REQUESTS FOR ADMISSIONS

Tricky Little Discovery Devices

If you are like most lawyers, you are using the usual discovery devices to gather all your information for Summary Judgment or trial--Form Interrogatories, Special Interrogatories, Requests for Production of Documents, and of course, the deposition schedule from Hell. However, tactical use of Requests for Admissions (RFA's) are rarely in a party's discovery plan. Take a close look at C.C.P. §2033.010 et seq. Requests for admissions are wonderful, but tricky discovery devices that can certainly help you set up your case.

The Purpose of Requests for Admissions

The main purpose of RFA's is to set issues to rest by compelling admissions of things that cannot reasonably be controverted. [Weil and Brown, *Cal. Prac. Guide: Civil Procedure Before Trial* (TRG 2019) ¶8:1256, citing *Shepard & Morgan v. Lee & Daniel, Inc.* (1982) 31 C3d 256, 261] RFA's may be used to (1) establish the truth of specified facts, (2) admit a legal conclusion, (3) determine a party's opinion relating to a fact, (4) settle a matter in controversy, and (5) admit the genuineness of documents. [C.C.P. §2033.010; Weil and Brown, *Cal. Prac. Guide: Civil Procedure Before Trial* (TRG 2019) ¶¶8:1288 - 8:1301.2; *CEB California Civil Discovery Practice* 4th Edition §§ 9:17 - 9:20]. Admissions in response to RFA's are treated in effect as stipulations to the truthfulness of the matters admitted. No other evidence is necessary to establish the point and no contrary evidence is admissible without leave of court to withdraw or amend the response. [Weil and Brown, *Cal. Prac. Guide: Civil Procedure Before Trial* (TRG 2019) ¶8:1388, citing C.C.P. §2033.300-410); *Murillo v. Sup. Ct*. (2006)]

How to Write Requests for Admissions

Code of Civil Procedure §2033.060(a) – (g) sets forth the basic tenants as to how a request for admission must be drafted:

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- Each request must be numbered consecutively
- The first paragraph immediately shall state the identity of the party requesting the admissions, the set number, and the identity of the responding party
- Each request shall be "separately set forth" and identified by number or letter
- Each request shall be "full and complete in and of itself" and there shall be no preface or instructions.
- Any term specifically defined shall be typed with all caps whenever the term appears.
- No subparts or "compound, conjunctive or disjunctive" requests.
- If you are requesting an admission of the genuineness of documents, then they must be attached.
- No party shall combine in a single document requests for admissions with any other method of discovery (i.e., can't have interrogatories in the same document)

The leading discovery treatises also provide helpful advice. Weil and Brown, *Cal. Prac. Guide: Civil Procedure Before Trial* (TRG 2019) §8:1287.1 states:

> *Keep your RFA's as simple as possible so there is no room for denial or evasion. This will avoid objections on the ground of 'compound and conjunctive.*
>
> *Keep in mind that any admission obtained will probably be construed narrowly. So, make sure there is no room for quibbling as to what was admitted.*

CEB, California Civil Discovery Practice (4th ed. 2019) §9:17 advises that because the court has broad discretion in determining admissibility and relevance of evidence and scope and effect of an admission: the

> *". . . RFA's must be clear concise and unambiguous. See Fredericks v. Kontos Indus., Inc. (1987) 189 CA 3d 272, 277 (if admission is susceptible to more than one meaning, trial court must exercise its discretion to determine scope and effect of admission 'so that it accurately reflects what facts are admitted in the light of other evidence'. Trial courts may consider parol evidence that explains an admission but cannot use parol evidence to contradict the plain meaning of a response to an RFA; if a response to an RFA is unambiguous, the matter admitted is conclusively established." Monroy v. City of Los Angeles* (2008) 164 CA4th 248, 260.

However, the best advice I was ever given was when I was admonished by a San Francisco Superior Court Judge during a Case Management Conference when he asked me what jury instructions I was going to use at trial. I responded; "*Your Honor we don't even have a trial date yet.*" The Judge replied, "Then how do you know what discovery you need to prove your case?" After the Case Management Conference, I looked at the jury instructions. I found that the jury instructions are one-page road maps as to what I had to prove and how my RFA's needed to be drafted.

The Motions

Motions to Compel Further Responses and Motions for Requests for Admissions be Deemed Admitted must be in your arsenal. Though they appear to be the same motion you would use with the other discovery devices, there are a few noteworthy twists and turns.

