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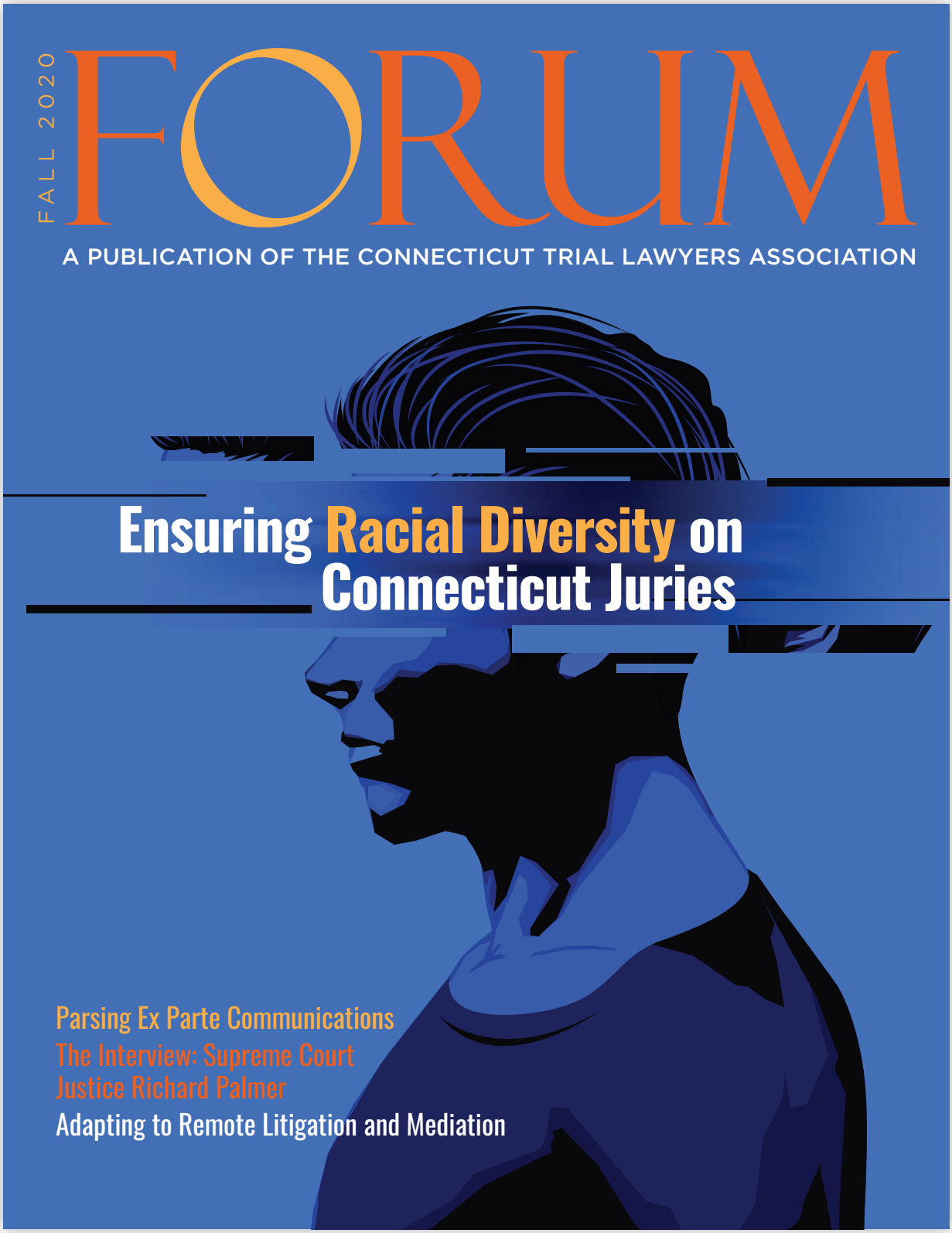

