Study J-506 January 31, 2006

Memorandum 2006-11

Civil Discovery Improvements: Discovery Motion in Unlawful Detainer; Request for Admission (Discussion of Issues)

This memorandum continues the Commission's study on civil discovery, commenced in 2002. It addresses suggestions made by civil litigator Mark Storm relating to:

- Time for hearing a discovery motion in an unlawful detainer action.
- Factual basis for a response to a request for admission.
- Consequences for failure to timely respond to a request for admission.

The memorandum presents background information and preliminary analysis of the issues raised by each suggestion. The Commission needs to decide whether to pursue each matter further. The staff will then prepare a draft tentative recommendation implementing the Commission's decisions on these and other matters in this study, to be presented at a future meeting.

Mr. Storm's email communications are attached as an Exhibit, as follows:

TIME FOR HEARING DISCOVERY MOTION IN AN UNLAWFUL DETAINER ACTION

Statutory time limits in an unlawful detainer action are generally shorter than comparable time limits in other civil actions, based on the legislative priority afforded unlawful detainer actions. See Code Civ. Proc. § 1179a. For example, a party in an unlawful detainer action is required to respond to a written discovery request in only five days, rather than thirty. Code Civ. Proc. §§ 2030.260(a), 2031.260, 2033.250. Also, a party in an unlawful detainer action

may calendar a summary judgment motion on five days' notice, rather than seventy-five. Code Civ. Proc. §§ 437c(a), 1170.7.

However, Mr. Storm points out the absence of any statutory provision allowing a discovery motion in an unlawful detainer matter to be heard on an expedited basis. Exhibit p. 4. Instead, in the absence of an order shortening time, this motion requires sixteen court days' notice to be provided prior to a hearing on the motion, the same as most other civil cases. Code Civ. Proc. § 1005(b). Mr. Storm notes the incongruity of allowing a potentially dispositive motion for summary judgment in an unlawful detainer matter to be heard on only five days' notice, while requiring sixteen court days' notice for a motion seeking only to compel further discovery responses. In a subsequent email, Mr. Storm describes a case in which the current statutory scheme governing discovery in an unlawful detainer matter caused a significant and seemingly unjustified hardship to his client. Exhibit pp. 6-8.

Analysis

The Legislature has mandated that unlawful detainer actions be handled on an expedited basis. There appears to be no logical reason to require sixteen court days' notice to calendar a discovery motion in an unlawful detainer action, when five calendar days' notice is deemed sufficient for a summary judgment motion.

Moreover, orders shortening time for setting a discovery motion in an unlawful detainer matter are apparently already routinely granted. A statutorily shortened notice period would therefore simply eliminate the need to make an ex parte appearance to obtain this relief, saving both litigants and the courts valuable time and resources.

The staff thus recommends that **the Commission propose the enactment of a new statute shortening the period of notice required for a discovery motion in an unlawful detainer action**.

The proposed new statute would read:

> **Code Civ. Proc. § 1170.8 (added). Time for discovery motion**
>
> SEC. ____. Section 1170.8 is added to the Code of Civil Procedure, to read:
>
> 1170.8. In any action under this chapter, a discovery motion may be made at any time after the answer is filed upon giving five days notice.
>
> **Comment.** Section 1170.8 is new. The section provides for an expedited hearing on a discovery motion in a forcible entry or forcible or unlawful detainer case, consistent with the precedence

> for such cases expressed in Section 1179a. The section is modeled on Section 1170.7 (five days notice required for summary judgment motion in action under this chapter).

FACTUAL BASIS FOR RESPONSE TO REQUEST FOR ADMISSION

A request for admission requests an opposing party to admit or deny the truth of a stated fact, or the genuineness of a specified document. Code Civ. Proc. § 2033.010. A response to the request must either admit the specified matter, deny it, or state that the responding party has insufficient information to respond. Code Civ. Proc. § 2033.220. The response need not include any supporting factual basis for the response.

To obtain this factual basis (as well as the identification of any supporting witnesses or documents), a party propounding a request for admission often concurrently serves Judicial Council Form Interrogatory 17.1, as a separate discovery request. This form interrogatory requires the responding party to identify all persons, documents, and facts supporting each response to a concurrently served request for admission that is not an unqualified admission.

