Alabama Rules of Civil Procedure

V. DEPOSITIONS AND DISCOVERY

Rule 33.

Interrogatories to parties.

(a) *Availability; Procedures for Use.* Any party may serve upon any other party written interrogatories in accordance with subdivision (d) of this rule to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

A party shall not propound more than forty (40) interrogatories to any other party without leave of court. Upon motion, and for good cause shown, the court may increase the number of interrogatories that a party may serve upon another party. For purposes of this rule, (1) any subpart or separable question (whether or not separately numbered, lettered, or paragraphed) propounded under an interrogatory shall be considered a separate interrogatory, and (2) the word "party" includes all parties represented by the same lawyer or firm. When the number of interrogatories exceeds forty (40) without leave of court, the party upon whom the interrogatories have been served need only answer or object to the first forty (40) interrogatories.

Each interrogatory shall be answered separately and fully in writing under oath in accordance with subdivision (d) of this rule, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the interrogatories, except that the defendant may serve answers or objections within forty-five (45) days after service of the summons and the complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory. If that party so moves, the motion must set forth the complete text of an interrogatory to which objection is made and the complete text of the objection.

(b) *Scope; use at trial.* Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(c) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(d) *Form of interrogatories and answers*. A party propounding interrogatories shall provide sufficient space for a response to each interrogatory. The party responding to interrogatories may either (1) make answers on the spaces provided or (2) retype or otherwise reproduce each interrogatory and state the answer after each interrogatory, or (3) disregard the space provided and prepare answers separately from the interrogatories. If the responding party elects to answer on the space provided and the space is inadequate, additional pages may be used with a reference in the space to the additional pages.

(dc) *District court rule.* Rule 33 applies in the district courts in those instances where interrogatories are permitted by Rule 26(dc).

[Amended 12-17-84; Amended 6-12-90, eff. 10-1-90; Amended eff. 8-1-92; Amended eff. 10-1-95; Amended 11-4-2009, eff. 2-1-2010.]

Committee Comments on 1973 Adoption

There is no provision corresponding to Rule 33 in Tit. 7, § 474(1)-(18), Code of Ala. And the procedures of Rule 33 are both simpler and broader than the previous statutory authorization, which they supersede, for interrogatories to an adverse party. Code of Ala., Tit. 7, §§ 477-486. Note also that interrogatories are available against any other party, not simply an adverse party.

The rule specifically provides that the scope of interrogatories is the same as that for discovery generally, as set out in Rule 26(b). Thus interrogatories may be used for purposes of discovery, and are not limited to obtaining material testimony in the cause, as required by the former statute. Code of Ala., Tit. 7, § 477.

Since interrogatories under this rule may be used for discovery, it no longer follows that they are admissible as evidence in the cause, as they would have been under the former statute. Code of Ala., Tit. 7, § 481. Instead the use of interrogatories is limited by Rule 32(a), as well as by the ordinary rules of evidence. Interrogatories may be served with plaintiff's complaint, or served shortly thereafter, in either event the defendant does not have to answer or object any sooner than 45 days from service of the summons and complaint. Generally, responses or objections are due in 30 days.

It has frequently been held that both good faith and the spirit of the rule require the party answering interrogatories to see to it that his answers are truthful as of the time of the trial as well as of the time when the interrogatories are answered. Thus where a party acquires information after he has answered an interrogatory which would change his answer, there is an obligation upon him to apprise the party who submitted the interrogatory of this additional information. *McNally v. Yellow Cab Co.,* 16 F.R.D. 460 (E.D.Pa.1954); *Smith v. Acadia Overseas Freighters, Ltd.*, 120 F.Supp. 192 (E.D.Pa.1953); *Chenault v. Nebraska Farm Products, Inc.*, 9 F.R.D. 529 (D.Neb.1949); *RCA Mfg. Co. v. Decca Records*, 1 F.R.D. 433 (S.D.N.Y.1940); *White Tower Management Corp. v. Erie Main Corp.*, 28 N.J.Super. 425, 100 A.2d 775 (1954); cf. *Novick v. Pennsylvania R. Co.,* 18 F.R.D. 296 (W.D.Pa.1955). This view is codified in Rule 26(e), Supplementation of Responses.

