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WHY AREN'T YOU USING REQUESTS FOR ADMISSIONS?

By Katherine Gallo

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. I suggest you take a closer look at C.C.P. §2033.010 et seq. Requests for admissions are wonderful, tricky little discovery devices that really help you set up your case. Let me 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 2010), ¶8:1256, citing *Shepard & Morgan v. Lee & Daniel, Inc.* (1982) 31 C3d 256, 261. 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 Since requests for admissions are conclusive (unless the court permits an admission to be withdrawn or interprets it so as to limit its effect), the response can't be explained away in a declaration as can be done with answers to interrogatories or deposition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

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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 served 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?

Third 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. §2033.420. 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 to prove the issue at trial. 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. See Weil and Brown, Cal. Prac. Guide: *Civil Procedure Before Trial* (TRG 2010), ¶8:1404 et seq.

Consider using Requests for Admissions--it is a very effective discovery device.

NEXT: How to Draft Your Requests for Admissions.

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