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What Exactly Are We Admitting To? The Use and Limits of Notices to Admit in New York Commercial Litigation

By Lara A. Flath
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Among the procedural tools available to New York litigants, the "notice to admit" mechanism under CPLR 3123 stands out for its potential to streamline litigation by eliminating matters that should not be in dispute. This article explores the purpose and recent applications of the notice to admit, with a focus on its proper and improper uses, timing, and the consequences of noncompliance. Understanding CPLR 3123 can help litigants leverage this tool effectively, ensuring that litigation remains focused on genuine disputes.

CPLR 3123(a) authorizes a party to serve a notice to admit "the truth of any matters of fact set forth in the request, as to which the party requesting the admission reasonably believes there can be no substantial dispute at the trial and which are within the knowledge of such other party or can be ascertained by him upon reasonable inquiry." CPLR 3123(a). The rule also permits requests regarding "the genuineness of any papers or documents, or the correctness or fairness of representation of any photographs."

As courts have acknowledged, this device has "special utility in litigation relating to commercial claims" by expediting trial and crystallizing issues. See, e.g., *Residential Energy JV LLC v. Pinto*, 87 Misc. 3d 1235(A), at *5 (Sup. Ct. Westchester Cnty. 2025) (quoting 4 New York Practice Series, Commercial Litigation in New York State Courts §32:9 (Robert L. Haig, 5th ed. 2025)); *Hodes v. City of New York*, 165 A.D.2d 168, 170 (1st Dep't 1991). Indeed, the purpose of a notice to admit is to "promote efficiency in the litigation process" and "eliminate from a trial matters which are easily provable and about which there can be no controversy." *Residential Energy JV LLC*, 87 Misc. 3d 1235(A), at *6-7 (citations omitted).

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While a notice to admit can be a useful tool, its use is circumscribed. Courts have repeatedly emphasized that it is not a substitute for other discovery devices, nor is it a vehicle for

seeking admissions on ultimate legal conclusions or material facts in contention. See, e.g., *Taylor v. Blair,* 116 A.D.2d 204, 205-06 (1st Dep't 1986); *Hawthorne Grp., LLC v. RRE Ventures*, 7 A.D.3d 320, 324 (1st Dep't 2004). In this respect, a proper CPLR 3123(a) notice contrasts with requests for admission (RFAs) under the Federal Rules of Civil Procedure, which more broadly allow for RFAs relating to "facts, the application of law to fact, or opinions about either[.]" Fed. R. Civ. P. 36(a)(1)(A).

Proper uses of a notice to admit focus on "'clear cut' matters of fact," see *Residential Energy,* 87 Misc. 3d 1235(A), at *5 (quoting Haig, Commercial Litigation in New York Courts §32:9), such as the existence of a contractual relationship, the authenticity of a document, or matters pertaining to ownership and control. 470 4th Ave. *Fee Owner, LLC v. Adam Am. LLC,* No. 656506/2018, 70 Misc. 3d 1214(A), at *1 (Sup. Ct. Cnty. Feb. 4, 2021); *Ocasio v. 87 Realty NY LLC,* No. 155504/2023, 2026 WL 130472, at *1 (Sup. Ct. N.Y. Cnty. Jan. 5, 2026). *Residential Energy JV LLC v. Pinto*, a recent Commercial Division case, demonstrates proper use of a notice to admit.

In a commercial dispute involving breach of fiduciary duty, unjust enrichment, and unfair competition claims, the plaintiff served a notice to admit the genuineness and transmission of certain text messages, email exchanges, and related documents between the parties. *Residential Energy*, 87 Misc. 3d 1235(A), at *2-4. The court explained that "[t]he Notice to Admit does not impermissibly seek to compel an admission of a legal conclusion or ultimate fact in contention," and that seeking the "genuineness of certain documents [is] entirely proper."

On the other hand, the Commercial Division's decision in *Chen Dongwu v. New York City Regional Center LLC,* No. 652024/2017, 74 Misc. 3d 1233(A) (Sup. Ct. N.Y. Cnty. Apr. 21, 2022), exemplifies the limitations of a notice to admit. In *Chen*, the plaintiffs asserted claims for fraud and breach of fiduciary duty involving their investment in defendants' fund. Plaintiffs allegedly invested in defendants' fund as a means to support plaintiffs' application to the EB-5 immigration investor program.

