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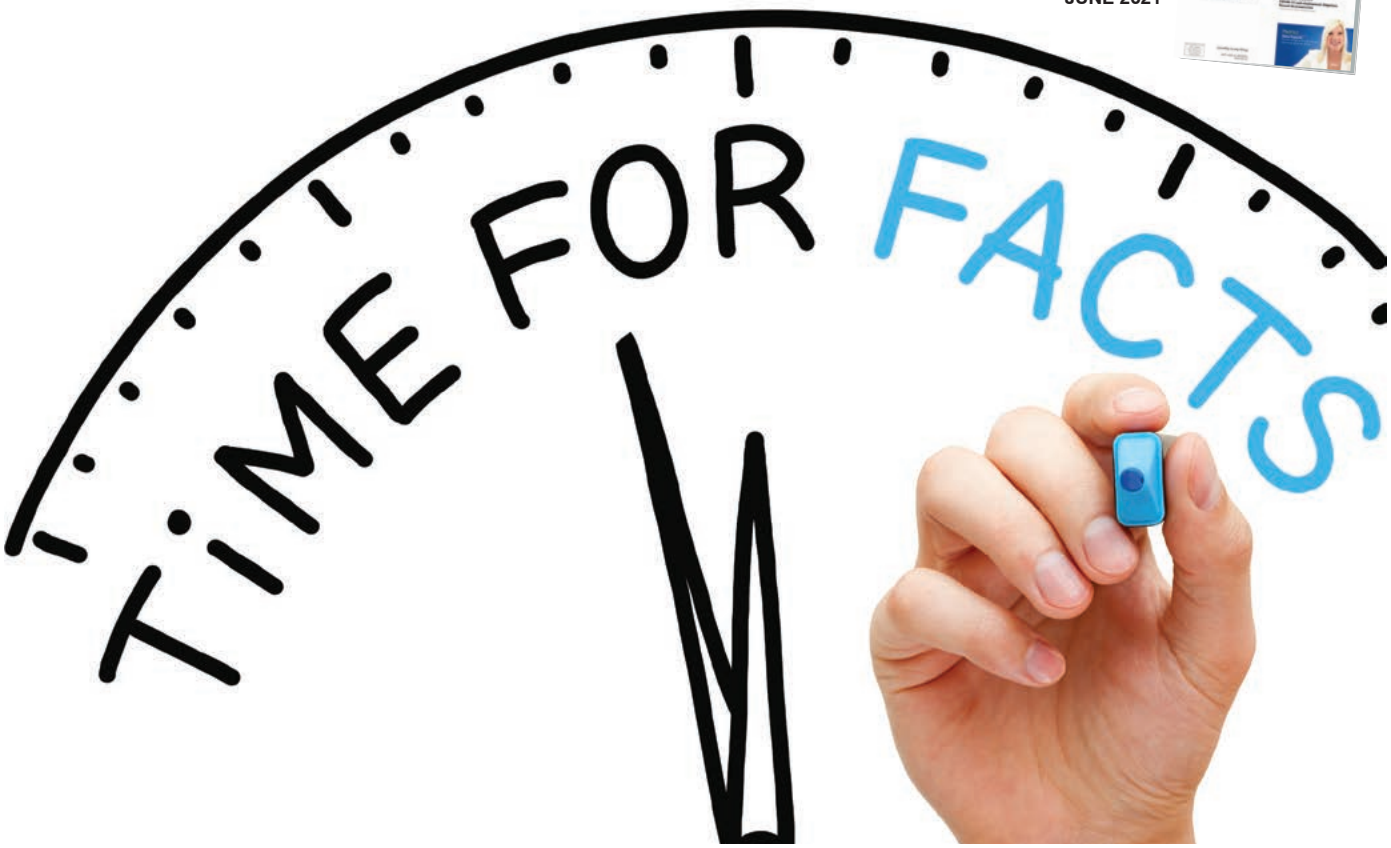

A facts-based approach to Requests for Admission

How to use the discovery process with its RFAs to your advantage in an auto-accident case

By Eean L. Boles and Eustace de Saint Phalle

In every civil litigation case, liability of the defendant must be proven for the plaintiff to prevail. It can be vital to a case for the plaintiff's attorney to take the lead and control of the process of proving liability. Any delay in sending out discovery benefits the defense. The faster a plaintiff proves the liability of the defendant(s), the closer that plaintiff is towards receiving compensation. Accordingly, the plaintiff's attorney should often begin the discovery process with discovery specifically related to the liability of the defendant.

