Understanding the Boundaries of Requests for Admission

By: Andrew L. Smith , Esq.

Introduction

All too often attorneys serve "*form discovery*." It is simply a routine, a reflex, an automatic task anytime an answer to a complaint is prepared. This may be a way to generate a few extra billable hours, but it is all too often an unnecessary headache and unfair to the client.

Discovery must be narrowly tailored to fit the facts of the case at hand, and limited to the claims, defenses, and damages sought by the parties to the pending dispute. I cannot tell you how often I have received form discovery, including catch-all combined interrogatories, requests for production of documents, and requests for admission, which obviously do not correspond to the facts of the particular case. The discovery may discuss claims or issues that have not been asserted or may even list incorrect party or witness names, dates, or events. Not only does form discovery lessen the image of counsel, but it causes confusion, delay, and complications to an already difficult, costly, and time-consuming path to travel, known as the discovery phase of litigation.

With properly framed written discovery litigation can move forward smoothly, and the parties can resolve a number of issues to get to the heart of the dispute. This article will discuss one of the forms of written discovery, namely, the overlooked and often misused category of requests for admission.

Background and Procedure

First, let's be clear here – we are talking about requests for admission, not "requests for admissions," not "request for admissions," and not "admissions." The purpose of requests for admission "is to provide a mechanism by which potentially disputed issues may be expeditiously resolved before trial, thereby expediting proof of these issues at trial." *St. Paul Fire & Marine Ins. Co. v. Battle*, 44 Ohio App.2d 261, 337 N.E.2d 806, Syllabus (1975). Requests are a "time saver" and a "money saver." They are intended to clarify and simplify the facts and understanding of a case.

Under the Ohio Rule, there is no limit to the number of requests that can be served. I have seen situations where a set of combined written discovery includes one request, and just recently I received a set of 500 very detailed requests.

As with all other written discovery, service of requests can occur at any time after a lawsuit is filed, and can even be served with the complaint. This is often a very powerful tool because responses must be quickly served within 28 days of service in Ohio. Further, any matter admitted is conclusively established in the case unless the court on motion permits withdrawal or amendment of the admission, pursuant to Civ.R. 36(B).

If the request relates to specific documents, copies of the documents must be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

The old requirement that the answer to a request be sworn is now deleted. The answer can be signed by the party or, as standard practice, by the party's attorney.

A party serving requests must also serve the party with an electronic copy of the requests. This requirement is stated in Civ.R. 36(A), and can save support staff quite a bit of time and frustration, and ensures the actual verbiage of the propounded requests stays uniform.

Scope

Requests for admission are often used to clear up administrative issues in a case, including background facts and authenticity of evidence or documents. The true scope of requests for admission is provided in Civ.R. 36 (A). According to the Rule, requests for admission can relate to "*statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request*." The Ohio Rule tracks the exact language of the Federal Rule. The scope of requests can be very broad, and typically boil down

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to three categories: (1) statements or opinions of fact; (2) application of law to fact; and (3) authenticity of documents or information.

Requests can be effectively used to confirm incidental, but important facts in the case, such as:

- The parties' relationship (i.e. employer–employee, employer–independent contractor, agent-principal, manufacturer-distributor);
- The identity of a property's owner, lessor, or lessee;
- Whether a relevant contract was entered into;
- The validity of signatures on a contract or other documents;
- Whether a required demand or notice has been made, or whether it was timely;
- Whether a relevant meeting or conversation occurred at all, or on a specific date or at a particular place, the participants or subject matter of meetings or conversations; or
- Facts bearing on the court's jurisdiction.

Consider the following useful requests in the defense of a complicated case involving allegations of intentional infliction of emotional distress and abuse of process by a public insurance adjuster:

> ***Request for Admission No. 1:*** *Admit there was no public media coverage of the bad faith proceedings, including no coverage by local newspapers, social media, or television.*
>
> ***Request for Admission No. 2:*** *Admit complaints have been levied against Public Adjuster X with the Arizona Department of Insurance.*
>
> ***Request for Admission No. 3:*** *Admit the Arizona Department of Insurance has investigated Public Adjuster X for fraudulent insurance practices.*
>
> ***Request for Admission No. 4:*** *Admit Public Adjuster X attempted to invoke "appraisal" for the underlying water loss claim prior to submitting a Sworn Statement in Proof of Loss to ABC Insurance Company.*

Proper Objections

A responding party has four options: (1) admit; (2) deny; (3) admit in part and deny in part; or (4) explain why the party is unable to answer. It is possible to object to all or part of a request as well, but courts do not like parties who play "word games" to avoid responding. Further, Civ.R. 36 is phrased to discourage objections, and place quite a burden on an objecting party.

