

**ATTORNEY Bar #(0000)**

**(Form provided courtesy of Lokken & Assoc.)**

**FIRM NAME**

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IN THE THIRD JUDICIAL DISTRICT JUVENILE COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH, in the  
interest of:

) **MOTION AND ORDER TO HAVE**  
) **ADMISSIONS DEEMED ADMITTED**

CHILD (00/00/00)

) Case #

A person(s) under the age  
of eighteen years.

) JUDGE

COMES NOW the Respondent, CLIENT, by and through counsel, ATTORNEY, of FIRM, pursuant to UTAH RULES OF CIVIL PROCEDURE 36(A) and hereby moves this Court to have the Admissions served upon the child's counsel on or about January 7, 2000, deemed admitted. This motion is based upon the following Memorandum:

**STATEMENT OF FACTS**

1. On January 7, 2000, Respondent counsel served via first-class postage-prepaid mail a copy of the Request for Admissions upon the Petitioner. An original mailing certificate was filed with this Court. (See **Exhibit ~A~**)
2. On February 10, 2000, Respondent counsel received only an incomplete

document that was faxed, without notary signature and without proper answers as mandated by the Rules. Therefore, Respondent has not received an answer or objection from the Petitioner with regard to the Request for Admissions.

### ARGUMENT

#### **THE ADMISSIONS SHOULD BE DEEMED ADMITTED**

UTAH RULES OF CIVIL PROCEDURE 36(A) states as follows:

A party may service upon any other party a written request for the admission, for purpose of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in their request. . . . Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. . .

UTAH RULES OF CIVIL PROCEDURE 36(B) states that, "Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." On January 7, 2000, Respondent counsel served via first-class postage-prepaid mail a copy of Request for Admissions upon the Petitioner. An original certificate of service was filed with this Court. (See **Exhibit ~A~**) The time set forth in Rule 36(a) above would allow for an answer or objection to said Request for Admissions to be filed by February 10, 2000, by the Petitioner. As of February 11, 2000, Respondent counsel has not received a proper answer or objection from the Petitioner with regard to this matter. As it states in Rule 36(b), "...[t]he matter is admitted unless, within thirty days after service of the request, ... the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney."

This court has a duty to deem the Admissions as having been admitted due to the failure of the party to answer them in the time frame set forth in Rule 36(a). In Langeland v. Monarch Motors, Inc., 952.P2d 1058, 1061 (Utah 1998), the Supreme Court of Utah stated the following:

The policy behind rule 36 concerning request for admission in to facilitate and expedite the discovery process by allowing parties to obtain admissions as to certain undisputed matters and thus avoid the effort and expense of having to conduct discovery as to those matters. The penalty provided in rule 36(b), automatically admitting and establishing requests not responded to within thirty days, was conceived as a means of preventing abuse of the discovery process and facilitating the smooth administration of justice. Requests for admission must be taken seriously and answers or objections must be served promptly. The penalty for delay or abuse is intentionally harsh, and the parties who fail to comply with the procedural requirements of rule 36 should not lightly escape the consequences of the rule.

The Supreme Court of Utah went on to say, "...the court will not come to the rescue of a party who flagrantly ignores these rules at the expense of a party who attempts to conform with them." **Id.** at 1064. The Petitioner has failed to appropriately file any objection or answer on his client's behalf in this matter within the 30 days allotted by Rule 36, and the penalty set forth in Rule 36(b) should apply.

**EVEN IF PETITIONER HAD FILED IN A TIMELY MANNER  
PETITIONER HAS NOT APPROPRIATELY RESPONDED**

Petitioner's response is wrought with vague objections pertaining to lack of information or knowledge. By the responses, it is obvious that Petitioner was dilatory in his efforts to appropriately answer the Request for Admissions.

UTAH RULES OF CIVIL PROCEDURE 36(A) requires:

...If an objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is

requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. 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; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

As stated previously Petitioner has failed entirely to comply with Rule 36. The answers indicate an obvious lack of effort and a veiled attempt at minimal compliance due to Petitioner's own negligence.

#### **FACSIMILE DOES NOT CONSTITUTE SERVICE**

On February 10, 1999, Petitioner sent by facsimile an "Answer to Request for Admissions." UTAH RULES OF CIVIL PROCEDURES do not provide for service by facsimile. Additionally, no certificate of service has been filed with the court.

#### **CONCLUSION**

THEREFORE, based upon the foregoing, Respondent respectfully requests that this Court enter an order deeming Respondent's Request for Admissions served upon the Petitioner this matter as admitted.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

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ATTORNEY  
Attorney for CLIENT

**CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2000, faxed and mailed, first class postage prepaid, a true and correct copy of the foregoing Motion to Have Admissions Deemed Admitted to:

STATE OF UTAH  
ATTORNEY GENERAL'S OFFICE

GUARDIAN AD LITEM

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**ATTORNEY, Bar #(6600)**

**FIRM**

Attorneys for CLIENT

Address

City, State Zip

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IN THE THIRD JUDICIAL DISTRICT JUVENILE COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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THE STATE OF UTAH, in the  
interest of:

CHILD (00/00/00)

A person(s) under the age  
of eighteen years.

) **ORDER ON RESPONDENT'S**  
) **MOTION AND ORDER TO HAVE**  
) **ADMISSIONS DEEMED ADMITTED**

)  
) Case #

)  
)  
) Judge

)

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Based upon Respondent's Motion to Have Admissions Deemed Admitted and for good cause appearing, IT IS HEREBY ORDERED that Respondent's Request for Admissions served on Petitioner are hereby deemed admitted for purposes of the above-entitled pending action.

DATED THIS \_\_\_\_ day of \_\_\_\_\_, 2003.

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Honorable Judge  
Third District Juvenile Court

**CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2000 faxed and mailed, first class postage prepaid, a true and correct copy of the foregoing Order to:

STATE OF UTAH  
ATTORNEY GENERAL'S OFFICE

GUARDIAN AD LITEM

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# **Exhibit ~A~**