

***FAMILY LAW LAWYERS SHOULD,
AS A STANDARD OF PRACTICE, UTILIZE
MCR 2.312: REQUEST FOR ADMISSION, AND
MRE 201: JUDICIAL NOTICE OF ADJUDICATIVE FACTS
IN HANDLING DOMESTIC RELATIONS CASES***

Kenneth E. Prather, Sr.
KENNETH E. PRATHER, SR., P.C.,
19838 Mack Avenue
Grosse Pointe Woods, MI 48236
Phone: 313-884-5622/313-884-6703 (Fax)
E-mail: ken.prather@pratherfamilylaw.com

Family Law lawyers should, as a standard of practice, utilize MCR 2.312. REQUEST FOR ADMISSION, and MRE 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS, to prove the elements of their cases, narrow the issues, recover attorney fees, and reduce litigation costs.

MCR 2.312. REQUEST FOR ADMISSION

MCR 2.312(A) Availability; Scope, states:

Within the time for completion of discovery, a party may serve on another party a written request for the admission of the truth of a matter within the scope of MCR 2.302(B) stated in the request that relates to statements or opinions of fact or the application of law to fact, including the genuineness of documents described in the request. Copies of the documents must be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is required must be stated separately. **(Exhibit 1)**

MCR 2.312(B) Answer; Objection, states:

(1) Each matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection within 42 days after being served with the summons and complaint.

(2) The answer must specifically deny the matter or state in detail the reasons why the answering party cannot truthfully admit or deny it. A denial must fairly meet the substance of the request, and when good faith requires that a party qualify an answer or deny only part of the matter of which an admission is requested, the party must specify the parts that are admitted and denied.

(3) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he or she has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable the party to admit or deny.

(4) If an objection is made, the reasons must be stated. A party who considers that a matter of which an admission has been requested

presents a genuine issue for trial may not, on that ground alone, object to the request. The party may, subject to the provisions of MCR 2.313(C), deny the matter or state reasons why he or she cannot admit or deny it.

MCR 2.312 is a powerful, underutilized discovery procedure that can be used to establish, in the course of a divorce proceeding, admitted matters relating to:

- Truth of relevant matters not privileged (MCR 2.302(B)).
- Statements or opinions of fact, or
- Application of law to the facts, including the genuineness of documents described in the request.

MCR 2.312(B) Answer; Objection, provides procedure for answering and objecting to the requested admissions. Section 4 states, in relevant part:

“... The party may, subject to the provisions of MCR 2.313(C), deny the matter or state reasons why he or she cannot admit or deny it.”

MCR 2.313(C) states, in relevant part:

(C) Expenses on Failure to Admit. If a party denies the genuineness of a document, or the truth of a matter as requested under MCR 2.312, and if the party requesting the admission later proves the genuineness of the document or the truth of the matter, the requesting party may move for an order requiring the other party to pay the expenses incurred in making that proof, including attorney fees. The court shall enter the order unless it finds that:

- (1) the request was held objectionable pursuant to MCR 2.312,
- (2) the admission sought was of no substantial importance,
- (3) the party failing to admit had reasonable ground to believe that he or she might prevail on the matter, or
- (4) there was other good reason for the failure to admit.

MCR 2.312(C) also provides in relevant part:

“... Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of the rule, it may order either that the matter is admitted, or that an amended answer be served. The

court may, in lieu of one of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time before trial. The provisions of MCR 2.313(A)(5) apply to the trial. The provisions of MCR 2.313(A)(5) apply to the award of expenses incurred in relation to the motion.

MCR 2.313 (A)(5) *Award of Expenses*, states:

(5) *Award of Expenses of Motion.*

(a) If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct, or both, to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(b) If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion, or both, to pay to the person who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(c) If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and other persons in a just manner.

MCR 2.312(F) *Filing With Court*, states:

Requests and responses under this rule must be filed with the court either before service or within a reasonable time thereafter.

The practical, financial and time- and cost-saving benefits in utilizing this rule are significant:

First: Without filing a motion, without presenting any testimony or exhibits in a court hearing, a lawyer, by filing a request for admissions under MCR 2.312, can establish essential facts and the law applicable to the facts for purposes of settlement negotiations, mediation and trial, if necessary.

Second: Under MCR 2.312(C) the court instead of ruling on the requested admission or requiring an amended answer be served may, at a pre-trial conference or a designated time before

trial, rule on the requested admissions. This procedure, if followed, would be extremely helpful in preparing for trial. Forewarned is forearmed.

Requests for admissions can be utilized to secure the admissibility of a broad spectrum of facts, exhibits, lay and expert testimony, and the law applicable to the facts in a domestic relations case. Some examples are:

- Parties: The names, ages, birth dates, social security number, drivers license, education, occupation and income for each party.
- Children: The names, ages, birth dates, residences and school of each child involved in the divorce case.
- Under MCL 552.9, the plaintiff or defendant has established proper residency.
- Under MCL 552.6, there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood the marriage can be preserved.
- Under MCL 722.27(1)(c), the child's established custodial environment is with the Plaintiff-Mother or Defendant-Father.
- Under MCL 722.23, request the admission of facts relating to the 12 Best Interest Factors.
- Under MCL 722.27 and 722.26(a), request the proposed custodial decision, whether it will be sole legal custody or joint custody.
- Under MCL 722.23, the proposed parenting time arrangement for the non-custodial parent.
- Under MCL 552.605, the child support formula and child support obligation based upon the parties incomes.
- Under MCL 552.602(ee), payment of health care coverage and uninsured health care expenses for the parties' children.
- Under *Reeves v. Reeves*, 226 Mich App 490, 568 NW2d 141(1997), what assets if any should be excluded from the marital estate.
- The fair market values of all assets in the marital estate, less any encumbrances to determine the equity to be awarded each party.
- Provision for the payment of individual and joint liabilities.

- Under MCL 552.101(2-3), provision for life insurance coverage on a party, to secure the payment of spousal support, child support and property division payments.

MRE.201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS
(Exhibit 2)

MRE 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS provides in relevant part:

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

In *Alley v. Klotz*, 320 Mich 521, 31 NW2d 816(1948), the trial court took judicial notice of mortality tables. *Gibbons v. Gibbons*, 105 Mich App 400, 403; 306 NW2d 528(1981).

In *Thomas v. Thomas*, 176 Mich App 90, 439 NW2d 270 (1989), the Court of Appeals took judicial notice of increase in the cost of living.

It is suggested that the trial court should take judicial notice of Social Security mortality tables (**Exhibit 3**), and tax rates contained in the Joseph Du Canto tax chart (**Exhibit 4**).

The practical benefits of utilizing MRE.201 are the same as the practical benefits of using MCR 2.312, request for admissions.

Respectfully submitted,

Dated: March 28, 2007

Kenneth E. Prather, Sr.