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How to Write Requests for Admissions
By Katherine Gallo

Requests for admissions 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. See C.C.P. §2033.010; Weil and Brown, *Cal. Prac. Guide: Civil Procedure Before Trial* (TRG 2010), ¶¶8:1288 - 8:1301.2; CEB *California Civil Discovery Practice* 4th Edition §§ 9:17 - 9:20. However that is all good and dandy, but how to write a Request for Admission in order to obtain effective evidence to use for a motion for summary judgment or at trial is difficult.

California Code of Civil Procedure §2033.060 sets forth the basic tenants as to how a request for admission **must** be drafted:

- Each request must be numbered consecutively. C.C.P. §2033.060(a)
- The first paragraph immediately shall state the identity of the party requesting the admissions, the set number, and the identity of the responding party. C.C.P. §2033.060(b)
- Each request shall be "separately set forth." C.C.P. § 2033.060(c)
- Each request shall be "full and complete in and of itself" and there shall be no preface or instructions. C.C.P. §2033.060(d)
- No carry over definitions. C.C.P. §2033.060(e)
- No subparts or "compound, conjunctive or disjunctive" requests. C.C.P. §2033.060(f)
- If you are requesting an admission of the genuineness of documents, then they must be attached. C.C.P. §2033.060(g)

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The discovery treatises also give some helpful advice. Weil and Brown, *Cal. Prac. Guide: Civil Procedure Before Trial* (TRG 2010), §8:1287.1 states:

"Keep your RFA's as simple as possible so there is no room for denial! 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. 2010) §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 Judge. During a Case Management Conference the Judge asked me what were the 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?*"

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I went back to my office and whined to our seasoned trial attorney. He had no sympathy for me and said "*The Judge is right. Go look at the jury instructions and figure out your case.*" With my tail between my legs I went to the library and looked at jury instructions for the first time. They were amazing. They were one page road maps as to what I had to prove. Right then and there I started using requests for admissions.

As an example, using California Jury Instruction 1201 Titled Strict Liability—Manufacturing Defect—Essential Factual Elements), I would write my requests as follows:

Request # 1: Admit that *[name of defendant]* *[manufactured/distributed/sold]* the *[product]*.

Request #2: Admit that the *[product]* contained a manufacturing defect when it left *[name of defendant]*'s possession.

Request #3: Admit that *[name of plaintiff]* was harmed while using the *[product]* in a reasonably foreseeable way.

Request #4: Admit that the *[product]*'s defect was a substantial factor in causing *[name of plaintiff]*'s harm.

I would then serve these Requests for Admissions with Form Interrogatory #17.1 and a Request for Production of Documents for "all documents listed in your answers to Form Interrogatory 17.1(d)." The foundation of my discovery plan was now set and I was in a position to receive effective evidence or, in the alternative, cost of proof sanctions.