The defendants filed a notice to admit seeking admissions relevant to whether plaintiffs fully understood the scope and form of their submitted immigration applications and accompanying investment paperwork. The Commercial Division concluded that these requests improperly sought admissions to fundamental questions at the heart of the case and granted plaintiffs' motion for a protective order.

Furthermore, the court found defendants' requests for admissions "as to the plaintiffs' 'sophistication' as an investor" and "plaintiffs' net worth and personal investment values" were "inappropriate and not a line of inquiry proper for a request for admission." (Citing *DeSilva v. Rosenberg*, 236 A.D.2d 508, 509 (2d Dept 1997) (stating that "the purpose of a notice to admit is not to obtain information in lieu of other disclosure devices, such as the taking of depositions before trial")).

When crafting a notice to admit, practitioners should avoid the "kitchen sink" approach. Notices should be concise and precise, targeting only those facts that are truly undisputed and easily provable. Courts can—and do—strike improper notices in whole or in part and even impose monetary sanctions for abuse of the device.

In *Residential Energy*, the Commercial Division warned that courts are not required to "prune the Notice to Admit by striking those improper requests while leaving others intact." 87 Misc. 3d 1235(A) at *6; see also *Hodes*, 165 A.D.2d at 171 ("An examination of plaintiff's 50-page purported notice to admit demonstrates that it

scarcely constitutes a request for admission of the sort of narrow, limited matters contemplated by the statute but, instead, appears to be merely a subterfuge for obtaining further discovery."). But see *470 4th Ave. Fee Owner, LLC*, 70 Misc. 3d 1214(A), at *1-2 (striking admissions that went to the "heart of the parties' claims and defenses," but preserving items that merely sought to admit the "existence of a contractual relationship").

A party that receives a notice to admit must also consider whether the notice to admit serves a proper purpose. Upon receipt of a notice to admit, a party can admit to the matters set forth in the request, specifically deny the matters, or specifically detail the reasons why the party cannot truthfully admit or deny the matters. CPLR 3123(a). The receiving party can also "seek a protective order to test the validity of the notice to admit." See, e.g., *Central Nassau Diagnostic Imaging, P.C. v. GEICO*, 28 Misc. 3d 34, 36 (N.Y. App. Term 1st Dep't 2010). The statute provides for the imposition of costs where a receiving party unreasonably fails to admit uncontestable facts, underscoring the importance of good faith in responding to notices to admit. *See* CPLR 3123(c).

Finally, a responding party must provide a timely response. While the timing for service of a notice to admit is flexible—it can be served "any time after service of the answer or after the expiration of twenty days from service of the summons, whichever is sooner, and not later than twenty days before the trial"—the receiving party must respond within 20 days of service. CPLR 3123(a).

When a receiving party fails to provide a timely response, the party may be deemed to have admitted each of the factual matters on which an admission was sought. For example, in *Central Nassau Diagnostic Imaging*, the plaintiff served the defendant with a notice to admit seeking admissions that certain bills were "true and accurate" copies received by the defendant and that they had not been paid. 28 Misc. 3d. at 36.

The defendant did not respond or seek a protective order and thus was deemed to have admitted these facts. The First Department further explained that even though the admitted facts "were material to plaintiff's prima facie case and determinative of its claim," that did not "preclude them from being deemed admitted by defendant."

To be sure, whether to admit facts due to a failure to timely respond is a matter of judicial discretion. In *Meadowbrook-Richman, Inc. v. Cicchiello*, the court declined to automatically admit a fact when the notice to admit was improper in the first instance. 273 A.D.2d 6, 6 (1st Dep't 2000). Although the defendant's response was four months late, the First Department determined that the notice to admit "improperly demanded that defendant concede matters that were in dispute," and concluded that the defendant had no obligation to supply admissions to the plaintiff.

In sum, a notice to admit under CPLR 3123 remains a valuable tool in New York practice. Used properly, a notice to admit can expedite litigation, reduce costs, and clarify issues for trial. Used improperly, it risks sanctions and wasted effort. As with other discovery devices, precision, good faith, and strategic judgment are key.

The opinions expressed in this article are those of the authors and do not necessarily reflect the views of Skadden or its clients.

Lara Flath *is a complex litigation and trials partner in Skadden, Arps, Slate, Meagher & Flom.*