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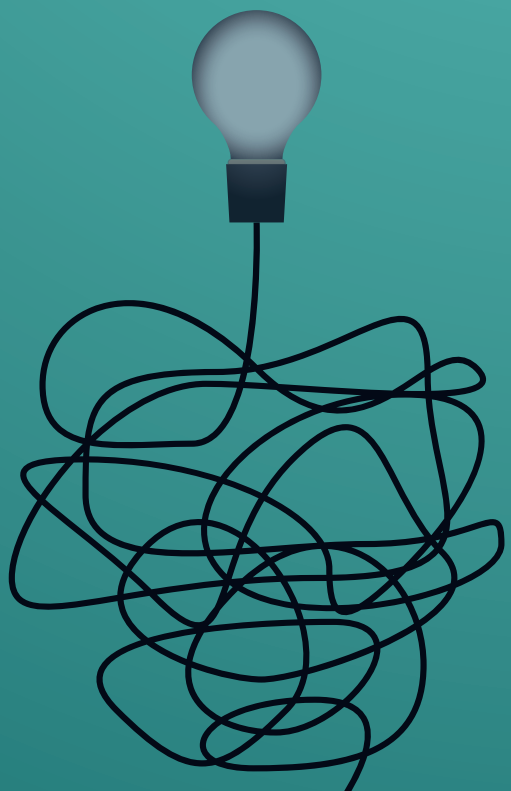
Requests for Admission — A Primer on their Power and Effective Use

Connecticut's procedure regarding requests for admission is set forth in Connecticut Practice Book §§ 13–22 through 13–25. Our procedures are modeled on the Federal Rules, Rule 36.[1]

According to the Practice Book, the purpose of requests for admission is "to facilitate proof with respect to issues that cannot be eliminated from the case and,...to narrow the issues by eliminating those that can be."[2] Put more plainly, requests for admission are incredibly powerful arrows in your quiver that may be used to establish specified facts, obtain admissions of legal conclusions, determine an opponent's opinion relating to a fact, and establish the genuineness of documents. Requests for admission can streamline proof, expedite resolution of a case, and focus the triable issues. During pretrial preparation of a case, the planning for and filing of targeted requests for admission is a crucial step in the discovery process. This article is a primer on how to use them to your best advantage.



Scope

The scope of requests for admission includes any matters relevant to the subject action, statements or opinions of fact, and the application of law to fact.[3] For example, seeking admissions of the application of law to facts in a premises liability action could require the defendant to admit underlying facts relevant to notice, like when a snow storm stopped. In a medical malpractice case, a defendant could be required to make admissions concerning continuous treatment or lack of informed consent. Requests for admission may be an expeditious method to determine which medical bills are at issue in an auto collision.

A request for admission may be used to ascertain what a witness testified at a deposition.[4] Admissions of deposition testimony may highlight favorable testimony

or fill in gaps in the record with facts helpful to your case. For example, in a malpractice case involving a failure to make a proper diagnosis, carefully drafted requests for admission may force the defendant physician to admit the existence of available factual information that should have been considered in making his or her diagnosis even though that information was not contained in the medical record. Such admissions may help overcome a defense that the medical record lacks information to suggest another, proper diagnosis.

Drafting Requests for Admission

The best time to draft and file requests for admission is an important, tactical consideration. They should be filed far enough in advance of trial to accommodate the inevitably long process of obtaining adequate answers to them, but not so early that they are too generic. Expect defendants to quibble over the meaning and interpretation of each request. To minimize this, draft your requests narrowly and precisely using short, simple sentences. Compound, conjunctive or disjunctive requests invite objections and denials. "Requests for admission must be simple, direct and concise so they may be admitted or denied with little or no explanation or qualification."[5]

Use of an elaborate prefatory definitional section may be unwise as it also invites quibbling. A request for admission that is susceptible to more than one meaning may result in the court sustaining an objection to such a request.[6] The bottom line – keep them simple and clear. Requests seeking an admission of the genuineness of a document must attach the document. Consider serving your requests for admission *after* the deposition of a key defense expert so as not to telegraph to the defendant areas you will be covering. Securing factual admissions that track what you expect the jury instructions will be is also a wise tactic. The jury instructions set out the elements of your proof; your request for admission targets these elements and may obviate the need for such proof.

