Responding to Interrogatories

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Written discovery can be broken down into three main categories: document requests (Fed. R. Civ. P. ("Rule") 33), requests for admission (Rule 36), and interrogatories (Rule 33). This checklist will take a closer look at responding to interrogatories.

In the broadest sense, interrogatories are written questions from one party to another. They may concern any matter that is discoverable, meaning any matter not privileged that is relevant to the claims and defenses of any party, and need only be "reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). The purpose of interrogatories, like all discovery, is to narrow and clarify the issues and disputes before the court.

Interrogatories, however, have additional heft. The answers provided may be used as evidence at trial subject to the applicable rules of evidence. Answers to interrogatories may also be used in summary judgment motions and in motions to dismiss. They may be used as admissions of a party opponent. (Answers are not binding, however, and the answering party may introduce other evidence on the matter.) Answers to interrogatories may also be used for impeachment purposes. While interrogatory answers do not become evidence until they are offered at trial, you should consider the many possible uses when crafting your response.

General Objections
Typically, responses to interrogatories consist of three parts. Typically, interrogatory responses begin with several paragraphs of "General Objections." However, general objections are "officially" disfavored. That said, they are still frequently used to set forth any global objections to the interrogatories as well as challenge any definitions or instructions that the propounding party set forth. For example, if you object to the relevant time period as defined by the propounding party, it should be addressed here. Because of their disfavored status, general objections should be used selectively. If the objection is not truly global, err on the side of repetitive specific objections.

One last note on general objections: While some courts allow you to incorporate the general objections by reference, it is generally advisable to err on the side of repetition and assert any objections to each individual interrogatory.

Specific Objections and Response
The second part is the "Specific Objections and Response." In this section, you will address each individual interrogatory in turn, raising any objections and, to the extent appropriate, provide your answer. Some local rules require the answering party to set forth each question before answering or objecting to it in the document containing its responses.

Specific objections

- **Scope**. Generally, any relevant matter is discoverable unless it is privileged. The party opposing discovery has the burden of showing that interrogatories are overly burdensome or that the requested discovery is not relevant.
- **Timing**. Objections must be served with the answers. Failure to raise an objection may waive it.
- **Grounds**. There are a wide range of grounds for specific objections. Some of the possible objections are:
  - Irrelevant information
  - Information not reasonably calculated to lead to the discovery of admissible evidence
  - Privileged information
  - Facts known and opinions held by nonwitness experts (consulting experts)
  - Trade secrets
  - Legal conclusions or questions of pure law
  - Seeking information that is unreasonably cumulative or duplicative or obtainable from some other source that is more convenient, less burdensome, or expensive
  - Unduly burdensome (given their likely benefit, considering the needs of the case, amount in controversy, parties' resources, and the importance of the issues at stake)
  - Overbroad, overly general, or all-inclusive
  - So vague or ambiguous as to be burdensome or oppressive
  - Argumentative or speculative
  - In excess of the number permitted by statute
  - Cumulative or answered in previous discovery
  - Fifth Amendment protection

Responses

- **Duties**. The responding party has a duty to answer any part of an interrogatory that is not objectionable. Under certain circumstances a party may respond by producing business records. Failure to respond may result in sanctions and a court order to respond. Because of this duty, the answering party may elect to seek a protective order governing their responses.
- **Answer in full**. The responding party must answer each interrogatory separately, fully, and in writing. Answers must be responsive, complete, and not evasive.
  - The responding party has a duty to furnish all of the information available to it at the time of the answer. If only partial information is available, the answering party should respond with the information that it has available, indicate that it is still gathering responsive information, and supplement the response in a timely manner with the additional and complete information.
  - A party has an affirmative duty to furnish all the information available to it, but not a duty to search out new information in response to the interrogatories. But the distinction is unclear. Generally, the party answers in part and makes an objection on the ground that gathering additional information would constitute an undue burden or excessive expense.

- **Lack of knowledge may excuse answering interrogatory**. If, after a good faith search, the answering party is not able to reply because it lacks information or knowledge, the party must state under oath that it is unable to provide the information sought and disclose the specific steps it took in an effort to obtain the information.
  - Producing business records in lieu of answer. Business records may be used when the answer may be derived from them and the burden of finding the answer is substantially the same for both parties. The purpose of this provision is to place the burden of research on the party seeking the information
  - This is limited to business records only, meaning the type from which raw data and facts can be discovered. The records must be identified with sufficient detail for the propounding party to locate and identify the records. The rule does not, however, require a party to compile the information or identify responsive material by Bates number when it would be equally as burdensome for the propounding party to do so.
  - Where an answer is readily available in a more convenient form, this procedure should not be used.
  - The propounding party has the right to challenge such a response. If the court intervenes in such a dispute, it may make factual findings on the issues, including cost of research, nature of the records, and the familiarity of the responding party with the records.
- **Corporations**. When interrogatories are directed at a corporation, the corporation must furnish whatever information is available to it through the personal knowledge of anyone in the corporation through reasonable efforts. "Reasonable efforts" include gathering information from employees and subsidiaries. There is an exception for personal information acquired by a corporate officer outside the scope of official duties.

Signature and Verification

The third part of any interrogatory response is the attorney's signature and the party's verification. Typically, the verification is attached as a separate page to the response while the attorney's signature block appears on the last page, as it would in a pleading.

- **Verification**. Federal rules require that responses to interrogatories be verified by the answering party under oath. A verification asserts that the information provided is true and correct. Failure to include a verification may be grounds for sanctions. The circuits are split as to whether the attorney may sign the verification on behalf of his or her client. As of this writing, the Fourth and Tenth Circuits have affirmatively asserted that an attorney may not verify answers as a substitute for the party's signature.
  - In the case of an organization or corporate party, the interrogatories must be signed by an officer or agent of the business.
  - The corporate client may designate an attorney for the business (the general counsel for example) to answer and sign for the verification.
  - The officer or agent of the corporation may sign on information and belief, disclaiming personal knowledge of the facts stated in the answers but acknowledging that the persons who provided the facts stated that they were true.
- **Attorney's signature**. As with any pleading, the responding party's attorney must sign the response. In doing so, the attorney is vouching for the objections asserted therein. However, as discussed above, the attorney is not making an assertion about the accuracy of the responses.

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