

THE COURTS

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

[207 PA. CODE CH. 3]

Amendment to Rules Relating to Initiation of Formal Changes; Doc. No. 1 JD 94

Order

Per Curiam:

And Now, this 4th day of April, 1997, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, and in accordance with this Court's Order dated February 13, 1997, having adopted a proposed amendment to Rule of Procedure No. 301(C) and a new subsection (D), *It Is Hereby Ordered:*

That Rule of Procedure No. 301(C) and new subsection (D) shall become effective immediately.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

CHAPTER 3. INITIATION OF FORMAL CHARGES

Rule 301. Initiating Formal Charges; **Conference Judge**; Scheduling.

(A) *Board Complaint.* Proceedings in the Court shall be commenced by the filing of a Board Complaint with the Clerk and concurrent service of the Board Complaint on the Judicial Officer.

(B) *Appointment of Conference Judge.* Within 10 days after a Board Complaint is filed pursuant to paragraph (A), the President Judge shall appoint a member of the Court to serve as Conference Judge on the case as provided in these rules.

(C) [**Scheduling. After a Board Complaint is filed, the Conference Judge shall promptly schedule a date for the trial and pre-trial conference, and shall notify the Board and the Judicial Officer.] Duties of Conference Judge Following the Filing of Formal Complaint. In addition to the other duties of Conference Judge set forth in these rules, the Conference Judge shall:**

- (1) dispose of all pre-trial motions;
- (2) schedule and conduct a pre-trial conference, in accordance with C.J.D.R.P. No. 421; and
- (3) upon disposition of all pre-trial matters, certify to the President Judge notice that the matter is ready for trial.

(D) The Clerk shall serve certified copies of orders scheduling pre-trial conferences and trials to the Board and the Judicial Officer.

[Pa.B. Doc. No. 97-584. Filed for public inspection April 18, 1997, 9:00 a.m.]

PART IV. COURT OF JUDICIAL DISCIPLINE

[207 PA. CODE CH. 5]

Amendment to Rules Relating to Trial Procedures; Doc. No. 1 JD 94

Order

Per Curiam:

And Now, this 4th day of April, 1997, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, and in accordance with this Court's Order dated February 13, 1997, having adopted a proposed amendment to Rule of Procedure No. 502(B)(4), *It Is Hereby Ordered:*

That Rule of Procedure No. 502(B)(4) shall become effective immediately.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

CHAPTER 5. TRIAL PROCEDURES

Rule 502. Trial. Stipulations of Fact. Conclusions of Law. Withdrawal of Counts.

(A) The trial shall be held before the Court and shall be open to the public.

(B) Conduct of Trial.

(1) All testimony shall be under oath.

(2) The Board and the Judicial Officer shall be permitted to present evidence and examine and cross-examine witnesses. The Judicial Officer may, but shall not be required to, testify.

(3) At the conclusion of the trial, the Board and the Judicial Officer may, at the request of the Court, present oral argument and shall submit proposed findings of fact and conclusions of law.

(4) The trial shall be recorded verbatim. Requests and orders for transcripts shall be governed by Pa.R.J.A. 5000.5. Any party requesting notes of testimony shall bear the cost of transcription. [**If] When the notes of testimony [are] have been transcribed, [it shall be the duty of] the court reporter [to file the original transcript with the Clerk] shall first submit the transcript to the Clerk. Following receipt and review of the transcript, the Court shall lodge the transcript and shall inform the court reporter of said lodging. In no instance shall the court reporter provide a version of the transcript to a requesting party until the transcript is lodged, and the Clerk**

has informed the court reporter and the parties that the transcript has been lodged.

* * * * *

[Pa.B. Doc. No. 97-585. Filed for public inspection April 18, 1997, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 200 AND 4000]

Amendment of Rules Governing Subpoenas and Discovery; No. 277; Doc. No. 5

Order

Per Curiam:

And Now, this 7th day of April, 1997, the Pennsylvania Rules of Civil Procedure are amended as follows:

- 1. Rules 234.1, 234.2, 234.4 and 234.6 governing subpoenas are amended to read as follows.
2. Rules 4006(b) and 4007.1(d) governing discovery are amended to read as follows.
3. Rule 4009 governing production of documents and things and entry upon land is rescinded.
3. New Rule 4009.1 et seq., governing production of documents and things and entry upon land are promulgated to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1997.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 234.1. Subpoena to Attend and Testify.

