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DEERING'S CALIFORNIA CODES ANNOTATED
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CODE OF CIVIL PROCEDURE
Part 4. Miscellaneous Provisions
Title 4. Civil Discovery Act
Chapter 7. Sanctions

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Cal Code Civ Proc § 2023.030 (2013)

§ 2023.030. Sanctions which may be imposed for misuse of discovery process; Failure to provide electronically stored information

To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process:

(a) The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on one unsuccessfully asserting that another has engaged in the misuse of the discovery process, or on any attorney who advised that assertion, or on both. If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(b) The court may impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process. The court may also impose an issue sanction by an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses.

(c) The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence.

(d) The court may impose a terminating sanction by one of the following orders:

(1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process.

(2) An order staying further proceedings by that party until an order for discovery is obeyed.

(3) An order dismissing the action, or any part of the action, of that party.

(4) An order rendering a judgment by default against that party.

(e) The court may impose a contempt sanction by an order treating the misuse of the discovery process as a contempt of court.

(f)

(1) Notwithstanding subdivision (a), or any other section of this title, absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

NOTES:

Amendments:

2012 Amendment:

Added subd (f).

Historical Derivation:

Former CCP § 2023(b), added Stats 1986 ch 1334 § 2, amended Stats 1987 ch 86 § 6.

Law Revision Commission Comments:

2004

The introductory clause of Section 2023.030 continues the introductory clause of former Section 2023(b) without substantive change.

Subdivision (a) continues former Section 2023(b)(1) without change, except to replace "article" with "title."

Subdivision (b) continues former Section 2023(b)(2) without change.

Subdivision (c) continues former Section 2023(b)(3) without change.

Subdivision (d) continues former Section 2023(b)(4) without change.

Subdivision (e) continues former Section 2023(b)(5) without change.

Collateral References:

Cal. Points & Authorities (Matthew Bender(R)) ch 24A "Attorneys At Law: Malpractice" § 24A.03.

Cal. Points & Authorities (Matthew Bender(R)) ch 47 "Contempt" § 47.63.

Cal. Points & Authorities (Matthew Bender(R)) ch 80 "Discovery: Scope Regulation And Timing" § 80.80.

Cal. Points & Authorities (Matthew Bender(R)) ch 80 "Discovery: Scope Regulation And Timing" § 80.100.

Cal. Points & Authorities (Matthew Bender(R)) ch 82 "Discovery: Privileges And Other Discovery Limitations" § 82.10.

Cal. Points & Authorities (Matthew Bender(R)) ch 82 "Discovery: Privileges And Other Discovery Limitations" § 82.20.

Cal. Points & Authorities (Matthew Bender(R)) ch 82 "Discovery: Privileges And Other Discovery Limitations" § 82.30.

Cal. Points & Authorities (Matthew Bender(R)) ch 82 "Discovery: Privileges And Other Discovery Limitations" § 82.31.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.10.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.30.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.60.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.70.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.80.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.100.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.150.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.160.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.170.

Cal. Points & Authorities (Matthew Bender(R)) ch 84 "Discovery: Interrogatories" § 84.10.

Cal. Points & Authorities (Matthew Bender(R)) ch 84 "Discovery: Interrogatories" § 84.20.

Cal. Points & Authorities (Matthew Bender(R)) ch 84 "Discovery: Interrogatories" § 84.30.

Cal. Points & Authorities (Matthew Bender(R)) ch 84 "Discovery: Interrogatories" § 84.70.

Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible Evidence" § 85.10.

Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible Evidence" § 85.20.

Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible

Evidence" § 85.30.

Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible Evidence" § 85.50.

Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible Evidence" § 85.60.

Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible Evidence" § 85.80.

Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible Evidence" § 85.90.

Cal. Points & Authorities (Matthew Bender(R)) ch 86 "Discovery: Requests For Admissions" § 86.10.

Cal. Points & Authorities (Matthew Bender(R)) ch 86 "Discovery: Requests For Admissions" § 86.14.

Cal. Points & Authorities (Matthew Bender(R)) ch 86 "Discovery: Requests For Admissions" § 86.20.