Mr. Storm would like to see Form Interrogatory 17.1 made a statutory component of any served request for admission. Exhibit pp. 1, 2, 3. He notes this would allow a party propounding a request for admission to serve a single document (rather than one document containing the request for admission, and a second containing Form Interrogatory 17.1), and receive a single responsive document. Mr. Storm believes this merging would also streamline both "meet and confer" discussions as well as motions to compel, as disputed issues would be governed by one discrete section of the discovery statute. Exhibit p. 2.

Analysis

Mr. Storm's proposal has some logical appeal. However, the Legislature has apparently already considered a consolidation similar to that proposed by Mr. Storm. At present, Code of Civil Procedure Section 2033.060(h) explicitly prohibits combining a request for admission and any other method of discovery in a single document.

Moreover, Mr. Storm's proposal is problematic due to the essentially different natures of an interrogatory and a request for admission. An interrogatory, like most classic methods of discovery (e.g., a deposition, inspection demand, physical examination, and demand for expert witness information) is an

investigatory tool, designed to gain information relating to issues in litigation that are in dispute. A request for admission is designed to identify issues in litigation that are *not* in dispute, so as to *foreclose* the need for further investigation of those issues. See 2 B. Witkin, *Evidence* § 1553, at 1506 (3d ed. 1986).

Likely due to this distinction, the Legislature has mandated several distinct procedural rules applicable to the two discovery devices. An attempt to "graft" an interrogatory onto a request for admission would thus face significant obstacles, both in terms of drafting as well as effectuating legislative intent.

Here are a few examples of the different statutory treatment:

- When a party fails to timely serve a response to a request for admission, upon motion a monetary sanction against the dilatory party is mandatory. Code Civ. Proc. § 2033.280(c). When the untimely response is to an interrogatory, upon motion the imposition of a monetary sanction is discretionary, and can be imposed against either party. Code Civ. Proc. § 2030.290(c).

- After serving a response to an interrogatory, a party may thereafter serve an amended response to the same interrogatory without leave of court, and may rely upon the amended response at trial unless the court grants a motion ordering otherwise. Code Civ. Proc. § 2030.310. The first response to a request for admission is presumptively binding at trial, absent the granting of a motion for relief. Code Civ. Proc. § 2033.410.

- If a response to a request for admission is disproved at trial, the party propounding the request may be entitled to recoup the cost of disproving the response, including reasonable attorney's fees. Code Civ. Proc. § 2033.420. There exists no similar provision relating to "disproving" the response to an interrogatory at trial.

These significant distinctions would be difficult if not impossible to preserve when applied to a merged request for admission and interrogatory. Many balancing determinations would have to be made before drafting a proposed statutory revision. Even then, it is likely several issues would remain to be resolved by the courts.

Staff therefore recommends that **the Commission not pursue a proposal to statutorily combine Judicial Council Form Interrogatory 17.1 with a request for admission**.

Mr. Storm also suggests that the current statutory scheme places an insufficient burden on a litigant to timely respond to a request for admission. Exhibit pp. 3, 5-8. Mr. Storm notes that when a litigant fails to timely serve a response to a request, the burden remains on the party propounding the request to file a motion. Moreover, even once the motion is filed, the respondent can still avoid an adverse consequence (other than a monetary sanction) by simply serving a response prior to the hearing on the motion. Code Civ. Proc. § 2033.280(c).

Mr. Storm also points out that, in an unlawful detainer matter, this effective extension of time granted a party to respond to a request for admission can have a significant substantive impact. Exhibit pp. 6-8.

Possible Revision to Statutory Scheme Relating to Requests for Admission

Mr. Storm believes the statutory scheme should instead provide that if a respondent fails to timely serve a response to a request for admission, the matter that is the subject of the request should be *deemed* admitted, based on service of a notice to that effect by the propounding party. Mr. Storm proposes that the burden should then be on the tardy respondent to make a motion for *relief* from the deemed admission.

However, Mr. Storm's proposal very closely mirrors the mandate of former Code of Civil Procedure Section 2033, which was repealed in 1986. See 1986 Cal. Stat. ch. 1334, § 1. The pertinent part of former Section 2033 read as follows:

> 2033. (a) ....
>
> Upon failure of a party served with requests for admissions pursuant to this section either to answer or to file objections within the period as designated in the request or as extended by the court, the party making the request may serve upon the other party a notice in writing by certified or registered mail, return receipt requested, notifying the party so served that the genuineness of the documents or the truth of the facts has been deemed admitted. Once the notice is served, the party upon whom the notice is served shall not have the right to apply for relief under the provisions of Section 473 unless a motion requesting relief is served and filed within 30 days after service of the notice.
>
> ….

