

THE COURTS

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. I]

Order Revising Comment to Rule 101; No. 382
Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

Now, this 30th day of December, 2005, upon the recommendation of the Committee on Rules of Evidence, and having been published for comment in *Pennsylvania Bulletin*, Vol. 35, No. 31, page 4179, and with a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revision of comment is hereby revised in the following form.

This *Order* shall be processed immediately in accordance with Pa. R.J.A. 103(b), and shall be effective February 1, 2006.

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope and Citation of the Rules.

Comment—2005

A principal goal of these rules is to construct a comprehensive code of evidence governing court proceedings in the Commonwealth of Pennsylvania. However, these rules cannot be all-inclusive. Some of our law of evidence is governed by the Constitutions of the United States and of Pennsylvania. Some is governed by statute. Some evidentiary rules are contained in the Rules of Civil and Criminal Procedure and the rules governing proceedings before courts of limited jurisdiction. Traditionally, our courts have not applied the law of evidence in its full rigor in proceedings such as preliminary hearings, bail hearings, grand jury proceedings, sentencing hearings, parole and probation hearings, extradition or rendition hearings, and others. Traditional rules of evidence have also been relaxed to some extent in custody matters, see, e.g., Pa.R.C.P. 1915.11(b) (court interrogation of a child), and other domestic relations matters, see, e.g., Pa.R.C.P. 1930.3 ([**telephone testimony**] **testimony by electronic means**). The Pennsylvania Rules of Evidence are not intended to supersede these other provisions of law unless they do so expressly or by necessary implication.

These rules are applicable [**only to**] in the courts of the Commonwealth of Pennsylvania's unified judicial system. [They are applicable in all divisions of the Courts of Common Pleas including the Civil Division, Criminal Division, Trial Division, Orphans' Court Division and Family Division. They are not applicable to other tribunals, such as administrative agencies and arbitration panels, except as provided by law or unless the tribunal chooses to apply them.] In some respects, these rules are applicable in administrative proceedings. See, e.g., *Gibson v. W.C.A.B.*, 580 Pa. 470, 861 A.2d 938 (2004)(evidentiary rules 602, 701 and 702 applicable

in agency proceedings in general, including workers' compensation proceedings). These rules are also applicable in compulsory arbitration hearings, with specific exceptions relating to the admissibility of certain written evidence and official documents. Pa.R.C.P. 1305 [(rules of evidence shall be followed in compulsory arbitration hearings, with specific provisions relating to the admissibility of certain written evidence and official documents)].

FINAL REPORT

Rule 101. Scope and Citation of the Rules

Comment Changes

The Comment to Pa.R.E. 101 is being revised to reflect the opinion of the Supreme Court in *Gibson v. W.C.A.B.*, 861 A.2d 938 (Pa. 2004). As a result of the *Gibson* opinion, Pennsylvania Rules of Evidence 602, 701 and 702 are applicable in administrative agency proceedings. The revised Comment also calls attention to Pa.R.C.P. 1305 concerning the applicability of the rules of evidence to compulsory arbitration hearings.

[Pa.B. Doc. No. 06-136. Filed for public inspection January 27, 2006, 9:00 a.m.]

[225 PA. CODE ART. IV]

Order Revising Comment to Rule 409; No. 383
Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

Now, this 30th day of December, 2005, upon the recommendation of the Committee on Rules of Evidence, and with a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revision of comment is hereby revised in the following form.

Whereas prior distribution and publication of this amendment would otherwise be required, it has been determined that immediate promulgation of the amendment is required in the interest of justice and efficient administration.

This *Order* shall be processed immediately in accordance with Pa.R.J.A. 103(b), and shall be effective February 1, 2006.

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 409. Payment of Medical and Similar Expenses.

* * * * *

Comment—2005

This rule is identical to F.R.E. 409 and is consistent with prior Pennsylvania law. See 42 Pa.C.S. [A.] § 6141(c) (payment [**of expenses**] to **injured person and others generally** not admissible) (text quoted in Comment to Pa.R.E. 408); [**see also**] *Burns v. Joseph Flaherty Co.*, 278 Pa. 579, 123 A. 496 (1924) (guarantee of

medical expenses cannot be used as basis for liability). As with F.R.E. 409 [and Pa.R.E. 408 (but not F.R.E. 408), collateral admissions of fact], ancillary statements made in the course of paying, offering to pay [for medical], or promising to pay, medical, hospital, or similar expenses are not excluded by this rule. However, they may be excluded by Pa.R.E. 408.

