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## A Primer on Judicial Admissions

By Markus May

A judicial admission is a deliberate, clear, unequivocal statement by a party about a concrete fact within that party's knowledge.1 Once made, a judicial admission conclusively binds the party to the statement made and the party cannot later contradict the statement.2 The purpose behind the rule is to remove the temptation to commit perjury.3 Note that judicial admissions are only statements made by a party and the doctrine does not apply to third party or expert witness statements.

Unlike ordinary evidentiary admissions, which can be contradicted or explained, a judicial admission cannot be contradicted or explained. This means a judicial admission cannot be contradicted in a motion for summary judgment.4 A judicial admission can also not be contradicted at trial.5 Thus a party cannot introduce an affidavit or testify contrary to a prior judicial admission.6 There is also authority that not only can the party not testify contrary to the judicial admission, the party may not offer contrary testimony from other occurrence witnesses or experts.78 Therefore in practice it turns out that judicial admissions are "not evidence at all but rather have the effect of withdrawing a fact from contention."9

As judicial admissions cannot be contradicted or explained at trial or in a summary judgment motion, it is important to be able to determine when you are dealing with a judicial admission as opposed to an ordinary evidentiary admission. Verified pleadings constitute a judicial admission.10 Further, though an amended complaint normally supersedes a prior complaint, where the prior complaint was verified, any admissions that were not the product of mistake or inadvertence are binding judicial admissions.11 Note also that as pleadings in a case include the exhibits attached to the complaint, the facts in the exhibits may be deemed judicial admissions.12 Thus, "… a party may not create a genuine issue of material fact by taking contradictory positions, nor may he remove a factual question from consideration just to raise it anew when convenient."13 Formal admissions in open court, admissions pursuant to requests to admit and stipulations also constitute judicial admissions.14

Supreme Court Rule 201(j) provides that matters obtained in discovery are not conclusive, but may be contradicted by other evidence. Generally a party's testimony at a deposition is treated only as an evidentiary admission.15 However, with respect to certain discovery admissions, the courts have adopted the judicial admission doctrine. 16 So where "statements may be 'so

deliberate, detailed, and unequivocal, as to matters within the party's personal knowledge' the statements can be held to be judicial admissions."17 Thus a number of cases have held that testimony at discovery depositions may constitute judicial admissions.18 Interrogatory answers may constitute judicial admissions in the same way as answers to questions in a discovery deposition.19 Thus, where a party was asked about contentions being made in a case, the Illinois Supreme Court held that the party alone knew what its contentions were and its answers in discovery were a judicial admission.20 However, [t]he rule is inapplicable when the party's testimony is inadvertent, or uncertain, or amounts to an estimate or opinion rather than a statement of concrete fact.21

A judicial admission must be an unequivocal statement of fact.22 The American Heritage Dictionary defines "equivocal" as being "capable of two or more interpretations" and *Hansen* cites Webster's dictionary as equating "equivocal" with "ambiguous."23 Whether a statement is unequivocal is a question of law to be decided by the court.24 "Therefore, in the absence of ambiguity or equivocation in the contract or the statement, as the case may be, interpretation is the province of the court and may be done by summary judgment."25 Thus the judge decides if a statement is unequivocal and whether a statement constitutes a judicial admission. The judge does not make this determination in a vacuum, but in light of the party's entire testimony, not just a part of it. The judge can also consider other witnesses' opportunities to observe the facts.26 This avoids penalizing honest mistakes and confusion.27 For example, in *El Rincon Supportive Services Organization, Inc. v. First Nonprofit Mutual Insurance Co.*,28 the complaint stated damages were caused by "construction excavation and operations."29 The defendant insurance company denied coverage based on an exclusion prohibiting coverage for "construction" activities. The First District held that in this instance the use of the term "construction" in the complaint was not "deliberate, unequivocal and intended to be an admission of fact" and therefore was not a judicial admission.30.

A judicial admission also "must concern a concrete fact and not be merely a matter of inference, opinion, estimate, or uncertain memory… and such admission of fact carries with it an admission of other facts necessarily implied from it."31 Where a statement is merely an assertion, and not a fact, the statement cannot be a judicial admission. Thus where a party stated that a full green signal (without a left turn arrow) was a left-turn signal, this was simply a conclusion and not a statement of fact.32 Likewise, though the amount of distance traveled is a concrete fact, where a party estimates distance without use of a measuring instrument, a statement concerning the distance traveled is not a judicial admission.33

**Family Law Considerations**

For family law practitioners, *IRMO Smith* 34 touches upon an issue

of particular importance. In most family law cases, the parties fill out financial affidavits, which list certain property as being marital or nonmarital property. In *Smith* a party listed property under a heading titled "Joint/Marital property." The *Smith* court found this to be an ambiguous statement as to whether the property was considered to be only joint or "joint and marital property" and declined to make the statement a judicial admission. The danger for the family law practitioner arises when the property in an affidavit is listed as "marital" or "nonmarital" and there is no ambiguity.

