Responding to defendants' avoidance tactics in answers to requests for admissions

Kristi S. Schubert; Lamothe Law Firm, LLC; New Orleans, Louisiana

Well-crafted requests for admissions can force the defendant to take a position and narrow the issues for trial. Frequently, the defendants' first set of answers will use a variety of improper objections and other tactics to avoid the requests and minimize the value of their answers.

Kristi Schubert

When this happens, taking the time to draft a short letter identifying the deficiencies with citations to relevant code articles and favorable case law can often prompt the defendants to amend their answers.

In my experience, these supplemental answers have often yielded valuable admissions. Even if defendants make no useful admissions, their unreasonable denials may entitle you to an award of any expenses incurred in proving them under Article 1472.

You should remind the defendants that if they do not amend their answers to cure the defects, you will move to determine the sufficiency of the answers pursuant to Article 1467, which permits the court to deem answers that do not substantially comply with the rules as admissions. Louisiana courts have previously deemed requests for admissions as admitted where the defendant equivocated in its responses. *Powell v. Dep't of Highways*, 383 So.2d 425 (La. Ct. App.), *writ refused*, 389 So.2d 1129 (La.1980)

Here are some common improper responses and the relevant law to which you can cite in challenging them:

Defendant objects because the request "presents a genuine issue for trial."

This is not a proper objection. Article 1467 specifically states that 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." La. Code Civ. Proc. Ann. art. 1467

Case law makes it clear that admissions may be used to establish both uncontradicted facts and "contradicted facts which constitute the crux of the matter in litigation." *Succession of Rock*, 340 So.2d 1325 (La.1976)

Defendant objects due to "lack of knowledge."

This is a proper objection only if the defendant states that a reasonable inquiry has been made. Article 1467 states that the "answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny." La. Code Civ. Proc. Ann. art. 1467

Courts have held a denial for lack of sufficient information to be inappropriate where, in fact, there was sufficient information to allow an appropriate admission or denial. *Hudson v. Maryland Cas. Co.*, App. 2 Cir. 1970, 241 So.2d 567, *writ refused,* 257 La. 609, 243 So.2d 275

Defendant objects because the request seeks a legal conclusion.

This is a proper objection in Louisiana state courts, but it is often used improperly or when it is unwarranted. Louisiana's rules only permit request for admissions regarding factual information or the genuineness

of documents, not on matters of law. *Ball Mktg. Enter. v. Rainbow Tomato Co.*, 340 So.2d 700, 702 (La. Ct. App. 1976). This is in contrast the Federal Rules, which allow requests for admissions directly on matters of law.

Many defendants will improperly object to a purely factual request by claiming that it would require a legal conclusion. You can remind these defendants that while they may object to any portion of the request that calls for a conclusion of law, they are still under a legal obligation to admit or deny the portions of the request that call for admission or denial of fact. *Ball Mktg. Enter. v. Rainbow Tomato Co.*, 340 So.2d 700, 702 (La. Ct. App. 1976)

Defendant denies the entire request because a small part of the request is untrue.

A defendant may not summarily deny a request when only one portion of the request is untrue. Article 1467 states that "when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder." La. Code Civ. Proc. Ann. art. 1467

Defendant objects or denies by stating that "the records speak for themselves."

While I have been unable to find any written case law in Louisiana on this matter, federal case law suggests that this is not a proper objection. See *Miller v. Holzmann*, 240 F.R.D. 1, 4 (D.D.C. 2006) ("Thus, the defendant's objection to the requests on the grounds that the document speaks for itself is a meritless objection and will be overruled.")

Miller describes such an objection as "an evasion of the responsibility to either admit or deny" and "a waste of time" since it defeats the purpose of requests for admissions, which is to narrow the issues for trial. *Id.*

Defendant denies the truth of factual matters that are admitted in his or her deposition.

At least one Louisiana court has held that where certain factual matters are admitted in a deposition, it is sanctionable conduct to deny them in the request for admission. See *Settles v. Paul*, 46,209 (La.App. 2 Cir. 4/13/11), 61 So.3d 854, 860 (Awarding attorney fees and expenses where a party denied requests for admissions on matters to which he later admitted in his deposition).