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WHY AREN'T YOU USING REQUESTS FOR ADMISSIONS?
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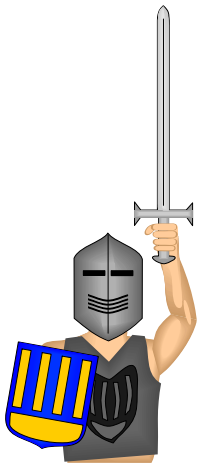

If you are like most lawyers, you are using the typical discovery devices to gather up all your information--form interrogatories, special interrogatories, requests for production of documents, and of course the deposition schedule from hell. However, requests for admissions are rarely in a party's discovery plan. We suggest you take a look a closer look at C.C.P. '2033. Requests for admissions are wonderful, tricky little discovery devices that really help you set up your case. Let us explain why.

First Reason: Setting Issues to Rest

The main purpose of requests for admissions 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 1998), '8:1256, citing *Brigante v. Huang* (1993) 20 Cal. App. 4th 1569, 1577. If a party admits key facts, including legal conclusions, you may be in a position to move for a motion for summary judgment or summary adjudication. Since requests for admissions are conclusive (unless the court permits an admission to be withdrawn or interprets it so as to limit its effect), the response can't be explained away in a declaration as can be done with answers to interrogatories or deposition questions.

Second Reason: Replacing Contention Interrogatories

By serving your requests for admissions with Form Interrogatory 17.1, you have effectively replaced contention interrogatories. Form Interrogatory 17.1 was specifically designed to cover all the information that is sought with contention interrogatories--state all facts, all witnesses and all documents that support your position. Also, serving 35 requests for admissions with Form Interrogatory 17.1 (with its four officially sanctioned subparts) is the functional equivalent of serving 140 special interrogatories. By serving 35 requests for admissions and Form Interrogatory 17.1, you don't have to serve a "Declaration of Necessity" as you would if you ponied up 140 special interrogatories. It is also very likely that you will want to serve more special interrogatories as the case progresses, so why waste your 35 special interrogatories and take a chance on getting a motion for protective order granted against you?

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Third Reason: Getting Real Answers

Have you noticed how you never get a straight answer to your deposition questions and interrogatories? Well, C.C.P. '2033(f)(1) has been interpreted as requiring the answering party to toe the line.

"The answer must be, as complete and straightforward, as the information available reasonably permits" . . . and shall admit so much of the matter as is true . . . or as reasonably and clearly qualified by the responding party. Weil and Brown, *supra,* at 8:1323, citing C.C.P. '2033(f)(1). A denial must be unequivocal. C.C.P. '2033(f)(1)(B) See *Holguin v. Superior Court* (1972) 22 Cal. App. 3d, 812,820 and *Smith v. Circle P Ranch Co., Inc.* (1978) 87 Cal. App. 3d 267, 275. A party may deny request for admission on information and belief. You can also deny a request for admission on the basis of inability to admit or deny the matter stated in the request, but a party has to have made a good faith to obtain the information from available sources. C.C.P. '2033(f)(1)(C); See Weil and Brown, *supra,* at '8:1342.

Fourth Reason: Getting Binding Admissions

C.C.P. '2033 has some teeth. Failure to timely respond to request for admissions waives all objections as it does with interrogatories and requests for production of documents. C.C.P. '2033(k). However, the propounding party may bring a motion to have the matters deemed admitted. C.C.P. '2033(k). There is no requirement to meet and confer and there is no 45-day time limit on bringing the motion. The only requirement is that the matter ***cannot*** be heard on shortened time. *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal. App. 4th 393, 401. The court "shall" deem the matters admitted unless the responding party serves its responses to the requests before the hearing. C.C.P. '2033(k)(1) The responses have to be in "substantial compliance." See Weil and Brown, *supra,* at '8:1374.1 and *Allen Pacific v. Superior Court (Chan)* (1977) 57 Cal. App. 4th 1546 If the court finds that the responses served are in "substantial compliance," monetary sanctions are MANDATORY!!! C.C.P. '2033(k). The word "shall" is in the statute.

Once the court has established the matters to be deemed admitted there is no relief. "Nothing in C.C.P. '2033 specifically deals with relief from a deemed admission order. However, several court have interpreted '2033 to impliedly prohibit such relief." Weil and Brown, *supra*, at '8:1377 citing *Courtesy Claims Service, Inc. v. Sup. Ct. (Galvan)* (1990)

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219 Cal. App. 3d 52, 56; *St. Paul Fire & Marine Ins. Co. v. Sup Ct. (Advalloy, Inc.)* (1992) 2 Cal. App. 4th 843, 850-851; and *Tobin v. Oris* (1992) 3 Cal. App. 4th 814, 828. The courts have also held that there is no relief available using C.C.P. ' 473. St. *Paul Fire & Marine Ins. Co. v. Superior Court (Advalloy, Inc.)*, *supra*, 2 Cal. App. 4th at 852. The courts reasoned all the discovery statutes have a provision for relief from waiver *except* for C.C.P. 2033(k). Accordingly, the courts have decided that the legislative intent was to not allow such relief.

Fifth Reason: Costs of Proof Sanctions

The legislative intent behind requests for admissions was 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(o). If the responding party is found to have unreasonably denied a request for admission, that party may be ordered to pay the costs and fees incurred by the requesting party in proving that matter at trial after the request for admission was denied. See *Garcia v. Hyster Co.* (1994) 28 Cal. App. 4th 724, 736; *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal. App. 4th 618, 635-638. The court is required to impose the sanction. Again, the word *shall* is in the statute. The propounding party doesn't have to be the winning party to be entitled to the sanction. See *Smith v. Circle P Ranch Co., Inc.* (1978) 87 Cal. App. 3d 267, 276. The party only has to show that he is entitled to "reasonable expenses incurred . . . including reasonable attorneys' fees" in proving matters unreasonably denied. C.C.P. ' 2033(o). If you are the party who unreasonably denied the request for admission, a recommendation--settle the case. The court may not award sanctions if the case is settled or dismissed before trial. See *Garcia v. Hyster Co.* (1994) 28 Cal. App. 4th 724, 736.

Review C.C.P. ' 2033 again--it can be a very effective discovery device.