1983 Cal. Stat. ch. 141, § 2.

A new version of Section 2033 enacted in 1986 abandoned that approach. See 1986 Cal. Stat. ch. 1334, § 2. The Reporter's Note to the new version of Section 2033 indicated the new statutory scheme relating to requests for admission was specifically intended to remedy many problems with the former scheme. State Bar—Judicial Council Joint Commission on Discovery, Proposed California Civil Discovery Act of 1986, Reporter's Note to Section 2033(f), (k), pp. 101-02, 103, *reprinted in* 2 Hogan & Weber, *California Civil Discovery*, app. C (1997). The new approach enacted in 1986 continues in effect today; although that version of Section 2033 was repealed in 2004, it was continued without substantive change in Sections 2033.010-2033.420. See Sections 2033.010-2033.420 & Comments.

According to the State Bar—Judicial Council Commission, the former scheme was intended to allow respondents who wished to admit a request for admission to serve no response at all. (This type of "default" response was particularly suited for requests for admission, which generally call for one of only two possible responses.)

However, problems arose based on what had become (and still remains) a common tactical ploy — propounding parties were routinely requesting that an opposing party admit *every essential allegation in the propounding party's pleadings*, and hoping the opposing party would fail to timely respond to the requests. Then, if these tactical "requests" were deemed admitted based on the lack of timely response, the binding admissions would end the litigation. Under former Section 2033, this scenario was often occurring solely due to inadvertence by counsel, a result deemed "draconian" and "out of all proportion" to the harm caused by an untimely response. See *id*.; *Wilcox v. Birtwhistle*, 21 Cal. 4th 973, 979, 987 P.2d 727, 90 Cal. Rptr. 2d 260 (1999).

As the Legislature after significant study in 1986 decided to modify a statutory scheme nearly identical to Mr. Storm's proposal, the staff recommends **that the Commission not pursue the revision to Code of Civil Procedure Section 2033.280 suggested by Mr. Storm.**

Possible Ambiguity in Present Scheme (Code Civ. Proc. § 2033.280)

However, Mr. Storm's suggestion did cause the staff to wonder about another issue. Section 2033.280 reads:

> 2033.280. If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:
> ….

> (b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).
>
> (c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

If a responding party fails to timely serve a response to a request for admission, subdivision (b) indicates that the propounding party may move for an order that the matter specified in the request be deemed admitted. Subdivision (c) indicates that, if the court thereafter finds that the responding party has not served a proper response by the time of the motion hearing, the court *must* make the deemed admitted order.

However, there appears to be an arguable gap in the statutory language: If the motion is made and the court thereafter finds a responding party *has* served a proper response by the time of the motion hearing, is the court then *barred* from making the deemed admitted order? Or does the court in this circumstance still retain *discretion* to enter the order (perhaps as a sanction for perceived intentional delay, or for any other perceived misconduct)?

The Commission has not received any comment requesting clarification of this matter. Moreover, any proposal by the Commission to clarify the issue could be seen as a revision relating to discovery sanctions, a subject that the Commission previously decided to avoid due to its controversial nature.

Nevertheless, due to the potentially dispositive impact of a "deemed admitted" request for admission, the staff decided to point out the issue and ask the Commission (1) whether reasonable people are likely to disagree about the meaning of the statutory language, and if so, (2) whether the Commission wishes to consider the matter further.

If the Commission decides to pursue this issue, the staff will prepare a memorandum with further analysis.

Respectfully submitted,

Steve Cohen
Staff Counsel

Exhibit

COMMENTS OF MARK W. STORM

From: Mark W. Storm <mstorm@klalawfirm.com>
To: commission@clrc.ca.gov <commission@clrc.ca.gov>
Subject: Civil Procedure Proposal
Date: October 25, 2002

Dear CLRC,

I am a practicing civil litigator, and I have a brief proposal for reforming the Code of Civil Procedure regarding civil discovery.

Form Interrogatory 17.1 (as part of Judicial Council Form FI-120) requires a party to provide facts, documents, etc., in support of any response to a Request for Admission that is anything other than a qualified admission of the matter involved in the Request for Admission. The interrogatory process is goverened by CCP 2030, while the Request for Admission process is goverend by CCP 2033.

