

# THE DISCOVERY ACT APPLIES IN FAMILY LAW

Katherine Gallo 969G Edgewater Blvd., #345  
Foster City, CA 94404  
650-571-1011

[klgallo@discoveryreferee.com](mailto:klgallo@discoveryreferee.com)

[www.discoveryreferee.com](http://www.discoveryreferee.com)

[www.resolvingdiscoverydisputes.com](http://www.resolvingdiscoverydisputes.com)

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*“Although some informality and flexibility have been accepted in marital dissolution proceedings, such proceedings are [generally] governed by the same statutory rules of evidence and procedure that apply in other civil actions...No statute or rule of court exempts a marital dissolution proceeding from the application of the Civil Discovery Act, Code Civ. Proc., § 2016.010 et seq.”*

In re Marriage of Boblitt, 223 Cal. App. 4th 1004 at 1022

# COMMON MISTAKES

- **Relying on information obtained informally.**
- **Delaying discovery until the eve of trial.**
- **Failure to develop a discovery plan.**
- **Serving objectionable written discovery.**
- **Responding to written discovery with garbage objections.**
- **Filing discovery motions that are not in compliance with the Code of Civil Procedure.**

# THE PURPOSE OF DISCOVERY

*“The basic purpose of discovery is to take the ‘game’ element out of trial preparation by enabling parties to obtain the evidence necessary to evaluate and resolve their dispute beforehand.”*

Weil and Brown, *Civil Procedure Before Trial* (TRG, 2014) Section 8.1 citing *Greyhound Cor. v. Superior Court* (1961) 56 C2d355, 376

**The 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.”** *Emerson Electric Co. v. Superior Court* (1997) 16 Cal. 4<sup>th</sup> 1101, 1108.

**In order to accomplish the legislative purpose behind the discovery statutes they “must be construed liberally in favor of disclosure”** *Emerson Elect. Co. v. Superior Court* (1997) at 1107 quoting *Greyhound* at 377

# Obligations of a party

- “A party cannot plead ignorance to information which can be obtained from sources under his control.” *Deyo v. Kilbourne* (1978) 84 CA3d 771,782
- A party must disclose non-privileged facts known to his or her lawyer. *Smith v. Sup. Ct (Alfred)* (1961) 189 CA 2d 6
- A party must disclose information known to all persons in its employ. *Gordon v. Sup. Ct. (U.S.MFG.Co)* (1984) 161 CA 3d 15,167-168
- In responding, a party is expected to make a good faith inquiry of his or her family members. At least where they are shown to be cooperating with the party in the lawsuit. *Jones v. Superior Court (Benny)* (1981) 119 CA 3d 534, 552
- The responding party is required to obtain facts from experts who have been retained by a party and designated as a trial witness. *Sigerseth v. Superior Court* (1972) 23 CA 3d 427,433

# **HYP0 #1**

**Request for Admission #17:** Admit that you never paid the mortgage on the house located at 124 Berkeley Ave., Pleasant Hill, CA 94523.

## **Response 30 days later**

Respondent is unable to admit or deny this request due to lack of sufficient information. Respondent reserves the right to amend this response once they have done discovery.

- **What if anything is wrong with this response?**

# ANSWER

- The language “*paid the mortgage*” may be found to be vague, but responding party should respond as to what they think “*paid the mortgage means.*”
- Not valid. All the information should be in the care, custody and control of the responding party therefore it lacks merit.
- A party responding in their inability to admit or deny must also state that “*a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter.*”  
CCP §2033.220(c)