

***PROPOSED AMENDMENTS AS DRAFTED BY THE SUPREME COURT RULES
COMMITTEE***

Rule 213. Written Interrogatories to Parties

(a) Directing Interrogatories. A party may direct written interrogatories to any other party. A copy of the interrogatories shall be served on all other parties entitled to notice.

(b) Duty of Attorney. It is the duty of an attorney directing interrogatories to restrict them to the subject matter of the particular case, to avoid undue detail, and to avoid the imposition of any unnecessary burden or expense on the answering party.

(c) Number of Interrogatories. Except as provided in subparagraph (j), a party shall not serve more than 30 interrogatories, including sub-parts, on any other party except upon agreement of the parties or leave of court granted upon a showing of good cause. A motion for leave of court to serve more than 30 interrogatories must be in writing and shall set forth the proposed interrogatories and the reasons establishing good cause for their use.

(d) Answers and Objections. Within 28 days after service of the interrogatories upon the party to whom they are directed, the party shall serve a sworn answer or an objection to each interrogatory, with proof of service upon all other parties entitled to notice. Any objection to an answer or to the refusal to answer an interrogatory shall be heard by the court upon prompt notice and motion of the party propounding the interrogatory. The answering party shall set forth in full each interrogatory being answered immediately preceding the answer. Sworn answers to interrogatories directed to a public or private corporation, or a partnership or association shall be made by an officer, partner, or agent, who shall furnish such information as is available to the party.

(e) Option to Produce Documents. When the answer to an interrogatory may be obtained from documents in the possession or control of the party on whom the interrogatory was served, it shall be a sufficient answer to the interrogatory to produce those documents responsive to the interrogatory. When a party elects to answer an interrogatory by the production of documents, that production shall comply with the requirements of Rule 214.

(f) Identity and Testimony of Witnesses. Upon written interrogatory, a party must furnish the identity and ~~location~~ address of witnesses who will testify at trial, ~~together with the subject of their testimony and must provide the following information:~~

(1) Lay Witnesses. A “lay witness” is a person giving only fact or lay opinion testimony. For each lay witness, the party must identify the subjects on which the witness will testify. An answer is sufficient if it gives reasonable notice of the testimony, taking into account the limitations on the party’s knowledge of the facts known by and opinions held by the witness.

(2) Independent Expert Witnesses. An “independent expert witness” is a person

***PROPOSED AMENDMENTS AS DRAFTED BY THE SUPREME COURT RULES
COMMITTEE***

giving expert testimony who is not the party, the party's current employee, or the party's retained expert. For each independent expert witness, the party must identify the subjects on which the witness will testify and the opinions the party expects to elicit. An answer is sufficient if it gives reasonable notice of the testimony, taking into account the limitations on the party's knowledge of the facts known by and opinions held by the witness.

(3) *Controlled Expert Witnesses.* A "controlled expert witness" is a person giving expert testimony who is the party, the party's current employee, or the party's retained expert. For each controlled expert witness, the party must identify: (i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefor; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case.

~~(g) **Opinion Witnesses.** An opinion witness is a person who will offer any opinion testimony. Upon written interrogatory, the party must state:~~

~~(i) the subject matter on which the opinion witness is expected to testify;~~

~~(ii) the conclusions and opinions of the opinion witness and the bases therefor; and~~

~~(iii) the qualifications of the opinion witness; and provide all reports of the opinion witness.~~

(g) **Limitation on Testimony and Freedom To Cross-Examine.** The information disclosed in answer to a Rule 213(f) interrogatory, or at deposition, limits the testimony that can be given by a witness on direct examination. Information expressed in a deposition need not be later specifically identified in a Rule 213(f) answer, but, upon objection at trial, the burden is on the proponent of the witness to prove the information was provided in a Rule 213(f) answer or in the deposition.

Without making disclosure under this rule, however, a cross-examining party can elicit information, including opinions, from the witness. This freedom to cross-examine is subject to a restriction that applies in actions that involve multiple parties and multiple representation. In such actions, the cross-examining party may not elicit undisclosed information, including opinions, from the witness on an issue on which its position is aligned with that of the party doing the direct examination.

(h) Use of Answers to Interrogatories. Answers to interrogatories may be used in evidence to the same extent as a discovery deposition.

***PROPOSED AMENDMENTS AS DRAFTED BY THE SUPREME COURT RULES
COMMITTEE***

(i) Duty to Supplement. A party has a duty to seasonably supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to that party.