(a) ***

Official Note: See Discovery Rule 4009.1 et seq. for a request upon a party and a subpoena upon a person not a party for the production of documents and things other than at a deposition or a trial.

* * * * *

Rule 234.2. Subpoena. Issuance. Service. Compliance. Fees. Prisoners. [Fees]

* * * * *

(b) A copy of the subpoena may be served upon any person within the Commonwealth by a competent adult

- (1) in the manner prescribed by Rule 402(a);
(2) by any form of mail requiring a return receipt, postage prepaid, restricted delivery. Service is complete upon delivery of the mail to the [defendant] person subpoenaed or any of the persons referred to in Rule 402(a)(2). The return receipt may be signed by the [defendant] person subpoenaed or any of such persons; or

(3) by ordinary mail. The mail shall contain two copies of the Notice and Acknowledgment prescribed by Rule 234.9 and a self-addressed stamped envelope.

* * * * *

Rule 234.4. Subpoena. Notice to Attend. Notice to Produce. Relief From Compliance. Motion to Quash.

* * * * *

(b) A motion to quash a subpoena, notice to attend or notice to produce may be filed by a party, [(or)] by the person served or by any other person with sufficient interest. After hearing, the court may make an order to protect a party, [or] witness or other person from unreasonable annoyance, embarrassment, oppression, burden or expense.

Rule 234.6. Form of Subpoena.

A subpoena issued pursuant to Rule 234.1 shall be substantially in the following form:

Commonwealth of Pennsylvania
County of _____
(Caption)

SUBPOENA TO ATTEND AND TESTIFY

To _____:
(Name(s) of Witness(es))

- 1. You are ordered by the Court to come to _____
(Courtroom or other place)
at _____, Pennsylvania, on _____ at
o'clock, _____ M., to testify on behalf of
in the above case, and to remain until excused.
2. And bring with you the following: _____

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

[Issued] Requested by: _____
[(State attorney's)
Attorney's name, address,
telephone number and
identification number)

BY THE COURT,

Date: _____ By _____
(Name of Prothonotary)

Seal of the Court

Official Note: This form of subpoena shall be used whenever a subpoena is issuable under Rule 234.1, including hearings in connection with depositions and before arbitrators, masters, commissioners, etc.

[If a subpoena for] To require the production of documents[, records] or things [is desired] in addition to testimony, complete paragraph 2.

* * * * *

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

Rule 4006. Answers to Written Interrogatories by a Party.

- (a)(1) ***
- (2) ***

Official Note: Rule [233] 440 requires the answering party to serve a copy of the answers upon every party to the action.

(b) Where the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of that party's records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer would be substantially the same for the party serving the interrogatory as for the party served, a sufficient answer to such an interrogatory shall be to specify the records from which the answer may be derived or ascertained and to afford the party serving the interrogatory reasonable opportunity to examine, audit or inspect those records and to [**make**] **obtain** copies, compilations, abstracts or summaries[, **provided that a copy of any compilations, abstracts or summaries so made shall forthwith be furnished to the party producing the records**].

Rule 4007.1. Procedure in Deposition by Oral Examination.

* * * * *

(d)(1) If the person to be examined is a party, the notice may include a request made in compliance with Rule [4009] 4009.1 et seq, for the production of documents and tangible things at the taking of the deposition.

(2) If the person to be examined is not a party, and is to be served with a subpoena duces tecum to produce designated materials, the notice shall specify the materials to be produced. **The materials shall be produced at the deposition and not earlier, except upon the consent of all parties to the action.**

* * * * *

Rule 4009. Production of Documents and Things and Entry For Inspection and Other Purposes. Rescinded.

PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY FOR INSPECTION AND OTHER ACTIVITIES

**PRODUCTION OF DOCUMENTS AND THINGS
GENERAL PROVISIONS**

Rule 4009.1. Production of Documents and Things. General Provisions.

