Limits on Interrogatories in Matrimonial Actions  
By Joel R. Brandes

In an action for a divorce, the court must determine the rights of the parties in their separate property and marital property and equitably distribute their marital property. It must consider 16 enumerated factors in making an equitable distribution of marital property. (DRL § 236 (B)(5)(d) (1-16). When post-divorce maintenance is requested the court must consider 20 factors in determining its amount and duration, and if the guideline amount is unjust or inappropriate (DRL § 236 (B)(6)(e) (a-o) and (f)). In making an award for child support and determining whether the basic child support obligation is unjust or inappropriate the court is required to consider the 10 child support factors. (DRL §240 (1-b) (f)). Broad disclosure is required by the non-monied spouse by way of a searching exploration of the parties' assets, income, and financial dealings to gather all relevant information for purposes of establishing a prima facie case with regard to each of the factors.

Interrogatories have been a cost-effective disclosure device used in matrimonial actions, before or instead of depositions, especially where the parties have limited financial resources. Interrogatories are frequently used as the first disclosure device in those actions because they are far less costly to use than taking a deposition and can be used to obtain relevant documents without first serving a notice for discovery and inspection. (CPLR 3120) The questions propounded in interrogatories may be used to ascertain the existence of relevant documents and require that they be returned with the answers to the interrogatories or made available for examination and copying. (CPLR 3131). On the other hand, a deposition in a matrimonial action is time-consuming and increases the client's legal fees substantially. It is not unusual for the deposition of a party to be conducted for more than a day or two. Frequently, the party being deposed does not produce all of the documents requested in the notice to take deposition (See CPLR 3111) and offers to provide copies of the requested documents after the deposition concludes. Since these promises often go unfulfilled it is customary to adjourn the deposition until the documents are produced and the proponent of the deposition has the opportunity to question the witness about them at another session of the deposition.

CPLR 3130 (1) appears to give parties to a matrimonial action the absolute right to use interrogatories. It provides, in part, that “… after commencement of an action, any party may serve upon any other party written interrogatories.”

In Kaye v Kaye, 102 A.D.2d 682, 692, 478 N.Y.S.2d 324 (2 Dept., July 16, 1984)

the defendant husband's had a minority interest in three of four closely held family corporations. He was a 40% shareholder in two of the corporations and held 12% of the shares in the third. The balance of the stock in the corporations was held by the defendant's brother and father. Plaintiff initiated disclosure by serving interrogatories upon the defendant seeking both personal financial information and financial information with respect to the four corporations. In response, the defendant made an application for a protective order as to certain of the interrogatories. Special Term granted substantially all of the relief that the defendant requested. The court also limited the period of permitted disclosure to the three years immediately preceding the commencement of the divorce action and, in order to expedite discovery, sua sponte directed the parties to proceed directly to depositions and circumscribed the records to be produced at the depositions. The Appellate Division held that plaintiff's initial use of interrogatories as a disclosure device did not constitute an abuse necessitating an exercise of discretion by Special Term to expedite disclosure. It stated that the general rule is that a party is “free to choose both the [pretrial disclosure] devices it wishes to use and the order in which to use them.” … Further, the use of interrogatories as an initial disclosure device in complex equitable distribution cases will, in our view, expedite the discovery process…”. It held that Special Term's direction that the parties proceed to depositions upon oral examination would not expedite disclosure but may instead operate to prejudice the plaintiff by preventing the use of another, more appropriate, intermediate device.

In Kaye, supra, the court cited Barouh Eaton Allen Corp. v. I.B.M. Corp*.*, (76 A.D.2d 873, 875, 429 N.Y.S.2d 33, 35 (2d Dep't 1980)), where the Appellate Division observed that “the initial use of proper interrogatories is preferred in order to save time and money” and found that it was an improvident exercise of discretion for Supreme Court to require the defendant to proceed with the disclosure process by oral deposition, rather than by interrogatories. It noted that the CPLR does not set forth any order of priority as to the use of the various disclosure devices. A party is generally free to choose both the devices it wishes to use and the order in which to use them. This freedom of choice is, of course, subject to judicial intervention if the process is abused (see CPLR 3103, subd [a]). The courts may direct the priority by which a party may use the disclosure devices if it finds on the particular facts that expedition will result from the use of one device prior to another. It stated that in complex commercial cases and when dealing with corporations, the initial use of proper interrogatories is preferred in order to save time and money.

While the use of interrogatories has been criticized in commercial cases where the parties may have unlimited resources to use interrogatories to harass an adversary with irrelevant and burdensome questions, we are not aware of their use having ever been criticized by a court in matrimonial actions.

In Lobatto v. Lobatto,109 A.D.2d 697, 487 N.Y.S.2d 326 (1st Dep't 1985)) the Appellate Division observed that in complicated equitable distribution cases the use of interrogatories as an initial discovery device is often the best and most realistic tool for full and expeditious financial disclosure. It noted that under the Domestic Relations Law broad disclosure is required by way of the searching of a parties' assets and financial dealings, including interests in business entities acquired during the marriage. While the wife's interrogatories were detailed and extensive, the court noted that where, as here, the case is lengthy and complex and made even more difficult by the husband's reluctance to furnish the necessary information on the ground that the wife had no entitlement to his assets, claiming it was separate property, the interrogatories were appropriate. The court noted that the purpose of a deep probe into a spouse's finances is to permit a determination as to what constitutes marital property, to distinguish it from separate property, to uncover hidden assets, and to gather all relevant information for purposes of equitable distribution.

