Requests for Admission

by Janis White

Requests for admissions are the discovery device that is often overlooked. Perhaps that is because requests for admission are really not a discovery device. Although CR 36, the court rule governing requests for admission, is grouped with discovery rules, a request for admission does not seek the discovery of information, but instead seeks concessions that can be used as evidence at trial. Well-drafted requests for admissions can be used to narrow the issues for discovery and trial, and can be a useful tool to reduce the cost of litigation.

CR 36 allows requests for admission "that relate to statements or opinions of fact or of the application of law to fact." The rule does not permit requests for concessions as to pure questions of law. Courts have struggled to define when a request is objectionable because it seeks a pure legal conclusion and when a request is permissible because it calls for the application of law to fact.

In 2005, the Washington Supreme Court addressed the issue of the proper scope for requests for admission in a 5 – 4 decision, and held that five requests, "phrased arguably to characterize them as relating to the application of law to fact," were in fact requests for defendant to admit "legal conclusions." *Thompson v. King Feed & Nutrition Service, Inc.*, 153 Wn.2d 447, 474, 105 P.3d 378 (2005). The requests asked defendant to admit (i) that it had negligently stored its hay in plaintiffs' barn; (ii) that its negligence was a proximate cause of the fire that burned plaintiffs' barn; (iii) that there was no contributory negligence by plaintiffs; and (iv) that defendant's negligence was the sole proximate cause of the fire. *Thompson*, 153 Wn.2d at 473. The four dissenters thought the requests properly asked defendant "to apply the law to the facts concerning negligence, proximate cause, and contributory negligence." *Id.* at 463.

Since 2005, there have been three decisions applying *Thompson*. In chronological order, the first was *Byers v. Warner*, 129 Wn. App. 1023, 2005 WL 2212315 (Sept. 13, 2005). In *Byers*, plaintiff served requests for admission regarding her medical treatment following an accident and the reasonableness of her medical expenses. Citing *Thompson*, the court found that the requests did not seek legal conclusions: "[T]hese are factual matters that should have been eliminated from controversy." *Byers*, 2005 WL 22123515, at *2.

The next case decided was *Walter v. Bauer*, 141 Wn. App. 1024, 2007 WL 3261648 (Nov. 6, 2007). There, requests for admission were served and not answered within the 30-day statutory period. The trial court then deemed the matters set forth in the requests as admitted. On appeal, Alice Bauer, the appellant, argued that was an abuse of discretion because the requests went "to the heart of the dispute …." *Walter*, 2007 WL 3261648, at *3. The court noted the general principle that "[r]equests for admission as to central facts in dispute are beyond the proper scope of CR 36 because they, in effect, request an adversary to admit the truth of the assertion that he should lose the lawsuit." *Id.* Alice Bauer argued that, even though on its face, one of the requests for admissions did not seek a legal conclusion, the request required "her to admit that she lose the lawsuit by deeming her to have admitted that she is in fact the owner of the Wholesale Tool Outlet." *Id.* The request called for her to admit that she was the owner of Wholesale Tool Outlet, the name on the lease of a business she claimed was owned by her son, not her. The court found Alice Bauer's argument "goes to the propriety of the summary judgment disposition of the case, and not to the propriety of request for admission no. 2 …." *Id.*

The third and final case is H*aynes v. Russell*, 143 Wn. App. 1021, 2008 WL 517384 (Feb. 26, 2008). There, plaintiff sought sanctions for defendant's alleged improper failure to admit certain requests for admission. The requests asked defendant to admit that his operation of a vehicle in excess of the speed limit, his intoxication, his crossing the center line and his tortious conduct were proximate causes of the collision that was the subject of the lawsuit. The court, citing *Thompson*, held that while the requests "could possibly be characterized as relating to 'the application of law to fact,' CR 36 (a), they undoubtedly requested Mr. Russell to admit legal conclusions including negligence." *Haynes*, 2008 WL 517384, at *4.

What do these cases tell us as practitioners? CR 36(a)'s allowance of requests for admission that relate to "the application of law to fact" will be narrowly construed by the courts. Many requests that are phrased to call for "the application of law to fact" will not pass muster under *Thompson* and its progeny. However, at the same time, the courts will not allow litigants to use *Thompson* to object to requests that, on their face, seek only factual admissions. Since the best use of requests for admission is to narrow fact issues, counsel would be well advised to draft requests narrowly and avoid motion practice on whether or not a request that arguably calls for the application of law to fact will be construed by Washington courts as seeking a legal conclusion.

Janis G. White, a shareholder at Lane Powell PC, focuses her practice on complex commercial litigation, including banking, condemnation, real estate, fiduciary litigation, contracts, unfair competition and general commercial cases. Contact her at 206-223-7031 or whitej@lanepowell.com.