Any party may serve a request upon a party pursuant to Rules 4009.11 and 4009.12 or a subpoena upon a person not a party pursuant to Rules 4009.21 through 4009.27 to produce and permit the requesting party, or someone acting on the party's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, electronically created data, and other compilations of data from which information can be obtained, translated, if necessary, by the respondent party or person upon whom the request or subpoena is served through detection or recovery devices into reasonably usable form), or to

inspect, copy, test or sample any tangible things which constitute or contain matters within the scope of Rules 4003.1 through 4003.6 inclusive and which are in the possession, custody or control of the party or person upon whom the request or subpoena is served; and may do so one or more times.

Official Note: These rules do not prevent a court from entering an order under its common law power preserving or protecting a document or thing.

Parties to an action and persons not parties but served with a subpoena or request pursuant to these rules have the protective and enforcement provisions of the discovery rules available to them. See Rule 4012 governing protective orders and Rule 4019 governing enforcement and sanctions for failure to make discovery.

The remedy of a protective order is available to the party to whom a request is directed to prevent abuse.

These rules do not preclude (1) the issuance under Rule 234.1 et seq. of a subpoena or request for the production of documents or things at a deposition pursuant to Rule 4007.1(d) or (2) an independent action against a person not a party for production of documents or things.

REQUEST UPON A PARTY

Rule 4009.11. Request Upon a Party for Production of Documents and Things.

(a) The request may be served without leave of court upon the plaintiff after commencement of the action and upon any other party with or after service of the original process upon that party.

(b) The request shall set forth in numbered paragraphs the items to be produced either by individual item or by category, and describe each item or category with reasonable particularity. Each paragraph shall seek only a single item or a single category of items. The request shall be prepared in such fashion that sufficient space is provided immediately after each paragraph for insertion of the answer.

Rule 4009.12. Answer to Request Upon a Party for Production of Documents and Things.

(a) The party upon whom the request is served shall within thirty days after the service of the request

(1) serve an answer including objections to each numbered paragraph in the request, and

(2) produce or make available to the party submitting the request those documents and things described in the request to which there is no objection.

(i) Where the documents may be identified only after review of a larger group of documents, and the burden of identifying the documents would be substantially the same for the party serving the request as for the party served, the party served may afford the party serving the request reasonable opportunity to identify the documents, to examine or inspect them and to obtain copies.

(b) The answer shall be in the form of a paragraph-by-paragraph response which shall

(1) identify all documents or things produced or made available;

(2) identify all documents or things not produced or made available because of the objection that they are not within the scope of permissible discovery under Rule 4003.2 through Rule 4003.6 inclusive and Rule 4011(c). Documents or things not produced shall be identified with reasonable particularity together with the basis for non-production;

(3) specify a larger group of documents or things from which the documents or things to be produced or made available may be identified as provided by subdivision (a)(2)(i);

(4) object to the request on the grounds set forth in Rule 4011(a), (b), and (e) or on the ground that the request does not meet the requirements of Rule 4009.11;

(5) state that after reasonable investigation, it has been determined that there are no documents responsive to the request.

Official Note: The party who is requested to produce documents or things is encouraged to identify the documents or things produced and the documents or things withheld through a system of numbering. The party producing the documents and things and the party receiving them are encouraged to keep a current list of the documents and things produced and withheld based on the numbering system. This procedure will assist the court in resolving disputes arising out of production of documents.

Ordinarily, each page of a document should receive a separate number. However, a document may be assigned a number as a whole if it is bound or if it contains pages which are sequentially numbered.

The court may require numbering.

(c) The answer shall be signed and verified by the party making it and signed also by the attorney making an objection if one is set forth.

(d) If a request is reasonably susceptible to one construction under which documents sought to be produced are within the scope of the request and another construction under which the documents are outside the scope of the request, the answering party shall either produce the documents or identify with reasonable particularity the documents not produced together with the basis for non-production.

SUBPOENA UPON A PERSON NOT A PARTY

Rule 4009.21. Subpoena Upon a Person Not a Party for Production of Documents and Things. Prior Notice. Objections.

(a) A party seeking production from a person not a party to the action shall give written notice to every other party of the intent to serve a subpoena at least twenty days before the date of service. A copy of the subpoena proposed to be served shall be attached to the notice.

Official Note: For the form of the written notice, see Rule 4009.24(a).

(b) The written notice shall not be given to the person named in the subpoena.

(c) Any party may object to the subpoena by filing of record written objections and serving a copy of the objections upon every other party to the action.

Official Note: For the form of the objections, see Rule 4009.24(b).