One of the most important and undervalued tools of discovery is the Request for Admission (referred to as the "RFA"). Requests for Admission enable parties to create issues of fact and questions of law regarding liability and causation. These requests can be targeted to prove each element of every claim alleged in the complaint. When used properly, Requests for Admission can provide a road map that guides the plaintiff's attorney through the process of establishing a defendant's liability.

This article will detail the importance of getting ahead in the discovery process and provide an outline for how a plaintiff's attorney may establish liability in a case involving a failure to stop at a stop sign that leads to a collision. However, this outline can be easily implemented and applied to any type of civil case an attorney may litigate.

The underlying advantages of the Discovery Act

As we all know, litigating a case requires a ton of hard work in order to win. Most lawyers would love to press a button that speeds them through the arduous parts of litigation. Generally, practitioners wait until after the defendant has sent discovery or after the Case Management Conference to start propounding discovery. However, doing so

causes those attorneys to lose the advantage that is provided to them under the Discovery Act. For example, some attorneys are not aware that under Code of Civil Procedure section 2030.020, the defendant can be served with discovery just 10 days after being personally served with the complaint. Additionally, depositions can be noticed just 20 days after the complaint is personally served on the defendant in accordance with section 2025.210. As you can see, the Discovery Act permits you to initiate your discovery first which allows you to take the lead in the discovery process.

A discovery plan will help set the pace and direction of litigation

A lot of attorneys rely on templates or exemplars when preparing discovery requests in their personal injury cases. Some will do no written discovery or only Form Interrogatories prior to noticing the defendant's deposition. If you are going to initiate the discovery process, take the time to determine what information you have and what information is missing from the evidence you obtained from your client by creating a discovery plan. Your discovery plan should be able to outline the path you want to take in litigation to obtain the discovery you need to prove your case.

One of the goals of discovery is to establish the liability of each defendant. Go through your complaint and identify each element and all defenses/exceptions that apply for every claim listed. If you are unsure of any required/applicable elements or defenses, the Judicial Council of California Advisory Committee on Civil Jury Instructions (CACI) guide is a great tool to use in order to frame your discovery requests. Then refer to any statutes, regulations, or rules/procedures that are also relevant to the claims identified and applicable for each party under the circumstances of your case. This will be the framework for your discovery plan.

Remember, each form of discovery is helpful in its own way. Use Form Interrogatories to elicit basic information regarding the defendant. Special Interrogatories can be used to identify relevant facts, witnesses, documents, historical information, etc., to each piece of evidence that the defendant has in their possession or should have in their possession. Requests for Admission should be used for foundational facts and legal issues. Section 17.1 of Form Interrogatories should be used to support and back up your Requests for Admission by requiring the defendant to provide background information as to why they did not admit to one of your Requests for Admission. The Requests for Production of Documents need to support and correspond to your Requests for Admission and Special Interrogatories.

Additionally, it is important to identify potential witnesses and what information those witnesses will add to the case. Think about what information those witnesses do not have and whether they are more helpful for you or the defendant. Try to identify potential experts or areas in the case that need expert testimony, such as technical or mechanical subject matter. Finally, be sure to pinpoint any locations, items, or equipment that require an inspection.

Requests for admissions

Code of Civil Procedure section 2033.010 provides that "Any party may obtain discovery … by a written request that any other party to the action admit the genuineness of specified documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact." Any matter admitted in response to a request for admission is conclusively established against the party making the admission, unless the court permits a withdrawal or amendment of the admission under Code of Civil Procedure section 2033.300. (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973). While other discovery devices are meant to obtain proof for use at trial, requests to admit seek to eliminate proof at trial. (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762). The "primary purpose of requests for admissions is to set at rest triable issues so that they will not have to be tried; they are aimed at expediting trial." (*American Federation of State, County & Municipal Employees v. Metropolitan Water Dist.* (2005) 126 Cal.App.4th 247, 267-266).

Requests for Admission ("RFAs") are not limited to matters within personal knowledge of the responding party, and a responding party has a duty to make a reasonable investigation of the facts before answering items which do not fall within his personal knowledge. It is not enough to fail to investigate and then deny for lack of information in reliance on the lack of investigation. (*Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618). A single RFA can do a lot of work. Since RFAs allow you to ask direct questions and elicit direct responses regarding liability, RFAs should be the focus of your discovery plan. The defendant's responses allow you to map out everything you need for depositions and other forms of discovery.