Cal. Points & Authorities (Matthew Bender(R)) ch 86 "Discovery: Requests For Admissions" § 86.30.

Cal. Points & Authorities (Matthew Bender(R)) ch 86 "Discovery: Requests For Admissions" § 86.50.

Cal. Points & Authorities (Matthew Bender(R)) ch 86 "Discovery: Requests For Admissions" § 86.52.

Cal. Points & Authorities (Matthew Bender(R)) ch 87 "Discovery: Physical And Mental Examinations" § 87.10.

Cal. Points & Authorities (Matthew Bender(R)) ch 87 "Discovery: Physical And Mental Examinations" § 87.12.

Cal. Points & Authorities (Matthew Bender(R)) ch 87 "Discovery: Physical And Mental Examinations" § 87.13.

Cal. Points & Authorities (Matthew Bender(R)) ch 87 "Discovery: Physical And Mental Examinations" § 87.30.

Cal. Points & Authorities (Matthew Bender(R)) ch 87 "Discovery: Physical And Mental Examinations" § 87.50.

Cal. Points & Authorities (Matthew Bender(R)) ch 88 "Discovery: Exchange Of Expert Witness Information" § 88.10.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process" § 147.24.

Cal. Points & Authorities (Matthew Bender(R)) ch 180 "Pretrial Proceedings" § 180.31.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 110.13.

Matthew Bender (R) Practice Guide: *Cal. Trial and Post Trial Civil Procedure* §§ 1.23, 23.07[2].

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 2.13.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 3.10.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 5.08.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 7.04-7.05.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 7.07.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 11.14-11.15.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 13.02-13.06.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 13.08.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 13.12.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 13.14-13.15.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 16.02.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 16.06.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 16.16.

Law Review Articles:

Alt-Delete: Judges Have Made it Clear That Ignorance is No Longer an Excuse for Spoliation of Electronic Evidence. *33 LA Law 35* (July/August, 2010).

Super Powers: California Courts Have Broad Inherent Powers to Redress Litigation Misconduct. *33 LA Law 18* (November, 2010).

Hierarchy Notes:

Pt. 4, Tit. 4 Note

Pt. 4, Tit. 4, Ch. 7 Note

Emerging Issues Analysis

2012 Changes to the California Electronic Discovery Act

California's 2012 "clean up" legislation expands and clarifies application of the Electronic Discovery Act and specifically extends the application of numerous sections of the Civil Discovery Act to electronically stored information ("ESI"). This commentary addresses changes affecting the general provisions of the Civil Discovery Act, subpoenas, ESI that is not reasonably accessible, sanctions, and inadvertent production of privileged ESI.

NOTES OF DECISIONS 1. Illustrative Cases 2. Notice and Opportunity for Hearing Requirements 3. Applicability

Editor's Notes

For notes of decisions derived from cases decided under former CCP § 2023, see *CCP § 2023.010*.

1. Illustrative Cases

In a product liability suit relating to the absence of a three-point harness in a minivan, discovery sanctions against the manufacturer were proper under *CCP §§ 2023.010, 2023.020, 2023.030*, because a pattern of abuse led to loss of evidence on failure to warn. It was not excessive to instruct that the manufacturer failed to warn of a dangerous condition, even though the owner's manual including a warning. *Karlsson v. Ford Motor Co.* (2006, Cal App 2d Dist) 140 Cal App 4th 1202, 45 Cal Rptr 3d 265, 2006 Cal App LEXIS 976, rehearing denied *Karlsson v. Ford Motor Company* (2006) 2006 Cal. App. LEXIS 1226, review denied *Karlsson (Agneta) v. Ford Motor Company* (2006, Cal) 2006 Cal LEXIS 11662.

Trial court was not divested of authority to hear and grant a motion to compel responses under *CCP § 2030.290(b)* by the service of interrogatories that asserted inability to respond to some questions, which was not a proper response under *CCP, § 2030.210(a)*; hence, failure to complete the interrogatories was a proper basis for a monetary sanction against an attorney pursuant to *CCP §§ 2030.290(c), 2023.030* for violation of the order compelling responses. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007, 2d Dist) 2007 Cal App LEXIS 318.

