
CHAPTER 6

Discovery by Interrogatories

BUCKNER HINKLE, JR.

I. *Introduction*

Several discovery tools advance the fact-finding process in construction disputes. One tool, the interrogatory, is designed to discover facts under oath, learn where facts may be discovered, and narrow issues for trial¹ through written questions and answers. Stated more succinctly, the limited purpose of the interrogatory is to learn what another party knows.² The usefulness of interrogatories, however, has generated considerable debate for a long time.³ As one federal judge put it:

Interrogatories have become a prime offender in abusive, burdensome, unjustified, limitless, wasteful discovery.

Interrogatories, commonly utilized today in nearly every instance, are a device to shirk preparation of a case—they are more often than not “a lazy lawyer’s way to obtain evasive answers.”⁴

This chapter explores the effective use of interrogatories. Parts II and III analyze the legal authority and basic purpose behind interrogatories, along with the general advantages and disadvantages associated with their use. Part IV examines the different types of factual information interrogatories are designed to obtain and the use or abuse of interrogatories for these purposes. Part V compares interrogatories to other discovery tools and, in turn, addresses their coordination and sequencing in the discovery process. Part VI discusses drafting techniques for both interrogatories and answers. Finally, Parts VII and VIII analyze objections to interrogatories and the proper circumstances for supplementation.

II. *Authority*

Federal Rule of Civil Procedure 33 contains the basic provisions regarding the use of interrogatories. The rule permits any party in a civil action to serve 25 interroga-

tories, counting all discrete subparts,⁵ upon any other party without leave of court. A court must grant permission or the opposing party must stipulate to an increase in order for a party to serve any additional interrogatories.⁶ The scope of information obtainable by interrogatories is dictated by Rule 26(b)(1), which allows a party to discover all facts, legal conclusions, and applications of law to the facts relevant to the cause of action.⁷

Within 30 days of service, the receiving party must "separately and fully" answer each question in writing and under oath, unless otherwise directed by the court. When a party objects to an interrogatory and refuses to answer, the reasons for the objection must be timely and specifically stated. If not so stated, the objection will be waived.⁸

III. *Purpose of Interrogatories*

Some contend that interrogatories rarely, if ever, aid the fact-finding process. Others, however, assert that interrogatories can be effectively and efficiently utilized, depending upon the circumstances and application.⁹ While acknowledging that interrogatories are sometimes disadvantageous when compared to other discovery devices, the proponents assert that interrogatories can be strategically used to gain certain types of basic factual information.¹⁰ The construction lawyer must, therefore, sort out the advantages and disadvantages and use interrogatories in the most advantageous situations.

Two general types of interrogatories exist for purposes of discovery—identification interrogatories and contention interrogatories. Identification interrogatories request the responding party to identify relevant documents or objects as well as individuals having knowledge of facts or opinions relating to the suit. Contention interrogatories are intended to discover the factual basis and theory supporting another party's allegations.¹¹ These two categories of questions coincide with the primary functions of an interrogatory—to identify sources of evidence and to narrow the issues for trial or later discovery.¹² If used early in the discovery process, interrogatories allow each party to devote resources to the most relevant facts and issues and also obligate responding parties to supplement their answers when the facts or issues materially change.

A. *Advantages*

Interrogatories are most useful for gathering basic factual information, such as the names and addresses of witnesses or experts, identification of documents, dates of events, and calculations of damages. When used for these purposes, interrogatories offer several advantages over other forms of discovery, such as depositions.

1. *Interrogatories obtain information from multiple sources of knowledge.* Because the respondent must conduct a reasonable investigation when answering interrogatories, the answers may be derived from the knowledge of several individuals, including the respondent and its attorneys and agents.

