

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

**CASE NO. : 07-60534-CIV-DIMITROULEAS
MAGISTRATE JUDGE: ROSENBAUM**

HOWARD K. STERN,

Plaintiff,

vs.

JOHN M. O'QUINN and
JOHN M. O'QUINN & ASSOCIATES PLLC
d/b/a The O'Quinn Law Firm

Defendants.

**PLAINTIFF HOWARD K. STERN'S MEMORANDUM OF LAW IN SUPPORT
OF HIS MOTION TO DETERMINE THE SUFFICIENCY OF DEFENDANT
JOHN M. O'QUINN'S RESPONSES TO PLAINTIFF'S
FIRST REQUEST FOR ADMISSIONS**

Plaintiff HOWARD K. STERN ("Stern") hereby submits this Memorandum of Law in Support of His Motion to Determine the Sufficiency of Defendant John M. Quinn's Responses to Plaintiff's First Request for Admissions.

BACKGROUND

In his Complaint, Howard K. Stern alleges that John M. O'Quinn and John M. O'Quinn & Associates PLLC made defamatory statements about Stern during numerous television broadcasts. O'Quinn engaged in no less than eight televised interviews where he made slanderous remarks about Stern, including that he was criminally involved in the deaths of Anna Nicole Smith and Daniel Smith. To show that O'Quinn possessed actual malice when making the defamatory statements, Stern sought discovery on a number of

issues concerning the bases of O'Quinn's allegations. Although O'Quinn alleges that he has evidence supporting his claims about Stern, he cites the work-product doctrine as grounds for refusing to provide this information. For more background information, please see the Statement of Facts contained in Stern's memorandum opposing Defendants' motion for a protective order, filed under seal on June 24, 2008.

REQUESTS AT ISSUE

In Requests for Admission 9 through 16, Stern asked O'Quinn to admit that certain excerpts contained in the First Amended Complaint accurately quoted statements made by O'Quinn during his televised appearances. For each of the eight excerpts, Defendants provided identical denials, stating that the words were taken out of context and did not consider the medium in which the words were uttered. Defendants went no further. They did not acknowledge what words, if any, were accurately quoted, and did not explain how O'Quinn's words were taken out of context, what portions were omitted, or how the medium in which the words were uttered caused the quotation to be in error. Stern believes this answer is entirely insufficient, because the qualified denial provided is so generalized and non-specific, and it is impossible to tell if it is a full denial, a partial denial or a denial at all.

In Request for Admission No. 18, Stern asked O'Quinn to admit that he had no knowledge of any life insurance policies that a third-party would benefit from upon the death of Anna Nicole Smith. O'Quinn responded that he did not have information sufficient to enable him to admit or deny the statement. Stern believes this answer is entirely insufficient, because the request deals exclusively with what facts O'Quinn

knows or does not know, and can be either admitted or denied on that basis without any investigation.

DISCUSSION

Under the Federal Rules, “[a] party may serve upon any other party a written request for the admission . . . of the truth of any matters,” Fed. R. Civ. P. 36(a), that are “relevant to the claim,” Fed. R. Civ. P. 26(b)(1). Requests for admission are intended to expedite litigation by helping the parties to establish undisputed facts and narrow the issues of dispute. Perez v. Miami-Dade County, 297 F.3d 1255, 1268 (11th Cir. 2002). A party responding to a request for admission is expected to facilitate full and efficient discovery, rather than engage in evasion and word play. Marchand v. Mercy Med. Ctr., 22 F.3d 933, 936-37 (9th Cir. 1994) (“Parties may not view requests for admission as a mere procedural exercise requiring minimally acceptable conduct.”). Where, as here, a responding party gives an insufficient answer, the requesting party may move to determine the sufficiency of the answer of objection. Fed. R. Civ. P. 36(a)(6). Pursuant to that rule, the court may deem the request admitted. Id.

1. O’Quinn’s responses regarding the accuracy of his televised remarks were non-specific, evasive denials that failed to meet the substance of Stern’s requests.

When responding to a request for admission under Rule 36, a party must “specifically deny it or state in detail why the answering party cannot truthfully admit or deny it.” Fed. R. Civ. Proc. 36(a)(4) (emphasis added). The Rule requires that a denial “fairly respond to the substance of the matter.” Id. If the Request is true or partially true, the respondent must specify what parts of the Request are true and deny or qualify the remainder. U.S. ex rel. and for Use of Westinghouse Elec. Supply Co. v. Nat’l Sur.

Corp., 25 F.R.D. 249, 251 (E.D. Pa. 1960) (finding that Rule 36 required a party to admit that certain invoices were genuine copies even if other aspects of the request could be denied).

A response can also be deemed insufficient where a party gives only vague, non-specific denials. To avoid being construed as an admission, a denial must be “forthright, specific and unconditional.” United States v. Am. Tel. & Tel. Co., 83 F.R.D. 323, 333 (D.D.C. 1979). Additionally, a party gives an evasive or incomplete answer where the answer provides only generalized references to deposition testimony, other discovery materials, or the pleadings. See, e.g., Smith v. Logansport Community School Corp., 139 F.R.D. 637, 650 (N.D. Ind. 1991) (finding that party’s interrogatory answers providing non-specific references to depositions “make it impossible to determine whether an adequate answer has been given”) (quoting 4A Moore's Fed. Prac., § 33.25[1] (2d ed. 1991)).