With rare exception, whenever a party serves a Request for Admission (regarding facts, not genuinness of documents), that party serves Form Interrogatory 17.1 with the Request. The resulting documents are (1) Request for Admission; (2) Form Interrogatory; (3) Response to Request for Admission; and (4) Response to Form Interrogatory.

It would be much easier to change CCP 2033 to require the responding party to provide facts, documents, etc., (the information sought in Form Interrogatory 17.1) as part of the responding party's response to the Request for Admisssion instead of having to flip between four separate documents to get to the heart of the matter.

If the language of CCP 2033 is altered to incorporate the language of Form Interrogatory 17.1, the the Judicial Council can eliminate Form Interrogatory 17.1 from Judicial Council Form FI-120.

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COMMENTS OF MARK W. STORM

From: Mark W. Storm <mstorm@klalawfirm.com>
Date: November 15, 2002
To: Barbara Gaal <bgaal@clrc.ca.gov>
Subject: RE: Proposed amendment of CCP § 2033

Please bear in mind that this proposal will not only improve the efficiency and cost-effectiveness of the exchange of information between parties, it will also streamline "meet and confer letters" between parties and "motions to compel further responses" by bringing all of the information sought under ambit of a single code section instead of having to make separate motions based upon (1) CCP 2033 regarding improper responses to the request for admisssion; and (2) CCP 2030 regarding impropoer responses to Form Interrogatory 17.1.

-Mark

COMMENTS OF MARK W. STORM

On July 18, 2005, Mark Storm wrote:

Greetings,

I have the following proposed discovery changes:

1. REQUEST FOR ADMISSION AND FORM INTERROGATORY 17.1 CONSOLIDATION: A while ago, I sent the Commission a proposal to require a party responding to a Request for Admission ("RFA") to state the grounds for any denial in their response to the RFA. Under current law, the responding party need only state the grounds for their denial in response to Form Interrogatory 17.1 which must be served separately. The current process is cumbersome and wasteful in that it requires serving multiple documents and trying to read multiple documents together to figure out what is going on in the case. If you could let me know what, if anything, became of my proposal, I would appreciate it.

2. REQUEST FOR ADMISSION BURDEN SHIFTING: As a new proposal, I recommend another change to the law as it applies to Requests for Admissions. Pursuant to CCP 2033.010 et seq., the responding party gets 30 days to respond to an RFA, plus an additional 5 days to respond if the RFA is served by mail, which is standard procedure. Once the 35 days is up, then as a practical matter, the requesting party must wait an additional 2 days for the responses to possibly arrive by mail. If the responses don't come, then you have to "meet & confer" with the responding party to try to work things out. If this is done by mail, which happens most often because the parties want to evidence their meeting in writing, it might take another 3 days. If the reqponding party STILL does not respond, then the requesting party can file and serve a motion to deem matters admitted. Filing a motion typically requires 28 days notice. Then, the responding party can avoid the consequences of the motion by giving the requesting party responses that "substantially comply" with the statute any time before the hearing on the motion.

So, if the responding party is wiling to pay sanctions, a responding party in California can take 68 days to respond without having anything deemed admitted, while at the same time forcing the requesting party to file a mostly meaningless motion.

Placing the burden on the requesting party like that seems backward to me. The burden should be on the responding party to make a timely response. I recommend a change in the law where if the responding party fails to respond in the time allotted (30-35 days), then the requesting party would simply have to file and serve a Notice of Matters Deemed Admitted with a copy of the RFA attached. The Notice of Matters Deemed Admitted will be sufficient to deem all matters in the RFA admitted as true unless the responding party files and serves a motion for relief within 15 days of the Notice of Matters Deemed Admitted.

This rule change will place the burden on the responding party, where it belongs.

3. UNLAWFUL DETAINER DISCOVERY MOTION TIMING: Unlawful Derainer actions are supposed to by speedy summary actions and are given judicial priority. The timelines in unlawful detainer actions are very shorty compared to the timelines in regular civil actions. For example, parties in regular civil actions have 30 days to respond to discovery requests, but only 5 days in unlawful detainer actions. Summary judgment motions may be heard in 5 days in unlawful detainer actions but 75 days in regular civil actions.
There is no law shortening the timing of discovery motions in unlawful detainer actions. Discovery motion practice in unlawful detainer actions falls under the rules for regular civil moitons. It seems odd that a party can have a motion for summary judgment heard in 5 days, but a discovery motion cannot be heard in less than 21 days unless the moving party files an ex parte application to shorten time on the discovery motion.
I recommend creating a statue that would shorten the timing of unlawful detainer discovery motions to 5 days, plus an additional 5 days if served by mail.