The requirement of filing with the prothonotary the objections under this rule and the certificate under Rule 4009.23(a) provides a more formal procedure for the participation of a person not a party in the discovery process.

(d)(1) If objections are received by the party intending to serve the subpoena prior to its service, the subpoena shall not be served. The court upon motion shall rule upon the objections and enter an appropriate order.

Official Note: Subdivision (a) of this rule provides a twenty-day notice period during which a subpoena may not be served.

(2) If objections are not received as provided in paragraph (1), the subpoena may be served subject to the right of any party or interested person to seek a protective order.

Official Note: Rule 4009.22(a) requires the filing of a certificate as a prerequisite to service.

Rule 4009.22. Service of Subpoena.

(a) The party seeking production may serve on the person named in the subpoena a copy of the subpoena only if it is identical to the subpoena attached to the notice of intent to serve the subpoena and if the party seeking production has filed of record a certificate that

(1) the notice of intent to serve a subpoena was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,

(2) a copy of the notice of intent, including the proposed subpoena attached to the notice of intent, is attached to the certificate,

(3) no objection to the subpoena has been received, and

(4) the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Official Note: For the form of the certificate, see Rule 4009.25.

(b) The subpoena shall be issued as provided by Rule 234.2(a) and shall be served in the manner provided by Rule 234.2(b).

Official Note: Rule 234.2(a) governs the issuance by the prothonotary of a subpoena to testify. Rule 234.2(b) governs service of a subpoena to testify.

For the form of a subpoena to produce, see Rule 4009.26.

Rule 4009.23. Certificate of Compliance by a Person Not a Party. Notice of Documents or Things Received.

(a) The person not a party upon whom the subpoena has been served shall, in complying with the subpoena, execute a certificate of compliance and deliver it with the documents or things produced to the party serving the subpoena within twenty days

of service. A form of certificate to be executed and delivered shall be served with the subpoena.

Official Note: For the form of the certificate of compliance, see Rule 4009.27.

The requirement of filing with the prothonotary the certificate under this rule and the objections under Rule 4009.21(c) provides a more formal procedure for the participation of a person not a party in the discovery process.

(b) The party receiving documents and things pursuant to the subpoena shall give notice of receipt to every other party to the action and upon the payment of reasonable cost shall

(1) furnish a legible copy of each document to any other party who requests a copy and

(2) allow reasonable access to the things to any other party who requests access.

Rule 4009.24. Notice of Intent to Serve Subpoena. Objection to Subpoena. Forms.

(a) The written notice of intent to serve a subpoena required by Rule 4009.21(a) shall be substantially in the following form:

(CAPTION)

NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

_____ (party) intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Date: _____
Attorney for

(b) The objection to subpoena required by Rule 4009.21(c) shall be substantially in the following form:

(CAPTION)

OBJECTIONS TO SUBPOENA PURSUANT TO RULE 4009.21

_____ (party) objects to the proposed subpoena that is attached to these objections for the following reasons:

Date: _____
Attorney for

Rule 4009.25. Certificate Prerequisite to Service of Subpoena. Form.

The certificate required by Rule 4009.22(a) as a prerequisite to the service of a subpoena shall be substantially in the following form:

(CAPTION)

CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA PURSUANT TO RULE 4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, _____ certifies that
(Plaintiff/Defendant)

(1) a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,

(2) a copy of the notice of intent, including the proposed subpoena, is attached to this certificate,

(3) no objection to the subpoena has been received, and

(4) the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: _____
Attorney for

Rule 4009.26. Subpoena to Produce Documents or Things. Form.

A subpoena to produce documents or things shall be substantially in the following form:

(CAPTION)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: _____
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: _____

at _____
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Attorney's Name

Identification Number

Address

Telephone Number

Attorney for

BY THE COURT:

DATE: _____ By _____
(Prothonotary)

Seal of the Court

Rule 4009.27. Certificate of Compliance. Form.

The certificate of compliance required by Rule 4009.23(a) shall be substantially in the following form:

(CAPTION)
NOTICE

To _____ (Person Served with Subpoena):

You are required to complete the following Certificate of Compliance when producing documents or things pursuant to the Subpoena.