Trial court did not err in imposing a monetary sanction on a former employee for his unsuccessful opposition to his former employer's motion to compel further responses to interrogatories because even though there had been no previous order compelling the employee to respond, nothing in *CCP § 2030.300(d)* suggests that a party is entitled to one free refusal to serve further responses before a monetary sanction can be imposed. Furthermore, the employer established without contradiction that the employee refused to meet and confer regarding further responses to the interrogatories, which was a separate offense entitling the moving party to monetary sanctions notwithstanding the outcome of the particular discovery motion, and the amount of fees awarded pursuant to *CCP § 2023.030(a)* was not an abuse of discretion, as the trial court cut the employer's request by two-thirds. *Parker v. Wolters Kluwer United States, Inc.* (2007, Cal App 2d Dist) 149 Cal App 4th 285, 57 Cal Rptr 3d 18, 2007 Cal App LEXIS 490.

Ample evidence of noncompliance supported the imposition of terminating sanctions in an action for unpaid attorney fees; the clients failed to respond to interrogatories and production demands, they failed to pay monetary sanctions, and their attorney declared that she was unable to locate them. *Steven M. Garber & Associates v. Eskandarian* (2007, Cal App 2d Dist) 150 Cal App 4th 813, 59 Cal Rptr 3d 1, 2007 Cal App LEXIS 705.

In a defamation case, the trial court had the jurisdiction to strike defendant's answer and enter default against defendant as a terminating sanction. It was clear that defendant had no intention of answering discovery, filing proper and timely papers, or complying with court orders, and no lesser remedy would have changed defendant's conduct. *Del Junco v. Hufnagel* (2007, Cal App 2d Dist) 150 Cal App 4th 789, 60 Cal Rptr 3d 22, 2007 Cal App LEXIS 702, modified, rehearing denied (2007, Cal App 2d Dist) 2007 Cal App LEXIS 883, review denied *Del Junco Jr., M.D. (Tirso) v. Hufnagel (V. Georges)* (2007, Cal) 2007 Cal LEXIS 9050.

It was error to strike the testimony of other witnesses as a sanction for a parent's refusal to testify in a dependency hearing. This was not a case of discovery abuse and therefore *CCP § 2023.030(c)* was inapplicable. *In re Mark A.* (2007, 4th Dist) 156 Cal App 4th 1124, 68 Cal Rptr 3d 106, 2007 Cal App LEXIS 1848.

Trial court did not abuse its discretion in imposing terminating sanctions under *CCP § 2030.290(c)* or *CCP § 2023.030(d)(1)* in a contract case after finding that the sanctioned party was being evasive within the meaning of *CCP § 2023.010* when it tendered discovery responses that lacked meaningful information, repeatedly ignored meet and confer letters, continued to parrot the same answers after two orders compelling it to give further responses, and propounded no discovery of its own until faced with a motion for terminating sanctions. *Liberty Mutual Fire Ins. Co. v. LCL Administrators, Inc.* (2008, 3d Dist) 2008 Cal App LEXIS 859.

In a case where evidence showed that a client intentionally destroyed his file while a legal malpractice action was pending and only part of the file had been copied, there was a prima facie showing of prejudice that shifted the burden of proof to the client under *Ev C § 500*; terminating sanction was proper under *CCP § 2023.010(d)* and *CCP § 2023.030(a)-(d)* because he did not meet his burden. *Williams v. Russ* (2008, 2d Dist) 167 Cal App 4th 1215, 84 Cal Rptr 3d 813, 2008 Cal App LEXIS 1702, review denied *Williams (Doug) v. Russ (Larry)* (2009, Cal.) 2009 Cal. LEXIS 231.

In an action where trial court prohibited railroad company employer from compelling employee to attend a medical examination or conducting a disciplinary hearing to terminate employee's employment for refusing to provide it with medical evidence justifying his continued absence from work, trial court did not abuse discretion in imposing monetary sanctions against employer where the sanctions served not to punish but rather encourage voluntary compliance with the discovery procedures; employee's counsel had objected to employer's ex parte demands for medical information and had made every effort to secure employer's agreement to postpone the disciplinary hearing until trial court had heard his motion for injunctive relief, but instead employer had given equivocal responses while failing to agree to the requested postponement, forcing counsel to seek a temporary restraining order. *Pratt v. Union Pacific Railroad Co.* (2008, 3d Dist) 168 Cal App 4th 165, 85 Cal Rptr 3d 321, 2008 Cal App LEXIS 2027.

