

Subdivision (c). This new subdivision, inserted at the location of a subdivision previously abrogated, is included in view of the increased opportunities for video-recording and audio-recording of depositions under revised Rule 30(b). Under this rule a party may offer deposition testimony in any of the forms authorized under Rule 30(b) but, if offering it in a nonstenographic form, must provide the court with a transcript of the portions so offered. On request of any party in a jury trial, deposition testimony offered other than for impeachment purposes is to be presented in a nonstenographic form if available, unless the court directs otherwise. Note that under Rule 26(a)(3)(B) a party expecting to use nonstenographic deposition testimony as substantive evidence is required to provide other parties with a transcript in advance of trial.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subd. (a)(1), (4), are set out in this Appendix.

EFFECTIVE DATE OF AMENDMENT PROPOSED NOVEMBER 20, 1972

Amendment of this rule embraced by the order entered by the Supreme Court of the United States on November 20, 1972, effective on the 180th day beginning after January 2, 1975, see section 3 of Pub. L. 93-595, Jan. 2, 1975, 88 Stat. 1959, set out as a note under section 2074 of this title.

Rule 33. Interrogatories to Parties

(a) AVAILABILITY. Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number including all discrete subparts, 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. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2). Without leave of court or written stipulation, interrogatories may not be served before the time specified in Rule 26(d).

(b) ANSWERS AND OBJECTIONS.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) 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. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) 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.

(c) SCOPE; USE AT TRIAL. Interrogatories may relate to any matters which can be inquired into under Rule 26(b)(1), 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.

(d) OPTION TO PRODUCE BUSINESS RECORDS. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, 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.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Apr. 22, 1993, eff. Dec. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

This rule restates the substance of [former] Equity Rule 58 (Discovery—Interrogatories—Inspection and Production of Documents—Admission of Execution or Genuineness), with modifications to conform to these rules.

NOTES OF ADVISORY COMMITTEE ON RULES—1946 AMENDMENT

The added second sentence in the first paragraph of Rule 33 conforms with a similar change in Rule 26(a) and will avoid litigation as to when the interrogatories may be served. Original Rule 33 does not state the times at which parties may serve written interrogatories upon each other. It has been the accepted view, however, that the times were the same in Rule 33 as those stated in Rule 26(a). *United States v. American Solvents & Chemical Corp. of California* (D.Del. 1939) 30 F.Supp. 107; *Sheldon v. Great Lakes Transit Corp.* (W.D.N.Y. 1942) 5 Fed.Rules Serv. 33.11, Case 3; *Musher Foundation, Inc. v. Alba Trading Co.* (S.D.N.Y. 1941) 42 F.Supp. 281; 2 *Moore's Federal Practice*, (1938) 2621. The time within which leave of court must be secured by a plaintiff has been fixed at 10 days, in view of the fact that a defendant has 10 days within which to make objections in any case, which should give him ample time to engage counsel and prepare.

Further in the first paragraph of Rule 33, the word "service" is substituted for "delivery" in conformance with the use of the word "serve" elsewhere in the rule and generally throughout the rules. See also Note to Rule 13(a) herein. The portion of the rule dealing with practice on objections has been revised so as to afford a clearer statement of the procedure. The addition of the words "to interrogatories to which objection is made" insures that only the answers to the objection-

able interrogatories may be deferred, and that the answers to interrogatories not objectionable shall be forthcoming within the time prescribed in the rule. Under the original wording, answers to all interrogatories may be withheld until objections, sometimes to but a few interrogatories, are determined. The amendment expedites the procedure of the rule and serves to eliminate the strike value of objections to minor interrogatories. The elimination of the last sentence of the original rule is in line with the policy stated subsequently in this note.

