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# Drafting NY Civil-Litigation Documents: Part 11—Interrogatories

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## POINT OF VIEW

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## Drafting New York Civil-Litigation Documents: Part XI — Interrogatories

In the last issue, the *Legal Writer* discussed the bill of particulars. The focus in this issue is on interrogatories.

Similar to bills of particulars, interrogatories elicit detailed information about a case.<sup>1</sup> Interrogatories are different from bills of particulars. Interrogatories are a disclosure device. Unlike bills of particulars, interrogatories aren't part of the pleadings; they don't bind the party to the claims the party is seeking.<sup>2</sup> Also, interrogatories, unlike bills of particulars, can seek facts and evidence on the issues that the proponent and the responding party have the burden of proving at trial.<sup>3</sup> Bills of particulars are meant to amplify the pleadings, limit the issues in a case, and prevent surprise. Interrogatories are meant to elicit evidence for trial.<sup>4</sup>

Interrogatories are written questions that one party draws up and serves on another party.<sup>5</sup> You may probe any relevant, unprivileged subject in your interrogatories.<sup>6</sup> The other party — the responding party — responds to, or answers, the interrogatories under oath and sends the responses to the proponent, the inquiring party.

In federal court, practitioners use interrogatories. Bills of particulars don't exist under the federal rules. In federal court, interrogatories are available to all parties in all actions.<sup>7</sup> Unless the parties stipulate to more interrogatories or a court permits that to happen, each party is limited to 25 interrogatories in federal court.<sup>8</sup> So much for federal court. This article will focus on interrogatories in New York state courts.

Lawyers must often choose between bills of particulars and interrogatories. A party may not serve a demand for a bill of particulars and interrogatories on the same party.<sup>9</sup> But you may serve a demand for a bill of particulars on one party and use interrogatories against another party, as long as you don't send both devices to the same party. *Exception:* In a matrimonial action, a party is permitted to demand a bill of particulars and interrogatories on parties and nonparties.<sup>10</sup>

Interrogatories are similar to examinations before trial (EBTs) because interrogatories are a question-and-answer device to gather evidence. But interrogatories are faster, easier, and cheaper than EBTs. You may send interrogatories by mail or electronically; EBTs require you to set up a meeting at a designated time and place. EBTs require you to get a transcription reporter and pay for transcription, witness, and travel fees. Interrogatories give you the opportunity to craft questions or responses carefully. EBTs, however, are "fluid"; they're "a spontaneous inquiry" in which you may follow up and probe a witness for additional information.<sup>11</sup> EBTs might require you to spend hours, perhaps days, to prepare and then depose someone.

Lawyers must sometimes choose between interrogatories and EBTs. In negligence cases, a party may not serve interrogatories and depose the same party without leave of court.<sup>12</sup> Practitioners in negligence cases serve a demand for a bill of particulars and then depose the individual party.<sup>13</sup> This rule is party specific. Thus, in a

negligence case, party A may serve interrogatories on party B and seek to depose party C.

Lawyers must also decide when to request documents, depose a party, and serve interrogatories. What strategy to use and when depends on your case.

Minimize the responding party's opportunity to object to your interrogatory or to answer with a generality.

### Guidelines

- The rules for serving and answering interrogatories are in CPLR 3130 through 3133. You may serve interrogatories any time after the action commences. The responding party must respond within 20 days.

- A defendant may serve interrogatories on the plaintiff immediately after the plaintiff has served the complaint. The plaintiff, however, must wait until the defendant's time to serve its "responsive pleading [the answer] has expired" before serving interrogatories on the defendant.<sup>14</sup>

- Interrogatories are prohibited in juvenile-delinquency cases.<sup>15</sup>

- Only parties may propound interrogatories.<sup>16</sup> You may not serve interrogatories on non-parties.<sup>17</sup> Parties need not be adverse to serve

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or be served with interrogatories:<sup>18</sup> co-defendants may serve interrogatories on each other, and plaintiffs and third-party defendants may serve interrogatories on each other.

- Respond to all interrogatories. If you object to an interrogatory, state “with reasonable particularity” the reasons for objecting to it.<sup>19</sup>

- If the interrogatory seeks excessive or irrelevant information, you may also move for a protective order to strike the interrogatory in its entirety.<sup>20</sup>

- If you’ve failed to respond to interrogatories, the inquiring party may move under CPLR 3124 to compel your response.

