

Three Things to Know About Notices to Admit in New York

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In New York litigation, a well-timed notice to admit can sharpen the issues, trim trial time, and lock in key facts. But it's a tool that must be used strategically. When used correctly, it can streamline document authentication, conclusively establish undisputed facts, and even support dispositive motions. Misused, however, it risks time-consuming objections or outright rejection. Below are three things every litigator should know about how (and how not) to use a notice to admit.

A notice to admit can streamline the facts to be proven at trial.

The notice to admit can serve as a device for proving a fact that would be readily admissible at trial. For instance, if the case centers on a vehicle, a notice to admit may be preferable for establishing the owner of the vehicle rather than requiring a party to present documents and facts at trial to establish that “readily admissible” fact.

However, the notice to admit cannot serve as a device to require the other party to admit anything that resembles a legal conclusion. For instance, a notice to admit cannot ask a party to admit negligence, breach of a contract, or fraud. New York law prohibits a notice to admit being used “to cover ultimate conclusion, which can only be made after a full and complete trial.” Similarly, it cannot seek admission of facts that require an expert witness.

A notice to admit can also be used to establish facts that are public knowledge or facts which the requesting party reasonably believes are not in dispute. Accordingly, a requesting party will overstep the bounds of a notice to admit when seeking admission of a fact that is in dispute.

A notice to admit is effective for preparing documents to be admitted into evidence at trial.

In a notice to admit, a party may seek another party to admit that a specific document is authentic, that a copy of a document is accurate to the original, establish that a document is a business record (and thus potentially admissible as an exception to the hearsay rule under CPLR 4518), and authenticate a signature on a document.

These admissions can result in saving a substantial amount of resources at trial, as it obviates the need for a witness to testify as to each of those elements. Depending on the volume of documents that will be presented at trial, using a notice to admit rather than testimony could save numerous hours of trial testimony, making it a more economical approach but also keeping the trial concise and to the point.

A well-considered notice to admit can also ask for admission of facts that serve as the foundation for establishing a chain of custody for evidence, that a document is a business record, or potentially authenticate a document altogether. From this standpoint, for documents where the provenance is established, the notice to admit should be a straightforward and

uncontroversial component of the case.

Admitted facts can be used not only at trial but at the motion to dismiss or motion for summary judgment stage of litigation.

Facts admitted in response to a notice to admit (or admitted because no response was timely submitted to the notice to admit) can be used at several phases of litigation: trial, summary judgment, or motion to dismiss. This reinforces the fact that a notice to admit should be considered at every stage of litigation. Although the facts admitted may not, on their own, be enough to dispose of the case, the facts admitted may serve as a foundation for other arguments that support disposing of the case and should therefore be thoroughly considered.

Furthermore, a fact admitted in the context of a notice to admit has a stronger effect than statements made during a deposition or in response to an interrogatory, as the admission is conclusive and precludes denial unless a court allows the admission to be amended or withdrawn. By contrast, deposition testimony or a response to an interrogatory may be rebutted with contrary proof at trial. Therefore, even if the admitted facts do not dispose of the case at the motion stage, the admitted facts still may have a significant impact on the trial.

Conclusion

Notices to admit are a powerful but often underutilized tool in New York litigation. When drafted thoughtfully and within proper bounds, they can simplify trials, reduce costs, and strengthen pretrial motions. By focusing on undisputed facts and avoiding legal conclusions, attorneys can use notices to admit to gain strategic advantages at every stage of a case.