~~If a deposition of an opinion witness is taken, the witness' testimony at trial will be limited to the opinion expressed therein, in addition to those opinions identified in answers to Rule 213(g) interrogatories.~~

~~The opinions expressed in a deposition need not be later specifically identified in Rule 213 (g) answers, but, upon objection at trial, the burden is on the proponent of the witness to prove the opinions were provided in deposition or Rule 213(g) interrogatory.~~

(j) The Supreme Court, by administrative order, may approve standard forms of interrogatories for different classes of cases.

(k) Liberal Construction. This rule is to be liberally construed to do substantial justice between or among the parties.

Committee Comments To 2001 Amendments

Paragraph (f)

The purpose of this paragraph is to prevent unfair surprise at trial, without creating an undue burden on the parties before trial. The paragraph divides witnesses into three categories, with separate disclosure requirements for each category.

“Lay witnesses” include persons such as an eye witness to a car accident. For witnesses in this category, the party must identify the “subjects” of testimony – meaning the topics, rather than a summary. An answer must describe the subjects sufficiently to give “reasonable notice” of the testimony, enabling the opposing attorney to decide whether to depose the witness, and on what topics. In the above example, a proper answer might state that the witness will testify about: “(1) the path of travel and speed of the vehicles before impact, (2) a description of the impact, and (3) the lighting and weather conditions at the time of the accident.” The answer would not be proper if it said only that the witness will testify about: “the accident.” Requiring disclosure of only the subjects of lay witness testimony represents a change in the former rule, which required detailed disclosures regarding the subject matter, conclusions, opinions, bases and qualifications of any witness giving any opinion testimony, including lay opinion testimony. Experience has shown that applying this detailed-disclosure requirement to lay witnesses creates a serious burden without corresponding benefit to the opposing

***PROPOSED AMENDMENTS AS DRAFTED BY THE SUPREME COURT RULES
COMMITTEE***

party.

“Independent expert witnesses” include persons such as a police officer who gives expert testimony based on the officer’s investigation of a car accident, or a doctor who gives expert testimony based on the doctor’s treatment of the plaintiff’s injuries. For witnesses in this category, the party must identify the “subjects” (meaning topics) on which the witness will testify and the “opinions” the party expects to elicit. The limitations on the party’s knowledge of the facts known by and opinions held by the witness often will be important in applying the “reasonable notice” standard. For example, a treating doctor might refuse to speak with the plaintiff’s attorney, and the doctor cannot be contacted by the defendant’s attorney, so the opinions set forth in the medical records about diagnosis, prognosis, and cause of injury might be all that the two attorneys know about the doctor’s opinions. In these circumstances, the party intending to call the doctor need set forth only a brief statement of the opinions it expects to elicit. On the other hand, a party might know that a treating doctor will testify about another doctor’s compliance with the standard of care, or that a police officer will testify to an opinion based on work done outside the scope of the officer’s initial investigation. In these examples, the opinions go beyond those that would be reasonably expected based on the witness’ apparent involvement in the case. To prevent unfair surprise in circumstances like these, an answer must set forth a more detailed statement of the opinions the party expects to elicit. Requiring disclosure of only the “subjects” of testimony and the “opinions” the party expects to elicit represents a change in the former rule, which required detailed disclosures about the subject matter, conclusions, opinions, bases, and qualifications of all witnesses giving opinion testimony, including expert witnesses over whom the party has no control. Experience has shown that the detailed-disclosure requirement is too demanding for independent expert witnesses.

“Controlled expert witnesses” include persons such as retained experts. The party can count on full cooperation from the witnesses in this category, so the amended rule requires the party to provide all of the details required by the former rule. In particular, the requirement that the party identify the “subject matter” of the testimony means that the party must set forth the gist of the testimony on each topic the witness will address, as opposed to setting forth the topics alone.

A party may meet its disclosure obligation in part by incorporating prior statements or reports of the witness.

Paragraph (g)

Parties are to be allowed a full and complete cross-examination of any witness and may elicit additional undisclosed opinions in the course of cross-examination. This freedom to cross-examine is subject to a restriction which, for example, prevents a co-defendant from eliciting previously undisclosed contributory negligence opinions from another defendant’s expert.

***PROPOSED AMENDMENTS AS DRAFTED BY THE SUPREME COURT RULES
COMMITTEE***

Paragraph (i)

The material deleted from this paragraph now appears in modified form in paragraph (g).

Paragraph (k)

The application of this rule is intended to do substantial justice between the parties. This rule is intended to be a shield to prevent unfair surprise, but not a sword to prevent the admission of relevant evidence on the basis of technicalities. The purpose of the rule is to allow for a trial to be decided on the merits. The trial court should take this purpose into account when a violation occurs and it is ordering appropriate relief under Rule 219(c).

The rule does not apply to demonstrative evidence which is intended to explain or convey to the trier of fact the theories expressed in accordance with this rule.