Best Practices: Practical Tips for Requests for Admission of Facts

By Lauren Buford

Practitioners are acutely aware of Illinois Supreme Court Rule 216—the discovery rule for the admission of facts or genuineness of documents. Rule 216 provides that "[a] party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request." Ill. S. Ct. Rule 216(a). Rule 216 further provides in relevant part:

> **(c) Admission in the Absence of Denial.** Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters or (2) *written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part.*

Ill. S. Ct. Rule 216(c) (emphasis added).

Illinois Supreme Court Rule 216 requires a party served with requests for admission of facts to either (1) admit, (2) deny or set forth reasons why it cannot fully admit or deny the request or (3) object where the request is improper. Lawyers are often warned about the dreaded consequences of an untimely response to requests for admission of facts. This article will provide tips to help avoid common procedural traps of Rule 216.

Timeliness

The party responding to requests for admission of facts must answer within 28 days of service. The consequences of failing to answer requests for admission of facts are well known by practitioners: the facts contained within the requests are deemed "judicial admissions which cannot later be controverted by any contradictory evidence." *Robertson v. Sky Chefs, Inc.,* 344 Ill. App 3d 196, 199 (1st Dist. 2003). This draconian result stands not only at trial but also at the summary judgment phase of litigation. *Ellis v. American Family Mutual Insurance Company*, 322 Ill. App. 3d 1006, 1010 (4th Dist. 2001).

Unsavory opposing counsel used to bury requests for admission of facts in a large stack of discovery; however, recent changes to the Illinois Supreme Court Rules have made this cheap tactic nearly impossible. Recent amendments to Rule 216 require the proponent of the requests to set forth the request on a separate document, served separately, and with a prominent warning in 12-point or larger boldface type. See Ill. S. Ct. Rule 216(g). While these requirements cut down on the use of requests for admission of facts for procedural gamesmanship, the answering party must keep a keen eye on the clock due to service requirements. As of July 1, 2018, all documents, including requests for admission of facts, must be served electronically. The days of relying on the mail box rule to add a few extra days to a party's response deadline are over. Be aware that the 28-day clock begins ticking immediately because electronic service is complete on the day of transmission. See Ill. S. Ct. Rule 12(c).

Reasonable Effort to Obtain Answers

In *Szczeblewski v. Gossett*, 342 Ill. App. 3d 344 (5th Dist. 2003), the court considered a party's duty when answering requests for admission of facts. While Rule 216 does not speak to a party's duty to inquire prior to a denial, the *Szczeblewski* court explained that a party has a "good faith obligation to make a reasonable effort to secure answers to the requests to admit from persons and documents within the responding party's reasonable control."

Id. at 349. For example, the appellate court explained the defendant should avail himself of the knowledge of defendant's attorney and insurance company.

But beware; simply stating that you've made a "reasonable inquiry" is not acceptable. The court in *Oelze v. Score Sports Venture*, 401 Ill. App. 3d 110 (1st Dist. 2010) rejected "boilerplate" responses about a party's reasonable inquiry. The court expressly declared that stating that the party has "'made a reasonable inquiry and the information known or readily available within the [party's] control being insufficient to admit or deny'" was deficient. *Id.* at 124. The court demands more of the party than a boilerplate response. The party claiming, "insufficient knowledge" must explain "why its resources are lacking to such an extent that it cannot answer the questions." *Id.* at 126.

Notably, this requirement is important when answering requests about the reasonableness and necessity of medical bills. There are options for a defendant to provide a more thorough explanation not provided by the boilerplate answer in *Oelze*. A party can hire an expert economist to provide an affidavit explaining why they cannot form an opinion, at least as to the question of reasonableness. Another option is admitting the bills are reasonable or necessary but only to the extent that the bills are paid. Medical bills are presumed reasonable to the extent paid. *Wills v. Foster*, 229 Ill. 2d 393 (2008). Thus, a defendant gives up little ground when making this admission. Yet another option is to hire a medical expert to review the bills, compare with standard rates for similar services, and provide an affidavit regarding the reasonableness of the medical bills. This option may be particularly useful when plaintiff has sought care and treatment from non-traditional medical treaters or less than reputable establishments.

Who Should Sign the Sworn Statement?

Rule 216 contains a requirement that answers must be accompanied by a "sworn" statement signed by the party. *Brookbank v. Olson,* 389 Ill. App. 3d 683 (1st Dist. 2009). "[A] party, or in the case of a corporation, its corporate representative, must provide the sworn-to denial in response to a request for admission." *Id*. at 686-87. Sounds simple, right? Be warned, an attorney should be careful when choosing a corporate representative to provide a sworn statement. In most cases, defense counsel has a contact person within a company who assists with discovery responses; however, the corporate point person may not be the best person for this job.

In *Skotticelli v. Club Misty, Inc.*, 406 Ill. App. 3d 958 (1st Dist. 2010), the court considered whether the verification of a dissolved company complied with Rule 216 where its denials were based solely on its attorney's investigation. The court found that the defendant had complied with Rule 216 and that the corporation's reliance on the investigation had fulfilled its "good-faith obligation to make a reasonable effort to secure answers from persons and documents within its control." *Id.* at 960. Notably, the court ruled that Illinois case law and the code of civil procedure allow for "Rule 216 responses to be certified by a person with knowledge of the facts at issue, including the party's attorney." However, the court in *Z Financial, LLC v. ALSJ, Inc.*, 2012 IL App (1st) 112897, ¶ 35 dismissed this statement as *dicta* holding that a party—not the attorney—must sign the sworn statement. To ensure compliance with Rule 216, a practitioner must consider what the corporate representative knows, how he or she knows it, and whether the language of the verification reflects how that corporate representative obtained knowledge of the responses. Most parties automatically use the standard Rule 1-109 verification to accompany answers to requests for admissions of fact; however, depending on the circumstances, make sure to modify your verification accordingly.

What About the 60-Day Rule?

It's well settled that requests for admission of facts are a form of discovery and, as such, they are subject to the requirement that all discovery must be complete no later than 60 days before trial. *See* Ill. S. Ct. Rule

218(c). Rule 218(c) does allow a party to violate the 60 day rule "to do substantial justice between and among the parties." Therefore, do not assume untimely served requests for admission of facts are invalid. If you are served with untimely requests for admission of facts, immediately file a motion to strike and, in the alternative, seek additional time to answer.

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