Thank you,
-Mark Storm

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RESPONSE OF STEVE COHEN

From: Steve Cohen [mailto:scohen@clrc.ca.gov]
Sent: Wednesday, December 21, 2005
To: Mark Storm
Subject: Re: Proposed Discovery Changes

Mr. Storm,

We are in the process of reviewing your proposed discovery changes. Sorry it has taken so long, and thank you again for your suggestions.

I have a question for you regarding your second suggestion, which you label "REQUEST FOR ADMISSION BURDEN SHIFTING." It is of course true that discovery "misuse"

can occur when RFAs are served, and at least one interpretation of CCP 2033.280, as you state, appears to allow a party served with RFAs to effectively delay responding for a substantial period of time, for only the cost of a monetary sanction.

However, it would appear the same can be said as to any *other* type of discovery request, as well. In fact, serving dilatory responses to any other type of discovery request (e.g., just before the hearing on the proponent's motion), can often avoid even the monetary sanction, which by statute is only mandatory for RFAs. So, my question(s)--

Are you aware of any real life incidents (obviously, any information identifying parties or attorneys is not necessary), in which a dilatory respondent gained some *special* tactical advantage (or a frustrated proponent suffered some *special* prejudice) as a result of delayed responses to RFAs, which was primarily attributable to the fact that the responses *were to RFAs*, as opposed to some other type of discovery request?

If not, can you construct a plausible hypothetical scenario demonstrating same?

Feel free to telephone me directly if that is easier for you. Thanks.

Steve Cohen
California Law Revision Commission
(916) 739-7068
scohen@clrc.ca.gov

REPLY BY MARK W. STORM

From: markstorm@comcast.net
Subject: RE: Proposed Discovery Changes
Date: December 21, 2005
To: scohen@clrc.ca.gov

Mr. Cohen:

Thank you for your response.

To begin, why single out RFAs?

The main reason is that there is a different remedy for failure to respond to RFAs as opposed to other forms of written discovery. With non-RFA written discovery, the remedy for failure to respond is a court order compelling a response. Failing that, the court will grant issue sanctions upon separate motion.

On the other hand, the remedy for failing to respond to RFAs is an order deeming matters admitted. Essentially, with RFAs, the propounding party gets issue sanctions immediately without first having to get an order compelling a response. I suppose treating RFAs differently makes sense because RFAs essentially have a binary response -- admit or deny (in full or in part), whereas responses to other forms of written discovery get more complicated and open-ended.

If a responding party fails to answer an RFA, the result is simple ... the matter is deemed admitted. With interrogatories, depending on the question asked, it's not that simple or black-and-white and perhaps deserves additional judicial scrutiny to determine the impact of a failure to respond.

This story may answer your question:

The reason I brought the whole thing up was an unlawful detainer case where I represented the landlord who wanted to evict a tenant for failure to pay rent. The tenant had Section 8 benefits at one point, but the Housing Authority was having a hard time answering my questions about the tenant's Section 8 status even though the Housing Authority had sent out notices to the tenant that the Section 8 benefits had been terminated for various reasons.

The tenant was able to get the landlord's Section 8 benefit terminated. So the landlord was getting NO INCOME for the premises, despite having to pay the mortgage. How? Well, Housing Authority came to do an annual inspection and found defects at the premises and ordered the landlord to fix some them. The tenant refused to allow the landlord entry to fix the defects. Housing Authority came back for re-inspection and the tenant refused entry to them as well. Since Housing Authority could not verify that the landlord had made the repairs, they terminated the Section 8 payment to the landlord even though it was the tenant that caused the whole problem in the first place.

I served a 3-day notice and filed a complaint under the assumption that the Section 8 benefits were indeed cancelled, that the tenant had no Section 8 defenses, and that the tenant owed the landlord FULL rent, not just the portion of rent not covered by Section 8 payments.

The tenant filed an answer to the complaint claiming she was protected by Section 8. If this was true, the 3-day notice would be invalid and the landlord would have to start over with the eviction because the 3-day notice would have demanded excessive rent. This also opens the landlord up to a retaliatiry eviction claim in a successive UD action.

I subpoenaed the tenant's entire Section 8 file and spoke at length with staff counsel at Housing Authority, who still had a hard time telling me with any certainty that the tenant was not protected by Section 8.