In Briger v. Briger (110 A.D.2d 526, 487 N.Y.S.2d 756 (1st Dep't 1985)) the Appellate Division held that the wife's interrogatory pertaining to gifts from third parties valued in excess of $500 was not unreasonable and should not have been stricken; that the wife was entitled to know in which separate property the husband would claim an interest; and that the interrogatories calling for data supporting information disclosed in the parties' net worth statements were proper. The husband was a lawyer with substantial tax shelter investments. Although there were 65 questions with 353 subparts, the court did not find them oppressive to the point of vacatur. It held that a spouse with a minority interest in a business enterprise may be required to provide information within his &ldquo;“possession, custody, and control.&rdquo;”

### The answers to interrogatories may be used to the same extent as the deposition of a party. Since the deposition of an adverse party so far as admissible under the rules of evidence, may be used for any purpose including contradicting or impeaching the testimony of that party, interrogatories may be used to impeach or contradict the testimony of a party. (CPLR 3117) As a practical matter, this can only be done if the interrogatories are answered in proper form. Interrogatories must be answered in writing under oath by the party served. Each question must be answered separately and fully, and each answer must be preceded by the question to which it responds. (CPLR 3133)

In Snow v. Snow, 209 A.D.2d 399, 618 N.Y.S.2d 442 (2d Dep't 1994), the Appellate Division held that a spouse is entitled to discovery of assets up until the date of trial and required the husband toprovide updated financial information through the present. The Court stressed that the answer “N/A,” a common shorthand for the phrase “not applicable,” is not the equivalent of the answer “no” and is not an appropriate response to any of the questions listed.

The party who serves the interrogatories may use the answers at trial. However, the answering party may not use his own answers at trial since they are considered to be self-serving**. (**United Bank Ltd. v. Cambridge Sporting Goods Corp., 41 N.Y.2d 254, 392 N.Y.S.2d 265 (1976))**.**

Interrogatories may only be served, as of right, upon a party to the action. (CPLR 3130(1)). However, CPLR 3130(2) which applies only to matrimonial actions authorizes the court to make an order, upon motion, directing a nonparty witness to answer written interrogatories. The interrogatories that may be propounded are limited to &ldquo;“furnishing financial information as to a party.&rdquo;” The motion must be brought on by order to show cause, and notice of the motion must be given to the other party and the nonparty in such a manner as the court directs.

A party simply serves the written interrogatories upon the adverse party. The plaintiff must obtain leave of the court, with or without notice, if he serves written interrogatories before the defendant's time to serve a responsive pleading has expired. Therefore, the defendant has priority of examination. (CPLR 3132)

Service of the answers to each interrogatory must be made within twenty days after service of the interrogatories, except one to which the party objects, in which event the reasons for the objection must be stated with ““reasonable particularity.”” (CPLR 3133(a)).

There is a continuing obligation to update answers to interrogatories. A party must amend or supplement a response previously given to a request for disclosure promptly upon the party's thereafter obtaining information that the response was incorrect or incomplete when made, or that the response, though correct and complete when made, no longer is correct and complete, and the circumstances are such that a failure to amend or supplement the response would be materially misleading. (CPLR 3133(c)).

There is no obligation on the part of the recipient of the interrogatories to make a motion to strike any interrogatory. The burden to compel compliance is on the party serving the interrogatories. Where a person fails to respond to or comply with an interrogatory or document demand, the remedy for the party seeking disclosure is to move to compel compliance or a response. (CPLR 3124).

Interrogatories may still be vacated in their entirety if they are found &ldquo;“unduly burdensome.&rdquo;” In Bennett v. State Farm Fire & Cas. Co.*,* (189 A.D.3d 749, 137 N.Y.S.3d 120, (2d Dep't 2020)*)*the Appellate Divison held that a motion to compel responses to demands and interrogatories is properly denied where the demands and interrogatories seek information which is irrelevant, overly broad, or burdensome. Where discovery demands are overbroad, ‘the appropriate remedy is to vacate the entire demand rather than prune it.

22 NYCRR 202.16 (f) (2) (ii), which is part of the matrimonial calendar control rules, was amended effective July 1, 2022. At that time 22 NYCRR 202.20 an almost identical provision in the commercial division rules was incorporated into the matrimonial rules. These rules provide that in a matrimonial action, unless otherwise stipulated by the parties or ordered by the court, interrogatories shall be no more than 25 in number including subparts.

Unless an adversary stipulates to exceed the 25 interrogatory limit in matrimonial actions, the new rules require a court order to serve more than 25 interrogatories. This places the burden on the proponent of the interrogatories to make a motion on notice for an order granting him or her permission to serve more than 25 interrogatories. The 25 question limit on interrogatories effectively precludes the parties in contested matrimonial actions from using interrogatories to expedite the discovery process, unless they engage in delaying motion practice.

