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## Motions to compel: The new reality

How to bring your motion to compel and get it ruled on

Filing and having your motion to compel ruled on has become more difficult, particularly within the Los Angeles Superior-Personal Injury Court (“PI Court”). Hearing dates can be set far out in the future and in-person discovery conferences with the judge are generally required before the motion-to-compel hearing. The opposing party’s participation is needed throughout the motion-to-compel process – from scheduling the IDC to stipulating to extend the time to file the motion to compel which is almost always necessary to comply with the deadlines to file the motion. If opposing counsel wants to be difficult, they can make the entire process both frustrating and time consuming.

Opposing attorneys are aware of the difficulties in bringing motions to compel and use these difficulties to their advantage.

More and more it seems that evasive responses to written discovery and inapplicable, blanket objections are the norm. Motions to compel are often necessary to set the tone in your case and acquire the documents and information you need to win your case.

### Motions to compel in general

- **Grounds:** When a party who has proponded discovery believes the responses are inadequate, the propounding party may move for a motion to compel a further response. (Code Civ. Proc., § 2030.300(a)). (All further statutory citations are to the Code of Civil Procedure unless otherwise indicated.)
- **Timing:** The notice of motion to compel a further response to written discovery must be served within 45 days of service of the *verified* response at issue or

of when any verified supplemental response was served. (§ 2030.300(c)). Code of Civil Procedure section 1013 extends this time limit when the response was served by mail, overnight delivery, fax, or electronic service. (§ 2016.050; § 1010.6). For motions to compel further answers to deposition questions, the motion must be made no later than 60 days after the completion of the record of the deposition. (§ 2025.480). The parties may stipulate to a specific later date past the 45- or 60-day limit to give notice of the motion.

- **Content:** The motion must include a “meet and confer” declaration showing a good-faith attempt at informal resolution of all issues presented in the motion. (§ 2030.300(b)). The motion must also be accompanied by a separate statement

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of questions/document requests and responses in dispute. (CRC, rule 3.1345(a)). The separate statement must set forth each question, the response given, and the factual and legal reasons for compelling a further response. (CRC, rule 3.1345(c)).

### Motion to compel procedures for the PI Court

From the Sixth Amended General Order Re: Personal Injury Court (“PI Court”) Procedures, Central District (2/25/16):

Prior to filing a motion to compel in the PI Court, first check the Personal Injury (PI) Court homepage on the lacourt.org website to make sure you are following the most up-to-date PI Court General Order. As of today, the Sixth Amended General Order contains the most up-to-date practices and procedures for filing motions to compel.

In the PI Court, all motions to compel *further* responses to discovery require that you first participate in an Informal Discovery Conference (“IDC”) prior to the motion to compel hearing (*unless* the moving party submits a declaration showing that the opposing party has refused to participate in an IDC). Motions to compel where there has been no response or an unverified response do not require an IDC.

An IDC is an informal meeting (usually in chambers) wherein the judge meets with counsel for approximately 30 minutes to help resolve discovery disputes informally to reduce the number of discovery motions in the PI Courts.

The moving party must meet and confer with the opposing party regarding the scheduling of the IDC date and time. The moving party must file and serve an IDC form (LACIV 239) at least 15 court days prior to the IDC and attach the CRS receipt for the IDC reservation to the IDC form. The opposing party’s opposition to the moving party’s IDC form is due 10 court days prior to IDC.

**Note:** Scheduling or participating in an IDC does *not* extend any deadlines to file your motion to compel. The PI Court order *encourages* parties to stipulate to continue the 45- and 60-day deadlines for filing motions to compel, but they are not required to do so. If parties will not stipulate, you can still file your motion to compel to avoid it being untimely, however the IDC must take place at some time prior to the motion hearing.

### Tips for streamlining your IDC and motion hearing

Do everything you can to make the IDC hearing easy for your judge.

- Streamline your arguments, keep your IDC statement brief and to the point, and avoid attaching lengthy exhibits.
  - Tab all Declarations and/or exhibits. (CRC 3.1110(f)).
  - Mark your deposition excerpts in the transcripts. (CRC, rule 3.1116(c)).
  - Submit chambers copies for papers filed 7 days or less before the hearing. In addition to filing original motion papers, an extra copy marked “Chambers Copy” must be delivered directly to the courtroom. (6th Amended General Order: PI Court).
- If you are submitting lengthy motions or oppositions, consider submitting one or more three-ring binders organizing Chambers Copies for the judge. (6th Amended General Order: PI Court).

### Recent cases and issues relevant to motions to compel

#### • *Pre- and post-incident reports and investigations*

Pre- and post-incident reports and investigations including information about the perpetrator and other perpetrators are discoverable. In an action against a church for negligent hiring, supervising, and retaining, stemming from alleged incident in which a Bible instructor sexually abused minor plaintiff,

evidence concerning other children abused by the same perpetrator after the abuse suffered by the plaintiff, as well as the defendant’s knowledge and conduct in response thereto, and even reports concerning abuse by other employee-perpetrators both before and after the abuse suffered by the plaintiff, are discoverable as relevant to issues including notice, ratification and punitive damages. (*Lopez v. Watchtower Bible and Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566.)

#### • *Individual privacy rights in text messages/social media – balancing tests*

Not all rights to privacy were created equally. “Privacy concerns are not absolute. They must be balanced against other important interests. [N]ot every act which has some impact on personal privacy invokes the protections of [our Constitution].... [A] court should not play the trump card of unconstitutionality to protect absolutely every assertion of individual privacy.” (*In re Clergy Cases I* (2010) 188 Cal.App.4th 1224, 1234.)

The right of privacy in the California Constitution (art. I, § 1), “protects the individual’s reasonable expectation of privacy against a serious invasion.” (*Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 370.) In deciding whether to permit discovery that touches upon privacy “California courts balance the public need against the weight of the right.” (*Puerto v. Superior Court* (2008) 158 Cal.App.4th 1242, 1250-51.) Drawing this ultimate balance requires a careful evaluation of the privacy right asserted, the magnitude of the imposition on that right, and the interests militating for and against any intrusion on privacy. (*Pioneer*, 40 Cal.4th at p. 360.)

*Natalie Weatherford of Taylor & Ring, Los Angeles, handles all types of personal injury cases specializing in handling sexual abuse, sexual assault and sexual harassment cases involving children and adults.*