Depositions, on the other hand, only discover the personal knowledge of one deposed individual and do not allow time for a reasonable investigation.¹³

2. *Interrogatories advantageously request information about the structure or operations of a business.* If a party wishes to discover information about a corporation or other business entity, interrogatories can be used more effectively than depositions. A party must find the most appropriate and knowledgeable spokesperson when undergoing a deposition, or else face the risk of gaining little factual information. Interrogatories, however, can be served on a business entity and, through reasonable investigation, the information can be provided by several knowledgeable sources within the business.¹⁴
3. *Interrogatories may be more cost-effective than depositions.* If used for basic factual information, interrogatories are more cost-effective than depositions, because they do not require travel costs, reporter's fees, scheduling, and rescheduling, etc.¹⁵
4. *A well-drafted interrogatory is difficult to evade.* A clear, concise question demands a clear, concise answer. Because a reasonable investigation is required, the answering party will find it difficult to evade a simple and direct question requesting basic factual information.¹⁶
5. *Interrogatories may induce settlement negotiations or successful summary judgment motions.* By establishing the theories and contentions of parties in a civil action, interrogatories may expose the strengths and weaknesses of each side's case and, thus, facilitate settlement talks or summary judgment motions.¹⁷
6. *Interrogatories gather information not easily verbalized or located in one document.* Construction and other commercial matters often involve complex transactions and a multitude of technical details and dates. Such information is not easily verbalized and often escapes memory during depositions. Additionally, the details may be scattered among a variety of documents and not as easily uncovered by a document request. Because interrogatories permit a greater research and response time, they may be more conducive to gaining this information.¹⁸

B. Limitations and Disadvantages

1. *Interrogatories may only be directed to the parties in a civil action.* While the rules permit the deposition of both parties and non-parties in a civil action, interrogatories may only be served upon parties.¹⁹
2. *Attorneys usually craft the answers.* Although clear, concise questions may be difficult to evade, attorneys often carefully draft responses on behalf of parties and seek to provide less-than-candid answers. Such carefully prepared answers limit the chances of obtaining damaging or spontaneous information from the opposing party.²⁰
3. *The creation of a chain reaction.* The first party to serve the interrogatories often starts a chain reaction in which the other party responds with similar or nearly identical sets of interrogatories. However, many courts disfavor

this practice, because the same questions may not be appropriate for opposing parties in a civil action.²¹

4. *The process can be slow and expensive in complex cases.* The interrogatory process may lead to a series of objections and motions to compel along with complaints about the burdens associated with researching and providing the requested information. Further, the 30-day response time under Rule 33 does not facilitate quick answers to vital questions.²²
5. *Inability to ask effective follow-up interrogatories.* Depositions are more adaptive than interrogatories and permit attorneys to ask immediate follow-up questions or begin a new line of inquiry in reaction to the answers provided by the deposed individual. However, if a party drafts follow-up interrogatories, the time for answering them is longer, perhaps reducing their effectiveness.²³ Therefore, a question anticipating the need for follow-up might best be saved for a deposition.²⁴
6. *Interrogatories may help the opposing party prepare for trial.* When an opponent answers a large set of interrogatories regarding basic allegations and contentions, the answering party may, as a consequence, be better prepared for trial.²⁵ Also, since discrete subparts count against the limit of 25 interrogatories, a party posing an excessive number, without leave of court, telegraphs the questions that will be asked in the deposition, thereby giving opposing counsel a distinct advantage with witness preparation.²⁶
7. *Interrogatories cannot determine the nature and effectiveness of possible witnesses for trial.* The demeanor or credibility of a witness can be examined during a deposition, but not through a set of written interrogatories.²⁷

IV. Use and Abuse of Interrogatories

Interrogatories can be used to explore any information within the scope of Rule 26(b), which permits discovery of all facts and contentions relevant to the civil action. In recognition of the aforementioned advantages and disadvantages, commentators have argued that interrogatories should not broadly request a respondent to supply all factual details supporting allegations in a complaint or answer but instead should be limited to the following areas: (1) identifying knowledgeable persons; (2) obtaining information about experts; (3) collecting technical or statistical data; (4) quantifying damages; and (5) exploring contentions.²⁸ Mandatory disclosure provisions under Rule 26(a) now require a party's revelation of information regarding some of these topic areas, including identification of experts, witnesses, and damage calculations.²⁹ However, interrogatories provide good supplementary information and are essential in courts not following mandatory disclosure rules.³⁰ Thus, each of these areas is addressed below.

