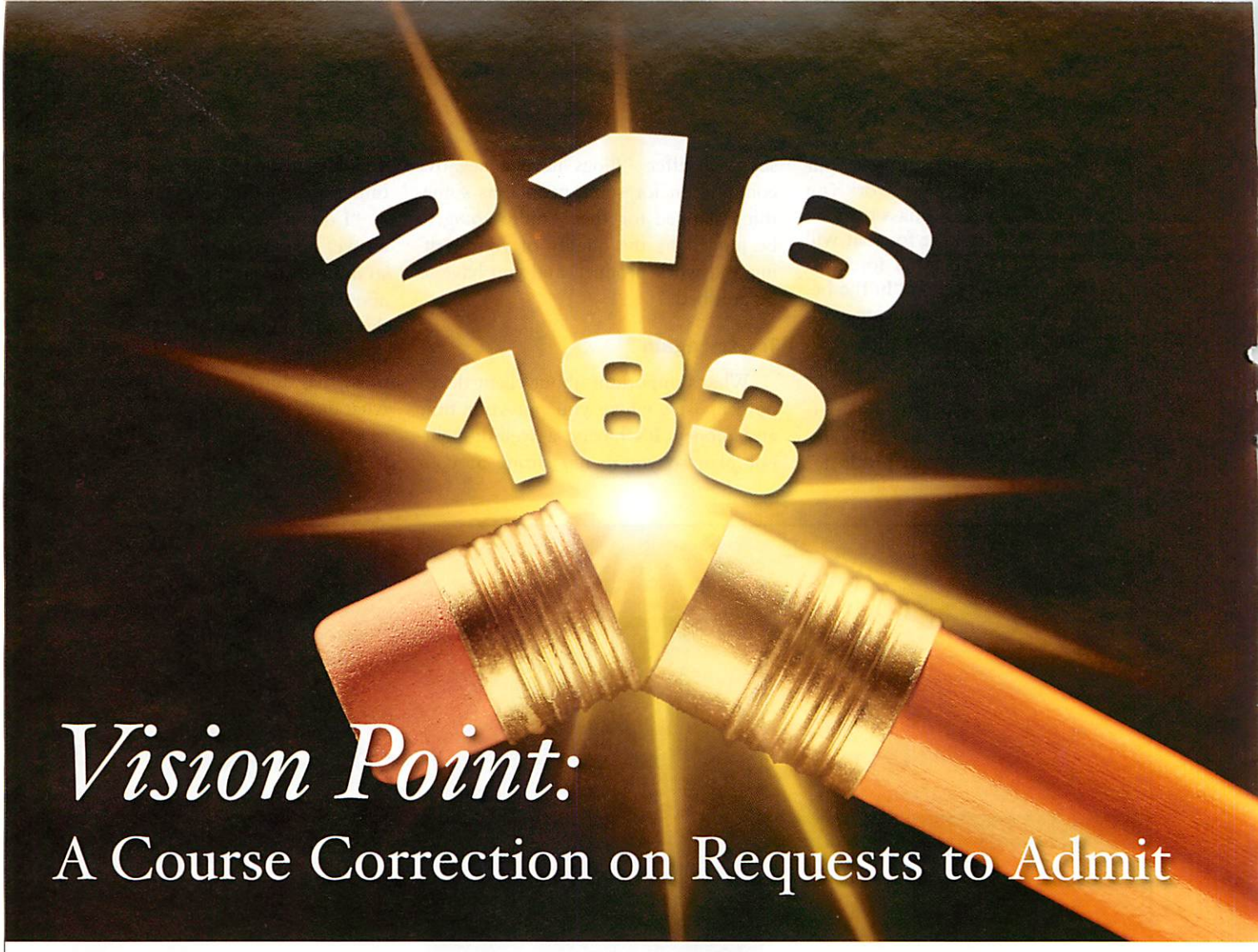

Vision Point: A Course Correction on Requests to Admit

The Illinois Supreme Court's important new opinion reverses numerous appellate decisions and promises to mitigate the harsh consequences that can result from a narrow application of Rules 216 and 183.

