

CLIENT ALERT

California Litigants, Pay Attention, the Rules of Discovery Have Changed

February 5, 2020

Effective January 1, 2020, discovery in California state courts follows three new rules, set out in California Code of Civil Procedure sections 2031.280, 2023.050, and 2016.090.

New Rules

First, when responding to requests for production, the produced documents must identify the specific request to which they respond. The rule previously allowed parties to produce documents as they were kept—a far more convenient standard for the producing party. Parties may still opt out of this requirement through joint stipulation.

Second, courts *shall* impose a \$250 sanction for: (a) failure to respond in good faith to a document production request or inspection demand; (b) producing requested documents less than a week before a hearing on their motion to compel; and (c) failing to meet and confer to resolve production disputes. Courts may also require the attorney to report the sanction to the State Bar.

Third, parties may now stipulate to provide one another with initial disclosures, similar to those used in federal courts. Stipulating parties will also be required to supplement or correct their responses as additional information becomes available.

Open Issues

Because parties may serve unlimited requests for production, the added burden of identifying the corresponding requests for each document could be substantial. As such, parties may attempt to mitigate that burden by identifying ranges of documents as responsive to multiple requests. This could lead to additional discovery motion practice. Additionally, it is unclear what remedies, if any, would be available to the requesting parties if they believe that the responding party has not properly matched documents to their corresponding requests. For example, although the new sections do not provide for evidence sanctions for the failure to comply, parties may seek to have documents excluded from trial because they were not identified as responsive to a particular discovery request.

It is also unclear if courts would be willing to strictly enforce the new requirement, as doing so may collide with the attorney work-product doctrine which protects attorney's impressions, conclusions, opinions, and theories. Matching specific documents to particular requests may be found to invade the work-product doctrine.

Moving Forward

Parties concerned with this additional burden may wish to agree, early in litigation, to limit the impact of the new requirements, or opt for the newly available initial disclosures model. Time will tell if parties are willing to strictly comply with these new requirements and how courts will enforce them.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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