FINAL REPORT

Rule 409. Payment of Medical and Similar Expenses

Comment Changes

The purpose of this Revision of Comment is to take note of the amended Pa.R.E. 408. The inaccurate language in the Rule 409 Comment is corrected by this revision.

[Pa.B. Doc. No. 06-137. Filed for public inspection January 27, 2006, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation No. 77

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, April 21, 2006 directed to:

Patricia A. Miles, Esquire
 Counsel, Domestic Relations Procedural Rules Committee
 5035 Ritter Road, Suite 700
 Mechanicsburg, Pennsylvania 17055
 FAX (717) 795-2175
 E-mail: patricia.miles@pacourts.us

*By the Domestic Relations
 Procedural Rules Committee*

NANCY P. WALLITSCH, ESQ.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation. **Allocation of Additional Expenses.**

Additional expenses may be allocated between the parties pursuant to this rule even if the parties' incomes do not justify an order of basic support.

(a) *Child care expenses.* Reasonable child care expenses paid by either parent, if necessary to maintain employment or appropriate education in pursuit of income, shall be allocated between the parties in proportion to their net incomes and added to his and her basic support obligation. When a parent is receiving a child care subsidy through the Department of Public Welfare, the expenses to be allocated between the parties shall be the full unsubsidized cost of the child care, not just the amount actually paid by the parent receiving the subsidy. However, if allocation of the unsubsidized amount would result in a support order that is overly burdensome to the obligor, deviation pursuant to Rule 1910.16-5 may be warranted.

* * * * *

(c) *Unreimbursed Medical Expenses.* Unreimbursed medical expenses of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes. Notwithstanding the prior sentence, there shall be no apportionment of unreimbursed medical expenses incurred by a party who is not owed a statutory duty of support by the other party. The court may direct that the obligor's share be added to his or her basic support obligation, or paid directly to the obligee or to the health care provider.

* * * * *

(3) Annual expenses pursuant to this subdivision (c), shall be calculated on a calendar year basis. In the year in which the initial support order is entered, the \$250 threshold shall be pro-rated. **Documentation of unreimbursed medical expenses that either party seeks to have allocated between the parties shall be provided to the other party not later than March 31 of the year following the calendar year in which the final bill was received by the party seeking allocation. Allocation of unreimbursed medical expenses for which documentation is not timely provided shall be within the discretion of the court.**

* * * * *

(e) *Mortgage Payment.* The guidelines assume that the spouse occupying the marital residence will be solely responsible for the mortgage payment, real estate taxes, and homeowners' insurance. Similarly, the court will assume that the party occupying the marital residence will be paying the items listed unless the recommendation specifically provides otherwise. If the obligee is living in the marital residence and the mortgage payment exceeds 25% of the obligee's net income (including amounts of spousal support, alimony pendente lite and child support), the court may direct the obligor to assume up to 50% of the excess amount as part of the total support award. **If the obligor is occupying the marital residence and the mortgage payment exceeds**

25% of the obligor's monthly net income (less any amount of spousal support, alimony pendente lite or child support the obligor is paying), the court may make an appropriate downward adjustment in the obligor's support obligation. For purposes of this subdivision, the term "mortgage" shall include first mortgages, real estate taxes and homeowners' insurance and may include any subsequent mortgages, home equity loans and any other obligations incurred during the marriage which are secured by the marital residence.

* * * * *

Explanatory Comment—2006

A new introductory sentence in Rule 1910.16-6 clarifies that additional expenses may be allocated between the parties even if the parties' respective incomes do not warrant an award of basic support. Thus, even if application of the formula at Rule 1910.16-4 results in a basic support obligation of zero, the court may enter a support order allocating between the parties any or all of the additional expenses addressed in this rule.

The amendment to subdivision (e) recognizes that the obligor may be occupying the marital residence and that, in particular circumstances, justice and fairness may warrant an adjustment in his or her support obligation.

[Pa.B. Doc. No. 06-138. Filed for public inspection January 27, 2006, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 3000]

Amendment of Rules Governing the Sale of Real Property upon Execution; Proposed Recommendation No. 210

The Civil Procedural Rules Committee is proposing the amendment of Rule of Civil Procedure 3129.3 and the promulgation of new Rule 3129.4 governing the sale of real property upon execution. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent not later than March 1, 2006 to:

Harold K. Don, Jr.,
Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055
or E-Mail to
civil.rules@pacourts.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 3000. JUDGMENTS

Subchapter D. ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY

Rule 3129.3. Postponement of [sale; new notice] Sale.
New Notice. Failure of Plaintiff to Attend Sale.