- Move under CPLR 3103 to cure any abuses in interrogatories. If the interrogatories are burdensome, oppressive, or improper, a court might vacate them all rather than cull the proper ones from the improper ones.<sup>21</sup>

## Use interrogatories to learn the identity of each person who has information about the case.

- Make a good-faith effort to resolve the interrogatory dispute with your adversary before you ask a court to intervene.

- Regardless which party initiated the interrogatories or for whom the interrogatories were meant, serve all parties with copies of interrogatories and the responses to the interrogatories.<sup>22</sup>

- Responses to interrogatories “must be under oath.”<sup>23</sup> If a party is a business entity, an employee or agent who has knowledge or information must answer the interrogatories.

- Unlimited are the number of interrogatories you may seek. Legislative efforts to set an arbitrary limit on the number of interrogatories you may seek have been unsuccessful.<sup>24</sup> A court may, however, limit the number to protect the responding party from “undue annoyance, expense, or oppression.”<sup>25</sup>

### Format of Interrogatories

- Put a caption on the first page of your interrogatories.

- Give the document a title: Identify whether it is your first set or a subsequent set of interrogatories. *Examples:* “Defendant XYZ’s First Set of Interrogatories of Plaintiff ABC”; “Defendant XYZ’s Second Set of Interrogatories of Plaintiff ABC.”

- Number your interrogatories. *Example:*

Interrogatory No. 1

[Insert your interrogatory]

Interrogatory No. 2

[Insert your interrogatory]

Interrogatory No. 3

[Insert your interrogatory]

- If your interrogatories have subparts, use letters in alphabetical order to designate the subparts. General format:

Interrogatory No. 4

[Insert your interrogatory];

(a) [Insert the subpart to your interrogatory]; and

(b) [Insert the subpart to your interrogatory].

(See Interrogatory No. 5, below, for a complete example.)

- You may include a brief introductory statement that identifies the party initiating the interrogatories, the party’s attorney, to whom the interrogatories are directed, the relevant CPLR provisions, and the time period within which the responding party must respond. An introductory statement isn’t required under the CPLR. *Example:*

Defendant Abe Frank requests that plaintiff James Doe respond in writing and under oath, within 20 days, in accordance with CPLR 3130, the following interrogatories.

- Although the CPLR doesn’t require you to do so, you might also want to include a “definitions” sec-

tion to define the words, phrases, and terms you’ll be using throughout the interrogatories.

*Examples:*

*Definitions*

The “contract” means the document plaintiff ABC and defendant XYZ executed on January 1, 2009. A copy is attached as Exhibit A to the complaint in this action.

“Documents” means memorialized information regardless of its medium. This includes writings (such as letters, reports, graphs, posters and transparencies, bills, forms, contracts, and memoranda); photographs; motion pictures; audio and visual recordings; and electronic information (such as word-processing files, emails, spreadsheets, computer databases, and computer-aided-design (CAD) files).

“Identify a person” means to provide the person’s name, address, telephone number, employer, and job title or description.<sup>26</sup>

Don’t define a commonly understood word just because you’ve included it in your interrogatories.

- You might want to include, although it’s not required, an “instructions” section. In this section you can specify the time period for your interrogatories. If you don’t specify the time period, the responding party might object to your vague and unduly burdensome interrogatories. Or the responding party might answer the interrogatories using the time period it believes is relevant. *Example:*

Instructions

Unless otherwise specified, the interrogatories refer to the period between January 1, 2009 and December 31, 2010. All references to documents, and all requests to produce these documents, are limited to this time period.<sup>27</sup>

- Because the responding party might object to an interrogatory on the basis of a privilege, include in your “instructions” section the things the

responding party should provide if asserting a privilege. *Example:*

#### Instructions: Privileges

If you're asserting a privilege in response to one or more interrogatories, specify the privilege and the basis for each privilege.

If the privilege pertains to a document, (1) identify the document's author or preparer; (2) identify each person who received the document; (3) specify the document's date; and (4) describe the document's subject.