**CERTIFICATE OF COMPLIANCE
WITH SUBPOENA TO PRODUCE DOCUMENTS OR
THINGS PURSUANT TO RULE 4009.23**

I, _____, (person served with subpoena) certify to the best of my knowledge, information and belief that all documents or things required to be produced pursuant to the subpoena issued on _____ (date of subpoena) have been produced.

Date: _____
_____ Person served with subpoena

**ENTRY UPON PROPERTY FOR INSPECTION AND
OTHER ACTIVITIES**

Rule 4009.31. Entry Upon Property for Inspection and Other Activities. General Provisions.

Any party may serve a request upon a party pursuant to Rule 4009.32 or a motion upon a person not a party pursuant to Rule 4009.33 to permit entry upon designated property in the possession or control of the party or person upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rules 4003.1 through 4003.6 inclusive.

Official Note: These rules do not prevent a court from entering an order under its common law power preserving or protecting property.

Parties to an action and persons not parties but served with a subpoena or request pursuant to these rules have the protective and enforcement provisions of the discovery rules available to them. See Rule 4012 governing protective orders and Rule 4019 governing enforcement and sanctions for failure to make discovery.

These rules do not preclude an independent action against a person not a party for permission to enter upon property.

Rule 4009.32. Request for Entry upon Property of a Party.

(a) The request 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 original process upon that party. The request shall describe with reasonable particularity the property to be entered and the activities to be performed.

(b) The party upon whom the request is served shall allow the requested entry unless the request is objected to within thirty days after service of the request, in which event the reasons for objection shall be stated. If objection is made to part of a request, the part shall be specified. The party

submitting the request may move for an order under Rule 4019(a) with respect to any objection to or failure to respond to the request or any part thereof, or any failure to permit entry as requested.

(c) A party may enter upon property one or more times to accomplish the activities set forth in the request.

Official Note: The remedy of a protective order is available to the party to whom the request is directed to prevent abuse.

Rule 4009.33. Motion for Entry Upon Property of a Person Not a Party.

(a) A motion to permit entry upon property of a person not a party shall begin with the notice prescribed by subdivision (c) and shall describe with reasonable particularity the property to be entered and the activities to be performed. The motion shall be served personally by a competent adult in the same manner as original process. A copy of the motion shall also be served upon all other parties to the action pursuant to Rule 440.

Official Note: For general provisions governing entry upon property, see Rule 4009.31.

(b) If the person served does not affirmatively consent to the entry, the motion may be presented to the court. The moving party shall give the person served not less than fifteen days notice of the presentation of the motion. Upon proof of service of the notice of the presentation, the court, as it deems appropriate, may enter an order permitting or denying the entry or set a date for a hearing. The order permitting entry shall specify a reasonable time, manner or other condition of entry and of making the inspection and performing any related acts.

(c) The notice required by subdivision (a) shall be substantially in the following form:

(CAPTION)

IMPORTANT NOTICE

YOU HAVE PROPERTY WHICH THE PARTIES TO THE ABOVE LAWSUIT WISH TO ENTER FOR INSPECTION OR OTHER ACTIVITIES. THE MOTION ATTACHED TO THIS NOTICE ASKS THE COURT FOR AN ORDER ALLOWING THE ENTRY INTO YOUR PROPERTY. IF YOU CONSENT TO THIS ENTRY PLEASE FILL IN THE ATTACHED FORM. PLEASE CONTACT THE ATTORNEY LISTED BELOW:

(Attorney filing the motion)

(Address)

(Telephone Number)

IF YOU DO NOT CONSENT TO THE ENTRY, YOU HAVE A RIGHT TO A HEARING ON THE MATTER. A DATE FOR PRESENTATION OF THE MOTION TO THE COURT WILL BE SET AND THE PARTY FILING THE MOTION WILL GIVE YOU FIFTEEN DAYS NOTICE OF ITS PRESENTATION. IF YOU DO NOT

APPEAR AT THE PRESENTATION OF THE MOTION, THE COURT MAY ENTER AN ORDER ALLOWING ENTRY.

YOU MAY WISH TO TAKE THIS NOTICE TO A LAWYER WHO CAN ADVISE YOU. IF YOU DO NOT HAVE A LAWYER AND WISH TO OBTAIN ONE, CONTACT THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

(Name of Office)

(Address of Office)

(Telephone Number)

Official Note: The office shall be that designated by the court under Rule 1018.1(c).