By Timothy J. Storm

In its recent opinion in *Vision Point of Sale, Inc v Haas*,[1] the Illinois Supreme Court strikes a blow – five blows, actually – for a common sense interpretation of Illinois Supreme Court Rule 216(a), which governs requests for admission of facts. *Vision Point* also provides a revised interpretation of what is required under Supreme Court Rule 183 to obtain an extension of time to respond to requests for admission.

The supreme court's reading of its own SCRs 183 and 216(a) differs substantially from the interpretations followed by several appellate districts. As a result, *Vision Point* represents a significant course correction of which practitioners should take note.

Requests for admission of facts

Illinois Supreme Court Rule 216(a) provides that a "party may serve on

1. 226 Ill 2d 334, 875 NE2d 1065 (2007).

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any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request."[2] Such requests are admitted unless, within 28 days after service of the request, the recipient serves either objections or "a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters."[3]

Admissions under SCR 216 – whether explicit or arising through failure to respond – are binding and cannot be controverted on summary judgment or at trial.[4] However, a SCR 216 admission is effective only in the case in which the request was served.[5]

The request for admission procedure permits parties to swiftly and decisively remove matters from controversy.[6] Because of its potential to profoundly affect litigation and the trickiness of complying with the letter of the rule,[7] SCR 216 has been called a "trap for the unwary" that punishes technical non-compliance without necessarily fulfilling the underlying goal of expediting the resolution of litigation on the merits.[8]

Extensions of time to respond to requests

Many of the controversies with respect to SCR 216 involve the effect of failing to make either a timely or a proper response, or both. A late response often implicates Illinois Supreme Court Rule 183, which provides that the "court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time."[9]

The recipient of a request for admission may seek an extension of time under SCR 183 to respond either before or after expiration of the 28-day response time provided under SCR 216. In addition, a party who is found to have provided improper responses to requests for admission will usually seek an extension of time under SCR 183 to file corrected responses that comply with SCR 216.[10]

The lessons of *Vision Point*

In *Vision Point*, the supreme court addresses several important practical aspects of requests for admission, including extensions of time to respond. Set forth below, roughly in order of importance (according to the author, not the supreme court), are five lessons from *Vision Point*.

"Good cause" for extension must be based on the reason for noncompliance. Although SCR 183 makes a showing of "good cause" a prerequisite for an extension of time, it does not define just what constitutes good cause, nor does it list what factors may be considered in a good cause analysis. Interestingly, it does not even specify the proper focus of the good-cause analysis – for example, whether there must be a showing that there was "good cause" for the party's failure to respond on time, or if a potentially catastrophic impact on the party arising from a mere technical violation of SCR 216(a) is enough to constitute "good cause" for a delinquent filing. *Vision Point* provides guidance on all of those points.

The *Vision Point* defendants served SCR 216 requests for admissions on the plaintiff, to which the plaintiff timely responded.[11] The final page of the plaintiff's response was signed by the plaintiff's attorney, with a verification by the plaintiff's chief executive officer appended. The plaintiff served the response on the defendants, but did not file it with the circuit court clerk.

The defendants moved to strike the response and deem the requests admitted, asserting that the response was deficient for two reasons: (1) although the party's verification was appended, the response itself contained the signature of the attorney, not the party; and (2) the response violated Cook County Circuit Court Rule 3.1(c), which requires that responses to requests for admission be filed with the clerk.

Vision Point overturns _Moy_ and holds that a party need not both verify and "sign" the final page of the response, as long as the party does, in fact, verify the response.

Upon finding that the response was deficient for not having been filed, the trial court granted the defendants' motion to strike the response and deem the requests admitted. The plaintiff then sought an extension of time pursuant to SCR 183 to file an amended response. The circuit court denied that motion, finding that the plaintiff had failed to demonstrate good cause for an extension.