Specifically, under Civ.R. 36(A)(2), an answer must specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A responding party can qualify an answer or deny only a part of the matter of which an admission is requested, and admit the remainder of the request. Further, an answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party "*states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.*" *Id.*

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For example, consider the following examples:

> ***Request for Admission No. 1:*** *Admit BIGO000534-BIGO000535 is a binding contract between Falken Tire Corp. and Big O Tires, LLC.*
>
> ***Response:*** *This request calls for either crucial facts central to the lawsuit or legal concessions. Calls for a legal conclusion. This document speaks for itself. On its face, this document was prepared on behalf of TBC Corporation.*
>
> ***Request for Admission No. 2:*** *Admit the Falken Tire Product Plaintiffs in this case allege was defective was not sold as a second, as defined in BIGO000534-BIGO000535.*
>
> ***Response:*** *Upon reasonable inquiry, the information known or readily available to this answering Defendant is insufficient to enable this answering defendant to either admit or deny this Request. It therefore DENIES this Request. Discovery is ongoing. This answering Defendant may supplement or amend this response upon receipt of additional information.*

Both of these responses constitute improper objections and gamesmanship. If the requesting party moved forward with a motion to compel, the court would like to grant the motion, deem the matters admitted, and possibly award sanctions for forcing the requesting party to go through the court to seek admissions.

Nevertheless, a number of proper objections are available to a responding party:

- **Pure Legal Conclusion:** Parties often object based on "a pure legal conclusion or legal issue." According to the staff notes, Civ.R. 36 "*does not authorize requests for admissions of law unrelated to the facts of the case*." But this objection is limited, as the Rule allows requests concerning "the application of law to fact." Ultimately, requests involving legal conclusions may create disputes between the parties, which are best resolved in the presence of the judge. What is clear is the more of a pure legal issue or an unrelated legal issue, the more likely the request is improper. For instance, courts have denied requests such as "*admit your negligence was the sole cause of the collision and you are liable for any damages proximately caused to plaintiff as a result of the collision*" or "admit *the Consumer Sales Practices Act provides for treble damages.*"

- **Impermissibly Compound:** A request can be "impermissibly compound." The requesting party can only ask for admission of one fact per request. For example, "*admit you are the owner of a Toyota Corolla with the license plate 7ABC123, and you were driving it on Highway 50 at 4pm on May 4, 2013*," is impermissibly compound.

- **Vague, Ambiguous, Unintelligible:** A request can be "vague, ambiguous, or unintelligible." It may be impossible to determine what the requesting party is asking. For instance, "*admit you were there,*" is vague and does not provide any specific information. This objection can be used where a request uses a word subject to multiple definitions or any other time where a "lazy" attorney does not think through how an answer to a request will likely be generated.

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- **Irrelevant:** The catch all objection of "this request is not reasonably calculated to lead to the discovery of relevant, admissible evidence" is available. All requests for admission must be relevant to the issues in the case. For example, "*admit you were wearing pink socks and a tutu at the time of the car accident*," is certainly objectionable based on general relevance to the issues at hand.

- **Privilege:** As with all other forms of discovery, requests can be objectionable based on any form of privilege, including the classic forms of attorney-client and work-product.

- **Lack Of Personal Knowledge:** Requests are answered by only the answering party. Facts about the subjective state of mind of the opposing party or other facts the answering party simply does not know about can be objectionable.

- **Expert Opinion:** An objection to a request improperly seeking "expert opinion" is proper if the request specifically seeks an admission regarding: (1) the identity of the responding party's testifying experts; (2) the subject matters on which they will testify; (3) the experts' mental impressions or opinions; (4) the identity of their reviewed and relied upon documents; and (5) other matters specifically relating to their mental impressions or opinions. For instance, "*admit Plaintiff has stopped treating for his broken leg*" or "*admit Professor McGonagall's migraine headaches resulted from the bungee jump fall*" are both objectionable.

- **Philosophical, Hypothetical, Subjective:** Policy or theory-based requests may also be improper, such as "*admit insureds pay the required premiums having faith their insurance company will pay policy benefits fairly when the insured event occurs.*" *See, e g., City of Cleveland v. Daher*, 2000 Ohio App. LEXIS 5937 (Ohio Ct. App., Cuyahoga County Dec. 14, 2000). But this can be a tricky issue since requests can relate to "opinions of fact."

- **Undue Burden Or Expense, Overly Broad, Unreasonably Duplicative Or Cumulative:** These objections, while available, are not generally proper because a request by its nature can only involve one discrete fact or issue. Further, the responding party is only obligated to make a "reasonable inquiry" into information "known or readily obtainable."

- **Matter In Dispute:** A party cannot object because an issue is "in dispute." According to the staff notes, "[t]he proper response in such cases is an answer. The very purpose of the request is to ascertain whether the answering party is prepared to admit or regards the matter as presenting a genuine issue for trial." But requests may be so voluminous and so framed the answering party finds the task of identifying what is in dispute and what is not unduly burdensome. If so, the responding party may obtain a protective order under Civ.R. 26(c).

Points to Remember

All too often attorneys serve misguided and useless form discovery. With properly framed requests for admission litigation can move forward smoothly, and the parties can resolve a number of issues to get to the heart of the dispute.

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When carefully crafting requests for admission always consider the following:

- What are the key facts or issues in dispute in this case I can quickly resolve through written discovery?
- Admission of which facts or issues can assist my claim or defense move forward or towards pre-trial settlement?
- Admission of which facts or issues can alleviate the need for future depositions, affidavits, interviews, discovery disputes, or authenticity disputes?
- What is the very purpose of drafting each request? How does each request benefit my client's position?
- Is this request objectionable as written?
- Does this request seek admission of a pure question of law or a mixed question of fact and law?

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