If the privilege pertains to information revealed in a conversation, (1) identify each participant to the conversation; (2) provide the date of the conversation; (3) identify each person who revealed the information; (4) identify the persons, either before, during, or after the conversation, who were privy to the information; and (5) describe the information's subject.<sup>28</sup>

- Sign the interrogatories. Either the pro se party or the party's attorney signs them. Attorneys who sign the interrogatories must provide their names, addresses, and telephone numbers.<sup>29</sup>

## Writing Interrogatories

- Use clear, straightforward language.

- Phrase each interrogatory precisely and meticulously. Avoid ambiguities. Minimize the responding party's opportunity to object to your interrogatory or to answer with a generality.

- Don't engage the responding party in a lengthy narrative.<sup>30</sup> Save narratives for EBTs. Don't write an interrogatory like this:

#### Interrogatory No. 1

Describe the sequence of events that you allege resulted in your injuries.<sup>31</sup>

- Break an issue down into parts. Make each part a separate interrogatory. *Example:*

#### Interrogatory No. 2

Identify who attended the meeting of July 1, 2009, on behalf of employer TLC Corp.

#### Interrogatory No. 3

Describe what representations were made about Joanne Doe's employment performance and skills.

#### Interrogatory No. 4

Describe in what manner Joanne Doe's employment performance changed after the meeting of July 1, 2009.

Or break an issue down into subparts.

*Example:*

#### Interrogatory No. 5

Have you conversed with co-defendant Tom Hail about the contract? If so, specify<sup>32</sup>

- (a) the date of the conversation;
- (b) the place (if face-to-face);
- (c) each person who was present; and
- (d) what was discussed during the conversation.

- Frame your interrogatory to get a "yes" or "no" response. Ask a follow-up question to clarify. *Example:*

#### Interrogatory No. 6

Do you contend that the jacuzzi you purchased from Supplier-of-Jacuzzis, Inc., was substantially defective?<sup>33</sup>

#### Interrogatory No. 7

If your answer to Interrogatory No. 6 is affirmative, describe how the jacuzzi was defective.

- If a specific statement, oral or written, is in question, quote the exact language. Don't write an interrogatory like this:

#### Interrogatory No. 8

Do you agree with Bill Jones's statement contained in Exhibit A?<sup>34</sup>

Don't generalize or paraphrase. Otherwise, you're inviting the responding party to object to the interrogatory.

- Don't ask for legal opinions in your interrogatories. Don't write an interrogatory like this:

#### Interrogatory No. 9

Do you contend that Jar Corp. is strictly liable for Joe Victim's injuries?<sup>35</sup>

- Use interrogatories to learn the identity of each person who has information about the case. Ask the responding party to identify these persons. *Example:*

#### Interrogatory No. 10

- (a) Identify each person you know or believe has knowledge or information about plaintiff's efforts to mitigate its damages.

- (b) For each person you identify, describe the knowledge or information the person has.<sup>36</sup>

- Use interrogatories to identify the persons who contributed information to respond to the interrogatories.

#### Interrogatory No. 11

Identify the individuals who provided information or drafted responses, or both, to plaintiff's interrogatories.<sup>37</sup>

- Use interrogatories to obtain background facts about the responding party, such as education, employment, and medical history. *Example:*

#### Interrogatory No. 12

List your employers for the last 10 years before the accident. Provide the dates of your employment, the name of your immediate supervisor, and the reason you are no longer working for that employer.<sup>38</sup>

#### Interrogatory No. 13

List every health-care provider, physical and mental, you consulted or visited in the 10 years before the accident. State the location, telephone number, reason for consultation or visit, and date of consultation or visit.<sup>39</sup>

- Use interrogatories to find out whether the responding party, or the responding party's witnesses, has a criminal conviction. Then impeach a party's or witness's credibility at trial with evidence that the party or witness was convicted of a crime. In your interrogatories, ask the responding party to name the crime, specify the Penal Law section, the court (including the county), the conviction date, and the sentence imposed.

- Use interrogatories to find out information about the responding party's claims or defenses. As explained

earlier, you may not serve demands for bills of particulars and interrogatories on the same party. Thus, if you choose to use the interrogatory instead of the bill of particulars, here's how you might want to elicit information about a claim:

Interrogatory No. 14

State in detail each fact on which you base the allegation in paragraph 10 of the complaint that you suffered damages from the jacuzzi you purchased from Supplier-of-Jacuzzis, Inc.