In a classic case of snatching defeat from the jaws of victory, the defendants proceeded to conduct themselves with

2. SCR 216(a).
3. SCR 216(c).
4. *Tires 'N Tracks, Inc v Dominic Fiordirosa Const Co, Inc*, 331 Ill App 3d 87, 91, 771 NE2d 612, 616 (2d D 2002).
5. SCR 216(e).
6. *Szczeblewski v Gossett*, 342 Ill App 3d 344, 349, 795 NE2d 368, 372 (5th D 2003).
7. *Vision Point*, 875 NE2d at 1076 ("[I]n most instances" failure to respond properly "may prove fatal to the case of the delinquent party.").
8. Id at 1076, FN 4, citing J. Hynes, *Admission of Facts in Discovery: Avoiding the Rule 216 Trap*, 93 Ill B J 402, 406 (2005).
9. SCR 183.
10. See, for example, *Robbins v Allstate Ins Co*, 362 Ill App 3d 540, 544, 841 NE2d 22, 26 (2d D 2005).
11. *Vision Point*, 875 NE2d at 1070.

what the trial judge called a "'settled policy of recalcitrance.'"[12] The trial court's frustration at the defendants' behavior, together with the court's view that the plaintiff's failure to properly respond to the requests for admission was merely a "'technical and inadvertent failure,'" caused the trial court to sua sponte vacate its prior order and allow the plaintiff to file and serve an amended response to the defendants' requests.[13]

The defendants argued that the court improperly considered matters apart from the reasons for the defective response in deciding to grant additional time for an amended response. The circuit court certified the following question of law:

> "In determining whether 'good cause' exists under Supreme Court Rule 183 for the grant of an extension of time to remedy an unintentional noncompliance with a procedural requirement, may the court take into consideration facts and circumstances of record that go beyond the reason for noncompliance?"[14]

The appellate court granted the defendants' petition for leave to appeal and answered the question in the affirmative.[15] The supreme court granted leave to appeal and reversed the appellate court's judgment.[16]

The supreme court held that the trial court improperly considered matters outside of the reasons for the plaintiff's non-compliance in deciding to grant an extension of time.[17] In effect, the circuit court imposed a sanction for the defendants' unrelated bad behavior in the litigation. The supreme court determined that decision to be an inappropriate use of SCR 183, noting that the court is empowered to enforce its orders through the use of contempt proceedings and SCR 219(c).[18]

The supreme court emphasized that the SCR 183 analysis of good cause must be limited to the responding party's conduct and may not encompass the propounding party's behavior. The burden rests with the party seeking the extension to demonstrate "good cause" by presenting "objective reasons to the court as to why the deadline was not met."[19] In particular, the supreme court emphasized its earlier holding in *Bright v Dicke*[20] that the non-moving party "should be under no obligation to show anything" in connection with a SCR 183 motion.[21]

Mistake, inadvertence, and neglect can constitute good cause for an extension. Although SCR 183 does not specify what "objective reasons" may be sufficient for a good cause finding, a number of appellate court rulings have lead to the generally accepted wisdom that mistake, inadvertence, and neglect were never sufficient bases for a finding of good cause.[22]

The supreme court observed in *Vision Point* that

> [O]ur appellate court over time has melded our narrow holding in *Bright* – that the mere absence of inconvenience or prejudice to the nonmoving party alone is insufficient to satisfy the good-cause requirement – with a second, broader, harsher, and apparently inflexible standard that "mistake, inadvertence, or attorney neglect" on the part of the moving party can never serve as the sole basis for establishing good cause to support an extension pursuant to Rule 183. This, in turn, means that under this line of case law, unless the party can present evidence separate and apart from mistake, inadvertence, or attorney neglect to support an argument that there was good cause for the initial delay in compliance, the extension will not be granted.[23]

The *Vision Point* court went on to state that the rule reflected in those cases is "unduly harsh"[24] and that the supreme court has "never held in this context that 'mistake, inadvertence, or attorney neglect' is automatically excluded from the trial court's consideration in determining whether good cause exists to grant an extension of time pursuant to Rule 183."[25] As a result, the supreme court overruled all appellate court decisions "which have grafted this standard onto the analysis we set forth in *Bright*."[26]

The party's signature on a verification satisfies the "sworn statement" requirement. SCR 216 makes clear that a valid response must be the "sworn statement" by the party and that the signature of the party's attorney is not sufficient.[27] *Vision Point* changes none of that.