Responses to Requests for Admission

Section 13-23 of the Practice Book requires a party served with requests for admission to either answer or object within 30 days; if not, the requests are deemed admitted. An answer must either admit or deny the request. Unlike discovery responses, there is no requirement that responses be verified under oath by the party. If a matter is admitted, it is binding on the responding party and avoids the need for the filing party to prove the matter.[7] An admission conclusively establishes the matter admitted and may serve as the basis for summary judgment.[8] Or, an admission may raise a genuine issue of material fact so as to preclude summary judgment.

Because of the consequences of making an admission, requests for admission invite pushback and obfuscation when defendants respond. Evasive responses may take the form of improper objections or admissions that are overly qualified to the point of being useless. But the law is that "(t)he rule requires absolute good faith and truthfulness in a response and any responses which seek to evade or avoid, short of a frank statement that the party cannot truthfully respond, stating the reasons or grounds therefore, will not be countenanced."[9] Denials are required to be "forthright, specific, and unconditional."[10] A party may not avoid responding based on technicalities or "nit-picking."[11] "When the purpose and significance of a request are reasonably clear, courts do not permit denials based on an overly technical reading of the request." As one court remarked, "(E)pistemological doubts speak highly of [a party's] philosophical sophistication, but poorly of its respect for Rule 36(a)."[12] "Requests for admission are not games of 'Battleship' in which the propounding party must guess the precise language coordinates that the responding party deems answerable."[13] Nor are "word games" permitted.[14] An admission may not be avoided because it "may prove decisive to the case."[15] A party served with a Rule 36 request "must admit [the requested] fact even if that admission will gut its case and subject it to summary judgment."[16]

Objections

Proper objections should track discovery objections – meaning that they must be based on a claim of privilege or that the request exceeds the scope of permissible discovery. The boilerplate objection that the "the matter of which an admission has been requested presents a genuine issue for trial" is prohibited by Practice Book § 13-23. Further, whether couched as an objection or an evasive answer, a response that a document speaks for itself is improper: "the tautological 'objection' that the

finder of fact can read the document for itself...is not a legitimate objection but an evasion of the responsibility to either admit or deny a request....It is also a waste of time, since the 'objection' that the document speaks for itself does not move the ball an inch down the field and defeats the narrowing of issues in dispute."[17]

Another court remarked, "(A) statement of a document's text is a matter of fact....(T)he actual text of an identified document, relevant to the case, may not be ignored on the ground...that the document in question 'speaks for itself.' Documents do not speak, rather, they represent factual information from which legal consequences may follow."[18] Some courts have gone so far as to deem a response that a document speaks for itself to be an admission.[19]

Answering Party Must Ascertain the Truth before Responding

An evasive response often encountered is that the party is unable to admit or deny the matter despite having made a reasonable inquiry. Such a summary response is improper unless the answering party details what efforts were undertaken prior to serving this response.[20] Courts have required that the answering party "ascertain the truth if the ability to do so is 'reasonably within his power.'"[21] In *Vitolo v. Enter. Leasing Corp.*, Judge Corradino held that a "reasonable inquiry" required a responding party to review photos and diagrams of an accident scene, a corresponding accident report, and similar matters before claiming an inability to respond. Even then the responding party must aver why, after such review has been conducted, it still is unable to admit or deny the request. In *Johnson Int'l. Co. v. Jackson Nat. Life Ins. Co.*, a case involving a contested life insurance policy, the trial court assessed costs against the plaintiff for its failure to admit the cause of death set out in the decedent's medical records. The court held that "reasonable inquiry" in that case required the responding party to review medical records from a hospital in Taiwan, written in both Chinese and English.

