

September 13, 2018

OAJ objects to the proposed amendment to Civ.R. 36 limiting the number of requests for admission to forty (40) for the following reasons:

- Limiting the number of admissions erodes the ability to narrow the issues put before a jury. Because the admission language is, by necessity, focused and attenuated, it is imperative that the number of admissions remain unlimited. In a complex case, there are an abundance of facts that need to be admitted to lay a foundation for the legal admissions. By way of example, one may need to ask five foundational admissions to arrive at one legal admission.
- Limiting the ability to identify clearly the issues for a jury is antithetical to the stated purpose of any proposed change to these rules – to reduce the time and expense associated with the civil justice system and to allow more issues and cases to be decided on their merit.
- Such a limitation precludes a plaintiff from properly preparing, analyzing and pursuing their case.
- Requesting leave of the court for additional requests will be a waste of time for the Court and for the parties.
- There is no need to limit the number of requests for admissions. We are unaware of allegations that the practice of submitting requests for admissions has been abused. Is there a report or analysis substantiating such abuses? Moreover, how was forty chosen as the number to set for the limitation?

SUMMARY

1. OHIO RULES OF CIVIL PROCEDURE

- Discovery

(Civ. R. 33, 34, and 36)

The Commission recommends this series of amendments so as to require any written discovery requests – such as requests for admissions, interrogatories, or requests for production – also include a copy of the request in a word processing format. This is intended to allow the responding party to more quickly compile the information and respond, as they can type their answers directly into the document.

These amendments also limit to 40 the number of requests for admissions that can be made without leave of court. Under the current rule, there is no limitation.

RULE 36. Requests for Admission.

(A) **Availability; procedures for use.** A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Civ.R. 26(B) set forth in the request, that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party after service of the summons and complaint upon that party. ~~A~~ The party serving a the request for admission shall serve the party with an electronic copy of the request for admission. The electronic copy shall be on a shareable medium and in an editable format reasonably useable for word processing and provided on computer disk, by electronic mail, or by other means agreed to by the parties. A party who is unable to provide an electronic copy of a request for admission may seek leave of court to be relieved of this requirement. A party shall not propound more than forty requests for admission to any other party without leave of court, which the court may grant for good cause shown. For purposes of this rule, any subpart propounded under a request for admission shall be considered a separate request for admission.

(1) Each matter of which an admission is requested shall be separately set forth. The party to whom the requests for admissions have been directed shall quote each request for admission immediately preceding the corresponding answer or objection. The matter is admitted unless, within a period designated in the request, not less than twenty-eight days after service of the request or within such shorter or longer time as the court may allow, party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.

(2) If objection is made, the reasons therefor shall be stated. 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. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer, or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Civ.R. 37(C), deny the matter or set forth reasons why the party cannot admit or deny it.

(3) The party who has requested the admissions may move for an order with respect to the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the

request be made at a pretrial conference or at a designated time prior to trial. The provisions of Civ.R. 37(A)(5) apply to the award of expenses incurred in relation to the motion.

[Existing language unaffected by the amendments is omitted to conserve space]

[Click here to link to proposed rule amendments to Ohio Rules of Civil Procedure, the Ohio Rules of Criminal Procedure, the Ohio Rules of Evidence, Ohio Rules of Appellate Procedure, and the Ohio Rules of Juvenile Procedure.](#)