

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Lee Smalley Edmon, Chair
Discovery Subcommittee
Hon. Andrew P. Banks, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665,
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DATE: October 9, 2007

SUBJECT: Requests for Admission (revise form DISC-020) (Action Required)

Issue Statement

The Judicial Council form *Request for Admissions* (form DISC-020) currently does not contain any instructions. The form should be revised to include basic information regarding requests for admission and the potentially serious consequences of mishandling them. This information would primarily be for the benefit of self-represented litigants who are served with the form; however, it would benefit all parties in civil cases.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2008, revise *Request for Admissions* (form DISC-020) to include instructions and to change the name of the form to *Requests for Admission* to reflect the terminology used in the Code of Civil Procedure.

A copy of revised form DISC-020 is attached at page 3.

Rationale for Recommendation

Experience has shown that laypersons do not fully comprehend requests for admission. It would be beneficial, especially for self-represented litigants but also for other litigants and the courts, to make publicly available on the *Requests for Admission* form information about how to propound and respond to requests for admission and the serious consequences of mishandling them.

Instructions are already included on the form interrogatories approved by the Judicial Council. Similar instructions should be added to the requests for admission form. Chapter 16 of the Civil Discovery Act, Code of Civil Procedure sections 2033.010–2033.420, states the law governing requests for admission in relatively straightforward language. Hence, the instructions on the *Requests for Admission* form need only briefly explain the purpose of requests for admission, direct litigants in need of information to the relevant sections of the Code of Civil Procedure and case law, alert litigants to the importance of carefully considering whether to admit or deny the truth of facts or the genuineness of document, alert litigants to the generally applicable deadlines for responding, and warn litigants of the potential penalties that exist for failing to admit the truth of a matter later proven. The new instructions on the form DISC-020 provide that information.

Alternative Actions Considered

The form could be left unchanged, but the benefits from including the instructions strongly favor revising the form as proposed. For this reason, the committee did not consider alternatives to providing the information on the form.

Comments From Interested Parties

A total of 11 comments were received on this proposal. The commentators included judges, court administrators, a small claims advisor, a legal publisher, and the State Bar’s Committee on Administration of Justice. Most of the comments were favorable; however, some commentators included suggestions for modifications to the language on the form.

A chart summarizing the public comments and the committee’s responses is attached at pages 4–7. As indicated in the chart, the committee agreed with a number of the specific comments and modified the form. For example, the information in the instructions has been reorganized to place the code references near the beginning.

Implementation Requirements and Costs

There should be no significant implementation requirements or costs to the courts as a result of revising the form to include the instructions and to change the title.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> <hr/> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
SHORT TITLE:	
<div style="text-align: center;"> REQUESTS FOR ADMISSION <input type="checkbox"/> Truth of Facts <input type="checkbox"/> Genuineness of Documents </div> Requesting Party: Answering Party: Set No.:	CASE NUMBER:

INSTRUCTIONS

Requests for admission are written requests by a party to an action requiring that any other party to the action either admit or deny, under oath, the truth of certain facts or the genuineness of certain documents. For information on timing, the number of admissions a party may request from any other party, service of requests and responses, restrictions on the style, format, and scope of requests for admission and responses to requests, and other details, see Code of Civil Procedure sections 94–95, 1013, and 2033.010–2033.420 and the case law relating to those sections.

An answering party should consider carefully whether to admit or deny the truth of facts or the genuineness of documents. With limited exceptions, an answering party will not be allowed to change an answer to a request for admission. There may be penalties if an answering party fails to admit the truth of any fact or the genuineness of any document when requested to do so and the requesting party later proves that the fact is true or that the document is genuine. These penalties may include, among other things, payment of the requesting party’s attorney’s fees incurred in making that proof.

Unless there is an agreement or a court order providing otherwise, the answering party must respond in writing to requests for admission within 30 days after they are served, or within 5 days after service in an unlawful detainer action. There may be significant penalties if an answering party fails to provide a timely written response to each request for admission. These penalties may include, among other things, an order that the facts in issue are deemed true or that the documents in issue are deemed genuine for purposes of the case.

Answers to *Requests for Admission* must be given under oath. The answering party should use the following language at the end of the responses:

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE)

(SIGNATURE)

These instructions are only a summary and are not intended to provide complete information about requests for admission. This *Requests for Admission* form does not change existing law relating to requests for admissions, nor does it affect an answering party’s right to assert any privilege or to make any objection.

REQUESTS FOR ADMISSION

You are requested to admit within 30 days after service, or within 5 days after service in an unlawful detainer action, of this *Requests for Admission* that:

1. Each of the following facts is true *(if more than one, number each fact consecutively)*:

Continued on Attachment 1

2. The original of each of the following documents, copies of which are attached, is genuine *(if more than one, number each document consecutively)*:

Continued on Attachment 2

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

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	Commentator	Position	Comment on behalf of group?	Comment	Committee’s Response
1.	Hon. Ronald Bauer Chair, Rules and Forms Committee Superior Court of California, County of Orange Santa Ana, CA	AM	Y	<p>1. In the body of the form under the Requests for Admission heading, add the underlined portion to the statement, “You are requested to admit within 30 days after service, <u>or within 5 days in an unlawful detainer action</u>, of this Requests for Admission...”</p> <p>2. The instructions regarding responses to requests for admission (paragraph 4) may be confusing to the parties as it appears that they must sign the instructions. Modify to reflect, “The answering party should use the following language at the end of the responses <u>above the date and their signature</u>: <i>I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.</i>” Or, in the alternative, add the word “Example” in bold to clarify. Another alternative would be to have a separate instruction page, which would be consistent with other Judicial Council forms.</p>	<p>1. The committee agreed and has included specific language relating to the time limits in unlawful detainer actions on the form.</p> <p>2. The committee disagreed. It did not think that the underlined language is necessary. The italicized language on the form already shows the format, including the location of the date and signature, to be used at the end of the responses. Similar language on the Judicial Council’s form interrogatories has proven to be workable.</p>
2.	Saul Bercovitch, Staff Attorney On behalf of: Committee on Administration of Justice State Bar of California San Francisco, CA	AM	Y	The Committee on Administration of Justice (CAJ) supports the concept of the proposed revisions to form DISC-020. CAJ notes, however, that almost all of the proposed revisions are directed toward the party who is <i>responding</i> to requests for admission, as opposed to the party who may be using the form to <i>propound</i> requests for admission. Many Judicial Council forms are designed to assist self-represented litigants who may want to use those forms.	The CAJ’s observations are noted.

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				<p>Here, in contrast, use of a form with the proposed revisions would create a series of warnings that primarily benefit the responding party (who may or may not be self-represented).</p> <p>The optional form would not provide equivalent warnings if a party chooses not to use the form, even where the responding party is self-represented. To the extent the newly proposed language is deemed significant to responding parties, CAJ believes that consideration should be given to requiring language along those lines in all requests for admission. CAJ recognizes, however, that pursuit of this type of change may require statutory revisions, has broader implications, and is likely beyond the scope of this particular proposal.</p>	<p>Under existing law, the Judicial Council form is required to be optional. (See Code Civ. Proc., § 2033.740(a).)</p> <p>CAJ's suggestion for legislation requiring that the information be included on all requests for admission is beyond the scope of the current proposal. The committee may consider whether to propose such legislation in the future.</p>
3.	Stephen A. Bouch Executive Officer Superior Court of California, County of Napa Napa, CA	A	N	No specific comments.	No response required.
4.	Joseph Chairez President Orange County Bar Association Irvine, CA	A	Y	No specific comments.	No response required.
5.	Julie A. Goren Attorney/Author-Publisher Sherman Oaks, CA	AM	N	1. Since this is intended to help pro pers, I would like to see a reference to Code of Civil Procedure section 1013 somewhere to help them	1. The committee agreed that a reference to Code of Civil Procedure section 1013 should be

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				<p>figure out when their response is due. It could be easily added to the other Code of Civil Procedure sections cited in the last line of the instructions.</p> <p>2. Also, note that the “2” is missing from “2033.710” in the bottom right-hand corner.</p>	<p>added to the instructions and has included a reference to the statute in the second sentence.</p> <p>2. The committee agreed. This reference has been corrected.</p>
6.	Hon. Carolyn B. Kuhl Managing Judge, Complex Litigation Program Superior Court of California, County of Los Angeles Los Angeles, CA	AM	N	<p>The third paragraph of the Instructions suggests that a party must either admit or deny each request for admission. However, a party may have a valid basis for objection. Also, a party may state that he or she lacks knowledge or information sufficient to form a belief as to the truth of the statement, and deny the statement on that basis.</p> <p>I agree with the statement in the discussion that the Code of Civil Procedure sections on the subject of requests for admission are relatively straightforward. I suggest that the best thing we can do in the Instructions is to expressly refer the user to these sections—the Instructions do so, but only in the last line. I suggest amending the Instructions section to include a sentence in the first paragraph referring the reader to the Code of Civil Procedure sections and emphasizing the importance of consulting those sections (perhaps the code sections even could be printed on the reverse of the form).</p> <p>In the third paragraph of the Instructions, I suggest that the second sentence read as</p>	<p>The last sentence of the instructions states that the form does not “affect an answering party’s right to assert any privilege or to make any objection.” The committee considered this statement to provide sufficient information.</p> <p>The committee agreed with this comment and relocated the code references to the first paragraph.</p> <p>The committee did not think that it is necessary to reprint the code sections on the reverse side of the form.</p> <p>The committee agreed and has modified the sentence to read as</p>

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				follows: "There may be significant penalties if an answering party fails to provide a timely written response to each request for admission."	suggested.
7.	Superior Court of California, County of Los Angeles Los Angeles, CA	A	N	No specific comments.	No response required.
8.	Pam Moraida Program Manager Superior Court of California, County of Solano Fairfield, CA	A	N	No specific comments.	No response required.
9.	Andrea Nelson Director of Operations Superior Court of California, County of Butte Oroville, CA	A	N	No specific comments.	No response required.
10.	Michael M. Roddy Executive Officer Superior Court of California, County of San Diego San Diego, CA	A	N	No specific comments.	No response required.
11.	Gloria M. Sanchez Small Claims Superior Court of California, County of Contra Costa Martinez, CA	AM	N	This is not in the plain language of pro pers. This is "lawyers' plain language." I agree with the need to inform pro pers of the serious consequences.	The instructions on the form are intended to be clear, but also in the standard Judicial Council forms format like the instructions on the form interrogatories. These forms are used both by parties represented by attorneys and by self-represented litigants.