The added second paragraph in Rule 33 contributes clarity and specificity as to the use and scope of interrogatories to the parties. The field of inquiry will be as broad as the scope of examination under Rule 26(b). There is no reason why interrogatories should be more limited than depositions, particularly when the former represent an inexpensive means of securing useful information. See *Hoffman v. Wilson Line, Inc.* (E.D.Pa. 1946) 9 Fed.Rules Serv. 33.514, Case 2; *Brewster v. Technicolor, Inc.* (S.D.N.Y. 1941) 5 Fed.Rules Serv. 33.319, Case 3; *Kingsway Press, Inc. v. Farrell Publishing Corp.* (S.D.N.Y. 1939) 30 F.Supp. 775. Under present Rule 33 some courts have unnecessarily restricted the breadth of inquiry on various grounds. See *Auer v. Hershey Creamery Co.* (D.N.J. 1939) 2 Fed.Rules Serv. 33.31, Case 2, 1 F.R.D. 14; *Tudor v. Leslie* (D.Mass. 1940) 4 Fed.Rules Serv. 33.324, Case 1. Other courts have read into the rule the requirement that interrogation should be directed only towards "important facts", and have tended to fix a more or less arbitrary limit as to the number of interrogatories which could be asked in any case. See *Knor v. Alter* (W.D.Pa. 1942) 6 Fed.Rules Serv. 33.352, Case 1; *Byers Theaters, Inc. v. Murphy* (W.D.Va. 1940) 3 Fed.Rules Serv. 33.31, Case 3, 1 F.R.D. 286; *Coca-Cola Co. v. Dixi-Cola Laboratories, Inc.* (D.Md. 1939) 30 F.Supp. 275. See also comment on these restrictions in Holtzoff, *Instruments of Discovery Under Federal Rules of Civil Procedure* (1942) 41 Mich.L.Rev. 205, 216-217. Under amended Rule 33, the party interrogated is given the right to invoke such protective orders under Rule 30(b) as are appropriate to the situation. At the same time, it is provided that the number of or number of sets of interrogatories to be served may not be limited arbitrarily or as a general policy to any particular number, but that a limit may be fixed only as justice requires to avoid annoyance, expense, embarrassment or oppression in individual cases. The party interrogated, therefore, must show the necessity for limitation on that basis. It will be noted that in accord with this change the last sentence of the present rule, restricting the sets of interrogatories to be served, has been stricken. In *J. Schoeneman, Inc. v. Brauer* (W.D.Mo. 1940) 3 Fed.Rules Serv. 33.31, Case 2, the court said: "Rule 33 . . . has been interpreted . . . as being just as broad in its implications as in the case of depositions . . . It makes no difference therefore, how many interrogatories are propounded. If the inquiries are pertinent the opposing party cannot complain." To the same effect, see *Canuso v. City of Niagara Falls* (W.D.N.Y. 1945) 8 Fed.Rules Serv. 33.352, Case 1; *Hoffman v. Wilson Line, Inc.*, *supra*.

By virtue of express language in the added second paragraph of Rule 33, as amended, any uncertainty as to the use of the answers to interrogatories is removed. The omission of a provision on this score in the original rule has caused some difficulty. See, e.g., *Bailey v. New England Mutual Life Ins. Co.* (S.D.Cal. 1940) 4 Fed.Rules Serv. 33.46, Case 1.

The second sentence of the second paragraph in Rule 33, as amended, concerns the situation where a party wishes to serve interrogatories on a party after having taken his deposition, or vice versa. It has been held that an oral examination of a party, after the submission to him and answer of interrogatories, would be permitted. *Howard v. State Marine Corp.* (S.D.N.Y. 1940) 4 Fed.Rules Serv. 33.62, Case 1, 1 F.R.D. 499; *Stevens v. Minder Construction Co.* (S.D.N.Y. 1943) 7 Fed.Rules Serv. 30b.31, Case 2. But objections have been sustained to interrogatories served after the oral deposition of a party had been taken. *McNally v. Simons* (S.D.N.Y. 1940)

3 Fed.Rules Serv. 33.61, Case 1, 1 F.R.D. 254; *Currier v. Currier* (S.D.N.Y. 1942) 6 Fed.Rules Serv. 33.61, Case 1. Rule 33, as amended, permits either interrogatories after a deposition or a deposition after interrogatories. It may be quite desirable or necessary to elicit additional information by the inexpensive method of interrogatories where a deposition has already been taken. The party to be interrogated, however, may seek a protective order from the court under Rule 30(b) where the additional deposition or interrogation works a hardship or injustice on the party from whom it is sought.

NOTES OF ADVISORY COMMITTEE ON RULES—1970 AMENDMENT

Subdivision (a). The mechanics of the operation of Rule 33 are substantially revised by the proposed amendment, with a view to reducing court intervention. There is general agreement that interrogatories spawn a greater percentage of objections and motions than any other discovery device. The Columbia Survey shows that, although half of the litigants resorted to depositions and about one-third used interrogatories, about 65 percent of the objections were made with respect to interrogatories and 26 percent related to depositions. See also Speck, *The Use of Discovery in United States District Courts*, 60 Yale L.J. 1132, 1144, 1151 (1951); Note, 36 Minn.L.Rev. 364, 379 (1952).

The procedures now provided in Rule 33 seem calculated to encourage objections and court motions. The time periods now allowed for responding to interrogatories—15 days for answers and 10 days for objections—are too short. The Columbia Survey shows that tardy response to interrogatories is common, virtually expected. The same was reported in Speck, *supra*, 60 Yale L.J. 1132, 1144. The time pressures tend to encourage objections as a means of gaining time to answer.

