

The attorney for a plaintiff in an action filed in federal district court served the defendant with the summons, the complaint, and 25 interrogatories asking questions about the defendant's contentions in the case. The interrogatories stated that they were to be answered within 30 days after service.

The defendant is likely to succeed in obtaining a protective order on which of the following grounds?

- A. Interrogatories are only proper to discover facts, not contentions.
- B. Interrogatories may not be served until an answer to the complaint is filed.
- C. Interrogatories may not be served until the parties have conferred to arrange for initial disclosures and prepare a discovery plan.
- D. The interrogatories exceed the number permitted without permission from the court or an agreement between the parties.

## Explanation:

### Methods of discovery

|                               |  |
|-------------------------------|--|
| <b>Depositions</b>            | <ul style="list-style-type: none"><li>• Written or oral examination of party or witness under oath</li><li>• 10 per party</li></ul>  |
| <b>Interrogatories</b>        | <ul style="list-style-type: none"><li>• Written questions served on party</li><li>• Serve up to 25</li><li>• Written responses due within 30 days of service</li></ul>   |
| <b>Request for production</b> | <ul style="list-style-type: none"><li>• Request served on party (or subpoena served on nonparty) to produce &amp; allow inspection of documents, electronic information, tangible items, or land</li><li>• No limit</li><li>• Written response due within 30 days of service</li></ul> |
| <b>Requests for admission</b> | <ul style="list-style-type: none"><li>• Requests served on other party to admit truth of facts within scope of discovery</li><li>• No limit</li><li>• Written response due within 30 days of service</li></ul>   |
| <b>Physical/mental exams</b>  | <ul style="list-style-type: none"><li>• Order by court or parties' agreement for physical or mental examination of party if those conditions are in controversy</li></ul>  |

Except in limited circumstances,\* a party **may not seek discovery** (including interrogatories) **until** the parties have held an **initial planning conference**—ie, a meeting where the parties arrange for **initial disclosures** and prepare a plan for discovery. If a discovery request is **submitted before** this conference is held (as seen here), the court would likely **grant a protective order**. This shields the served party from the undue burden of responding to that request, especially since the disclosure of the requested information will likely be arranged at the initial planning conference.

\*Discovery may be sought before an initial planning conference (1) in a **proceeding** exempt from initial disclosures or (2) if permitted by a court order, the parties' stipulation, or a procedural rule.

**(Choice A)** Interrogatories are written questions (served by one party on another party) that may inquire about any matter within the scope of discovery—including facts, opinions, *and* contentions that pertain to the case.

**(Choice B)** Interrogatories may be served after an initial planning conference has been held—not when an answer to the complaint has been filed.

**(Choice D)** A party may serve up to 25 interrogatories on any other party without the court's permission or an agreement between the parties (as seen here).

**Educational objective:**

Discovery requests generally cannot be served until the parties have held an initial planning conference to arrange for initial disclosures and prepare a discovery plan.

**References**

- Fed. R. Civ. P. 26(d) (timing of discovery).
- Fed. R. Civ. P. 33 (interrogatories).

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