The ‘denials’ provided by O’Quinn concerning the accuracy of his televised remarks fail on multiple levels. First, O’Quinn’s denials do not respond to the substance of the matter. Fed. R. Civ. Proc. 36(a)(4). Stern asked only whether the quotations of O’Quinn’s televised statements are accurate, yet O’Quinn responds each time, “Denied, in that the words are taken completely out of context” This response fails to answer the basic question of whether any of his statements were inaccurately quoted. More confusing still, O’Quinn alleges that his words were taken out of context, that some words were omitted, and that the “medium” was not considered – but fails to explain how any of those allegations are true. Notably, O’Quinn did not state that he lacked

knowledge to affirm or deny – e.g., he could not find the broadcasts – but he plainly denies, then offers an incomprehensible equivocation. These responses are not sufficient.

Second, O’Quinn’s putative denials are far too vague either to serve as clear denials or to provide Stern with any useful information about why the quotations are inaccurate. As stated earlier, O’Quinn fails to make a forthright denial as required under Rule 36. Compounding this problem, however, are O’Quinn’s purported justifications for the denials that simply refer Stern back to the televised interviews at issue and do not elaborate on O’Quinn’s allegations that the statements were taken out of context, that portions were omitted, and that the medium was not considered. O’Quinn cannot rest on these generalized references to the interviews as support for his denials.

O’Quinn has frustrated the discovery purposes of requests for admission by purportedly denying straightforward questions of transcript-accuracy about which there should be no genuine dispute. O’Quinn should be required to produce answers that meet the requirement of Rule 36, or else his ambiguous denials should be deemed admissions.

2. O’Quinn’s response regarding his knowledge of the beneficiaries of Ms. Smith’s alleged life insurance policies is illogical and insufficient.

Where, even after investigation, a responding party lacks information necessary to admit or deny a party’s request for admission, the responding party should state as much in the answer. Fed. R. Civ. Proc. 36(a)(4). But “[a] responding party may not refuse to answer by merely tracking the language of Rule 36(a).” 8A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2261 n.2 (citing Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1246 (9th Cir. 1981)). A formulaic response is insufficient where it is unaccompanied by reasons. Id. Additionally, a party may not claim lack of sufficient information when the party has the information relevant to the request. Herrera

v. Scully, 143 F.R.D. 545, 548 (S.D.N.Y. 1992); see Essex Builders Group, Inc. v. Amerisure Ins. Co., 230 F.R.D. 682, 685 (M.D. Fla. 2005).

Here, O'Quinn certainly has the information related to Request No. 18. Stern asks O'Quinn to admit that he "has no knowledge of any life insurance policies in which a third-party would benefit upon the death of Anna Nicole Smith." The request presents a binary choice: O'Quinn either has knowledge of the relevant insurance policies or he does not. No investigation is necessary – or even possible.

Disregarding the illogical nature of O'Quinn's position, O'Quinn still fails to satisfy Rule 36 because he offers no reasons to explain his answer. Instead, his response simply tracks the language of Rule 36(a). O'Quinn wrote, "After a reasonable inquiry, the information known or readily available to O'Quinn is insufficient to enable him to admit or deny." This answer is insufficient under Rule 36.

CONCLUSION

Stern respectfully submits that the answers provided by O'Quinn in response to Stern's Requests for Admission are insufficient. O'Quinn should be ordered to specify grounds upon which he denies Stern's Requests, or, in the alternative, O'Quinn's responses should be treated as admissions. The motion to determine sufficiency should therefore be GRANTED.

Respectfully submitted this 30th day of June, 2008.

/s/ L. Lin Wood
L. Lin Wood
(Georgia Bar No. 774588) (Pro hac vice)
llwood@pogolaw.com
Eric P. Schroeder
(Georgia Bar No. 629880) (Pro hac vice)
eschroeder@pogolaw.com

Katherine V. Hernacki
(Georgia Bar No.: 727027) (Pro hac vice)
khernacki@pogolaw.com

Luke A. Lantta
(Georgia Bar No. 141407) (Pro hac vice)
llantta@pogolaw.com

POWELL GOLDSTEIN LLP

One Atlantic Center
Fourteenth Floor
1201 West Peachtree Street, N.W.
Atlanta, Georgia 30309
Telephone: (404) 572-6600
Facsimile: (404) 572-6999

M. Krista Barth
(Florida Bar No. 0461229)
krista@emsattorneys.com

ERIC M. SAUERBERG, P.A.

Suite 102
200 Village Square
Palm Beach Gardens, Florida 33410
Telephone: (561) 776-0330
Facsimile: (561) 776-0302

Attorneys for Plaintiff
Howard K. Stern

5144818_1.DOC

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2008, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Robert M. Klein, Esq.
kleinr@stephenslynn.com
Roberta G. Mandel, Esq.
Cayla B. Tenenbaum, Esq.
Law Offices of Stephens Lynn La Cava
Hoffman & Puya, P.A.
Two Datan Center – Penthouse II
9130 South Dadeland Boulevard
Miami, FL 33156

Neil McCabe, Esq.
The O'Quinn Law Firm
440 Louisiana, Suite 2300
Houston, Texas 77002

This 30th day of June, 2008.

/s/ M. Krista Barth

M. Krista Barth
(Florida Bar No. 0461229)
krista@emsattorneys.com