Consequences and Costs

Once a response has been filed, under Practice Book § 13-23(b), the party who has requested the admission may file a motion to determine the sufficiency of the answer or objection if either is not adequate.[22] The motion will not be heard by the court until an affidavit is first filed attesting to the parties' good faith effort to resolve the disputed responses. Upon hearing such motion, § 13-23 expressly provides that the court may make a determination that an answer is non-compliant and may order an amended response to be filed or deem the matter admitted. According to Practice Book § 13-25, costs are recoverable against a party for failure to admit a matter that is later proven to be true. This provision may be an especially helpful weapon in smaller cases where the defendant unreasonably denies liability or delays resolution.

Conclusion

As seen from the foregoing, properly deployed requests for admission can be one of your most powerful weapons. Learn how to use them effectively. A lot of attorneys miss this opportunity; don't be one of them. Trying and winning cases is hard enough. There is simply no reason not to use requests to admit, which can help you streamline proof, expedite resolution and narrow the issues for trial.

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1 *Vitolo v. Enter. Leasing Corp.*, 1996 WL 497404, at *3 (Corradino, J. Aug. 21, 1996).
2 *Olszewski v. New Britain Gen. Hosp.*, No. CV 970477887S, 2000 WL 234718, at *1 (Feb. 3, 2000, Gaffney, J.) (citing commentary to Federal Rule 36).
3 Practice Book § 13-22.
4 *Uniden America Corp. v. Ericsson Inc.*, 181 F.R.D. 302, 304 (M.D.N.C.1998).
5 *Sommerfield v. City of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008).
6 *Fredericks v. Kontos Indus., Inc.*, 189 CA 3d 272, 277 (1987).
7 *E. Haven Builders Supply, Inc. v. Fanton*, 80 Conn. App. 734, 744 (2004).
8 *Montanaro v. Balcom*, 132 Conn. App. 520, 524 (2011).
9 *Dulansky v. Iowa-Illinois Gas & Elec. Co.*, 92 F. Supp. 118, 124 (S.D. Iowa 1950).
10 *Lynn v. Monarch Recovery Mgmt., Inc.*, 285 F.R.D. 350, 363 (D. Md. 2012).
11 *U.S. ex rel. Englund v. Los Angeles Cty.*, 235 F.R.D. 675, 684 (E.D. Cal. 2006).
12 *Holmgren v. State Farm Mut. Auto. Ins. Co.*, 976 F.2d 573, 580 (9th Cir. 1992).
13 *SEC v. Goldstone*, 300 F.R.D. 505, 515 (D. N.M. 2014).
14 *Liafail, Inc. v. Learning 2000, Inc.*, C.A. No. 01-599 and C.A. No. 01-678, 2003 WL 722199, at * 2 (D. Del. Mar. 3, 2003).
15 *Booth Oil Site Admin. Grp. v. Safety-Kleen Corp.*, 194 F.R.D. 76, 80 (W.D.N.Y. 2000).
16 *Langar v. Monarch Life Ins. Co.*, 966 F.2d 786, 805 (3d Cir. 1992).
17 *Essex Ins. Co. v. Barrett Moving & Storage, Inc.*, No. 312CV219J99TJCJRK, 2013 WL 12394151, at *1 (M.D. Fla. June 3, 2013); and *Miller v. Holzmann*, 240 F.R.D. 1, 4 (D.D.C. 2006).
18 *Booth Oil Site Admin. Grp.*, 194 F.R.D. 76, 80 (2000).
19 *Carnahan v. Alpha Epsilon Pi Fraternity, Inc.*, No. 2:17-CV-00086-RSL, 2018 WL 5825310, at *3 (W.D. Wash. Nov. 7, 2018); accord, *Aprile Horse Transp., Inc. v. Prestige Delivery Sys., Inc.*, No. 5:13-CV-15-GNS-LLK, 2015 WL 4068457, at *5 (W.D. Ky. July 2, 2015).
20 812 F. Supp. 966, 987 (D. Neb. 1993), aff'd and remanded, 19 F.3d 431 (8th Cir. 1994).
21 *Johnson Int'l.*, supra.
22 *E. Haven Builders Supply, Inc. v. Fanton*, at 744.