In the meantime, the tenant is living in the premises rent-free while the landlord is paying the mortgage while trying to sell the house, and at risk of being sued by the prospective buyers because she can't get the delinquent tenant out quickly due to the lingering Section 8 issue. I believe the tenant was just being vindictive and taking the landlord for a free ride and milking the system.

Given the confusion over at the Housing Authority, I did not want to risk going to trial and having the court rule against the landlord on the Section 8 issue. That would thwart the entire UD action due to what would then be considered a void 3-day notice because the landlord would had demanded excessive rent.

Believing the tenant was milking the system and not willing to engage in discovery, I decided to serve an RFA on the tenant in an effort to get an order deeming matters admitted that the tenant had no Section 8 defenses, thus precluding the tenant from offering testimony at trial that she indeed had any such defenses. I had no time to go through with interrogatories or other forms of written discovery and getting an order compelling responses before being awarded issue sanctions.

So, I served an RFA on the tenant asking her to admit she was in breach and that she had no Section 8 benefits or defenses. As expected, the tenant was just stalling and really didn't want to litigate, so the tenant failed to respond to the RFA. The tenant's stalling efforts worked pretty well because she had 5 days to respond to the RFA, plus 5 days for mailing since it was impossible to personally serve the tenant who was an expert at avoiding service. So I had to wait 10 days, plus a couple extra days before sending out a futile meet & confer letter by mail since I had no active phone number for the tenant. Then, I had to wait another 4-5 days to give the tenant a reasonable opportunity to respond to the meet & confer letter by mail before bringing a motion to deem matters admitted. Of course, the tenant did not respond and was simply waiting it out as long as possible before being evicted.

So, after waiting, I had to prepare an ex parte application to shorten time to hear a motion to deem matters admitted because UD discovery motions are not automatically heard on shortened time, unlike UD summary judgment motions, which is odd. (Hence my other point that all UD motions should be heard on shortened time without needing an ex parte application to shorten time).

I had two separate motions to prepare and two separate filing fees to pay at the landlord's expense against a tenant who likely never intends to pay rent, will never pay the landlord a dime of a judgment, and is really just milking the landlord at this point. In the meantime, the landlord is at risk of a mortgage default and a potential lawsuit from the prospective buyers of the property. Timing was critical, and it was completely unfair that the landlord had the burden of paying for and getting an order deeming matters admitted when it was the tenant who was dragging the whole thing out at the landlord's expense. If the landlord lost on the Section 8 issue at trial, the delay and cost would have been worse.

The UD court granted the ex parte application to shorten time but had to schedule the hearing on the motion to deem matters admitted 10 days out to allow time to mail-serve the order shortening time on the tenant.

So, the RFA was served on DAY 1 and the tenant would normally have until DAY 6 to respond. However, since the tenant was an expert at avoiding personal service, it had to go by mail, adding 5 days, giving the tenant until DAY 11 to respond. Then, the landlord had to wait a couple extra days to allow for the tenant's possible mailing the response and could not realistically send a meet and confer letter until DAY 13. Then, the landlord had to wait at least 3 more days, DAY 16, before realistically brining an ex parte application to shorten time and a motion to deem matters admitted. Then, the court scheduled the hearing 10 days out, DAY 27.

A bad faith tenant should not be able to drag a UD case out 27 days at a landlord's expense just because a landlord needs to serve an RFA to which the tenant does not intend to respond. In this case it was too risky to go to trial without first attempting to have the Section 8 matters deemed admitted. Also, if the tenant had Section 8 benefirts, the tenant would arguably be entitled to a longer notice period befaore evicting. It's a huge risk to the landlord.

In UD cases, a party should be able to serve an RFA by hand on DAY 1, with a response due on DAY 6. File and serve a notice of matters deemed admitted by hand on DAY 7 (which doubles as a meet & confer letter). The responding party would then have until DAY 12 to file a motion for relief.

Alternatively, in UD cases, a party should be able to serve an RFA by mail on DAY 1, with a response due on DAY 11. File and serve a notice of matters deemed admitted by mail on DAY 12. The responding party would then have until DAY 22 to file a motion for relief.

Given that the goal of a UD action is to restore possession as quickly as possible, my alternative should be considered.

I think the same principle should apply to regular civil actions in that a responding party acting in bad faith should not force the asking party to jump through all the hoops to get justice.

I hope this helps.
-Mark