Explanatory Comment

Rule 4009 governing production of documents and things and entry upon land has been rescinded and replaced with a new chapter of rules, Rule 4009.1 et seq. The new chapter is divided into two parts, one relating to production of documents and things and the other relating to entry upon property. Each part is in turn divided into three sections: first, a general provision describing the discovery method; second, a provision relating to discovery from a party to an action; and finally, a provision relating to discovery from a person not a party.

There are in addition several amendments to the rules governing subpoenas to appear and testify as well as amendments to Rule 4006(b) governing answers to written interrogatories and Rule 4007.1(d) governing oral depositions.

Production of Documents and Things

Production Generally

Rule 4009.1 is a general provision derived from former Rule 4009(a)(1) and sets forth the parameters of production. While continuing to provide for a request for production by a party to an action (Rules 4009.11 and 4009.12), the rule also provides for a new subpoena for production by a person not a party (Rules 4009.21 through 4009.27).

Request Upon a Party for Production

Rule 4009.11 governs the form and service of a request upon a party for production of documents and things. The request is to be in the form of numbered paragraphs, each of which should request one item or category of items described with "reasonable particularity." As in the case of written interrogatories to a party, the rule requires that sufficient space be "provided immediately after each paragraph for insertion of the answer."

Rule 4009.12 provides for the answer to a request. Subdivision (a) requires that, within thirty days after service of the request, the party upon whom the request is served must serve a verified answer and "produce or make available those documents and things described in the request to which there is no objection." Any objections to the request must be set forth in the answer. Subdivision (b) provides specific guidance to the manner of answering the request while subdivision (c) requires that the answer be signed and verified.

Rule 4009.12(a)(2) allows a party to respond by producing a larger group of documents from which the requested documents may be identified. This provision is similar to

that of Rule 4006(b) which allows a party to answer a written interrogatory by producing records for inspection.

Rule 4009.12(d) requires that, if a request is subject to a reasonable interpretation that certain documents are within the scope of the request, the party from whom production is sought must respond to the request and either produce the documents or "identify with reasonable particularity the documents not produced together with the basis for non-production."

Subpoena Upon a Person Not a Party for Production of Documents and Things

The subpoena upon a person not a party for the production of documents and things under Rules 4009.21 through 4009.27 is new. Subdivision (a) of Rule 4009.21 requires that a party who wishes to take advantage of this procedure must give twenty days advance notice to all other parties of the intention to serve the subpoena. A copy of the subpoena proposed to be served must be attached to the notice of intent. Under subdivision (b), advance notice is not given to the person upon whom the subpoena will be served.

Subdivisions (c) and (d) of Rule 4009.21 govern objections to the service of the subpoena. Any party may object to service of the subpoena by filing and serving written objections. There is a twenty-day period in which to object during which the subpoena may not be served. However, the subpoena may not be served even after the twenty-day period if the objections are received prior to serving the subpoena by the party who served the notice of intent. A protective order is available to the objecting party if the objections are not timely received and the subpoena is served.

Rule 4009.22 authorizes service of the subpoena if it is identical to the subpoena attached to the notice of intent and if the party seeking to serve it files the required certificate. Subdivisions (a) and (b) of Rule 234.2 governing issuance and service of the subpoena to attend and testify are incorporated by reference into the rule.

Rule 4009.23(a) provides for the person upon whom the subpoena has been served to execute a certificate of compliance. Subdivision (b) of the rule provides for the party who has received documents or things to give notice to other parties of their receipt and, upon request and payment of reasonable costs, to provide copies of documents or reasonable access to things.

Rules 4009.24 through 4009.27 provide several forms, including the form of notice of intention to serve a subpoena and the form of the subpoena itself.

A conforming amendment has been made to Rule 4007.1(d) governing production of documents and things in connection with a deposition. The person who is not a party and who has been subpoenaed to produce documents or things at a deposition is prohibited from producing them earlier than at the time of the deposition except upon the consent of all parties. This provision together with the notice provision of new Rule 4009.21 ensures a period of notice and the opportunity to object whether the method of production is by subpoena to produce or a subpoena to attend and testify.

Entry Upon Property for Inspection and Other Activities

General Provisions

Rule 4009.31 is derived from former Rule 4009(a)(2) and describes the entry upon property. In addition to providing for a request for entry upon property of a party

to an action (Rule 4009.32), the new rule also provides for a motion for entry upon the property of a person not a party (Rule 4009.33).