The time for objections is even shorter than for answers, and the party runs the risk that if he fails to object in time he may have waived his objections. E.g., *Cleminshaw v. Beech Aircraft Corp.*, 21 F.R.D. 300 (D.Del. 1957); see 4 *Moore's Federal Practice*, ¶33.27 (2d ed. 1966); 2A *Barron & Holtzoff, Federal Practice and Procedure* 372-373 (Wright ed. 1961). It often seems easier to object than to seek an extension of time. Unlike Rules 30(d) and 37(a), Rule 33 imposes no sanction of expenses on a party whose objections are clearly unjustified.

Rule 33 assures that the objections will lead directly to court, through its requirement that they be served with a notice of hearing. Although this procedure does preclude an out-of-court resolution of the dispute, the procedure tends to discourage informal negotiations. If answers are served and they are thought inadequate, the interrogating party may move under Rule 37(a) for an order compelling adequate answers. There is no assurance that the hearing on objections and that on inadequate answers will be heard together.

The amendment improves the procedure of Rule 33 in the following respects:

(1) The time allowed for response is increased to 30 days and this time period applies to both answers and objections, but a defendant need not respond in less than 45 days after service of the summons and complaint upon him. As is true under existing law, the responding party who believes that some parts or all of the interrogatories are objectionable may choose to seek a protective order under new Rule 26(c) or may serve objections under this rule. Unless he applies for a protective order, he is required to serve answers or objections in response to the interrogatories, subject to the sanctions provided in Rule 37(d). Answers and objections are served together, so that a response to each interrogatory is encouraged, and any failure to respond is easily noted.

(2) In view of the enlarged time permitted for response, it is no longer necessary to require leave of court for service of interrogatories. The purpose of this requirement—that defendant have time to obtain counsel before a response must be made—is adequately fulfilled by the requirement that interrogatories be served upon a party with or after service of the summons and complaint upon him.

Some would urge that the plaintiff nevertheless not be permitted to serve interrogatories with the complaint. They fear that a routine practice might be invited, whereby form interrogatories would accompany most complaints. More fundamentally, they feel that, since very general complaints are permitted in present-day pleading, it is fair that the defendant have a right to take the lead in serving interrogatories. (These views apply also to Rule 36.) The amendment of Rule 33 rejects these views, in favor of allowing both parties to go forward with discovery, each free to obtain the information he needs respecting the case.

(3) If objections are made, the burden is on the interrogating party to move under Rule 37(a) for a court order compelling answers, in the course of which the court will pass on the objections. The change in the burden of going forward does not alter the existing obligation of an objecting party to justify his objections. *E.g., Pressley v. Boehlke*, 33 F.R.D. 316 (W.D.N.C. 1963). If the discovering party asserts that an answer is incomplete or evasive, again he may look to Rule 37(a) for relief, and he should add this assertion to his motion to overrule objections. There is no requirement that the parties consult informally concerning their differences, but the new procedure should encourage consultation, and the court may by local rule require it.

The proposed changes are similar in approach to those adopted by California in 1961. See Calif.Code Civ.Proc. §2030(a). The experience of the Los Angeles Superior Court is informally reported as showing that the California amendment resulted in a significant reduction in court motions concerning interrogatories. Rhode Island takes a similar approach. See R. 33, *R.I.R.Civ.Proc. Official Draft*, p. 74 (Boston Law Book Co.).

A change is made in subdivision (a) which is not related to the sequence of procedures. The restriction to "adverse" parties is eliminated. The courts have generally construed this restriction as precluding interrogatories unless an issue between the parties is disclosed by the pleadings—even though the parties may have conflicting interests. *E.g., Mozeika v. Kaufman Construction Co.*, 25 F.R.D. 233 (E.D.Pa. 1960) (plaintiff and third-party defendant); *Biddle v. Hutchinson*, 24 F.R.D. 256 (M.D.Pa. 1959) (codefendants). The resulting distinctions have often been highly technical. In *Schlagenhauf v. Holder*, 379 U.S. 104 (1964), the Supreme Court rejected a contention that examination under Rule 35 could be had only against an "opposing" party, as not in keeping "with the aims of a liberal, nontechnical application of the Federal Rules." 379 U.S. at 116. Eliminating the requirement of "adverse" parties from Rule 33 brings it into line with all other discovery rules.

A second change in subdivision (a) is the addition of the term "governmental agency" to the listing of organizations whose answers are to be made by any officer or agent of the organization. This does not involve any change in existing law. Compare the similar listing in Rule 30(b)(6).