Motion for Requests for Admissions be Deemed Admitted

This motion is quick and dirty. If you have not received responses to your RFA's, then you can file the motion. You neither have to meet and confer nor are there any time limitations in bringing the motion. And, most importantly, on the day of the hearing, you will either have an order that (1) your

Requests for Admissions are Deemed Admitted or (2) "*substantially compliant*" responses and sanctions in your pocket.

Unlike the other discovery statutes that address the failure to respond, C.C.P. §2033.280 has teeth as it states:

> ***Failure to serve timely response: Waiver; Motion for Order that matters be deemed admitted; Finding of court; Monetary sanction***
>
> *If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:*
>
> ***(a)** The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:*
>
> > ***(1)** The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.*
> >
> > ***(2)** The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.*

In other words, to defeat the motion, the responding party has to give you the "***substantially compliant***" responses before the hearing **as well as** a declaration from the attorney admitting that the tardy responses were the result of his "***mistake, inadvertence or excusable neglect***." The statute further states:

> ***(b)** The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).*
>
> ***(c)** The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is **MANDATORY** that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion*. [emphasis added]

In essence, even if the motion was defeated because "*substantially compliant*" responses were served prior to the hearing, it is **MANDATORY** that the court imposes a monetary sanction against the responding party. This is the only place in the Discovery Act that imposes **MANDATORY** sanctions.

However, a *"'deemed admitted' order establishes by judicial fiat that a non-responding party has responded to the requests by admitting the truth of all matters contained there."* Weil and Brown, Cal. Prac. Guide: Civil Procedure Before Trial (TRG 2019), ¶8:1375.1 citing *Wilcox v. Birtwhistle* (1999) 21 C4th 973, 979.

Motion to Compel Further Responses

You need to bring this motion if any of the following are in the responses:

- Garbage objections
- Evasive responses
- Partial or qualified admissions

- Responding party states that they lack sufficient information to admit or deny
- Admitting part and failing to admit or deny the remainder of the request
- Denying part and failing to admit or deny the remainder of the request.

The procedural requirements for a Motion to Compel Further Responses to Requests for Admissions are the same as for the other discovery devices. However, there is one additional thing you need to be aware of – **YOU NEED TO FILE THIS MOTION IF YOU WANT COST OF PROOF SANCTIONS!** See Weil and Brown, *Cal. Prac. Guide: Civil Procedure Before Trial* (TRG 2019), ¶8:1378; CEB, California Civil Discovery Practice (4th ed. 2019) §9:87 and *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal. App. 4th 618, 633.

However, you can't compel a party to admit the request even if they made the same admission in a deposition or in interrogatories. See *Hoguin v. Sup. Ct.* (1972) 22 CA 3d 812

Cost of Proof Sanctions

The legislative intent behind RFA's is to urge parties to take them seriously. One of the real kickers of this statute is the cost of proof sanctions set out in C.C.P. §2033.420. If the responding party is found to have unreasonably denied an RFA, that party may be ordered to pay attorneys' fees and costs incurred by the requesting party to prove the issue at trial. See *Garcia v. Hyster Co.* (1994) 28 Cal. App. 4th 724, 736 and *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal. App. 4th 618, 635-638. There is no specification on when or how the motion for expenses of proof should be made other than at the conclusion of a trial or after a motion for summary judgment is granted. See C.C.P. §2033.420 and *Barnett v. Penske Truck Leasing Co., L.L.P.* (2001) 90 CA 4th 494, 498.

Cost of proof sanctions are not really sanctions per se, but are designed to compensate for unnecessary expenses resulting from proving matters unreasonably denied. **You don't have to win the lawsuit to be awarded these sanctions!** Weil and Brown, *Cal. Prac. Guide: Civil Procedure Before Trial* (TRG 2019), ¶8:1405 citing *Smith v. Circle P Ranch Co., Inc.* (1978) 87 CA3d, 267, 276

The court shall award costs of proof unless the court finds any of the following:

(1) An objection to the request was sustained or a response to it was waived under Section 2033.290.

(2) The admission sought was of no substantial importance.

(3) The party failing to make the admission had reasonable ground to believe that the party would prevail on the matter:

(4) There was other good reason for the failure to admit. See C.C.P. Section 2033.420 (b)(1)-(4)