Trial court abused its discretion by not imposing a terminating sanction pursuant to *CCP §§ 2025.450*, subd. (d), 2023.030, for a manufacturer's persistent and flagrant discovery misconduct under *CCP § 2023.010*, subds. (d)-(g), when more discovery abuses came to light during the trial of a consumer warranty and fraud case. *Doppes v. Bentley Motors, Inc.* (2009, 4th Dist) 174 Cal App 4th 967, 94 Cal Rptr 3d 802, 2009 Cal App LEXIS 904, review denied *Doppes (August B.) v. Bentley Motors, Inc.* (2009, Cal.) 2009 Cal. LEXIS 10331.

Trial court had the discretion, under *CCP § 2023.030*, subd. (c), not to impose an evidence sanction prohibiting a party from introducing promissory notes in evidence, despite the party's failure to timely comply with a discovery request to produce any documents supporting a sale of real property. *Lee v. Lee* (2009, 5th Dist) 175 Cal App 4th 1553, 97 Cal Rptr 3d 516, 2009 Cal App LEXIS 1255.

Monetary sanction for frivolous objections to special interrogatories was appropriate under *CCP § 2023.030(a)* because a vagueness objection to a term defined by statute lacked substantial justification; moreover, questions that required reference to an answer to an earlier interrogatory were not incomplete under *CCP § 2030.060(d)* or compound, conjunctive, or disjunctive under *§ 2030.060(f)* because the interrogatories did not arguably exceed the limit of 35 as provided in *CCP § 2030.030(b)*. *Clement v. Alegre* (2009, 1st Dist) 177 Cal App 4th 1277, 99 Cal Rptr 3d 791, 2009 Cal App LEXIS 1568.

Because a wife sought discovery in connection with a motion to set aside child support orders that was barred by her own delay, awarding sanctions against her under *CCP §§ 1987.2(a)*, 2023.010-2023.030, or 2023.030(a), was not an abuse of discretion. *In re Marriage of Zimmerman* (2010, 2d Dist) 183 Cal App 4th 900, 109 Cal Rptr 3d 96, 2010 Cal App LEXIS 484, review denied *Zimmerman (Ruth & Paul), Marriage of* (2010, Cal.) 2010 Cal. LEXIS 5837.

Contractual attorney fees awarded in a default judgment entered as a discovery sanction under former *CCP § 2023* did not constitute relief under *CCP § 580* and thus did not have to be specified by dollar amount in the cross-complaint. Due process did not require notice of an amount of future attorney fees that might be imposed in connection with terminating sanctions, which was an impossibility within the meaning of *CC § 3531*. *Simke, Chodos, Silberfeld & Anteau, Inc. v. Athans* (2011, 2d Dist) 2011 Cal App LEXIS 652.

Terminating sanctions were authorized under *CCP §§ 2023.030(d)*, 2030.290(c), 2031.300(c), for misuse of the discovery process under *CCP § 2023.010* by failing to comply with an order to answer special interrogatories and to respond to demands for production of documents. *Van Sickle v. Gilbert* (2011, 3d Dist) 2011 Cal App LEXIS 849.

Trial court did not abuse its discretion in relying on issue sanctions that it had imposed against an employee when it

granted a preliminary injunction to his former employer because, given that the determined issues virtually assured that the employer would prevail at trial, there was a very strong showing of likelihood of success on the employer's claim that the employee had violated the enforceable noncompete clause of his employment contract with the employer and had used a device, the rights to which he had transferred to the employer, in doing so, to the detriment of the employer. The employee had not shown that the trial court abused its discretion in concluding that the likelihood that the employer would prevail was strong enough to justify the issuance of the injunction, even given that the balance of hardships tipped in the employee's favor. *Newlife Sciences, LLC v. Weinstock* (2011, 2d Dist) 2011 Cal App LEXIS 917.

