

### § 6.8(B) REQUEST FOR ADMISSIONS

---

Requests for Admissions force an opposing party to commit to a position or set of facts. Requests of this nature may prove to be more powerful than any other form of discovery at exposing the strategy, strengths, and weaknesses of the opposing party.

As the name of this discovery device implies, either party may request the other party to admit or deny certain facts. A party admitting to facts within requests for admissions responses will not be able to contest those facts later at trial.

Historically, requests for admissions have had two functions. The first function is to avoid lengthy examination of the opposing party during trial. Secondly, admissions can be used strategically to force the other party to declare his or her position about certain facts.

Imagine the advantage one party could have by asking the opposing party to admit to damaging information. Assuming the information is true, the opposing party is forced to choose between two unpleasant possibilities: Telling the truth and admitting to something that hurts that party's position, or lying - thereby committing perjury.

Most states now limit the number of requests that may be propounded. This makes it imperative that each request be relevant.

Requests for Admissions may also be used to authenticate exhibits intended for use at trial.

#### DISCUSSION POINT

1. What form do the requests take? Questions, statements, or both?
2. Can requests be sent to any witness?
3. Are the requests responded to under oath?
4. Under what circumstances may the responding party refuse to respond?
5. What may happen if a request is not responded to on time?

## RESPONDING TO REQUESTS FOR ADMISSIONS

---

When a law firm receives a set of Requests for Admissions from the opposing party, the paralegal should stamp the “date received” on the document and make note of the response deadline in the appropriate calendar or tickler system.

Responding in a timely manner is especially critical for requests for admissions because if a request is not specifically *admitted* or *denied* within the required time frame, usually 30 days, the request can be deemed admitted by the requesting party.

### DISCOVERY POINT

Some states require that a responding party admit in part and deny in part requests for admissions that are only partly accurate. However, such requests are generally easy to deny. Try to spot these requests during the drafting process and try rephrasing.

The rule is that every request for admissions must be answered, but there are several potential options. A request for admission may be:

- *admitted*
- *denied*
- *neither admitted nor denied due to lack of sufficient information with which to respond at this time* (A specific reason must be provided for the refusal to respond.)
- *neither admitted nor denied* due to vagueness of the request
- responded to with *request response omitted*

The attorney may choose not to respond to a particularly troublesome request, but this strategy may give the opposing an opportunity to have the request deemed admitted.

The final two options above may be accompanied by an objection filed with the court about the appropriateness of the request. Not responding to a request is likely to instigate a motion to compel, in which the opposing party asks the court to require a response.

When responding, do not offer additional information. Just admit or deny each request. Do not explain.

### DISCOVERY POINT

It may be possible to object to a request because it is vague or inappropriate, but this tactic should not be overused.

---

Many beginning paralegals find it disturbing that a defendant or plaintiff may be forced to respond to potentially damaging inquiries. What about the Fifth Amendment? Remember that the Fifth Amendment applies only in criminal, not civil, matters. However, if answering a request places a client in potential jeopardy of being charged with a criminal offense or if the matter being litigated also involves criminal conduct, the individual cannot be forced to provide testimony, or admissions, against himself or herself. In such a case, the court may need to decide if the responding party truly is at risk of self-incrimination.

The attorney should sign the response and the respondent should sign a verification of the truth of the response for attachment to the document. Of course, a certificate of mailing should accompany the response.

#### DISCUSSION POINT

1. Which of the following is a valid request for admission?
  - a. Admit or deny that you abandoned your child.
  - b. Were you at your child's last birthday party?
  - c. With whom did you spend last Christmas?
2. Can the requesting party pose a statement she or he knows has the potential to elicit a response which could incriminate the responding party in a criminal act? Why or why not?
3. O.J. Simpson was required to answer discovery requests in his civil litigation trial even though he had been tried and acquitted of murder in a previous criminal trial. Why?

---

#### Request for Admissions Techniques

Use form books whenever possible to create requests for admissions. However, there will be times when no form quite fits, or the form you find needs substantial alteration. The following techniques are designed to give the paralegal a framework for authoring requests for admissions.

*Technique One: Verify or corroborate interrogatories.*

Review each interrogatory. Can you rephrase any of your interrogatories into statements? When you receive answers to both forms of discovery, look for discrepancies between the responses to the interrogatories and answers to the requests for admissions. If there are, in fact, discrepancies, that will be an area worthy of your attention.

**EXAMPLE | ADMISSIONS TECHNIQUE ONE**

1. Admit or deny that you have been an employee of the U.S. Postal Service for eight years.
2. Admit or deny that you were on duty at 1:30 p.m., July 5, 2020.