Request for Entry Upon Property of a Party

Rule 4009.32 provides that the request must "describe with reasonable particularity the property to be entered and the activities to be performed." The party served must permit the requested entry or object within thirty days after service of the request. The enforcement provisions of Rule 4019(a) are available with respect to an objection, a failure to respond or a failure to permit the requested entry.

The party requesting entry may enter "one or more times to accomplish the activities set forth in the request." A note advises that abuse may be prevented by means of a protective order.

Motion for Entry Upon Property of a Person Not a Party

Rule 4009.33 governs three aspects of procedure upon a motion for entry upon property of a person not a party. First, subdivision (a) requires that the motion begin with the form of "Important Notice" prescribed by subdivision (c). Second, subdivision (a) also requires service of the motion upon both the person not a party whose property is to be entered and all other parties to the action. Finally, subdivision (b) provides for notice of presentation of the motion to the court when the person does not affirmatively consent to the entry.

Additional Revisions

The following amendments have been made to Rule 234.1 et seq. governing subpoenas:

1. The title of Rule 234.1 has been revised to read "Subpoena to Attend and Testify." A note has been added to Rule 234.1(a) calling attention to Rule 4009.1 et seq. providing for production of documents and things by request or subpoena independently of a deposition or trial.

2. Rule 234.2(b) has been amended by substituting the words "person subpoenaed" in place of "defendant."

3. Rule 234.4(b) has been amended to make clear that a "person with sufficient interest" as well as a party or person served may move to quash a subpoena, notice to defend or notice to produce.

4. The form of subpoena provided by Rule 234.6 has been amended by adding the title "Subpoena to Attend and Testify", thus distinguishing it from a subpoena to produce under Rule 4009.21.

5. Discovery Rule 4006(b) has been revised to provide that, if an interrogatory is answered by specifying records from which the answer may be derived, the party examining or inspecting the records may "obtain copies" of the records provided. The party answering the interrogatory by specifying records is no longer entitled to compilations, abstracts or summaries which may be described as the

work product of the party examining or inspecting the records.

By the Civil Procedural Rules Committee,

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 97-586. Filed for public inspection April 18, 1997, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DELAWARE COUNTY

Amendment to Local Rule 206(B)(1)(d); Misc. No. 97.4901

Order

And Now, to wit, this 1st day of April, 1997, it is hereby *Ordered* and *Decreed* that Delaware County Local Rule 206(B)(1)(d) is *Amended* as follows:

(d) Each Answer to petitions or motions filed pursuant to this Rule shall be accompanied by the following:

(i) a face sheet clearly indicating that they are being filed pursuant to Rule *206; and

(ii) a form or proposed order fairly encompassing the relief requested.

By the Court

A. LEO SERENI,
President Judge

[Pa.B. Doc. No. 97-587. Filed for public inspection April 18, 1997, 9:00 a.m.]

SCHUYLKILL COUNTY

Amendment to Civil Rule of Procedure 206A(e); S-667 1997

Order of Court

And Now, this 7th day of April, at 11:25 a.m., the Court hereby amends Schuylkill County Civil Rule of Procedure No. 206A(e) and adopts amended Rule No. 206A(e) for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District). This rule shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is *Ordered* and *Directed* to do the following:

1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.

2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3) File one (1) certified copy of this Order and Rule with the Pennsylvania Civil Procedural Rules Committee.

4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rule.

JOSEPH F. MCCLOSKEY,
President Judge

Rule 206A.

(e) Every motion not certified as uncontested shall be accompanied by a memorandum containing a concise statement of the legal contentions and authorities relied upon in support of the motion and an affidavit of service

upon the party against whom relief is sought, or to his attorney. Any party opposing the motion shall file and serve such answer or other response that may be appropriate, a memorandum in opposition, and an affidavit of service upon the other party within fifteen (15) days after service of the originating motion and supporting brief, unless the Pennsylvania Rules of Civil Procedure mandate a period of time different than fifteen (15) days. In the absence of timely response, the motion may be treated as uncontested. The Court may require or permit further briefing, if appropriate.

[Pa.B. Doc. No. 97-588. Filed for public inspection April 18, 1997, 9:00 a.m.]