Absent evidence of the condition of unlabeled and disorganized documents when they were found, the trial court acted within its discretion when it required the producing party to bear the costs of organizing the documents as a sanction under CCP §§ 2023.010, 2031.320, 2023.030, for willful abuse of discovery procedure and failure to comply with CCP § 2031.280(a). *Kayne v. Grande Holdings Limited* (2011, 2d Dist) 2011 Cal App LEXIS 1155.

Trial court erred in imposing \$5,000 in sanctions against plaintiff and her attorney for opposing a motion for a protective order by a deponent in plaintiff's personal injury action against defendant, who was the deponent's wife. While the trial court may properly have rejected plaintiff's contention concerning the scope of the exception to the marital privilege, the conflicting legal authority on an unsettled issue provided substantial justification for plaintiff's position, thereby negating the basis for the sanction order. *Diepenbrock v. Brown* (2012, 1st Dist) 208 Cal App 4th 743, 2012 Cal App LEXIS 896.

2. Notice and Opportunity for Hearing Requirements

Although a trial court did not err when it ordered a former employee to appear for a third deposition because he had waived any objection to the location of the deposition by failing to serve a written objection on his former employer at least three calendar days prior to the date of the deposition as required by CCP § 2025.410(a), it did err in its ex parte imposition of monetary sanctions for the employee's disruption and refusal to proceed with his second deposition because, pursuant to CCP § 2023.030, discovery sanctions could not be awarded ex parte. *Parker v. Wolters Kluwer United States, Inc.* (2007, Cal App 2d Dist) 149 Cal App 4th 285, 57 Cal Rptr 3d 18, 2007 Cal App LEXIS 490.

3. Applicability

Although a doctor who challenged a denial of staff privileges failed to produce information requested under B & P C § 809.2(d), the hearing officer was not empowered under CCP § 2023.030(d) or any other authority to terminate the peer review hearing before the doctor had an opportunity to exercise the rights set forth in B & P C § 809.3(a). *Mileikowsky v. West Hills Hospital Medical Center* (2007, 2d Dist) 154 Cal App 4th 752, 64 Cal Rptr 3d 888, 2007 Cal App LEXIS 1411, aff'd *Mileikowsky v. West Hills Hospital & Medical Center* (2009, Cal) 45 Cal 4th 1259, 91 Cal Rptr 3d 516, 203 P 3d 1113, 2009 Cal LEXIS 3662.

Court must look to CCP § 2034.300(b), and not the general provisions providing for sanctions for conduct that is a misuse of the discovery process found in CCP § 2023.030. *Muller v. Fresno Community Hospital & Medical Center* (2009, 2d Dist) 172 Cal App 4th 887, 91 Cal Rptr 3d 617, 2009 Cal App LEXIS 439.

Party opposing a motion for sanctions has the burden of showing good cause when it asks for an in camera inspection of documents to prove it reasonably applied a protective order safeguarding privacy interests, as an in camera inspection of numerous documents with multiple redactions is time-consuming and burdensome, and there must be at least some minimal showing. Accordingly, a trial court had not abused its discretion in refusing to hold an in camera document inspection for the purpose of deciding whether a monetary sanction was appropriate or in imposing a monetary sanction against defendant without conducting an in camera inspection where, based on defendant's own declaration and its reliance upon a patently inapt federal regulation, the trial court reasonably could have concluded that defendant had made excessive redactions without substantial justification. *Doe v. United States Swimming, Inc.* (2011, 6th Dist) 200 Cal App 4th 1424, 2011 Cal App LEXIS 1452.

In accordance with the unambiguous ban on entry of a judgment by default in a quiet title action under *CCP* § 764.010, occupants of property were entitled to participate in a noticed evidentiary hearing to determine the merits of the action, despite their status as defaulting defendants resulting from the trial court's imposition of terminating sanctions. The provision authorizing a judgment by default as a discovery sanction, *CCP* § 2023.030 (d)(4), was inapplicable pursuant to *CCP* § 760.060 by reason of its inconsistency with the quiet title provisions. *Nickell v. Matlock* (2012, 2d Dist) 2012 Cal App LEXIS 649.