However, confusion had arisen about how many times the party was required to sign the response. Was a party's signed verification appended to the response sufficient? Did the SCR require a signature at the end of the response plus a signed verification? What was the effect of an attorney's signature in addition to the party's signature? Until *Vision Point*, the answer to those questions was found in *Moy v Ng*.[28]

In *Moy*, the plaintiffs' answer to the defendant's SCR 216 request for admissions was signed by the plaintiffs' attorney and verified by one of the plaintiffs.[29] The *Moy* court found that the attorney's signature rendered the response improper notwithstanding the plaintiff's verification, stating that "the answer fails to comply with Rule 216(c) in that it is signed by the plaintiffs' attorney, not by one or more of the plaintiffs."[30]

Thus, under the rationale of *Moy*, it appeared that the presence of an attorney's signature anywhere on the response (except for objections) could es-

In *Vision Point* the court wrote that it has "never held...that 'mistake, inadvertence, or attorney neglect' is automatically excluded for the trial court's consideration in determining...good cause...."

12. Id at 1071, quoting the circuit court.
13. Id.
14. Id at 1068, quoting the circuit court certified question of law.
15. Id at 1068.
16. Id at 1069.
17. Id at 1081.
18. Id at 1078.
19. Id at 1075.
20. 166 Ill 2d 204, 652 NE2d 275 (1995).
21. Id at 210, 652 NE2d at 277.
22. See, for example, *Hammond v SBC Comm, Inc*, 365 Ill App 3d 879, 893, 850 NE2d 265, 277 (1st D 2006), appeal denied, 221 Ill 2d 635, 857 NE2d 671 (2006) (a party may not rely upon "mistake, inadvertence, or attorney neglect as the sole basis for a good-cause determination"); *Robbins*, 362 Ill App 3d at 544, 841 NE2d at 26 ("Case law clearly establishes that 'good cause' is not simply mistake, inadvertence, or neglect."); *Cothren v Thompson*, 356 Ill App 3d 279, 283, 826 NE2d 534, 539 (4th D 2005), appeal denied, 216 Ill 2d 682, 839 NE2d 1022 (2005); *Glasco v Marony*, 347 Ill App 3d 1069, 1073, 808 NE2d 1107, 1110 (5th D 2004) ("Mistake, inadvertence, or simple attorney neglect cannot constitute the sole basis for a good cause determination").
23. *Vision Point*, 875 NE2d at 1076.
24. Id at 1077.
25. Id at 1078.
26. Id (specifically mentioning *Hammond*, *Robbins*, *Cothren*, and *Glasco*, as well as *Larson v O'Donnell*, 361 Ill App 3d 388, 836 NE2d 863 (1st D 2005), appeal denied, 217 Ill 2d 603, 844 NE2d 966 (2006).
27. SCR 216(c).
28. 341 Ill App 3d 984, 793 NE2d 919 (1st D 2003), appeal denied, 206 Ill 2d 624, 806 NE2d 1067 (2003).
29. Id at 988, 793 NE2d at 924.
30. Id at 990, 793 NE2d at 925.

sentially negate the party's verification. *Vision Point* puts an end to that interpretation, holding that it "has no support in the language of Rule 216."[31] *Vision Point* overturns *Moy* and holds that a party need not both verify and "sign" the final page of the response, as long as the party does, in fact, verify the response.