* * * * *

(b) If the sale, notice of which was given as provided by Rule 3129.2, is stayed, continued, postponed or adjourned to a date certain within [one hundred] one hundred thirty days of the scheduled sale, and public announcement thereof, including the new date, is made to the bidders assembled at the time and place [originally] fixed for the sale, no new notice as provided by Rule 3129.2 shall be required, but there may be only [one such stay, continuance, postponement or adjournment] two such stays, continuances, postponements or adjournments without new notice.

(c) If the plaintiff or a representative of the plaintiff is not present at the sale, the real property shall not be sold. The sheriff shall return the writ of execution to the prothonotary and file a return pursuant to Rule 3139 indicating that the real property was not sold because the plaintiff or a representative of the plaintiff was not present at the sale. Thereafter, the writ may be reissued pursuant to Rule 3106.

Rule 3129.4. Sale of Real Property. Motion to Divest Subordinate Lien When Required Notice Not Given.

(a) As used in this rule,

"owner" means the plaintiff or plaintiff's successor in title when the property is sold in execution to the plaintiff or the buyer or the buyer's successor in title when the property is sold in execution to a third party, and

"required amount" includes the amount of the plaintiff's judgment, interest on the judgment through the date of the execution sale, costs and taxes in the amount paid from the proceeds of the sale, and other municipal obligations

(b)(1) After the sale of real property, the owner may file to the court and number of the execution, a proceeding to divest the lien of any person who had a lien on the real property which was subordinate to the lien held by the plaintiff but who was not served with notice of the sale pursuant to Rule 3129.2(c)(1)(iii). The proceeding shall be commenced by filing a Motion under Rule 3129.4(b) for an order requiring tender of the required amount.

(2) The motion shall begin with a notice to answer within twenty days after service and shall

(i) identify the parties to the motion,

(ii) describe the real property which was sold at execution and set forth the date of the sale,

(iii) identify the lien which is sought to be divested and set forth that the lien is subordinate to the plaintiff's claim, and

(iv) state the required amount.

(c)(1) The motion shall be served on all parties to the action and on

(I) each lienholder whose address is known, by first class mail, as provided by Rule 3129.2(c)(1)(iii), and

(II) each lienholder whose address is unknown, by publication in accordance with Rule 430.

(2) The owner shall file a return of service as provided by Rule 3129.3(c)(2).

(d)(1) If the lienholder does not file an answer to the motion, the owner shall request that the court enter an order as provided by subdivision (d)(3).

(2) If the lienholder files an answer to the motion, the motion shall proceed pursuant to Rule 208.1 et seq. and any local rules promulgated thereunder.

(3) If the court determines that the averments of the motion required by this rule are true or uncontested and sets the required amount, the court shall enter an order that the lienholder shall have the right to acquire the property sold upon tender of the required amount within thirty days of the date of the order but that, upon failure to tender the required amount within the thirty day period, the court upon motion under subdivision (e) shall order the lien divested.

(e) If the court enters an order pursuant to subdivision (d) and the lienholder does not tender the required amount within thirty days of the date of the order, the owner shall file a Motion under Rule 3129.4(e) to divest the lien. The motion shall set forth the entry of the order, notice of the order to the lienholder and the failure of the lienholder to tender payment.

Official Note: The motion to divest must be served upon every other party to the action. See Rule 440(a)(1).

(f) The Notice required by subdivision (b)(2) shall be in the following form:

NOTICE

You have been sued in court to divest a lien or other interest in real property as described in the attached motion. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this motion and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and the court may enter an order against you without further notice requiring you to tender within thirty days a "required amount of money" or the lien will be divested. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(Name)

(Address)

(Telephone Number)

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

Explanatory Comment

Recommendation No. 210 addresses three issues with respect to the execution sale of real property.

I. Rule 3129.3(b)—Postponement of sale

Rule 3129.3(b) presently provides for the ability to postpone a sale of real property one time to a date within one hundred days of the scheduled sale without giving new notice of sale required by Rule 3129.2. The proposed amendment would permit two postponements within one hundred thirty days of the scheduled sale without giving new notice. The proposal provides flexibility where more than one postponement is needed, saving time and expense. New notice under Rule 3129.2 is required when additional postponements of the sale are required.

