

Part I

DISCOVERY METHODS

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A. STATUTORY AUTHORITY FOR DISCOVERY

§ 1:1 The California Civil Discovery Act; purpose and applicability

The Civil Discovery Act, Cal. C.C.P. §§ 2016.010 to 2036.050, governs discovery in California. Cal. C.C.P. § 2016.010.

California Discovery provides complete coverage of all discovery methods and provides in-depth coverage of interrogatories, focusing on specific actions and the various uses of interrogatories and objections to interrogatories.

The state has two substantial interests in regulating pre-trial discovery. The first is to facilitate the search for truth and promote justice, while the second is to protect the legitimate privacy interests of the litigants and third parties. *Nativi v. Deutsche Bank National Trust Company*, 223 Cal. App. 4th 261, 167 Cal. Rptr. 3d 173 (6th Dist. 2014), review denied, (Apr. 30, 2014).

The principle that when the Legislature deletes an express provision of a statute it is presumed that it intended to effect a substantial change in the law applies specifically to the Civil Discovery Act. *Toyota Motor Corp. v. Superior Court*, 197 Cal. App. 4th 1107, 130 Cal. Rptr. 3d 131 (2d Dist. 2011), as modified, (July 28, 2011).

Under California law, judgment is entered as a discovery sanction only after the offending party has disrupted the truth-seeking function of litigation by failing to comply with its discovery obligations. *In re Marciano*, 446 B.R. 407 (Bankr. C.D. Cal. 2010), aff'd, 459 B.R. 27 (B.A.P. 9th Cir. 2011), aff'd, 708 F.3d 1123 (9th Cir. 2013).

The purposes of the discovery statutes are to assist the parties and the trier of fact in ascertaining the truth; to

encourage settlement by educating the parties as to the strengths of their claims and defenses; to expedite and facilitate preparation and trial; to prevent delay; and to safeguard against surprise. *Cottini v. Enloe Medical Center*, 226 Cal. App. 4th 401, 172 Cal. Rptr. 3d 4 (3d Dist. 2014); *Boston v. Penny Lane Centers, Inc.*, 88 Cal.Rptr.3d 707, 170 Cal.App. 4th 936 (Cal.App. 2 Dist. Jan 27, 2009).

A purpose of the California discovery act is to make

discovery a simple, convenient, and inexpensive means of revealing the truth and exposing false claims. *Pratt v. Union Pacific R. Co.*, 168 Cal. App. 4th 165, 85 Cal. Rptr. 3d 321 (3d Dist. 2008), as modified (Nov. 19, 2008).

A key legislative purpose of the discovery statutes is to educate the parties concerning their claims and defenses so as to encourage settlements and to expedite and facilitate trial. The discovery procedures are designed to minimize the opportunities for fabrication and forgetfulness. *Puerto v. Superior Court*, 158 Cal.App.4th 1242 (Cal.App. 2 Dist. Jan 15, 2008).

In establishing the statutory methods of obtaining discovery in the Civil Discovery Act, it was the intent of the legislature that discovery be allowed whenever consistent with justice and public policy. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants*, 55 Cal.Rptr.3d 751, 148 Cal.App.4th 390 (Cal.App. 2 Dist. Mar 8, 2007).

California's discovery process allows for discovery of all relevant material and is designed to eliminate the element of surprise. Information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. *Garamendi v. Golden Eagle Ins. Co.*, 116 Cal.App.4th 694 (Cal.App. 1 Dist. Mar 04, 2004).

The purpose of pretrial discovery is to obtain all of the facts relative to a claim or defense. *Hernandez v. Superior Court*, 112 Cal.App.4th 285 (Cal.App. 2 Dist. Sep 29, 2003), as modified (Oct 23, 2003).

Statutes governing discovery, like the federal rules, were designed to make discovery a "simple, convenient, and inexpensive" means of revealing the truth and exposing false claims. *American Home Assurance Co. v. Societe Commerciale Toutelectric*, 128 Cal.Rptr.2d 430, 104 Cal.App.4th 406 (Cal.App. 1 Dist. Dec 17, 2002).

California's pretrial discovery procedures are designed to minimize the opportunities for fabrication and forgetfulness, and to eliminate the need for guesswork about the other side's evidence, with all doubts about discoverability resolved in favor of disclosure. *Kirkland v. Superior Court*, 95 Cal.App.4th 92, 115 Cal.Rptr.2d 279, 02 Cal. Daily Op. Serv. 253, 2002 Daily Journal D.A.R. 325 (Cal.App. 2 Dist. Jan 09, 2002).

The Civil Discovery Act applies in both a civil action and a special proceeding of a civil nature; a special proceeding of a civil nature is a type of case which was not, under the common law or equity practice, either an action at law or a suit in equity. *People v. Superior Court (Cheek)*, 114 Cal.Rptr.2d 760, 94 Cal.App.4th 980 (Cal.App. 6 Dist. Dec 21, 2001).

The purpose of the discovery rules is to enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise; the discovery process is designed to make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent. *Juarez v. Boy Scouts of America, Inc.*, 97 Cal.Rptr.2d 12, 81 Cal.App.4th 377 (Cal.App. 1 Dist. May 12, 2000).

Nothing in the Civil Discovery Act prevents a party from conducting a unilateral investigation without resort to any statutory discovery device, provided only that the investigation is otherwise lawful. *Pullin v. Superior Court*, 97 Cal.Rptr.2d 447, 81 Cal.App.4th 1161 (Cal.App. 2 Dist. Jun 29, 2000).

One central precept of the Civil Discovery Act is that discovery be essentially self-executing. *Obregon v. Superior Court*, 79 Cal.Rptr.2d 62, 67 Cal.App.4th 424 (Cal.App. 2 Dist. Oct 22, 1998).

Arbitration is not a "special proceeding," within the meaning of the Code of Civil Procedure relating to depositions. *Brock v. Kaiser Foundation Hospitals*, 13 Cal.Rptr.2d 678, 10 Cal.App.4th 1790 (Cal.App. 3 Dist. Nov 10, 1992), declined to extend on other grounds by *Engalla v. Permanente Medical Group, Inc.*, 15 Cal.4th 951, 938 P.2d 903, 64 Cal.Rptr.2d 843 (Cal. Jun 30, 1997), as modified (Jul 30, 1997).

The Civil Discovery Act was intended to bring a new form of order to civil discovery and to eliminate some of the more undesirable elements of the adversarial system, including the "sporting" theory of litigation, that of surprise at trial. *Pillsbury, Madison & Sutro v. Schectman*, 64 Cal.Rptr.2d 698, 55 Cal.App.4th 1279 (Cal.App. 1 Dist. Jun 19, 1997).

Courts must insist discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation; these tools should be well calibrated, and a lancet is to be preferred over the sledge hammer. *Calcor Space Facility, Inc. v. Superior Court*, 61 Cal.Rptr.2d 567, 53 Cal.App.4th 216 (Cal.App. 4 Dist. Feb 28, 1997).

The Civil Discovery Act, as limited or adapted by the rules of procedure of the state bar, constitute the method of discovery in disciplinary proceedings. *Nizinski v. State Bar of California*, 121 Cal.Rptr. 824, 14 Cal.3d 587, 536 P.2d 72 (1975).

The discovery laws in California are designed to expedite the trial of civil matters by enabling counsel to move quickly and thoroughly to obtain evidence and evidentiary leads, and thus to more quickly and effectively prepare for trial.