Implementing our fact-based requests for admission

Now let's try applying this strategy to a hypothetical scenario. In our case, the Plaintiff is driving down the street and arrives at an intersection. The Plaintiff has the right of way and proceeds forward through the intersection. At the same time, the Defendant on the driver's side of Plaintiff's vehicle reaches the intersection but proceeds through a stop sign and causes a collision with our Plaintiff. Here, the Defendant unlawfully failed to stop at the stop sign, which caused an accident that forced the Plaintiff to suffer injuries and damages.

Based on the facts, the claims would be negligence and negligence per se for violating Vehicle Code section 22450, subdivision (a), which states "the driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection

shall stop at a limit line, if marked, otherwise before entering the crosswalk on the near side of the intersection."

To prove negligence at trial, CACI Jury Instruction 400 requires a plaintiff to prove that: 1) the defendant was negligent; 2) the plaintiff was harmed; and 3) defendant's negligence was a substantial factor in causing plaintiff's harm.

To prove negligence per se, CACI Jury Instruction 418 requires a plaintiff to prove that: 1) defendant violated this law and 2) the violation was a substantial factor in bringing about the harm. If so, then you must find that defendant was negligent [unless you also find that the violation was excused]. If you find that defendant did not violate this law or that the violation was not a substantial factor in bringing about the harm [or if you and the violation was excused], then you must still decide whether defendant was negligent in light of the other instructions.

Accordingly, here are a few Requests for Admission that apply to this situation and can assist in establishing liability:

- Admit that the Traffic Collision Report attached hereto as Exhibit 1, refers to events that actually occurred on September 14, 2020.
- Admit that the INCIDENT occurred at the intersection of 1st Street and Main Avenue.
- Admit that you failed to stop at the stop sign on 1st Street while traveling northbound at the intersection of 1st Street and Main Avenue.
- Admit that under Vehicle Code § 22450(a), ALL drivers have a duty to come to a complete stop at the limit line before entering the intersection of 1st Street and Main Avenue.
- Admit that YOU violated Vehicle Code § 22450(a) when YOU failed to bring YOUR vehicle to a complete stop at the limit line before entering the intersection of 1st Street and Main Avenue.
- Admit that you caused the collision on September 14, 2020, by failing to come to a complete stop before entering the intersection of 1st Street and Main Avenue.
- Admit that you were negligent when you failed to stop at the limit line at 1st Street.
- Admit that but for your negligence in failing to stop at the limit line before entering the intersection of 1st Street and Main Avenue, the INCIDENT would not have occurred.
- Admit that you were the sole cause of the incident at 1st Street and Main Avenue on September 14, 2020.
- Admit that as a result of your negligence in causing the INCIDENT, Plaintiff suffered injuries to the following body parts: cervical spine, lumber spine, neck and head.

Motions to compel

It is very important to read discovery responses within the first week of receiving them; that way you can calendar your date to file a Motion to Compel. If there are discrepancies or baseless objections in the responses, you will have to follow up with the defense attorney in order to receive the correct information. Once you have reviewed the defendant's discovery responses and determined that you will need supplemental responses to your discovery requests, it is important to meet and confer with the defense attorney to address the missing information. Before a Motion to Compel sufficient responses can be filed, California requires the parties to engage in a "reasonable and good faith attempt at an informal resolution of each issue presented by the motion." (Code Civ. Proc., § 2016.040.)

At a minimum, counsel should either meet or talk by telephone or Zoom to attempt to work out the various issues. If the issues are still unresolved, then you will have to follow up with a meet and confer letter. However, it is important to make sure that your meet and confer letter offers more than a simple demand for further information. Your letter should be drafted like a template for your separate statement of facts, in accordance with California Rules of Court, rule 3.1345, in case you have to file a Motion to Compel.

For each of the responses that you want the defendant to supplement, restate the specific discovery request, the full response given by the defendant, the nature of the deficiency, the supporting legal authority, and the specific information sought. That way, your request is clear and provides all of the necessary information the defense attorney would need to understand what you are asking for. The meet and confer effort should reflect the same level of persuasive effort as the motion itself, and most importantly, should be conducted with the same level of professionalism as an oral argument before the court.

Meet and confer letters should be sent out no later than one to two weeks after being served with the defendant's responses. This is because the Motion to Compel further responses has to be brought within forty-five days of service of the defendant's responses pursuant to Code of Civil Procedure section 2030.300. Give the defendant one week to respond to your meet and confer letter and be sure to ask for an extension for your Motion to Compel deadline, if one is needed.

It is extremely important to follow through on all deadlines established in your meet and confer letters. If a response is not received by the time you requested, then you should absolutely follow through on filing your Motion to Compel. This also exemplifies why it is important to maintain a trail of your communication with defense counsel. Even if communication is done over the phone, be sure to send a follow-up letter to document what was discussed and agreed to. You can protect yourself if counsel tries to go back and change their position.