The duty of a party to supplement his answers to interrogatories is governed by a new provision in Rule 26(e).

Subdivision (b). There are numerous and conflicting decisions on the question whether and to what extent interrogatories are limited to matters "of fact," or may elicit opinions, contentions, and legal conclusions. Compare, *e.g., Payer, Hewitt & Co. v. Bellanca Corp.*, 26 F.R.D. 219 (D.Del. 1960) (opinions bad); *Zinsky v. New York Central R.R.*, 36 F.R.D. 680 (N.D. Ohio 1964) (factual opinion or contention good, but legal theory bad); *United States v. Carter Products, Inc.*, 28 F.R.D. 373 (S.D.N.Y. 1961) (factual contentions and legal theories bad) with *Taylor v. Sound Steamship Lines, Inc.*, 100 F.Supp. 388 (D.Conn. 1951) (opinions good), *Bynum v. United States*, 36 F.R.D. 14 (E.D.La. 1964) (contentions as to facts constituting negligence good). For lists of the many conflicting authorities, see 4 *Moore's Federal Practice* ¶33.17 (2d ed. 1966); 2A *Barron & Holtzoff, Federal Practice and Procedure* §768 (Wright ed. 1961).

Rule 33 is amended to provide that an interrogatory is not objectionable merely because it calls for an opin-

ion or contention that relates to fact or the application of law to fact. Efforts to draw sharp lines between facts and opinions have invariably been unsuccessful, and the clear trend of the cases is to permit "factual" opinions. As to requests for opinions or contentions that call for the application of law to fact, they can be most useful in narrowing and sharpening the issues, which is a major purpose of discovery. See *Diversified Products Corp. v. Sports Center Co.*, 42 F.R.D. 3 (D.Md. 1967); *Moore, supra*; *Field & McKusick, Maine Civil Practice* §26.18 (1959). On the other hand, under the new language interrogatories may not extend to issues of "pure law," *i.e.*, legal issues unrelated to the facts of the case. *Cf. United States v. Maryland & Va. Milk Producers Assn., Inc.*, 22 F.R.D. 300 (D.D.C. 1958).

Since interrogatories involving mixed questions of law and fact may create disputes between the parties which are best resolved after much or all of the other discovery has been completed, the court is expressly authorized to defer an answer. Likewise, the court may delay determination until pretrial conference, if it believes that the dispute is best resolved in the presence of the judge.

The principal question raised with respect to the cases permitting such interrogatories is whether they reintroduce undesirable aspects of the prior pleading practice, whereby parties were chained to misconceived contentions or theories, and ultimate determination on the merits was frustrated. See James, *The Revival of Bills of Particulars under the Federal Rules*, 71 Harv.L.Rev. 1473 (1958). But there are few if any instances in the recorded cases demonstrating that such frustration has occurred. The general rule governing the use of answers to interrogatories is that under ordinary circumstances they do not limit proof. See *e.g., McElroy v. United Air Lines, Inc.*, 21 F.R.D. 100 (W.D.Mo. 1967); *Pressley v. Boehlke*, 33 F.R.D. 316, 317 (W.D.N.C. 1963). Although in exceptional circumstances reliance on an answer may cause such prejudice that the court will hold the answering party bound to his answer, *e.g., Zielinski v. Philadelphia Piers, Inc.*, 139 F.Supp. 408 (E.D.Pa. 1956), the interrogating party will ordinarily not be entitled to rely on the unchanging character of the answers he receives and cannot base prejudice on such reliance. The rule does not affect the power of a court to permit withdrawal or amendment of answers to interrogatories.

The use of answers to interrogatories at trial is made subject to the rules of evidence. The provisions governing use of depositions, to which Rule 33 presently refers, are not entirely apposite to answers to interrogatories, since deposition practice contemplates that all parties will ordinarily participate through cross-examination. See 4 *Moore's Federal Practice* ¶33.29[1] (2 ed. 1966).

Certain provisions are deleted from subdivision (b) because they are fully covered by new Rule 26(c) providing for protective orders and Rules 26(a) and 26(d). The language of the subdivision is thus simplified without any change of substance.

