Unjustified Objections to Interrogatories Merit Sanctions

by Keith A. Liker
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In an important but easily-overlooked decision, the Court of Appeal for the First District upheld an award of discovery sanctions based on objections to the practice of propounding interrogatories about a party's responses to previous interrogatories.

In *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, the court addressed the lengths to which some attorneys and parties will go to avoid providing discovery responses to straightforward interrogatories "with nitpicking and meritless objections," which resulted in delayed proceedings, impeding the self-executing operation of the Civil Discovery Act, wasting the time of the court and a discovery referee, as well as the opposing party and his attorney.

Plaintiff sued defendant for specific performance and unspecified damages in connection with a dispute arising out of the sale of real property by plaintiff to defendant. Defendant served a set of 23 special interrogatories to plaintiff. The interrogatories requested information on damages, causation and the existence of a loan commitment. Plaintiff answered three of the interrogatories, but then interposed objections as to the remaining 20. Plaintiff objected that the questions were "vague and ambiguous" because propounding party's use of the term "economic damages" did not specifically refer to Civil Code §1431.2 which defines economic damages.

The parties then engaged in the series of "meet & confer" letters. Defendant's attorney pointed out that plaintiff himself had quoted Civil Code §1431.2 and characterized it as the "generally accepted definition" of economic damages, and clarified that this was the information sought in the interrogatories. Plaintiff also interposed objections that the interrogatories were not "full and complete" pursuant to Code of Civil Procedure §2030.060(d) because they asked for a quantification of the amount of damages that had been requested in earlier interrogatories. That is, plaintiff also objected to defendant's interrogatories on the grounds that they referenced prior interrogatories.

The matter was heard by a discovery referee *nine months after* the interrogatories had been propounded. The referee determined that plaintiff had deliberately misconstrued and objected to the phrase "economic damages" solely in order to provide evasive responses. As to plaintiff's claim that the interrogatories referenced prior interrogatories and were not "full and complete in and of itself," the referee found that the case cited by plaintiff was inapposite, so the objection was frivolous. The referee determined that plaintiff's objections were unreasonable, evasive, lacking in legal merit and without justification, and recommended that plaintiff be ordered to provide answers and pay approximately $6,600 in discovery sanctions. The court adopted the referee's order.

In its decision, affirming the trial court, the reviewing court held that it is a central precept of the Civil Discovery Act that discovery be essentially "self-executing," meaning that the system is designed to operate without judicial involvement. Conduct becomes sanctionable when it frustrates the goal of a self-executing discovery system, because it requires the trial court to become involved in a discovery dispute, based on objections that were without "substantial justification" to begin with. The Court of Appeal also found that plaintiff forced the court to decide a dispute that was not "genuine." Instead, the purpose of plaintiff's objections was to delay discovery, require defendant

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to incur potentially significant costs in re-drafting interrogatories that were clear and did not exceed the numerical limits for special interrogatories, and to generally obstruct the self-executing discovery process. The dispute only arose when plaintiff seized upon an arguable deficiency in defendant's interrogatories based upon slim authority, which did not provide substantial justification for the objections asserted.

This decision is significant because it affirms that when a responding party *deliberately misconstrues* a written discovery request and then provides evasive responses and unjustified objections based on the misconstrued request, a misuse of the discovery process occurs which warrants the imposition of monetary sanctions. **TBN**

The ruling in *Cassel* precluded a plaintiff from disclosing pre-mediation and mediation conversations with his attorney in a subsequent legal malpractice case against his attorney. Contrary to the Court of Appeal, the Supreme Court found that "neither the language nor the purpose of the mediation confidentiality statutes supports a conclusion that they are subject to an exception, similar to that provided for the attorney-client privilege, for lawsuits between attorney and client." *Id.* at *11.

Impact of the Ruling

The reluctantly concurring opinion of Justice Chin warns that the Court's ruling could shield wrongdoing in an effort to preserve confidentiality:

> ***The court holds today that private communications between an attorney and a client related to mediation remain confidential even in a lawsuit between the two. This holding will effectively shield an attorney's actions during mediation, including advising the client, from a malpractice action even if those actions are incompetent or even deceptive. Attorneys participating in mediation will not be held accountable for any incompetent or fraudulent actions during that mediation unless the actions are so extreme as to engender a criminal prosecution against the attorney. This is a high price to pay to preserve total confidentiality in the mediation process.***

Id. at *16 (Justice Chin "reluctantly" concurring; internal citation and footnote omitted).

As noted several times in the Court of Appeal decision and in the opinion of the Supreme Court, the role of the judiciary is to interpret the intent of the Legislature. Here, given the absolute nature of the mediation privilege, the justices felt restrained in their ability to create a judicial exception to the rule. At this point, only the Legislature could craft an exception to mediation confidentiality that might allow redress for clients who believe their attorneys breached their duty of loyalty and the standard of care. **TBN**