If a client lists property as "marital" when it really is nonmarital property, the other side may argue that a judicial admission has been made which prevents the client from later presenting contradictory evidence as to the nature of the property. After all, the client has personal knowledge of the property and has made an unequivocal statement that the property is marital property. However, hope is not lost in this instance.

The client has several arguments that have availed at the trial court level in preventing such a statement from being construed as a judicial admission. The first argument is that the determination of whether property is marital or nonmarital is actually a legal decision to be made by the trial court.35 As this is a legal decision, a party's statement on an affidavit should not be determinative of the nature of the property. A party's statement regarding the nature of the property would be more in the nature of an opinion. It is not a concrete fact and therefore is not dispositive as to the true nature of the property.

Further where a statement relates to a matter about which one could easily have been mistaken, such a statement would not be a judicial admission.36 The allocation of property as marital or nonmarital is complex as shown by the volumes of litigation related to this matter. One could argue that where initial research revealed certain property as "marital" and later research showed it to be "nonmarital," a party's statement is not the type of "concrete" or "unequivocal" fact to which a judicial admission should apply.

Two other arguments may carry some weight in this situation. First, the Illinois Supreme Court has held that the term "marital property" in the statute "is a nomenclature devised to realize an equitable distribution of property upon termination of the marriage. Operation of the term "marital property" under the Act is not triggered until the time of dissolution."37 Therefore, property can arguably not by deemed "marital" or "nonmarital" prior to dissolution and a party's statement would only be an evidentiary admission and not a judicial admission. Second, a party could argue that Supreme Court Rule 213 requires parties to amend prior answers whenever new information subsequently becomes known to that party. This would seem to allow parties to amend their answers at any time during discovery and not only when the information discovered is adverse to the party. Of course, amended discovery answers should be sent out as soon as a mistake is discovered.

**Swiftly Moving Events Exception**

*Brummet v. Farel*38 carves out an additional exception to the use of the judicial admission doctrine. In *Brummet* the court found the "rule is inapplicable when the facts relate to a matter about which the party could easily have been mistaken, such as swiftly moving events preceding a collision in which the party was injured."39 The court went on to write:

The "swiftly moving event" exception to the general rule more appropriately allows the trier of fact to evaluate credibility and resolve conflicts in the testimony. Automobile accident cases often turn on the perceptions of the eyewitnesses, and the total picture of the event cannot rest on one witness's testimony alone. Treatment of a declaration as a judicial admission rather than an evidentiary admission "depends upon an evaluation of all [the] testimony, and not just a part of it [and] upon an appraisal of [the] testimony in the light of the testimony of the other witnesses and a consideration of their respective opportunities to observe the facts about which they testify. … These qualifications of the general rule serve several important policies, not the least of which is the restraint of judicial comment on the credibility of witnesses. If the court chooses to treat a declaration of a party that has been contradicted by other witnesses as a judicial admission, the court, in effect, has commented on credibility, *i.e.,* it has found one to be more worthy of belief than the other.40

Note however, that the dissent makes a strong argument against creating a "swiftly moving events" exception to the judicial admission doctrine and this doctrine has not been followed by at least one court. See *Caponi v. Larry's 66* where the Second District distinguished the Fifth District opinion and failed to establish a "swiftly moving event exception.41

**Ask Or You Won't Receive**

As a final practice pointer, if at trial an attorney wants the court to find that a statement by a party is a judicial admission, then the attorney should state that request with specificity. In *Pryor v. American Central Transport, Inc.* the plaintiff asked the court to hold that an interrogatory answer was an "admission." Because the plaintiff attorney merely asked the court to consider the answer as an "admission," the appellate court found the trial court could have thought the plaintiff was only asserting the admission was an admission of a party opponent or an evidentiary admission and not necessarily a judicial admission. "[I]t was incumbent upon plaintiff to state specifically the type of admission she was seeking."42 Thus the interrogatory answer was deemed merely to be an evidentiary admission as opposed to a judicial admission. 43

**Conclusion**

When you have a deliberate, clear, unequivocal statement by a party about a concrete fact within that party's knowledge you have

the potential for a judicial admission which will make that fact binding upon the party. That "concrete fact" can not later be contradicted by the party's testimony or by another sworn statement. Therefore, the judicial admission doctrine can be a trap for the unwary. Hopefully this article spurs some thought and helps some of us to avoid falling into that trap in the future.

1 *Estate of Rennick*, 181 Ill.2d 395, 407, 692 N.E.2d 1150, 1156 (1998).

2 *Id*.

3 *Id.*, 181 Ill.2d at 408, 692 N.E.2d at 1156.

4 *Schmahl v. A.V.C. Enterprises, Inc.*, 148 Ill.App.3d 324, 331, 499 N.E.2d 572, 577 (1st Dist. 1986).

5 *Dayan v. McDonald's Corp.*, 125 Ill.App.3d 972, 983, 466 N.E.2d 958, 967 (1st Dist. 1984).

