

Use of Requests for Admissions and Requests for Genuineness of Documents

A sometimes underused discovery tool is Code of Civil Procedure §§2033.010 et seq., otherwise known as Requests for Admissions (RFA) and Requests for Genuineness of Documents.

How Many May Be Propounded

1. RFA

A party may request that any other party admit no more than thirty-five (35) matters that do not relate to the genuineness of documents. If the initial set of admission requests does not exhaust this limit, the balance may be requested in subsequent sets. CCP §2033.030(a). Additional requests must be supported by a declaration; if not, the additional request need not be answered. CCP §2033.030(b).

2. Genuineness of Documents

The number of requests for admission of the genuineness of documents is not limited except as justice requires to protect the responding party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense. CCP §2033.030(c).

Drafting RFAs

RFA should be crafted carefully and precisely, asking for admission of one item at a time, to avoid objections such as “compound”. CCP §2033.060(f). Also, the proponent must be careful not to combine an RFA with other discovery methods CCP §2033.060(h). Think of propounding RFAs like building a foundation – instead of requesting an admission that “the blue sky is full of large, white clouds”, ask for an admission that:

1. The sky is blue.
2. There are clouds in the blue sky.
3. The blue sky is full of clouds.
4. The blue sky is full of large clouds.
5. The blue sky is full of large, white clouds.

Also, be sure to propound Form Interrogatories, No. 17.1 together with RFAs. If an

RFA is denied, the party must explain in detail why it is not admitting to certain facts.

Effect of Admissions

The reward for a well-drafted RFA is that a matter admitted in response to a request for admission is conclusively established against the party making the admission CCP §2033.410(a). Further, if a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. CCP §2033.420(a). The court shall order the reasonable expenses unless it finds:

- (1) An objection to the request was sustained or a response to it was waived under Section 2033.290.
 - (2) The admission sought was of no substantial importance.
 - (3) The party failing to make the admission had reasonable ground to believe that that party would prevail on the matter.
 - (4) There was other good reason for the failure to admit.
- CCP §2033.420(b)(1)-(4).

Costs of proof in connection with requests for admission are awarded if the response is established to be incorrect—not for the misuse of the discovery process. Because those costs of proof expenses compensate a party for a loss or detriment caused by the act of another, they are more akin to damages or a traditional statutory award of attorney fees to a prevailing party. *City of Glendale v. Marcus Cable Associates, LLC*. (2015) 235 Cal.App.4th 344, 359.