THE HIDDEN POWER OF THE REQUEST FOR ADMISSIONS

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How often have many of us experienced frustration with nonresponsive interrogatory or deposition answers and fact-bending opening statements? When the other side does not follow the rules, motions follow, which waste time and energy. Sometimes we just let defense lawyers off the hook and don't hold them accountable.

A great solution to this problem may be simple: the request for admissions (RFA). By using the RFA, statements and facts can be sent to your adversary that require a definitive "admit or deny" answer. Admitted answers are read to a jury at trial. Overlooked by even the most experienced and creative attorneys, the RFA can be your best weapon to corral defense positions and reports, support the plaintiff's claim and experts, and eliminate land mines. Serving a well-drafted RFA can lock in devastating theories against the defense and enable you to deliver a powerful opening statement. Motion practice may be required to win an RFA battle, but it's a battle well worth the fight.

In a recent case, we uncovered that a nursing home submitted reports to Medicaid that stated it employed workers in positions that it did not employ in that fashion. This information was contained in a government document that was certified by the facility's owner and was dissected in depositions. We served an RFA that included a series of admit or deny statements that stated the employee in that facility position did not actually have that job, nor any other corporate position.

The RFA allowed us to boil down

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exactly what we knew the defendant had to admit, based on the deposition, in the way we wanted it to read to the jury. We left no wiggle room, but the defendant wiggled anyway.

This is Jane Doe's deposition testimony:

Q: In 2009, were you employed by [corporation]?

A: No, I was employed by Acme Nursing Home.

Q: What was your position?

A: I was Regional Director of Clinical Services.

And this is the answer to the first request:

RFA # 1: In 2009, Jane Doe was the Regional Director of Clinical Services.

Answer: Objection. . . . Subject to the foregoing objections, and to the extent it is responsive to this request, Jane Doe was employed by defendant Acme during the relevant time period.

We filed a motion to have the responses deemed admitted, an option available in some states. The New Jersey RFA rule has language similar to other jurisdictions: "The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter." (N.J. Ct. R. 4:22-1, Request for Admissions (1994).)

This does not allow the defense nearly the latitude it has with interrogatory questions; RFAs eliminate the defendant's ability to sidestep the truth. What was helpful in this case was that the deposition testimony supported what we were requesting in the RFAs. Having the facts on your side may persuade the judge to rule that the RFAs should be admitted—you're not just winning on a technicality.

Once the judge granted the motion, we were able to state in the opening that the defendant admitted to lying to the state on a certified record.

The RFA gives you credibility by allowing you to state admitted facts rather than spin your perception of the evidence, and it ties the hands of defense attorneys who try to twist the evidence to their advantage.

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