II. Rule 3129.3(c)—Failure of plaintiff to appear at sale

The present execution rules do not provide for the instance when the plaintiff, whether in person or by representative, does not attend the sale of real property. New subdivision (c) of Rule 3129.3 addresses this issue. Subdivision (c) provides that, if the plaintiff is not present at the sale, "the real property shall not be sold." In such a case, the sheriff is directed to "return the writ of execution to the prothonotary and file a return pursuant to Rule 3139." The plaintiff may again seek to have the property sold but must recommence the proceedings by having the writ of execution reissued pursuant to Rule 3106 and giving new notice under Rule 3129.2.

III. Rule 3129.4—Divesting a subordinate lien when required notice is not given

The rules governing execution upon a money judgment contain no procedure to divest a lien subordinate to the lien held by the plaintiff when notice of the sale required under Rule 3129.2 has not been given to the lienholder. New Rule 3129.4 supplies this procedure.

Subdivision (b) of the new rule provides for a proceeding to divest such a lien which is to be commenced by a motion which is filed to the court and number of the execution proceeding. The content of the motion and the requirement of service are set forth in subdivisions (b) and (c) of the rule.

The rule requires the court to enter two orders. The first order under subdivision (d)(3) provides "that the lienholder shall have the right to acquire the property sold upon tender of the required amount within thirty days of the date of the order but that, upon failure to tender the required amount within the thirty day period, the court upon motion under subdivision (e) shall order the lien divested." "Required amount" is a term defined by subdivision (a) of the rule.

If the first order is entered under subdivision (d)(3) and the lienholder does not tender the required amount, the lienholder will file a Motion under Rule 3129.4(e) to divest the lien. The court will enter an order divesting the lien where appropriate.

By the Civil Procedural Rules Committee
R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 06-139. Filed for public inspection January 27, 2006, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

Order

And Now, this 5th day of January 2006, Dauphin County Local Rules 212.2, 215.1, 1001, 1038, 1703, 2039 and 4019 are amended as follows:

Rule 212.2. Contents of Pre-Trial Statements

In addition to requirements of Pa.R.C.P. 212.2, the pre-trial statement shall include:

- (a) the estimated length of trial;
- (b) any scheduling problems;
- (c) any special evidentiary issues;
- (d) a realistic settlement offer or demand[.];

(e) a certification that counsel discussed mediation in good faith with his or her client(s) and with opposing counsel and with all unrepresented parties, if any, in accordance with Dauphin County Local Rule 1001.

Rule 215.1 Jury Trials

(1) LISTING—An original and one copy of a Certificate of Readiness shall be filed with the Prothonotary listing a case for a jury trial in accordance with the timelines published in the Annual Court Calendar. No case subject to compulsory arbitration shall be listed for trial, unless on appeal from a report and award of arbitrators. The party filing the Certificate of Readiness shall communicate with all counsel and/or pro se parties and confirm the availability of all counsel or the pro se party, as the case may be, together with the availability of all witnesses and all parties for the particular trial term before the Certificate of Readiness is filed. The listing party shall attest that all discovery has been completed, serious settlement negotiations have been conducted, **[videotaped testimony for use at trial has been recorded,]** and that the case is READY IN ALL RESPECTS for trial. **Absent extraordinary and compelling circumstances, the failure to complete videotaped testimony for use at trial shall not be a proper basis for a request for a continuance.** A copy of the Certificate of Readiness shall be promptly served on all counsel and/or pro se parties. If a party is not represented by counsel of record, such notice shall include the date of the first day of the applicable trial session. The Prothonotary shall forward the original Certificate of Readiness to the Court Administrator's Office and shall retain the copy in the file. The Certificate of Readiness form is available in the Prothonotary's Office, in the Court Administrator's Office and online at the Dauphin County website (www.dauphincounty.org). Parties filing the Certificate of Readiness form must ensure that the most current form is utilized. Failure to utilize the most current form shall result in the rejection of the Certificate of Readiness. If a party is unable to satisfy the requirements regarding the filing of a Certificate of Readiness due to the unavailability of counsel, parties or witnesses, such party shall immediately file an Administrative Application for Status Conference in accordance with Dauphin County Local Rule 215.3.

