FOR THE YOUNG LAWYER: TEN ADMONTIONS FOR ADMISSIONS

by Rebecca Visosky

Requests for admissions can be a simple and efficient method of discovery that results in a powerful tool for trial or summary judgment. The following are ten hints for the new practitioner on how to maximize the benefit of requests for admissions and avoid the common pitfalls that lessen their effectiveness.

Narrowly Draft Requests

One of the most common mistakes when drafting requests is trying to prove too much in one request. Prepare requests that include only one fact to be admitted or denied. Like a good cross-examination question, the request should suggest an obvious answer – either a yes or a no. Avoid characterizing a fact or document about which you are seeking an admission with argumentative or charged language. A responding party can avoid admitting a “fact” based on an inaccurate characterization. For example, a request for admission that states “Admit or Deny that on January 1, 2005 you were recklessly speeding on Main Street” will likely garner an objection. That same admission might be more effective if split into two more factually specific requests: “Admit or deny that on January 1, 2005, you were traveling 80 miles per hour on Main Street” followed by “Admit or deny that the speed limit on Main Street as of January 1, 2005 was 50 miles per hour.”

Strategically Time Requests

Requests for admissions should not necessarily be among the first set of discovery served. They may be served any time after the parties conduct a Rule 26(f) conference up to 30 days before the end of the discovery period. Strategically, admissions are often best served near the end of the discovery period after other written discovery tools and depositions have been used to educate the parties on the facts. Generally speaking, the more information the drafting attorney has before serving requests for admissions, the better to assist him or her in narrowly drafting requests to address precise facts. Moreover, the responding party will have less opportunity and success amending its admissions or moving to withdraw deemed admissions near the end of litigation.

Determine If Requests for Admissions Are the Proper Tool

A request for admission is not an open-ended investigatory tool like an interrogatory or deposition question. The purpose of a request for admission is to withdraw a fact from contention. A request for admission may be helpful to simplify issues that appear to be resolved or transform an evidentiary admission in a deposition or interrogatory answer into a judicial admission that cannot be contested at trial. Some of the most common and effective uses of admissions are to authenticate documents, challenge expert qualifications, and prove up jurisdictional facts.
Include Preliminary Instructions and Definitions

Preliminary instructions and definitions of terms make requests more precise without over-burdening each request with elaborate explanations. Definitions should be kept simple because an overinclusive definition will likely invite an objection. Instructions should remind the responding party of its obligations under the Federal Rules of Civil Procedure, in particular the deadline by which answers must be served to avoid having requests deemed admitted.

Build Facts and Apply Law to Facts

Although a request to admit a pure question of law is improper, it is now permissible to seek admissions that apply law to fact, such as whether the premises where an accident occurred were under the control of defendant. Again like a good cross examination, it is best to seek a separate admission of each distinct fact that supports an ultimate legal conclusion. Furthermore, the drafting attorney must ensure that an admission regarding a legal conclusion correctly states the controlling law. Any variation in the legal standard will likely render the admission useless.

Avoid Objection Pitfalls

When first drafting requests for admissions, it is common to lessen their effectiveness by making them susceptible to objection. The drafting attorney can avoid common objections such as overbreadth or undue burden by limiting the requests to a reasonable number given the complexity of the case, avoiding repetitious requests that have already been answered by other forms of discovery, and defining the relevant time period about which the requests inquire. Precision in drafting and attaching any documents to which the requests refer may avoid objections to vagueness.

Insist on Adequate Answers

Do not allow the responding party to evade a well-tailored admission by giving an incomplete or obscured answer. Rule 36 requires that a request for admission be admitted or denied, and that a denial “fairly meet the substance of the requested admissions.” If good faith requires a party to qualify its answer, then Rule 36 requires that the party “specify so much of it as is true and qualify or deny the remainder.” Lack of knowledge or information is not a proper response unless the party precisely states that it has “made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable [it] to admit or deny” the request. If responses fall short of these requirements, counsel for the requesting party should confer with opposing counsel about amending the admissions and, failing that, file a motion to determine the sufficiency of the admissions and hope that the requests are deemed admitted or, alternatively, reanswered.

Use Admissions Correctly

Admissions may only be used against the responding party in the proceeding or action in which they are made or deemed. They can be used as summary judgment evidence (once filed) or to prove a fact or exclude evidence at trial. They are admissible as admissions by party-opponent and constitute judicial admissions similar to a pleading or stipulation,
opposed to evidentiary admissions), which generally means they cannot be contested at trial.\textsuperscript{13}

### Protect Deemed Admissions

If a party fails to respond timely to requests for admissions, the requests are deemed admitted automatically. Barring a local rule or practice to the contrary, it is generally not necessary for the requesting party to file a motion or otherwise affirmatively seek to have the requests deemed admitted. Instead, it is the responding party’s burden to file a motion to withdraw the deemed admissions. The closer the parties are to trial, the less likely the court is to allow withdrawal of the admissions, particularly if the requesting party can demonstrate reliance on the admissions.\textsuperscript{14}

### Focus on Prejudice to Avoid Withdrawal of Admissions

An admission may be withdrawn if presentation of the merits will be served thereby and if the party who obtained the admission will not be prejudiced.\textsuperscript{15} A determination of prejudice relates to the difficulties a requesting party will face in proving its case without the admission, such as an unavailable key witness or the sudden need to obtain evidence of the previously admitted fact.\textsuperscript{16} Counsel for the party opposing withdrawal should therefore emphasize the effects of withdrawal on ultimately proving a claim or defense and the added expense or burden of obtaining the necessary evidence at the time of withdrawal as compared to conducting the same discovery at an earlier stage in the litigation.\textsuperscript{17}

Error! Objects cannot be created from editing field codes. Ms. Visosky is an associate with Carrington, Coleman, Sloman & Blumenthal, L.L.P., in Dallas, Texas. Her practice emphasizes complex commercial litigation.

---

\textsuperscript{1} See Fed. R. Civ. P. 36(a).


\textsuperscript{3} FED. R. CIV. P. 36, 1970 advisory committee’s notes.


\textsuperscript{7} See e.g., Becerra v. Asher, 105 F.3d 1042, 1048 (5th Cir. 1997).


10 *See Fed. R. Civ. P. 36(a)*

11 *See Fed. R. Civ. P. 36(b); see also Becerra v. Asher*, 105 F.3d at 1048.

12 *See Fed. R. Civ. P. 56(c).*


15 *See Fed. R. Civ. P. 36(b); see also Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co.*, 123 F.R.D. 97, 103-108 (D. Del. 1988).

16 *See Perez v. Miami Dade County*, 297 F.3d 1255, 1266 (11th Cir. 2002).

17 *Ropfogel*, 138 F.R.D at 584; *see also Riley v. Kurtz*, 194 F.3d 1313 (table) (6th Cir. 1999).