A. Identification of Knowledgeable Persons and Witnesses

Rule 26(b) authorizes discovery of individuals having knowledge of relevant facts as well as potential witnesses who may testify at trial regarding these facts. Interrogatories may, therefore, request identification of individuals somehow related to

the occurrences or transactions at issue and, in turn, help guide the future course of discovery, determine the proper individuals to depose, and project who will be witnesses at trial. Also, a party can tailor document requests in reference to the named individuals.³¹ Interrogatories too broadly worded are ineffective and subject to monotonous objection.³² For example, responding parties may object to or evade an interrogatory asking for "each person with knowledge of any discoverable matter," especially in complex cases. Such a question is too broad and may be considered an undue burden by the court. The identification of individuals should be limited to discrete matters.³³

B. Identification of Experts

Discovery of experts is vital. Interrogatories may solicit the following information from each expert that will testify at trial:

- (a) the expert's name and address,
- (b) the subject matter about which the expert will testify,
- (c) the facts and opinions supporting the expert's testimony, and,
- (d) the grounds for each opinion.³⁴

Each of these questions meets the relevancy standard under Rule 26(b) and is essential to understanding the future testimony of an opposing party's experts, or in order to prepare for a deposition later in the discovery process. Some lawyers, however, may attempt to seek additional information involving an expert's past testimony or involvement with other cases. Such questions may create discovery disputes and slow the interrogatory process. Consideration should be given to other sources, such as database services, a party's own experts, other lawyers, or a deposition, for obtaining additional information on experts.³⁵ It is particularly important to inquire about experts early in the case, even though disclosures about experts are required by Rule 26.³⁶ Early disclosure of opinions increases the possibilities of undermining the opinions through other discovery.³⁷

C. Technical or Statistical Data

A document request or deposition often fails to effectively reveal technical data not centrally located in one document, not easily verbalized, or quickly forgotten. Interrogatories, therefore, allow an opposing party to research the issues and provide the factual details not as easily obtained through other discovery tools.³⁸ More specifically, interrogatory questions may request the dates of certain transactions or occurrences, associated names and addresses, and technical details about the subject matter of the litigation.³⁹

However, an interrogatory requesting a wide range of technical information scattered among many documents may overburden the responding party. In situations when discovery would be equally burdensome to both sides, Rule 33 permits a party to designate the documents where the information may be found and force the requesting party to pull the information from those documents.⁴⁰

D. Damages

Damages are not easily proven through sources other than the opposing party claiming damages. The testimony or deposition of one individual or the information in one document rarely provides each and every element of damages, especially in construction disputes. Thus, interrogatories, which allow more time for research and response, are well suited to soliciting the various components of damages. After all, attorneys will probably fully develop an argument for damages prior to trial, and an interrogatory helps to "smoke out" this information in advance.⁴¹ This is another area of inquiry that should be undertaken early in the case.⁴² Here are examples of interrogatories addressing damage allegations:

- (a) A full description of the item or element of damage,
- (b) The amount of each element of damage,
- (c) The components of each element of damage,
- (d) The method of calculating each component or element of damage, and
- (e) Identification of documents and other sources supporting the damage amount or indicating the costs.⁴³

E. Contention Interrogatories

Although subject to criticism, contention interrogatories are permissible because they clarify the basis of an adversarial claim.⁴⁴ Contention interrogatories usually involve four types of questions: (1) ask another party what it contends, (2) ask another party whether it makes a specific contention, (3) state all facts that are the basis of contention, and (4) ask a party to take a position and then explain the legal basis or theory behind the contention.⁴⁵ Although interrogatories may not be used to discover questions of pure law, Rule 33 permits the application of law to fact and, therefore, allows a party to discover the theories or allegations underlying an opponent's case in reference to supporting facts.⁴⁶ Contention interrogatories narrow the issues for trial and discovery and also develop the groundwork for a summary judgment motion or settlement negotiation.⁴⁷

There are limits to contention interrogatories. Those requesting another party to "write basically a portrait of their trial" and discover every bit of evidentiary minutiae underlying its allegations are likely to produce an unwinnable discovery dispute.⁴⁸ Further, contention interrogatories are often poorly drafted, too broad in their scope, and excessive in number, thereby inviting objections or a nonresponsive answer by the opposing side.⁴⁹ Rather than taking a broad approach, questions requesting the basis for an opposing party's theories and allegations should be narrowly tailored to discrete issues.⁵⁰

V. Coordination and Sequencing with Other Discovery Methods

The Federal Rules of Civil Procedure allow parties to coordinate different discovery devices and use them to collectively gather information about a particular issue in a case. Thus, the use of interrogatories does not preclude the use of other discov-

