

## § 5.7 Motions to Compel Further Answers - in General

Upon reviewing responses to discovery (or hearing a response during a deposition), the propounding party may decide that the responses are insufficient, e.g., objections were improperly raised, questions were not completely answered, etc. In that case, the party may bring a motion for an order compelling the responding party to provide further answers. There are specific procedures and time limitations with which the party must comply.

The applicable code section for each method of discovery contains a provision dealing with motions to compel further answers. See, e.g., C.C.P. § 2016.040 for compelling further answers to deposition questions, C.C.P. § 2030.300 for compelling further answers to rogs, and C.C.P. § 2033.290 for compelling further answers to RFA's.

### WARNING!!

**THE CODE IS VERY EXPLICIT, AND MUST BE COMPLIED WITH IN ORDER TO AVOID A WAIVER OF RIGHTS AND/OR THE IMPOSITION OF SANCTIONS. BE SURE TO READ THE APPLICABLE CODE SECTIONS IN THEIR ENTIRETY. THE FOLLOWING DISCUSSION CONTAINS JUST A FEW HIGHLIGHTS OF THE PROVISIONS CONCERNING MOTIONS TO COMPEL FURTHER ANSWERS.**

Sanctions. The Discovery Act is replete with provisions whereby parties may be sanctioned for violating its provisions. Sanctions vary in severity. For example, a party may be ordered to pay monetary sanctions (usually the opposing party's attorneys' fees and costs incurred as a result of the violation) for failing to meet and confer (§ 2023.020) or for unsuccessfully making or opposing a motion to compel (see, e.g., subsection (d) under C.C.P. §§ 2030.300, 2031.310, and 2033.290). Far worse, the court may order issue, evidentiary, or terminating sanctions (which prevent a party from raising a particular issue at trial, introducing evidence at trial, or from bringing or defending a claim at all), if a party fails to obey an order compelling further responses (see, e.g., subsection (e) under C.C.P. §§ 2030.300 and 2031.310). Failure to obey an order compelling further responses to requests for admission could result in the requests being admitted (see C.C.P. § 2033.290(e)).

Meet and Confer Requirement. The filing of a motion to compel further responses must be preceded by a "reasonable and good faith attempt at an informal resolution of each issue presented by the motion" (see, e.g., subsection (b) under C.C.P. § 2030.300 for rogs, and § 2031.310 for inspection demands). To that end, every motion to compel further responses must be accompanied by a "meet and confer declaration" showing that, before filing the motion, the moving party did so. See § 6.3.3 for further information.

Time in Which to Bring Motion. There are two dates to keep in mind when considering timing on motions to compel further answers.

First, if the motion isn't served within a specified period of time following the receipt of the responses in question, the propounding party's right to bring the motion to compel is waived. In that regard, notices of motion to compel further responses to interrogatories, requests for admission, and inspection demands must be served within 45 days of service of the response (see subsection (c) under C.C.P. §§ 2030.300, 2031.310, and 2033.290), and notice of motions to compel further responses or documents at deposition must be served within 60 days after the completion of the record of the deposition (see C.C.P. § 2025.480).

Second, motions regarding non-expert discovery must be heard on or before the 15<sup>th</sup> day prior to the *initial* trial date, so sufficient notice must be given and a hearing date obtained. (C.C.P. § 2024.020(a))

Separate Statement. Every motion to compel further responses must contain a "Separate Statement" detailing the question asked, the response, and a discussion concerning why the response is insufficient. See § 6.3.4 for further information.

If you need to file a motion to compel, see "Regular Motions," in Chapter 6.