Here's how you might want to elicit information about a defense:

Interrogatory No. 15

Describe in detail how plaintiff

the responding party's damage claims.

*Example:*

Interrogatory No. 17

Describe each injury for which you seek damages in this action.<sup>43</sup>

Interrogatory No. 18

(a) For each injury you described in your response to Interrogatory No. 17,

(b) Produce a copy of each document that substantiates, in whole or in part, each injury; and

(c) Produce a copy of each document that substantiates, in whole or in part, the damages you seek.<sup>44</sup>

• Use "contention" interrogatories to get the responding party to reveal the legal and factual theories of its

plaintiff relies to support its contention in paragraph 5 of the complaint that the "malfunctioning" of plaintiff's jacuzzi was due to Supplier-of-Jacuzzis Inc.'s negligence.

Interrogatory No. 21

For each person you identified in your response to Interrogatory No. 20,

(1) Identify the person's complete name;

(2) Identify the person's last known address; and

(3) Identify the person's telephone number.

• Use "change-of-heart" interrogatories after you've completed an EBT.<sup>47</sup> After an EBT, the responding party might abandon some of its claims or defenses. Clarify that information in your interrogatories.

*Example:*

Interrogatory No. 22

In light of your examination before trial testimony, do you still contend that John Johnson was not acting as your agent when he signed the agreement?<sup>48</sup>

• Use interrogatories to obtain the damages the responding party seeks.

Interrogatory No. 23

State the amount of recovery you seek for each element of damages sought.<sup>49</sup>

• Use "should-have-done" interrogatories to determine what the responding party believes your client should have done to avoid the circumstances that form the basis of the lawsuit.<sup>50</sup> In a slip-and-fall case, for example, you might want to use the following interrogatory:

Interrogatory No. 24

You alleged in the complaint that defendant failed to take the steps that a reasonably prudent homeowner would have taken to avoid black ice forming on the sidewalk. State every step that you claim a reasonably prudent homeowner would have taken to avoid black ice forming on the sidewalk.<sup>51</sup>

In the next issue, the *Legal Writer* will continue with interrogatories

**Don't generalize or paraphrase.  
Otherwise, you're inviting the responding  
party to object to the interrogatory.**

failed to mitigate its damages, as alleged in paragraph 21 of your answer.

• Use interrogatories to find out about any insurance policy.<sup>40</sup>

• Use interrogatories to obtain such information as the identity of witnesses and documents. Based on the information you obtain, you may later seek EBTs or request additional documents. Use interrogatories to create a strategy for your EBTs. In your interrogatories, seek the names of your opposition's potential witnesses, including any expert, to determine what information these witnesses know.<sup>41</sup> *Example:*

Interrogatory No. 16

Identify the individuals at Rock Corp. who negotiated the contract and provide their job titles and duties and their role in the negotiation process.<sup>42</sup>

• Use interrogatories to obtain complex factual information. The responding party must often assemble complex information from multiple sources. Under CPLR 3131, you may seek in your interrogatories copies of papers, documents, or photographs. Use interrogatories to find out about

case, if the responding party hasn't sufficiently explained the theories or defenses in the pleadings.<sup>45</sup> *Example:*

Interrogatory No. 19

State whether plaintiff contends that the "malfunctioning" of its jacuzzi, referred to in paragraph 5 of the complaint, was caused in whole or in part by (a) Supplier-of-Jacuzzis Inc.'s negligence; (2) a defect in the manufacture, construction, or design of equipment that Supplier-of-Jacuzzis Inc. supplied; and (3) Supplier-of-Jacuzzis Inc.'s act or failure to act.<sup>46</sup>

• After your contention interrogatories, follow up with interrogatories that ask the responding party for the factual bases for its contentions. Have it state the facts, and the name, the last known address, and the telephone number of each person who has knowledge of these facts, and have the responding party describe the document that supports any contention it made. *Example:*

