RULE 33. INTERROGATORIES TO PARTIES

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories 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, complaint, and notice regarding Electronic Service upon that party. Unless otherwise ordered by the court, more than one set of interrogatories may be served, but not more than a total of 30 interrogatories may be served by a party on any other party. Each distinct subpart in an interrogatory shall be deemed a separate interrogatory for the purposes of this rule.

Each interrogatory shall be answered separately and fully in writing under oath, 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 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons, complaint, and notice regarding Electronic Service 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. A party in responding to interrogatories shall set forth each interrogatory in full immediately preceding the party's answer or objection thereto.

(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 pretrial 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.

Advisory Note – November 2023

Subdivision (a) of Rule 33 is amended to include references to the notice regarding Electronic Service described in Rule 5(b).

Advisory Committee Note
July 2008

Rule 33 is amended to make clear that "business records" include "electronically stored information," which is intended to have the same broad meaning set forth in Rule 34 (a), which permits discovery of electronically stored information regardless of the medium in which the information is stored or the method by which it is retrieved. The amendment is made with simultaneous amendments to Rules 16, 26, 34 and 37 to provide a procedure for the discovery of electronically stored information. The amendments are taken largely from the 2006 amendments to the Federal Rules of Civil Procedure, whose Advisory Committees Notes and case law may be consulted for guidance.

Advisory Committee's Notes
May 1, 1999

Two amendments are made to Rule 33. The sentence in Rule 33(a) limiting a party to one set of interrogatories in the absence of court order has

been deleted. The amendment inserts new language making clear that a party may serve more than one set of interrogatories on another party but may not serve more than a total of 30 interrogatories. For the purposes of the rule, subparts of interrogatories are deemed to be separate interrogatories. The intent of the rule is to limit the total number of interrogatories served and to encourage simple, direct questions rather than elaborate form questions containing multiple parts. Like the limitation on depositions, the court has flexibility to permit more interrogatories in appropriate cases or to limit the number of interrogatories upon request under Rule 26(g). Thus, a court may well conclude that two defendants jointly representing a single interest may be considered one party for the purposes of the rule.

Advisory Committee's Notes
1981

The original Rule 33 in Maine limited the number of interrogatories to 30. The Advisory Committee believes that this arbitrary limitation has not functioned as originally anticipated. The limitation to 30 questions has not been interpreted consistently. Neither has the limitation served to relieve parties from overly-burdensome discovery. Rather, the courts have been increasingly burdened with motions disputing the actual number of interrogatories involved.

The parties may still object, based on Rule 26, should the situation require. This amendment conforms the Maine rule with the federal rule regarding the number of interrogatories permitted.

Advisory Committee's Note
September 23, 1971

This amendment expressly requires what is already the better practice in responding to interrogatories; namely, to set forth in full each interrogatory immediately preceding the answer or objection made thereto. This has long been the requirement of Local Rule 15(a) of the United States District Court for the District of Maine. *See* Field, McKusick & Wroth, *Maine Civil Practice* § 33.5. A similar amendment is made to Rule 36(a) relating to requests for admission. The juxtaposition of the interrogatory and the answer or objection thereto is helpful not only to opposing counsel and to the court in their subsequent

examination of the discovery papers, but also to the responding counsel himself in drafting and revising his responses to interrogatories.

Advisory Committee's Note
October 1, 1970

The mechanics of the operation of Rule 33 are substantially revised for the purpose of reducing the need of court intervention. Two of the changes made by the federal amendments, namely, the enlargement to 30 days of the period for answers or objections to interrogatories, and the elimination of any requirement for leave of court for serving interrogatories, were anticipated by a December 31, 1967, amendment of M.R.C.P. 33. Now following the lead of the federal amendments as actually promulgated, the following additional improvements are made: (1) A defendant is in no event required to serve answers or objections to interrogatories in less than 45 clays after service of the summons and complaint upon him. (2) If objections to interrogatories are served, the burden is on the interrogating party to move under Rule 37(a) for a court order to compel answers, in the course of which the court will pass on the objections. This works a change in the burden of going forward since existing Rule 33 requires a party serving written objections to serve therewith "a notice of hearing the objections at the earliest practicable time". Changing the burden of going forward will test the seriousness of the interrogating party in propounding the objected-to interrogatories and will in many instances avoid the court hearing which is required as a matter of course under the existing rule. A change in the burden of going forward does not, however, alter the obligation of' an objecting party to justify his objections if the propounding party files a motion.