*Technique Two: Give choices or degrees of liability.*

The goal with this technique is to provide the other party enough “rope to hang himself.” When given a choice, the answering party may wind up choosing the lesser of two evils, even when doing so admits some degree of liability.

**EXAMPLE | ADMISSIONS TECHNIQUE TWO**

11. Admit or deny that your response to seeing your wife’s lover was prudent and reasonable.
12. Admit or deny that your response to seeing your wife’s lover was a somewhat violent overreaction.
13. Admit or deny that your response to seeing your wife’s lover was criminal in its violent intent.

*Technique Three: Force the party to commit.*

On points of judgment or if a party is being evasive use a series of statements to force the party to commit.

**EXAMPLE | ADMISSIONS TECHNIQUE THREE**

23. Admit or deny that you had at least one drink during your lunch hour on the day in question.
24. Admit or deny that you had at least two drinks during your lunch hour on the day in question.
25. Admit or deny that you had at least three drinks during your lunch hour on the day in question.
26. Admit or deny that you had at least four drinks during your lunch hour on the day in question.

## EXAMPLE | REQUEST FOR ADMISSIONS

DISTRICT COURT OF CLARK COUNTY  
STATE OF CONFUSION

JOHN and SALLY SMITH

Plaintiff,

vs.

JACK DOE

Defendant.

## REQUEST FOR ADMISSIONS

TO: (OPPOSING PARTY'S NAME)

TO: (OPPOSING COUNSEL)

YOU ARE requested to admit or deny the statements contained herein and serve your responses upon PLAINTIFF within thirty days of receipt of these requests, pursuant to court rules.

## DEFINITIONS

1. "COMPLAINT" shall mean and refer to Plaintiffs' complaint originally filed on 7-05-11 in Department XVII of the Clark County District Court, Case No. 1756.
2. "PROPERTY" shall mean and refer to the real property owned by Defendant.
3. "YOU," "YOUR," "YOURS," and/or "DEFENDANT" shall mean and refer to all Defendants as well as their agents, attorneys, employees, accountants, family members, investigators, or any other person acting on their behalf.
4. "DOCUMENT" refers to any tangible piece of paper or evidence, including, but not limited to, letters, correspondence, contracts, proposals, subcontracts, invoices, memoranda, notes, drawings, reports, photographs, microfilm, videotapes, and/or computer input documentation.

## REQUEST FOR ADMISSIONS

1. Admit or deny YOU were employed as a taxi driver on July 4, 2010.
2. Admit or deny Plaintiffs were passengers in YOUR taxi.
3. Admit or deny YOUR taxi collided with another vehicle at the intersection of Sahara Boulevard and Paradise Road in the state of Confusion.
4. Admit or deny YOU were negligent in your operation of YOUR taxi during or immediately preceding the event in question.
5. Admit or deny Plaintiffs were passengers in YOUR taxi during the aforementioned collision.

DATED this \_\_\_\_ day of \_\_\_\_ 20\_\_.

\_\_\_\_\_  
 John Jones  
 Attorney for Defendant  
 Bar Number  
 Address

**CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_ 20\_\_, I placed a true and correct copy of the foregoing REQUEST FOR ADMISSIONS in the U.S. mail, postage prepaid, addressed to counsel on the attached list:

\_\_\_\_\_  
 An employee of [Law Firm Name]  
 Your Name, Paralegal

### § 6.8(C) REQUEST FOR PRODUCTION

Requests for Production and Inspection (most often simply referred to as Request for Production) usually involve documents, but they may also be used to inspect and take photographs of such things as cars, houses, and boats. As we will discuss later, it is imperative that the paralegal be able to distinguish between discoverable and non-discoverable material. The good news is that there are only two kinds of documents that are not discoverable. The bad news is that they are not always easy to identify.

#### Discoverable Materials

Any materials relevant to the litigation requested by the opposing party that do not violate the Fifth Amendment rights of the responding party or any other privilege or rule are discoverable.

#### Non-Discoverable Materials

Material which is part of Attorney Work Product, and information that is covered by a privilege, are not subject to disclosure to the opposing party, such as when a question or request could result in the responding party incriminating him or herself in a criminal act. (But that does not mean you can't ask!) Examples of non-discoverable material may include:

##### *Attorney Work Product*

Materials developed in anticipation of litigation by or for the attorney are not generally discoverable. For instance, a report produced by order of the client to update the attorney on the client's financial stability may be considered work product.