Interrogatory No. 20

State fully all facts, communications, and documents on which

and discuss how to respond to interrogatories. ■

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1. Kristy L. Fischmann, *Bills of Particulars & Interrogatories*, N.Y. St. B. Ass'n 107, 127 (Cont'g Legal Educ. Prog., May 25, 2011).
2. *Id.* at 127.
3. Michael P. Graff, *The Art of Pleading — New York State Courts*, N.Y. City Bar Ctr. for CLE 1, 32 (Dec. 8, 2008).
4. Fischmann, *supra* note 1, at 114.
5. *Id.* at 127; CPLR 3132; David D. Siegel, *New York Practice* § 361, at 590 (4th ed. 2005).
6. CPLR 3130(1); Siegel, *supra* note 5, at § 361, at 590.
7. Fischmann, *supra* note 1, at 130 (citing Fed. R. Civ. P. 33(a)).
8. *Id.* at 130 (citing Fed. R. Civ. P. 33(a)(1)).
9. Graff, *supra* note 3, at 33; CPLR 3130(1).
10. Siegel, *supra* note 5, at § 361, at 590.
11. Fischman, *supra* note 1, at 127.
12. Graff, *supra* note 3, at 33; Siegel, *supra* note 5, at § 361, at 591; Fischman, *supra* note 1, at 129. Fischman notes that if the action isn't predicated solely on a negligence theory, the restriction in CPLR 3130 wouldn't apply. The restriction wouldn't apply, therefore, if the case were based on negligence and on another legal theory, such as strict liability, breach of warranty, or breach of contract.
13. Graff, *supra* note 3, at 33.
14. CPLR 3132.

15. 1 Michael Barr, Myriam J. Altman, Burton N. Lipshie & Sharon S. Gerstman, *New York Civil Practice Before Trial* at § 29:100, at 29-16 (2006; Dec. 2009 Supp.) (citing *In re Wilfredo G.*, 154 Misc. 2d 979, 981, 586 N.Y.S.2d 725, 726 (Fam. Ct. Westchester County 1992) ("[T]his court determines that pursuant to section 165 and part 3 of article 3 of the Family Court Act ('Discovery'), interrogatories cannot be utilized in a juvenile delinquency proceeding.")).
16. CPLR 3130(1).
17. CPLR 3132.
18. Barr et al., *supra* note 15, at § 29:85, at 29-15.
19. CPLR 3133(a).
20. Siegel, *supra* note 5, at § 361, at 592 (citing *Hanover Ins. Co. v. Lama*, 164 Misc. 2d 843, 844-45, 629 N.Y.S.2d 945, 946 (App. Term 9th & 10th Jud. Dists. 1995)).
21. *Id.* at § 361, at 592 (citing *Barouh Eaton Allen Corp. v. I.B.M. Corp.*, 76 A.D.2d 873, 874, 429 N.Y.S.2d 33, 35 (2d Dep't 1980)).
22. CPLR 3132.
23. Siegel, *supra* note 5, at § 361, at 593.
24. *Id.* at § 361, at 593.
25. Barr et al., *supra* note 15, at § 29:86, at 29-15.
26. Adapted from *id.* at § 29:171, at 29-22, 29-23.
27. Adapted from *id.* at § 29:173, at 29-23.
28. Adapted from *id.* at § 29:174, at 29-24.

29. *Id.* at § 29:164, at 29-22.
30. *Id.* at § 29:193, at 29-24.
31. Adapted from *id.* at § 29:193, at 29-25.
32. Adapted from *id.* at § 29:186, at 29-25.
33. Adapted from *id.* at § 29:185, at 29-25.
34. Adapted from *id.* at § 29:187, at 29-25.
35. Adapted from *id.* at § 29:188, at 29-26.
36. Adapted from *id.* at § 29:203, at 29-27.
37. Adapted from *id.* at § 29:204, at 29-24.
38. Adapted from *id.* at § 29:211, at 29-28.
39. *Id.*
40. CPLR 3101(f).
41. Barr et al., *supra* note 15, at § 29:141, at 29-20.
42. Adapted from *id.* at § 29:141, at 29-20.
43. Adapted from *id.* at § 29:142, at 29-20.
44. Adapted from *id.* at § 29:142, at 29-20.
45. *Id.* at § 29:150, at 29-20.1.
46. Adapted from *id.* at § 29:150, at 29-20.1.
47. *Id.* at § 29:151, at 29-21.
48. Adapted from *id.* at § 29:151, at 29-21.
49. Adapted from *id.* at § 29:153, at 29-21.
50. *Id.* at § 29:154, at 29-21.
51. Adapted from *id.* at § 29:184, at 29-25.