Rule 1001 Mediation

a. General Applicability

Every civil action, except protection from abuse matters, filed in the Dauphin County Court of Common Pleas is eligible for mediation. Prior to filing suit and whenever practicable thereafter, parties and their counsel are encouraged to consider and to pursue mediation options.

b. Procedure **For Mediation in Non-Jury Civil Trials, Civil Jury Trials and Cases Subject to Arbitration**

Parties and their attorneys in all civil cases **which will result in a non-jury civil trial, civil jury trial or arbitration** may mutually elect to pursue mediation at any point before a case is listed for trial or arbitration. Status conferences conducted by the Court **in accordance with Dauphin County Local Rule 215.3** shall include a discussion of the likely success of mediation and the appropriate point in the life of that case for mediation session(s) to be scheduled.

c. **Certifications in Non-Jury Civil Trials, Civil Jury Trials and Cases Subject to Arbitration**

All pre-trial conference memoranda **filed in accordance with Dauphin County Local Rule 212.2** shall include certification by the attorney submitting same that mediation has been previously pursued or, if mediation has not been pursued, that the topic of mediation was discussed **[among all]** by not only counsel with their clients but also by all counsel and/or pro se parties and rejected only after good faith consideration. Likewise, certificates of readiness filed with the Court Administrator **[as to any civil action]** listing a case for a **Non-Jury Civil Trial, a Civil Jury Trial or Arbitration** shall contain a similar certification that mediation was pursued or, if not, was the subject of good faith consideration by counsel **and all parties**.

d. Mediation Programs

Parties and their attorneys are encouraged to use mediation to resolve disputes either through the Civil Dispute Resolution Program administered by the Dauphin County Bar Association or any other mediation program acceptable to the parties.

Rule 1038. Trial Without Jury

(1) When a case is READY IN ALL RESPECTS to be scheduled for a trial without a jury, any party may file an original and one copy of a Certificate of Readiness with the Prothonotary.

(2) The Prothonotary shall forward the original Certificate of Readiness to the Court Administrator's Office and shall retain the copy in the file.

(3) The Court Administrator's Office, under the direction and supervision of the Civil Calendar Judge, shall assign the case to be tried without a jury to a judge who has had prior significant involvement with the case or, if no judge has had prior significant involvement, to a judge on a rotating basis. **Parties shall provide a copy of all subsequent pleadings, filings, briefs and memoranda to the assigned judge simultaneously with the filing thereof with the Prothonotary.**

(4) The Certificate of Readiness form is available in the Prothonotary's Office, in the Court Administrator's Office and online at the Dauphin County website (www.dauphincounty.org). Parties filing a Certificate of Readiness form must ensure that the most current form is

utilized. Failure to utilize the most current form shall result in the rejection of the Certificate of Readiness.

Rule 1703 Class Actions

When a Class Action Complaint, which is properly captioned as such, is filed with the Prothonotary, a copy of the Complaint shall be immediately brought to the Court Administrator's Office by the filing party. The Court Administrator's Office, under the direction and supervision of the Civil Calendar Judge, will promptly assign the matter to a judge in accordance with Pa.R.C.P. 1703(b). **Parties shall provide a copy of all subsequent pleadings, filings, briefs and memoranda to the assigned judge simultaneously with the filing thereof with the Prothonotary.**

Rule 2039 Petitions for Approval of Minors' Compromises

COMMENT: Attorneys and Pro Se Parties are advised that Pa.R.C.P. No. 2039 provides for the payment of a minor's settlement funds to the minor when he/she reaches the age of majority. However, it is currently the court's policy to approve settlements which call for the payment of funds to the minor up to age 22 under the provisions of Pa.R.C.P. No. 2039(a)(3) and (4). Longer terms may also be approved under extraordinary circumstances such as those calling for a special needs trust, and the attorneys and pro se parties are advised to contact the court for guidance in this area before finalizing settlement discussions.

Rule 4019 Discovery

(1) (a) Except in the situations that are covered by subsection (4) hereof, when a dispute arises, during any discovery permitted under the Pennsylvania Rules of Civil Procedure, an aggrieved party shall file with the Prothonotary an original and one copy of a Motion for a Discovery Conference. The Prothonotary shall forward the original discovery conference motion to the Court Administrator's Office for assignment in accordance with Local Rule 208.3(a) and shall retain the copy in the file.

(b) The party filing the motion shall, at the time of filing, serve a copy upon all other parties.