Additionally, Motions to Compel are very important in building credibility with the judge. If you are forced to bring a Motion to Compel, it goes without saying, the plaintiff's attorney should only file a motion she believes she will win. Both the Court and the defendant's attorney must be able to see that you know what you

are doing and that their time will not be wasted doing pointless work. Effective Motions to Compel build opposing counsel's respect for you and likely lead to opposing counsel giving you better responses in the next round of discovery.

How to respond to bad-faith denials

What do you do when a defendant won't admit to things not reasonably in dispute? "If a party fails to admit . . . the truth of any matter when requested to do so," and the party requesting the admission thereafter proves the truth of that matter, the requesting party may move the court to require the responding party to pay the reasonable expenses incurred in making the proof, including attorneys' fees. (Code Civ. Proc., § 2033.420, subd. (a).)

Notably, this rule is not merely applicable to prevailing parties. (*Smith v. Circle P Ranch Co.* (1978) 87 Cal.App.3d 267, 275). Since costs of proof are intended to reimburse a propounding party for any unnecessary expenditures that result from proving issues unreasonably denied, any party may be awarded such costs, even if that party ultimately loses the lawsuit. Therefore, win or lose, if you can prove the responding party dishonestly or unreasonably denied an RFA, you may be compensated for the costs and attorney's fees incurred in the process of exposing the truth.

An RFA denial is unreasonable even if the responding party lacks personal knowledge to a request, but fails to make a reasonable investigation into the matter. (*Rosales v. Thermex-Thermatron, Inc.* (1998) 67 Cal.App.4th 187, 198). The court's recent decision in *Grace v. Mansourian* has made clear that a party's wishful thinking is not sufficient grounds to rightfully deny an RFA. Although a court cannot force a party to admit an obviously true fact, a responding party's "failure to do so comes with consequences, exposure to a costs of proof award." (*Grace v. Mansourian* (2015) 240 Cal.App.4th 523, 532).

Costs of Proof

How exactly do you get paid? If the propounding party can prove the responding party unreasonably denied an RFA, it may file a motion for costs of proof. (See Code Civ. Proc., § 2033.420; *Estate of Manuel* (2010) 187 Cal.App.4th 400, 403-05). The moving party must identify whom it is seeking costs from and must submit a memorandum of points and authorities and a declaration containing particular facts that support the amount sought. (Thomas, Cal. Civil Courtroom Handbook and Desktop Reference (2018) Sanctions and Contempt, § 25:29). Ultimately, the determination of whether a propounding party is entitled to costs of proof remains within the trial court's "sound discretion." (*American Federation of State, County & Municipal Employees v. Metropolitan Water Dist.* (2005) 126 Cal.App.4th 247, 267).

There are several categories of costs and fees that can be awarded as sanctions. In making an award determination, courts consider hourly fees and time spent on the case. Since the scope of the award should be limited to the reasonable expenses incurred in proving the particular matter, any requested amounts should be segregated from other costs and fees expended to prove unrelated issues. (*Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618, 636-37). Keeping organized records that document expenses made in the process of proving a specific matter can increase your chances of receiving a costs of proof award.

Conclusion: In litigation, the discovery process is the plaintiff's friend

As stated above, getting a head start in the discovery process of an auto accident case can really prove beneficial for the plaintiff's attorney and the client. Taking the time to develop and perfect a strategy for the discovery process increases efficiency in establishing the liability of a defendant. Utilizing the Requests for Admission will guide your discovery process by ensuring you establish liability and will lay the foundation for covering your costs and attorney's fees when you prevail in your case. Following through on that strategy forces opposing counsel to take your settlement demands seriously and shows the client how much you believe in their case.


Boles

Eean L. Boles is an associate in the Rains Lucia Stern St. Phalle & Silver, PC *Injury Resource Group. He represents people who have suffered serious injury as a result of automobile accidents, defective products, dangerous premises, negligence, and intentional torts. Eean has both litigation and trial experience in the Greater Los Angeles area.*


de Saint Phalle

Eustace de Saint Phalle is a partner with Rains Lucia Stern St. Phalle & Silver, PC *in San Francisco. He manages the personal injury practice for the firm statewide. The firm's personal injury practice focuses on civil litigation in a variety of areas, including industrial accidents, product liability, exceptions to workers' compensation, premises liability, professional malpractice, auto accidents, maritime accidents and construction defect accidents. He is happy to provide additional materials for briefs or motions in limine upon request.*