The authority to regulate practice and procedure in the courts is delegated primarily to the Legislature. (N.Y. Const., art. VI, 30). Generally, the Legislature has the power to prescribe rules of practice governing court proceedings, and any rules the courts adopt must be consistent with existing legislation and may be subsequently abrogated by statute. (Cohn v. Borchard Affiliations*,* 25 N.Y.2d 237, 303 N.Y.S.2d 633 (1969)). N.Y. Constitution, Article VI, 30, which is the source of the Appellate Division's broad judicial rule-making authority does not afford *carte blanche* to courts in promulgating regulations. A court may not significantly affect the legal relationship between litigating parties through the exercise of its rule-making authority No court rule can enlarge or abridge rights conferred by statute and this bars the imposition of additional procedural hurdles that impair statutory remedies. (People v Ramos, 85 N.Y.2d 678, 651 N.E.2d 895, 628 N.Y.S.2d 27 (1995); See also [Gormerly v. McGlynn, 84 N.Y. 284, 1881 WL 12807 (1881)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1881026272&pubNum=0000596&originatingDoc=I666bd278a57111d981cbf136477a35f6&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Keycite)); [Moot v. Moot, 214 N.Y. 204, 108 N.E. 424 (1915)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1915005397&pubNum=0000577&originatingDoc=I666bd278a57111d981cbf136477a35f6&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Keycite))).

The rule limiting interrogatories to 25 in matrimonial actions conflicts with CPLR 3130 which contains no limit on the number of interrogatories a party may serve (subject to CPLR 3103 which allows the court to make a protective order denying, limiting, conditioning, or regulating the use of any disclosure device).

When Commercial Division Rules which limit the number of interrogatories to 25 and depositions, were originally proposed, the New York State Bar Association (“ NYSBA”) commented about the then-proposed commercial division rule 202.20 that “ NYSBA continues to believe that the number of interrogatories should be limited only where the court has determined that the number is burdensome and unnecessary to the litigation, and that CPLR 3130 is already an adequate limitation on the use of interrogatories.” (See

<https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/received/Oct1UniformRules.pdf>

At that time the Matrimonial Practices Advisory and Rules Committee (“Committee”) publicly commented that many of the Commercial Division rules were “inapplicable and inappropriate in matrimonial litigation, and that matrimonial cases should continue to be governed by the provisions of 22 NYCRR Sections 202.16 and 202.16-a and 202.16-b.” The Committee wrote to the Administrative Board of the Courts on December 11, 2018, that the limitations “… are contrary to the fundamental principles of broad discovery in matrimonial actions governed by DRL Section 236(B)(4), where the goal is to obtain as much information as possible about the parties' financial circumstances. Additionally, interrogatories are particularly important in cases with self-represented litigants who are better able to access this discovery tool because it is easier and less expensive. … A limitation on depositions would lead to longer trials and fewer settlements. Certainly, trial judges should have the right to limit discovery if it is a fishing expedition, and for the most part, that has been successful.”

(See <https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/received/2019-com-rules-in-other-jdx.pdf>)

In a subsequent letter to the Administrative Board on October 26, 2021, in response to the Request for Public Comment on a proposal to harmonize the matrimonial rules with the new Uniform Civil Rules, the Committee submitted a proposal for 22 NYCRR 202.16 (f)((ii) which contained no limitation on the number and length of depositions and the number of interrogatories. (See <https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/Proposed-amendments-to-Matrimonial-and-Uniform-Civil-Rules.pdf>, Exhibit A, letter dated April 23, 2021). And on December 13, 2021, in response to another request for public comment, the Committee requested consideration of its harmonization document of October 26, 2021, which contained no limitations. ( See <https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/received/Matrimonial.pdf>)

The Administrative Board of the Courts acted favorably on the Committee’s comment that depositions should not be limited in matrimonial actions, and the matrimonial rules specifically provide that the limit on the number of depositions “shall not apply to matrimonial actions.” (See 202.16 (f) (2) (ii)). However, it failed to act on the Comment that the limit on interrogatories “was contrary to the fundamental principles of broad discovery in matrimonial actions governed by DRL Section 236(B)(4).”

Conclusion

22 NYCRR 202.16 (f) (2) (ii), limiting interrogatories to 25 in number in matrimonial actions should be repealed. It appears to abridge the right to use interrogatories conferred by CPLR 3130 and be inconsistent with existing legislation. It effectively prevents the parties, who cannot afford the expense of time-consuming and costly depositions, from using interrogatories in matrimonial actions to obtain low-cost broad financial discovery.

**Joel R. Brandes practices matrimonial law in New York City concentrating on appeals. He is the author of a new twelve-volume treatise, Law and the Family New York, 2022- 2023 Edition, and Law and the Family New York Forms, 2022 Edition (five volumes), both published by Thomson Reuters, and the New York Matrimonial Trial Handbook (Bookbaby). He can be reached at joel@nysdivorce.com or at his website at www.nysdivorce.com.**