

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

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee  
Hon. Marvin R. Baxter, Chair  
Civil and Small Claims Advisory Committee  
Hon. Elihu M. Berle, Chair  
Discovery Subcommittee  
Hon. C. Robert Jameson, Chair  
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DATE: October 26, 2004

SUBJECT: Civil Law: Use of Denials and Admissions (Code Civ. Proc., § 2033)  
(Action Required)

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Issue Statement

Code of Civil Procedure section 2033 (on requests for admission), unlike section 2025(u) (on the use of depositions) and section 2030(n) (on the use of interrogatory answers), is silent on whether a propounding party can offer in evidence a denial of an admission at a trial or other hearing. To clarify the law and make the provisions on requests for admissions consistent with other sections of the Civil Discovery Act the act should be amended to add a provision on the use of admissions and denials of requests for admissions at trials and hearings.

Recommendation

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to amend the Civil Discovery Act to clarify the admissibility at trial of admissions and denials of requests for admissions.

The text of the proposed legislation is attached at page 4.<sup>1</sup>

### Rationale for Recommendation

The proposed Judicial Council–sponsored legislation would clarify that, so far as they are admissible under the rules of evidence, a propounding party or any party other than the responding party may use denials of requests for admissions—as well as admissions—against a responding party at a trial or other hearing. The new section would be based on current subdivision (n) of section 2030 on the use of interrogatory answers at trial. The proposed statutory amendment would make the provision on the use of responses to requests for admissions consistent with other provisions in the Civil Discovery Act.

This proposal would improve civil procedure and court administration by expressly providing for the use of responses (i.e., both admissions and denials) to requests for admissions at trial and specifying by whom they may be used. Although current section 2033 does not contain such a provision, subdivision (n) assumes that admissions may be used at trial. It states in part: “Any matter admitted in response to a request for admission is conclusively established against the party making the admission in the pending action, unless the court has permitted withdrawal or amendment of that admission ...” (Code Civ. Proc., § 2033(n).) This subdivision is silent on the use of denials of requests for admissions at trials or hearings.

New subdivision 2033.430 would clarify that both admissions and denials may be admitted so far as they are admissible under the rules of evidence. Like the provision in current section 2030(n) on use of interrogatories, this new provision would specify that the admissions and denials may be used by the “propounding party or any party other than the responding party.” The reason for excluding the responding party is that this party’s denials would be inadmissible hearsay; that party should be required to provide direct testimony at trial rather than rely on its denials of requests for admissions.

### Alternative Actions Considered

The statute could be left unchanged; however, it appears preferable to provide an express provision on the use of admissions and denials of admissions at trial.

### Comments From Interested Parties

This legislative proposal was circulated for public comment in spring 2004. Five comments were received on the proposal. The commentators included an attorney, a legal publisher, a local bar association, the Committee on Administration of Justice of the State Bar of California, and the Civil Justice Association of California.

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<sup>1</sup> The amendment, which would become effective January 1, 2006, would add new section 2033.430. The proposed section number reflects the revised and reordered numbering system of the Civil Discovery Act that will become operative July 1, 2005, under Assembly Bill 3081. New section 2033.430 would be placed in chapter 16 (Requests for Admissions), article 3 (Effect of Admission) of the act.

A chart summarizing the public comments and the advisory committee's responses is attached at page 5.

Four of the five commentators agreed with the proposal. One of these suggested that the words "the propounding party or any party other than the responding party" be changed to "any party." The advisory committee discussed this comment and concluded it was better for the new section on the use of requests for admission and denials to be consistent with current section 2030(n), on which parties may use interrogatory answers at trial. As mentioned above, it would not be appropriate for a responding party to rely on its denial of a request for admission at trial.

The Civil Justice Association of California (CJAC) did not support the proposal. It stated that admissions and denials of requests for admissions are different from interrogatory answers and so should be treated differently. It noted that requests for admissions come early in a case, before there is time to investigate. If a request is partially correct and partially incorrect, it may be denied.

The committee disagreed with CJAC's objections to the proposal. For the purpose of use at trial, requests for admissions and interrogatories are more similar than different. Both may be asked early or later in a case. Both are generally prepared and answered by the parties' attorneys. Both may result in objections, affirmative and negative responses, and partial responses, and the responses to both may be relevant at trial. Hence, there is no reason to distinguish between the use at trial of interrogatory responses and the use of responses to requests for admissions.

In sum, the committee felt that the new section would be helpful in clarifying that both admissions and denials of requests for admissions may be used at trial and in providing requirements for their use at trial that are similar to those for the use of answers to interrogatories.

#### Implementation Requirements and Costs

There should be no significant implementation requirements or costs incurred by the courts if this legislation is enacted.

Attachments

Section 2033.430 would be added to the Code of Civil Procedure, effective January 1, 2006, to read:

1    **§ 2033.430**

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3    At the trial or other hearing in the action, so far as it is admissible under the rules of  
4    evidence, the propounding party or any party other than the responding party may use  
5    any admission or denial of a request for admission only against the responding party. It  
6    is not grounds for objection to the use of an admission or denial of a request for  
7    admission that the responding party is available to testify, has testified, or will testify at  
8    the trial or other hearing.

**Uses of Denials and Admissions  
(amend Code of Civil Procedure, section 2033)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Committee on Administration of Justice State Bar of California San Francisco, California	AM	Y	CAJ supports the proposal that the Judicial Council sponsor legislation to amend Code of Civil Procedure section 2033, as proposed.	No response required.
2.	Ms. Julie Goren Lawdable Press Sherman Oaks, California	AM	N	Recommended changing “the propounding party or any other party” to “any party.”	The committee disagreed. It believed it is preferable to use the same language regarding parties as it used in current Code of Civil Procedure section 2030(n).
3.	Mr. Richard L. Haeussler Attorney Haeussler & Associates Newport Beach, California	A	N	Agree with proposed changes.	No response required.
4.	Ms. Kim Hubbard President Orange County Bar Association Irvine, California	A	Y	Agree with proposed changes.	No response required.
5.	Ms. Laura R. Riddell Civil Justice Association of California Sacramento, California	N	Y	Often requests for admissions come early in a case before there is time to investigate. If a request is partially correct and partially incorrect it may be denied. Denials and admissions are not the same thing, and should not be treated as such.	The committee disagreed. Both requests for admissions and interrogatories may come early or later in a case. Both are generally prepared by the parties’ attorneys. Both may result in denials. For the purpose of using responses at trial, both are more similar than different. Hence, the committee believed that it would be useful to have express, consistent provisions on the use of interrogatory responses and the use of admissions and denials at trial.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.