

## RESOLUTION 04-11-2007

### DIGEST

#### Civil Procedure: Limiting Number of Interrogatories

Amends Code of Civil Procedure section 2030.030 to provide for a limit of 35 interrogatories, including both special and form interrogatories.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

Similar to Resolution 11-03-2005, which was approved as amended, and Resolution 10-13-2006, which was approved.

#### Reasons:

This resolution amends Code of Civil Procedure section 2030.030 to provide for a limit of 35 interrogatories, including both special and form interrogatories. This resolution should be disapproved because the ability to propound 35 special interrogatories in addition to form interrogatories assists the parties in discovering the factual bases for the litigation.

Interrogatories serve a useful purpose in litigation by allowing the parties to obtain significant information in a cost effective manner. Limiting the number of interrogatories could lead to unnecessary or longer depositions. In many cases, it is appropriate to propound additional written discovery requests.

This resolution, however, would provide a disincentive to economical discovery by requiring a party seeking to propound additional interrogatories to bear the cost of obtaining leave of court to do so. It also would not cure the abuse alleged, since a party could still exceed the 35-interrogatory limit simply by submitting a declaration for additional discovery as provided in Code of Civil Procedure section 2030.050.

The 2006 Conference approved Resolution 10-13-06, which proposed an amendment to Code of Civil Procedure section 94 by expressly providing that the limit of 35 written discovery requests in limited actions would exclude “[o]ne set of form interrogatories authorized under Code of Civil Procedure section 2033.710.” This resolution, which limits the use of form interrogatories in unlimited jurisdiction cases by including them in the 35-interrogatory limit, is therefore inconsistent with the reasoning behind Resolution 10-13-06.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend California Code of Civil Procedure section 2030.030 to read as follows:

1 §2030.030

2 (a) A party may propound to another party a total of thirty-five (35) interrogatories,  
3 consisting of any combination of either or both of the following:  
4 ~~(1) Thirty-five specially prepared interrogatories that are relevant to the subject~~  
5 ~~matter of the pending action and/or -~~  
6 ~~(2) Any additional number of official form interrogatories, as described in Chapter~~  
7 ~~17 (commencing with Section 2033.710), that are relevant to the subject matter of the~~  
8 ~~pending action. Any official form interrogatory with subparts shall be considered a single~~  
9 ~~interrogatory for the purposes of this section.~~  
10 (b) Except as provided in Section 2030.070, no party shall, as a matter of right,  
11 propound to any other party more than thirty-five (35) ~~specially prepared~~ interrogatories. If  
12 the initial set of interrogatories does not exhaust this limit, the balance may be propounded  
13 in subsequent sets.  
14 (c) Unless a declaration as described in Section 2030.050 has been made, a party  
15 need only respond to the first thirty-five (35) interrogatories served, if that party states an  
16 objection to the balance, under Section 2030.240, on the ground that the limit has been  
17 exceeded.

(Proposed new language underlined; language to be deleted stricken)

PROPOSERS: Stephen Steinberg, Geoffrey Steele, Christine Chestnut, Shannon Waggoner, Craig Davis, Michael Wilson, Avin Sharma, Pippin Brehler, Arlene Segal, Virginia George

#### STATEMENT OF REASONS

Existing Law: Permits the indiscriminate and unlimited use of form interrogatories.

This Resolution: Limits the use of form interrogatories by including them in the thirty-five interrogatory limit. Litigants would still be free to use form interrogatories where appropriate, and could still submit a declaration of necessity if they felt the need to exceed the thirty-five interrogatory limit.

The Problem: Form interrogatories are often used as a tool to harass and burden the opposing party. As the law currently stands, form interrogatories do not count against a party's limit, so there is no reason not to send them nor is there any reason not to check every single box on the form without thought to relevance or materiality.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

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RESPONSIBLE FLOOR DELEGATE:

## **COUNTERARGUMENTS**

### **BEVERLY HILLS BAR ASSOCIATION**

This resolution, which limits the use of form interrogatories by including them in the 35-interrogatory limit, claims that the use of form interrogatories is "indiscriminate and unlimited." The assertion is false. For all intents and purposes, only relevant form interrogatories may be used and only one set is served on each responding party. Generally, the form interrogatories do a very good job of capturing the most relevant information and cover subjects that are time-consuming or embarrassing to cover at a deposition (e.g., felony conviction). Form Interrogatories are not abusive in form or content because they are drafted and approved by the Judicial Council. They fulfill a function different from that of specially prepared interrogatories (which typically are used as contention interrogatories in business litigation) and should not count against the 35-interrogatory limit. Part of the value of form interrogatories is that they are typically insulated from spurious objections, and the responding parties know that. In sum: It ain't broke so don't fix it.

### **ORANGE COUNTY BAR ASSOCIATION**

At the 2006 Conference, the Delegates adopted Resolution 10-13-16, which proposed an amendment to Code of Civil Procedure § 94 by expressly providing that the limit of 35 written discovery requests in limited actions would exclude "[o]ne set of form interrogatories authorized under Code of Civil Procedure § 2033.710." This proposed Resolution provides for exactly the opposite. At a minimum the Conference should be consistent. Adopting two resolutions that directly conflict with each other is unwise and unnecessary. In addition, the proposed Resolution would not cure the abuse alleged, since it retains a party's ability to exceed the 35 interrogatory limit by simply submitting the declaration provided by Code of Civil Procedure § 2030.050.