



## MISSOURI APPELLATE COURT HOLDS TIMING REQUIREMENTS FOR REQUESTS FOR ADMISSIONS ARE NOT MERE SUGGESTIONS

*Lane House Construction, Inc. v. Doris Ogrowsky, --- S.W.3d ---,  
No. ED99897, April 8, 2014*

Requests for admissions propounded pursuant to Missouri Rule of Civil Procedure 59.01 are likely to get any litigant's attention, if only due to the potential consequences for failing to timely respond. The rule says such failure shall result in each matter being admitted. To underscore the point, the rule requires the proponent to include a warning in capital, boldface type that a failure to timely respond "shall result in each matter being admitted by you and not subject to further dispute." Missouri courts have consistently required strict compliance with Rule 59.01 when responding to requests for admissions, but what about when propounding them?

In the recent *Lane House* opinion, the Eastern District addressed, in a matter of first impression, the effect of requests for admissions where the propounding party did not comply strictly with Rule 59.01. Essentially, the court found that, since the rule requires strict compliance when responding to requests for admissions, fairness dictates the rule requires strict compliance when a party issues the requests.

Under Rule 59.01(c), requests for admissions may be served on a defendant upon the expiration of 30 days after defendant enters an appearance or is served with process. Plaintiff Lane served requests for admissions only 23 days after service of process. Plaintiff then filed a Motion for Summary Judgment upon defendant's failure to respond. Thereafter, defendant did answer the requests, but not until almost four months after plaintiff served them. The trial court granted plaintiff summary judgment on the basis that the requests were deemed admitted for failure to timely file a response.

On appeal, defendant argued plaintiff's failure to abide by the timing dictates of Rule 59.01 nullified plaintiff's requests *ab initio*. Plaintiff argued the court was free to deem the requests for admissions as having been propounded on the 31st day after service, and even with this "extra time," defendant's responses were untimely.

While noting that plaintiff's argument is not entirely implausible (and, in fact, the rules in other areas allow for certain premature filings to be deemed filed as of a later date), the court held the plain, unambiguous, and simple directives of Rule 59.01 control, and a plaintiff's premature propounding of requests for admissions are deemed invalid. Nothing in Rule 59.01 can be read to

permit a trial court to treat premature requests as being issued in accordance with the time parameters of the rule. According to the court, it is as if the plaintiff never propounded the requests for admissions. “[If] a plaintiff prematurely propounds requests for admissions, a defendant is under no obligation to respond to those requests.”

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