

Locke Lord QuickStudy: New Year, New Discovery Rules: ?California Amends Its Civil Discovery Act

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California has enacted changes to its Civil Discovery Act so that discovery procedures in California state court are now more closely aligned with the federal court system's initial disclosure requirements. California also increased the amount of monetary sanctions that may be assessed for discovery abuse, while simultaneously giving courts more leeway in declining to award them.

Parties in civil cases filed after January 1, 2024, subject to some exceptions, such as unlawful detainer matters, may now demand initial disclosures from other parties. Cal. Code Civ. Proc. §2016.090(a). Once a demand is made by any party, all other parties have 60 days to respond. The verified initial disclosures must include (1) the identities and contact information of persons likely to have discoverable information, along with the subjects of that information, that the disclosing party may use to support its claims or defenses or that is relevant; (2) a copy or a description of all documents that the disclosing party may use to support its claims or defenses or that is relevant; and (3) any contract or insurance policy that may provide for indemnity or reimbursement for payments made to satisfy the judgment.

Section 2016.090(a) also provides the parties the option to demand supplemental disclosures twice before the initial trial setting and once after the initial trial date is set. The court may also order one additional supplemental demand upon a showing of good cause. Unlike in federal court, there is no continuing obligation to supplement absent a demand.

The statute exempts from its coverage persons without an attorney.

The Civil Discovery Act was also amended to increase the amount of sanctions a court may award on a determination of discovery abuse, from \$250 to \$1,000, in addition to other sanctions permitted by existing law, such as an award of attorneys' fees. Cal. Code Civ. Proc. §2023.050. However, it also allows the court discretion in excusing the sanction if it makes written findings that the one subject to sanctions acted with substantial justification or circumstances make the imposition of the sanction unjust. Finally, it codifies protections for unrepresented parties, noting that there is a rebuttable presumption that an unrepresented natural person acted in good faith at the time of any sanctionable conduct, which can only be overcome by clear and convincing evidence.

The initial disclosure requirement can act as a cost saving for litigants, as it provides a more time-efficient manner to obtain discovery and may reduce the number of discovery requests that have to be answered. However, litigants should be wary of the codification of additional protections for unrepresented litigants, as it may embolden some in their discovery abuses, given the high bar to rebut the presumption of good faith.

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