Rule 33(a) is also amended to permit the service of interrogatories upon *any* other party. The existing restriction to "adverse" parties is eliminated. The highly technical distinctions that have been drawn in the federal cases interpreting the existing rule are thereby avoided. *See* Field, McKusick and Wroth § 33.2.

Maine Rule 33(a) continues to differ from F.R. 33(a) in that the Maine Rule puts a limit upon the use of interrogatories. Except by court order for good cause shown, a party may not serve more than one set of interrogatories upon any other party, nor may the number of interrogatories exceed 30 in number.

Rule 33(b) in its second paragraph resolves a question on which there have been conflicting decisions in the federal courts, namely, whether and to what extent interrogatories are limited to matters "of fact" or may elicit opinions, contentions and legal conclusions. *See* Field, McKusick and Wroth § 26.18. Rule 33(b) declares that an interrogatory is not objectionable merely because it calls for an opinion or contention that relates either to fact or to the application of law to fact. The only type of interrogatories that are objectionable are those that involve issues of "pure law", that is, legal issues unrelated to the facts of the case.

Under certain circumstances Rule 33(c) permits the interrogated party the option of producing voluminous business records, in lieu of answering an interrogatory. Thus, the burden of research and computations may be placed on the party who seeks the information and presumably expects to benefit, therefrom. The option is available only if the burden of deriving or ascertaining the answer from the records is substantially the same for both sides.

Advisory Committee's Note
December 31, 1967

In 1967 substantial revision and rearrangement of the discovery rules (26 through 37) of the Federal Rules of Civil Procedure are under consideration. While the Advisory Committee, believing as it does that maintenance of substantial uniformity with the Federal Rules is a desirable goal, does not intend any thoroughgoing revision of the Maine discovery rules until the current federal proposals are finally acted upon, change at once in certain time periods for interrogatories to parties under Rule 33 seems desirable.

In the first place, both the 10-day period for objecting to interrogatories and the 15-day period for answering are extended to 30 days. Experience has shown that the shorter periods previously prescribed were often inadequate. The short 10-day period for objecting to interrogatories has tended to encourage cautious attorneys routinely to file time-consuming objections.

The lengthening of the period for objecting or answering removes the original reason for not permitting, except with leave of court, the plaintiff to serve interrogatories for 20 days after commencement of the action. Since the defendant will be likely to consult a lawyer in order to answer the complaint

within 20 days after service upon him, it is no burden in the run of cases for him also to answer (or object to) interrogatories within 30 days after service of the complaint. Thus, the amendment removes the previous restriction upon the time when the plaintiff might serve interrogatories.

Reporter's Notes
December 1, 1959

This rule is based upon Federal Rule 33, but the limitation to a single set of interrogatories not more than 30 in number unless the court otherwise orders is not in the federal rule. It is taken from a Massachusetts statute enacted to correct the abuse of burdening an adversary with answering a needlessly large number of questions. I n determining what constitutes an interrogatory for the purpose of applying this limitation in number, it is intended that each question be separately counted, whether or not it is subsidiary or incidental to, or dependent upon, another question, and however the questions may be grouped, combined or arranged. In the unusual case where 30 interrogatories are inadequate, leave for additional interrogatories may be granted by the court.

Interrogatories to parties, provided for by this rule, have been the standard way of getting information about an opponent's case in Massachusetts for over a century. They are quick and inexpensive and to a large extent compensate for the generality of allegation permitted by Rule 8. Unlike pleadings, answers to interrogatories must be made under oath by the interrogated party.

Interrogatories under this rule are a one-sided inquiry. There are no cross interrogatories, as there may be on depositions under Rule 31. Subject to the rules of evidence, the answers may be used at trial by the interrogating party for any purpose, but not by the answering party.

The scope of inquiry is the same as under Rule 26(b). It is not limited to facts admissible in evidence and may be used to get leads to aid the interrogating party's investigation.