(2) (a) The motion shall be concise and contain the following:

(i) a brief statement identifying the parties and describing the nature of the case;

(ii) a brief statement of the status of any discovery procedure involved;

(iii) a verbatim statement of the discovery sought or objected to;

(iv) an assignment of reasons why the matter sought is discoverable or objected to, and a statement of the relief requested;

(v) a statement identifying all other parties and their counsel, with mailing addresses and telephone numbers, and a statement of the parties' attempt to resolve the dispute;

(vi) if necessary, a request for the suspension of all, or portion of all, discovery until the dispute is resolved;

(b) No briefs will be filed with the motion or thereafter, except as permitted under Rule 4019(3)(b)(ii).

(c) The party filing the motion shall submit therein all discovery disputes then existing between the parties.

(d) Any other party may file an answer to the motion and raise by separate motion, whether an answer is filed or not, any discovery dispute not previously raised.

(3) (a) Upon being filed, the matter shall be assigned to a Judge of this Court for disposition. **Parties shall provide a copy of all subsequent pleadings, filings, briefs and memoranda related to the assigned discovery motion to the assigned judge simultaneously with the filing thereof with the Prothonotary.**

(b) The Judge to whom the motion is assigned may:

(i) schedule a discovery conference;

(ii) require the filing of briefs;

(iii) require oral argument;

(iv) dismiss the matter if the moving party fails to comply with this rule.

(c) The Judge assigned to conduct the discovery conference shall enter an appropriate order disposing of the issues raised in the motion.

(d) Any order issued pursuant to this Rule shall be entered of record.

(4) Procedure for failure to provide discovery permitted by statute, rule of practice, rule of procedure, or order of court.

(a) WRITTEN DISCOVERY

(1) If a party fails to timely respond to interrogatories or a request for production of documents, and no extension of time has been granted, no motion for a protective order has been granted, or no objection to the written discovery request has been lodged, the party seeking the discovery shall proceed under ONE of the following options:

(a) DISCOVERY CONFERENCE—the aggrieved party may promptly file a Motion for a Discovery Conference in accordance with Local Rule 4019(1), provided that no written Notice of Intention to Seek Sanctions has been sent pursuant to Local Rule 4019(4)(a)(1)(b) as set forth hereafter.

(b) MOTION FOR SANCTIONS—

(i) A written Notice of Intention to Seek Sanctions, specifically (a) referencing this rule, (b) listing the sanctions sought, and (c) where applicable, noting that the Sanctions Hearing Order will require the presence of both the defaulting party(ies) and their counsel at said hearing, unless counsel for the defaulting party(ies) accepts full responsibility for the default, in writing, filed within five calendar days of receipt of the motion, shall be sent to counsel for the defaulting party(ies), if represented, otherwise to the defaulting party(ies), by certified mail, return receipt requested, at least thirty days before filing a Motion for Sanctions.

(ii) If a full and complete discovery response authorized by the Pennsylvania Rules of Civil Procedure is received within said thirty-day notice period, no Motion for Sanctions shall be filed. However, a Discovery Conference can thereafter be sought for any appropriate relief upon motion of any party.

(iii) A Motion for Sanctions shall state the discovery requests alleged to be in default, and the requested appropriate sanctions pursuant to Pa.R.Civ.P. 4019. A written certificate of service of the written Notice of Intention to Seek Sanctions and a copy of the notice shall be attached. If attorneys' fees and expenses are sought, reasonable documentation of time devoted and expenses

incurred must be attached to the Motion. Failure to attach such reasonable documentation shall preclude consideration of that form of relief. A concise Answer to the Motion is permitted if filed within ten days of service of a copy of the Motion for Sanctions. **Parties shall provide a copy of all subsequent pleadings, filings, briefs and memoranda related to the motion for sanctions to the assigned judge simultaneously with the filing thereof with the Prothonotary.**

(iv) The Civil Calendar Judge shall conduct a hearing on the Motion, even if the default that prompted the Motion has been corrected before the hearing date.

(v) Nothing in this section shall prohibit a party(ies), who is having difficulty in complying with a discovery request, from requesting a Discovery Conference with the Court by filing a Motion for Discovery Conference before a Notice of the Intention to Seek Sanctions is sent by the requesting party(ies).

(b) DEPOSITIONS

(1) When a party or nonparty fails to appear for a duly noticed deposition, and no Protective Order has been obtained, a Motion for Sanctions may be filed immediately and without further notice. However, it shall be the firm responsibility of the party seeking sanctions to ensure, to a certainty, that actual notice of the deposition was personally served on the person failing to appear.

These amendments shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

RICHARD A. LEWIS,
President Judge

[Pa.B. Doc. No. 06-140. Filed for public inspection January 27, 2006, 9:00 a.m.]