6 *Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.* 71 Ill.App.3d 562, 568, 390 N.E.2d 60 (1979)

7 *Caponi v. Larry's 66*, 236 Ill.App.3d 660, 671, 601 N.E.2d 1347, 1355 (2nd Dist 1992)

8 Note however for testimony to be binding, it must also be peculiarly within the knowledge of the deponent and where there are other witnesses, there may be an argument that their testimony should be allowed. *See Hansen v. Ruby Construction Co.*, 155 Ill.App.3d 475, 482, 508 N.E.2d 301, 305 (1st Dist. 1987).

9 *Pryor v. American Central Transport, Inc.*, 260 Ill.App.3d 76, 85, 629 N.E.2d 1205, 1211 (5th Dist. 1994) citing M. Graham, Evidence Text, Rules, Illustrations and Problems, at 146 (1983).

10 *Rynn v. Owens*, 181 Ill.App.3d 232, 235, 536 N.E.2d 959, 962 (1st Dist. 1989).

11 *Id.*

12 *El Rincon Supportive Services Organization, Inc. v. First Nonprofit Mutual Insurance Co.*, 346 Ill.App.3d 96, 100, 803 N.E.2d 532, 535 (1st dist 2004).

13 *Schmahl v. A.V.C. Enterprises, Inc.*, 148 Ill.App.3d at 331, 499 N.E.2d at 577.

14 *Brummet v. Farel*. 217 Ill.App.3d 264, 267, 576 N.E.2d 1232, 1234 (5th Dist. 1991).

15 *Lindenmier v. City of Rockford*, 156 Ill.App.3d 76, 87, 508 N.E.2d 1201, 1209 (2nd Dist. 1987).

16 Supreme Court Rule 212(a)(2) provides an admission by a party in a discovery deposition may be used to the same extent as any other admission by that party. Rule 213(h) provides that answers to interrogatories may be used to the same extent as a discovery deposition. Both deposition and interrogatory answers can be treated as either judicial or evidentiary admissions depending upon the content and context.

17 *Caponi v. Larry's 66*, 236 Ill.App.3d at 671, 601 N.E.2d at 1355.

18 *See list of cases in Estate of Rennick*, 181 Ill.2d at 408, 692 N.E.2d at 1156.

19 *Id.*

20 *Vans Material Co. v. Dep't. of Revenue*, 131 Ill.2d 196, 212, 545 N.E.2d 695, 703 (1989).

21 *Brummet v. Farel*. 217 Ill.App.3d at 267, 576 N.E.2d at 1234.

22 *Hansen v. Ruby Construction Co.*, 155 Ill.App.3d 475, 480, 508 N.E.2d 301, 303-304 (1st Dist. 1987).

23 American Heritage Dictionary Second College Edition (1982) and *Hansen*155 Ill.App.3d at 480, 508 N.E.2d at 304.

24 *Hansen*155 Ill.App.3d at 480, 508 N.E.2d at 304.

25 *Id.*

26 *McCormack v. Haan*, 20 Ill.2d 75, 78, 169 N.E.2d 239, 240-241 (1960), *Caponi v. Larry's 66*, 236 Ill.App.3d at 672, 601 N.E.2d at 1356.

27 *Trapkus v. Edstrom's Inc*, 140 Ill.App.3d 720, 723, 489 N.E.2d 340, 343 (3rd Dist. 1986).

28 346 Ill.App.3d at 100, 803 N.E.2d at 535 (1st Dist 2004).

29 *Id*. 346 Ill.App.3d at 99, 803 N.E.2d at 535.

30 *Id*. 346 Ill.App.3d at 101, 803 N.E.2d at 536.

31 *Caponi v. Larry's 66*, 236 Ill.App.3d at 671, 601 N.E.2d at 1355.

32 *Lindenmier v. City of Rockford*, 156 Ill.App.3d at 87, 508 N.E.2d at 1210.

33 *Caponi v. Larry's 66*, 236 Ill.App.3d at 672, 601 N.E.2d at 1356.

34 265 Ill.App.3d 249, 638 N.E.2d 384 (4th Dist. 1994).

35 *IRMO Hegge*, 285 Ill.App.3d 138, 140, 674 N.E.2d 124, 126 (2nd Dist. 1996).

36 *Brummet v. Farel*. 217 Ill.App.3d at 267, 576 N.E.2d at 1234.

37 *IRMO Kujwanski*, 71 ILL..2d 563, 573 (1978).

38 *Brummet v. Farel* 217 Ill.App.3d at 267, 576 N.E.2d at 1234.

39 *Id*.

40 *Id*. 217 Ill.App.3d at 268 576 N.E.2d at 1235.

41 236 Ill.App.3d at 672, 601 N.E.2d at 1356.

42 260 Ill.App.3d 76, 85, 629 N.E.2d 1205, 1212 (5th Dist. 1994).

43 *Id*.

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