

An electrician and a plumber filed separate diversity actions against a construction company in which they both claim that the company failed to pay them the amount specified in their contracts. The company defended on the ground that the electrician and plumber failed to complete their work on time. The electrician served a request for admission on the company, requesting that the company admit that it repeatedly denied contractors such as the electrician access to the construction site. The company did not respond to the request.

Forty-five days after the electrician's request was served, the plumber asked the court during a pretrial conference to enter an order conclusively establishing the fact that the company repeatedly denied contractors access to the construction site. The plumber relied on the company's failure to timely respond to the electrician's request for admission.

Is the court likely to enter the order?

- A. No, because the construction company has sixty days to respond to the electrician's request for admission.
- B. No, because the plumber cannot rely on the construction company's failure to respond to the request for admission in the electrician's action.
- C. Yes, because the construction company's failure to respond to the electrician's request for admission within 30 days after service is treated as an admission.
- D. Yes, because the court has the authority to enter orders at pretrial conferences that will expedite litigation.

### Explanation:

In a **request for admission**, a party requests that another party **admit the truth about matters** within the scope of discovery that relate to facts, the application of law to facts, opinions about either, or the genuineness of documents. The party served with such a request must **serve a written response** within 30 days that:

- **admits** the matter
- **specifically denies** the matter in whole or in part
- **explains** why the matter **cannot be admitted or denied** *or*
- **objects** that the matter falls outside the scope of discovery.

A party's **failure to adequately respond** within **30 days results in** the matter being admitted and **conclusively established** in the pending action. However, it does not serve as an admission for any other purpose and **cannot be used** against the party **in another proceeding**.

Here, the electrician and the plumber filed separate actions against the construction company. The electrician then served the company with a request to admit that it repeatedly denied contractors access to the construction site. The company's failure to respond within 30 days after the request was served results in the matter being established in the electrician's action **(Choice A)**. However, the plumber cannot rely on the company's failure to respond in the electrician's action, so the court is unlikely to enter the plumber's requested order **(Choice C)**.

**(Choice D)** At a pretrial conference, a federal court has broad authority to consider matters and enter appropriate orders that will help expedite litigation, improve the trial's quality, and facilitate settlement. Here, an order establishing that the company repeatedly denied contractors access to the construction site would be improper since the plumber cannot rely on the company's failure to respond in the electrician's action.

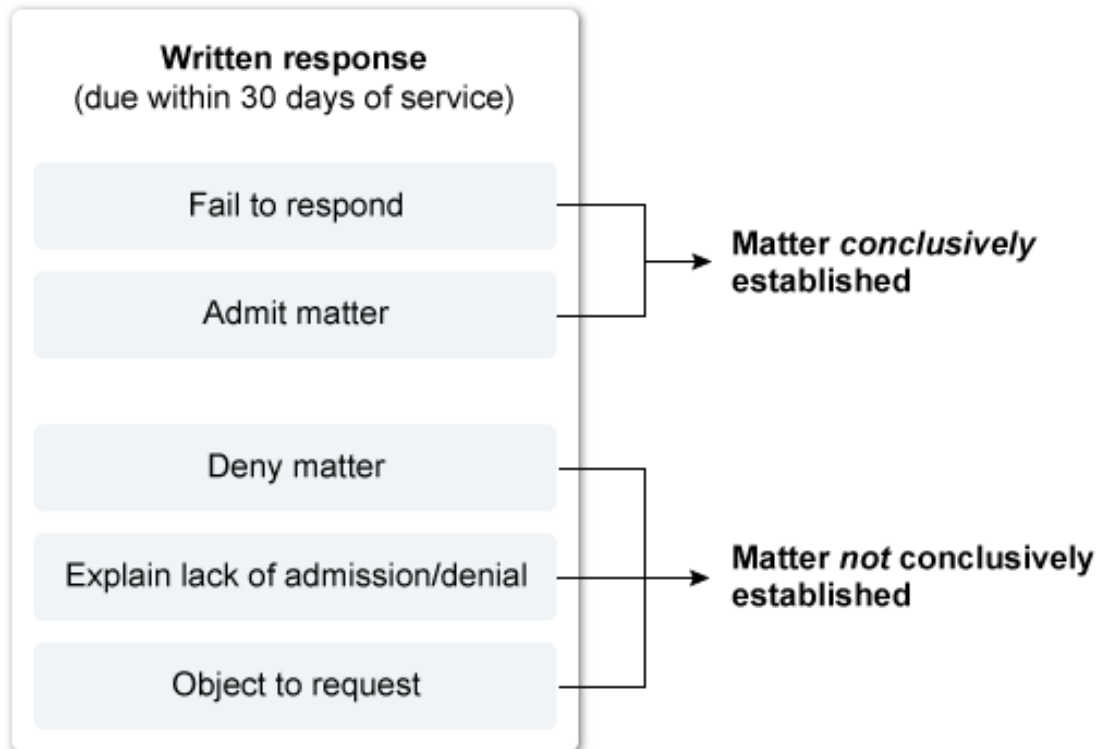
### Educational objective:

A party's failure to adequately respond to a request for admission within 30 days after the request is served results in the matter being admitted and conclusively established in the pending action. However, it does not serve as an admission for any other purpose and cannot be used against the party in another proceeding.

### References

- Fed. R. Civ. P. 36 (requests for admission).
- 8B Charles Alan Wright et al., Federal Practice and Procedure § 2264 (3d ed. 2020) (explaining the effect of failing to respond to a request for admission).

## Effect of response to request for admission (FRCP 36)



**FRCP** = Federal Rule of Civil Procedure.

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