Subdivision (c). This is a new subdivision, adopted from Calif.Code Civ.Proc. §2030(c), relating especially to interrogatories which require a party to engage in burdensome or expensive research into his own business records in order to give an answer. The subdivision gives the party an option to make the records available and place the burden of research on the party who seeks the information. "This provision, without undermining the liberal scope of interrogatory discovery, places the burden of discovery upon its potential beneficiary." *Louisell, Modern California Discovery*, 124-125 (1963), and alleviates a problem which in the past has troubled Federal courts. See *Speck, The Use of Discovery in United States District Courts*, 60 Yale L.J. 1132, 1142-1144 (1951). The interrogating party is protected against abusive use of this provision through the requirement that the burden of ascertaining the answer be substantially the same for both sides. A respondent may not impose on an interrogating party a mass of records as to which research is feasible only for one fa-

miliar with the records. At the same time, the respondent unable to invoke this subdivision does not on that account lose the protection available to him under new Rule 26(c) against oppressive or unduly burdensome or expensive interrogatories. And even when the respondent successfully invokes the subdivision, the court is not deprived of its usual power, in appropriate cases, to require that the interrogating party reimburse the respondent for the expense of assembling his records and making them intelligible.

NOTES OF ADVISORY COMMITTEE ON RULES—1980
AMENDMENT

Subdivision (c). The Committee is advised that parties upon whom interrogatories are served have occasionally responded by directing the interrogating party to a mass of business records or by offering to make all of their records available, justifying the response by the option provided by this subdivision. Such practices are an abuse of the option. A party who is permitted by the terms of this subdivision to offer records for inspection in lieu of answering an interrogatory should offer them in a manner that permits the same direct and economical access that is available to the party. If the information sought exists in the form of compilations, abstracts or summaries then available to the responding party, those should be made available to the interrogating party. The final sentence is added to make it clear that a responding party has the duty to specify, by category and location, the records from which answers to interrogatories can be derived.

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

Purpose of Revision. The purpose of this revision is to reduce the frequency and increase the efficiency of interrogatory practice. The revision is based on experience with local rules. For ease of reference, subdivision (a) is divided into two subdivisions and the remaining subdivisions renumbered.

Subdivision (a). Revision of this subdivision limits interrogatory practice. Because Rule 26(a)(1)–(3) requires disclosure of much of the information previously obtained by this form of discovery, there should be less occasion to use it. Experience in over half of the district courts has confirmed that limitations on the number of interrogatories are useful and manageable. Moreover, because the device can be costly and may be used as a means of harassment, it is desirable to subject its use to the control of the court consistent with the principles stated in Rule 26(b)(2), particularly in multiparty cases where it has not been unusual for the same interrogatory to be propounded to a party by more than one of its adversaries.

Each party is allowed to serve 25 interrogatories upon any other party, but must secure leave of court (or a stipulation from the opposing party) to serve a larger number. Parties cannot evade this presumptive limitation through the device of joining as “subparts” questions that seek information about discrete separate subjects. However, a question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication.

As with the number of depositions authorized by Rule 30, leave to serve additional interrogatories is to be allowed when consistent with Rule 26(b)(2). The aim is not to prevent needed discovery, but to provide judicial scrutiny before parties make potentially excessive use of this discovery device. In many cases it will be appropriate for the court to permit a larger number of interrogatories in the scheduling order entered under Rule 16(b).

Unless leave of court is obtained, interrogatories may not be served prior to the meeting of the parties under Rule 26(f).

When a case with outstanding interrogatories exceeding the number permitted by this rule is removed to

federal court, the interrogating party must seek leave allowing the additional interrogatories, specify which twenty-five are to be answered, or resubmit interrogatories that comply with the rule. Moreover, under Rule 26(d), the time for response would be measured from the date of the parties’ meeting under Rule 26(f). See Rule 81(c), providing that these rules govern procedures after removal.

Subdivision (b). A separate subdivision is made of the former second paragraph of subdivision (a). Language is added to paragraph (1) of this subdivision to emphasize the duty of the responding party to provide full answers to the extent not objectionable. If, for example, an interrogatory seeking information about numerous facilities or products is deemed objectionable, but an interrogatory seeking information about a lesser number of facilities or products would not have been objectionable, the interrogatory should be answered with respect to the latter even though an objection is raised as to the balance of the facilities or products. Similarly, the fact that additional time may be needed to respond to some questions (or to some aspects of questions) should not justify a delay in responding to those questions (or other aspects of questions) that can be answered within the prescribed time.

Paragraph (4) is added to make clear that objections must be specifically justified, and that unstated or untimely grounds for objection ordinarily are waived. Note also the provisions of revised Rule 26(b)(5), which require a responding party to indicate when it is withholding information under a claim of privilege or as trial preparation materials.

These provisions should be read in light of Rule 26(g), authorizing the court to impose sanctions on a party and attorney making an unfounded objection to an interrogatory.

Subdivisions (c) and (d). The provisions of former subdivisions (b) and (c) are renumbered.

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

(a) **SCOPE.** Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor’s behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) **PROCEDURE.** The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

The party upon whom the request is served shall serve a written response within 30 days