

IV.C | OTHER INTERROGATORY ISSUES

1 - Form Interrogatories. There are certain kinds of cases which lend themselves to interrogatories which may be markedly similar from case to case, for example, employment discrimination and maritime cargo damage suits or diversity actions in which form interrogatories have been approved by state law. Aside from such cases, the use of "form" interrogatories is ordinarily inappropriate. Carefully review interrogatories to ensure that they are tailored to the individual case; "boilerplate" is to be avoided.

2 - Contention Interrogatories. Interrogatories that generally require the responding party to state the basis of particular claims, defenses, or contentions in pleadings or other documents should be used sparingly and, if used, should be designed (1) to target claims, defenses, or contentions that the propounding attorney reasonably suspects may be the proper subject of early dismissal or resolution or (2) to identify and narrow the scope of unclear claims, defenses, and contentions. Interrogatories that purport to require a detailed narrative of the opposing parties' case are generally improper because they are overbroad and oppressive.

3 - Reference to Deposition or Document. Because a party is entitled to discovery both by deposition and interrogatory, it is ordinarily insufficient to answer an interrogatory by reference to an extrinsic matter, such as "see deposition of James Smith" or "see insurance claim." For example, a corporation may be required to state its official, corporate response even though one of its high-ranking officers has been deposed, because the testimony of an officer may not necessarily represent a complete or express corporate answer. Similarly, a reference to a single document is not necessarily a full answer, and the information in the document -- unlike the interrogatory answer -- is not ordinarily set forth under oath.

In rare circumstances, it may be appropriate for a corporation or partnership to answer a complex interrogatory by saying something such as "Acme Roofing Company adopts as its answer to this interrogatory the deposition testimony of James Smith, its Secretary, on pages 127-145 of his deposition transcript." This may suffice when an individual has already fully answered an interrogatory in the course of a previous deposition and the party agrees to be bound by this testimony. However, counsel are reminded, as provided in Rule 37(a)(3), Federal Rules of Civil Procedure, that for purposes of discovery sanctions, "an evasive or incomplete answer is to be treated as a failure to answer."

4 - Interrogatories Should Be Reasonably Particularized. Interrogatories designed to force an exhaustive or oppressive catalogue of information are generally improper. For example, an interrogatory such as "identify each and every document upon which you rely in support of your claim in Count Two" is objectionably overbroad in a typical case, although it may be appropriate in, for example, a simple suit on a note. While there is no simple and reliable test, common sense and good faith usually suggest whether such an interrogatory is proper.

5 - Rule 33(d). Rule 33(d), Federal Rules of Civil Procedure, allows a party in very limited circumstances to produce business records in lieu of answering interrogatories. Please refer to Section III A 10 for a detailed discussion of this option.

6 - Answering Objectionable Interrogatories. If any interrogatory is objectionable because of overbreadth, the responding party, although objecting, must answer the interrogatory to the extent that the interrogatory is not overbroad. In other words, an objection for overbreadth does not relieve the duty to respond to an extent that is not overbroad, while a party awaits a judicial determination regarding the objection.