Should an objection be interposed, the party seeking discovery must move under Rule 37(a) for an order compelling answers. Absent such motion, the answering party is not bound to take further action.

Rule 37(a) is also the appropriate vehicle for challenge of incomplete or evasive answers.

Rule 33(b), like its federal counterpart, permits discovery as to opinions or contentions that relate to the application of law to fact.

Rule 33(c) permits a party to make the underlying documentation available in lieu of preparation of a response based upon review and evaluation of the documents when burden of preparing the answer is substantially the same on both sides.

Under former federal rules, interrogatories seeking attachment of documents to the answers were objectionable on the ground that such practice called for production of documents without the then required showing of good cause. Since the good cause requirement for production no longer exists, an interrogatory seeking attachment of documents is not objectionable except to the extent that the requested documents themselves may fall beyond the ambit of "scope of discovery" as defined in Rule 26(b).

The practice of serving "canned interrogatories" is expressly condemned in that in the majority of instances, these interrogatories do not specifically relate to the transaction made the basis of the action in which they are used. Rule 26(c) is available to protect the party from annoyance, oppression and undue burden or expense. Further, the practitioner's attention is directed to the provisions of Rule 11 wherein his signature to a pleading, motion or other paper constitutes his certificate that good ground exists for the pleading, motion, or other paper. In the majority of instances, few, if any, good grounds for canned interrogatories can be demonstrated. Of course, under Rule 11, if the signature is affixed with the intent to defeat the purposes of Rule 11, the court may strike the pleading as sham and false.

Committee Comments to Amendment
Effective December 17, 1984

The December 17, 1984, amendment added the language "in accordance with subdivision (d) of this rule" in subdivision (a) and added subdivision (d). If interrogatories are the subject of separate responses, the questions will be found in one portion of the file and the answers at a later portion. The change in the form of interrogatories effected by the amendment was made to encourage the elimination of the tedious process of referring back and forth in a court file. This amendment, which requires that the party serving the interrogatories leave spaces adequate for answer, should facilitate the use of interrogatories at trial and will also be an aid to the court in ruling on objections to interrogatories if the

responding party elects to respond in the space provided or elects to reproduce the interrogatories and respond after each duplicated interrogatory.

Note that the rule does not require that a responding party make his answers on spaces made available by the propounding party. In addition to the option of reproducing the interrogatories and creating his own spaces for a response, the responding party retains the option of serving answers in the format that was utilized under prior practice where no spaces were provided with the interrogatories.

The rule provides, in the event that the space provided for an answer is inadequate, that additional response can be placed on a separate page with a reference in the space provided to the separate page where the answer is continued. When available space has been used and additional pages are necessary, it is satisfactory to produce the page upon which the overflow occurs, strike through interrogatories not yet answered, and follow the page with insertion of the additional pages necessary for completion of the answer. Thereafter, responses upon the space made available can resume on another reproduction of the same page with previously answered interrogatories having been struck through.

The party propounding the interrogatory will continue to have the obligation to file the original with the court and serve copies on parties pursuant to Rule 5(d). The party responding to the interrogatory will likewise have the obligation to file the original with the court and serve all other parties pursuant to Rule 5(d).

Committee Comments to Amendment to Rule 33(a)
Effective October 1, 1990

At the time of the adoption of these rules, the concern for abuse by the propounding of “canned” interrogatories was considered by the advisory committee. At that time, the appropriate solution for abuse, if perceived, was thought to be reliance upon the filing of motions under Rules 11 and 26(c) by the party from whom discovery was sought, who would have the burden of showing the need for relief. In the years since the effective date of these rules, the extent of misuse (by both sides) of voluminous “canned” interrogatories has grown. The problem has become so pervasive that (1) the number of interrogatories should be limited, and (2) the burden of seeking relief with respect to the number of interrogatories should be shifted to the discovering party, from the responding party.

