

MEMORANDUM

To: Advisory Committee on Rules
From: Civil Rules Subcommittee¹
Carolyn Koegler
Re: # 2017-001. Superior Court (Civ.) Rule 28. Requests for Admissions.
Date: January 26, 2017

The civil rules subcommittee requests that the Committee consider recommending that the Supreme Court delete the requirement in Superior Court (Civ.) Rule 28 that requests for admissions and responses to requests for admissions be filed with the court, as set forth in Appendix A.

The subcommittee notes that requests for admissions are something between answers to a complaint (which are filed with the court) and interrogatory answers (which are not filed with the court), but are closer to interrogatory answers. The subcommittee believes that there is little benefit to having every request for admissions pleading filed with the Court. If the receiving party fails to respond in a timely way, then the filing party can seek relief under Rule 28 from the court and represent that no response was received within 30 days (or argue the response was inadequate). In the majority of cases, the requests for admissions and responses never require court action or come into play in any way. In that way, they create unnecessary work for the clerk's office and judges. The subcommittee notes that Federal Rule of Civil Procedure 36 ("Request for Admission") does not require the filing of requests for admissions with the court.

¹ The members of the civil rules subcommittee are: Judge Delker (Chair), Judge Anderson, Karen Gorham, Carolyn Koegler, Kimberly Kirkland, Jeanne Herrick, Maureen Manning and David Slawsky.

APPENDIX A

Amend Superior Court (Civ.) Rule 28 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 28. Requests for Admissions.

(a)(i) Any party, desiring to obtain admission of the signature on or the genuineness of any relevant document or of any relevant facts which he or she believes not to be in dispute, may, after 30 days after the date the defendant is served with the Summons and Complaint, without leave of court, ~~file an original request therefor with the court, accompanied by any documents involved, and deliver a copy of such request and documents~~ **[deliver an original request therefor, accompanied by any documents involved,]** to the adverse party or his or her representative. Each of the matters of which an admission is requested shall be deemed admitted unless within 30 days after such delivery the party requested ~~files with the court and~~ delivers a copy thereof by mail or in hand to the party requesting such admission, or his or her attorney or non-attorney representative, either a sworn denial thereof or a written objection on the ground of privilege or that it is otherwise improper.

(ii) Notwithstanding (i) above, signatures and endorsements of all written instruments declared on will be considered as admitted unless the party disputing the signature or endorsement shall ~~file~~ **[serve notice on the opposing party]** a notice that they are disputed within 30 days after the date the defendant files an Answer. *See* Rule 37(c)

(b) If objection is made to part of a request, the remainder shall be answered within the time limit, and when good faith requires that a party qualify his or her answer or deny only part of a matter, he or she shall specify so much of it as is true and qualify or deny the remainder.

(c) Any party, who without good reason or in bad faith, denies under this rule any signature or fact which has been requested and which is thereafter proved, or who without good reason or in bad faith requests such admission under this rule and thereafter fails to prove it, may, on motion of the other party, be ordered to pay the reasonable expense, including counsel fees, incurred by such other party in proving the signature or fact or in denying the request, as the case may be.