A response may not be stricken because of a local rule requiring additional filing. Illinois SCR 201(m) provides that discovery is not to be filed with the circuit court clerk except on order of court or as authorized or required by local court rules. The local rules of most circuits prohibit the filing of discovery.[32]

Vision Point was pending in the Cook County Circuit Court, where Local Rule 3.1(c) provides that a party answering requests for admission of fact must, within 28 days after service of the request, serve on the opposing party and "file with the Clerk of the Circuit Court" the sworn statement required by SCR 216(c).[33] However, the supreme court noted that SCR 216 does not require that responses be filed so that "'service, rather than filing, is what matters.'"[34] Accordingly, to the extent that Cook County Local Rule 3.1(c) places a greater burden on a responding party than does SCR 216, the supreme court held that the local rule cannot be a basis to strike a proper response to a request for admission.[35]

Yes, requests for admission *are* discovery. The defendants in *Vision Point* argued that the circuit court's discretion under SCR 183 to grant extensions of time to respond to requests for admission is more circumscribed than the discretion typically permitted to the trial court in connection with discovery because requests for admission are not discovery. In support, the defendants relied upon the following language in *P.R.S. Intl, Inc v Shred Pax Corp*:[36]

> Although requests to admit are often classified as a discovery device and treated as such in practice "...the purpose of admissions is not to discover facts but rather to establish some of the material facts in a case without the necessity of formal proof at trial." Requests to admit are "a device by which 'to separate the wheat from the chaff'" and are "intended to circumscribe contested factual issues in the case so that issues which are disputed might be clearly and succinctly presented to the trier of facts."[37]

There does not seem to have been any serious or widespread misunderstanding among courts or practicing attorneys over the issue, but the supreme court has spoken: requests for admission are a method of discovery, at least for purposes of SCR 183.[38] The court noted that requests for admission are within the definition of "discovery methods" included in SCR 201.[39] Even though differing somewhat from other discovery methods in their operation, requests for admission are a part of a concept of discovery that is not "one-dimensional."[40]

The court flexes its supervisory muscles

In addition to offering welcome interpretive guidance with respect to SCRs 183 and 216(a), *Vision Point* also illustrates the supreme court's use of its supervisory role in the Illinois judiciary. General administrative and supervisory authority over all courts is vested in the supreme court.[41] Over time, appellate court opinions may veer off course in interpreting supreme court rules, with the cumulative effect that the implementation of a supreme court rule bears little resemblance to its plain language. As in *Vision Point*, the supreme court may step into such situations to effect a course correction, overruling a group of appellate opinions that diverge from the supreme court's interpretation.[42]

Through its decision in *Vision Point*, the supreme court has provided a "new and improved" understanding of the procedural aspects of requests for admission. The supreme court's guidance should be advantageous to both the courts and litigants, helping to avoid the "unduly harsh"[43] results that sometimes arose under prior readings of the rules. ■

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31. *Vision Point*, 875 NE2d at 1079.
32. The 16th, 17th, and 20th circuits permit requests for admissions and responses to be filed. The 11th circuit provides for filing proof of compliance with the requests. It appears that only the 1st and Cook County circuits have local rules which explicitly require that requests for admissions and responses be filed with the circuit court clerk.
33. Cook County Circuit Court Local Rule 3.1(c).
34. *Vision Point*, 875 NE2d at 1081, quoting *Bright* at 207, 652 NE2d at 276.
35. *Vision Point*, 875 NE2d at 1081.
36. 184 Ill 2d 224, 236, 703 NE2d 71, 77 (1998).
37. Id at 237, 703 NE2d at 77, citing 23 Am Jur 2d §314 (1983).
38. *Vision Point*, 875 NE2d at 1072-73.
39. Id at 1074.
40. Id.
41. Id at 1080, citing IL Const Art VI, §16.
42. It is interesting to note that the supreme court previously denied a petition for leave to appeal in nearly all of the cases that are explicitly overruled in *Vision Point*.
43. *Vision Point*, 875 NE2d at 1077.