Under the revision (largely drawn from a 1989 amendment to the Ohio Rules of Civil Procedure), only 40 interrogatories may be propounded by a party, but the court has authority to extend the number of interrogatories for good cause shown. It is contemplated that the trial court will exercise this discretion to allow litigants in complex cases to propound additional interrogatories. There may also be occasions, even in less complex cases, when the financial status of a litigant restricts the realistic availability of depositions as a means of discovery. In those instances, the trial court should also reasonably extend the number of allowed interrogatories. It is anticipated that the trial court, when exercising its discretion under Rule 33(a) to expand the number allowable, will do so moderately, only to an extent that will not become burdensome.

The principal differences from the Ohio version are that (1) a subquestion need not be separately paragraphed, numbered or lettered to be an “interrogatory” counted as such, and (2) everybody represented by the same law firm counts as a single “party” for purposes of the 40 questions.

Committee Comments to August 1, 1992,
Amendment to Rule 33(a)

That portion of the third paragraph dealing with the content of a motion under Rule 37(a) was added in order to permit the trial court to rule on the motion in question without having to search out separate documents, such as the interrogatories or the responses thereto, in remote parts of the file. Often, these documents will not even be on file in the clerk’s office, because many courts have dispensed with the need for the filing of certain discovery materials.

Committee Comments to October 1, 1995,
Amendment to Rule 33

Subdivision (c). This amendment incorporates an amendment to F.R.Civ.P. 33(c) that was added as a last sentence to that rule in 1980. It makes it clear that the responding party who tenders business records has an obligation to give detailed information concerning those records and their location.

Committee Comments to Amendment to
Rule 33(c) Effective February 1, 2010

See the Committee Comments to Amendment to Rule 26 Effective February 1, 2010, for general information concerning the comprehensive changes to Rules 16, 26, 33(c), 34, 37, and 45, which govern discovery of electronically stored information ("ESI").

The addition of the language "including electronically stored information" to subdivision (c) is intended to accommodate the use of ESI, as well as hard copies of business records, in responding to an interrogatory. However, the use of ESI, like the use of hard copies of documents, is qualified: The burden on the interrogating party to obtain the answers to the questions must not be substantially greater than the burden would be on the responding party.

The Federal Rules of Civil Procedure Advisory Committee Notes to Rule 33 are instructive and provide practical guidance:

> "Special difficulties may arise in using electronically stored information, either due to its form or because it is dependent on a particular computer system. Rule 33(d) [Ala. R. Civ. P. 33(c)] allows a responding party to substitute access to documents or electronically stored information for an answer only if the burden of deriving the answer will be substantially the same for either party. Rule 33(d) [Ala. R. Civ. P. 33(c)] states that a party electing to respond to an interrogatory by providing electronically stored information must ensure that the interrogating party can locate and identify it 'as readily as can the party served,' and that the responding party must give the interrogating party a 'reasonable opportunity to examine, audit, or inspect' the information. Depending on the circumstances, satisfying these provisions with regard to electronically stored information may require the responding party to provide some combination of technical support, information on application software, or other assistance. The key question is whether such support enables the interrogating party to derive or ascertain the answer from the electronically stored information as readily as the responding party. A party that wishes to invoke Rule 33(d) [Ala. R. Civ. P. 33(c)] by specifying electronically stored information may be required to provide direct access to its electronic information system, but only if that is necessary to afford the requesting party an adequate opportunity to derive or ascertain the answer to the interrogatory. In that situation, the responding party's need to protect sensitive interests of confidentiality or privacy may mean that it must derive or ascertain and provide the answer itself rather than invoke Rule 33(d) [Ala. R. Civ. P. 33(c)]."

Note from the reporter of decisions: The order amending, effective February 1, 2010, Rule 16, Rule 26, Rule 33(c), Rule 34, Rule 45, and Form 51A, and adopting effective February 1, 2010, Rule 37(g) and the Committee Comments to Amendment to Rule 16 Effective February 1, 2010, the Committee

Comments to Amendment to Rule 26 Effective February 1, 2010, the Committee Comments to Amendment to Rule 33(c) Effective February 1, 2010, the Committee Comments to Amendment to Rule 34 Effective February 1, 2010, the Committee Comments to Adoption of Rule 37(g) Effective February 1, 2010, and the Committee Comments to Amendment to Rule 45 Effective February 1, 2010, is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.