

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CH. 4000]

#### Proposed New Rule 4003.8 Governing Pre-Complaint Discovery; Proposed Recommendation No. 221

The Civil Procedural Rules Committee is proposing that new Rule of Civil Procedure 4003.8 governing pre-complaint discovery be promulgated as set forth in the following recommendation. The 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 February 16, 2007 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 4000. DEPOSITIONS AND DISCOVERY

#### Rule 4001. Scope. Definitions.

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(c) Subject to the provisions of this chapter, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery, or for preparation of pleadings, or for preparation or trial of a case, or for use at a hearing upon petition, motion or rule, or for any combination of the foregoing purposes.

**Official Note:** See Rule 4003.8 governing pre-complaint discovery.

\* \* \* \* \*

#### Rule 4003.8. Pre-Complaint Discovery.

(a) A plaintiff may obtain pre-complaint discovery where the information sought is material and necessary to the filing of the complaint and the discovery will not cause unreasonable annoyance, embarrassment, oppression, burden or expense to any person or party.

(b) Upon a motion for protective order or other objection to a plaintiff's pre-complaint discovery, the court may require the plaintiff to state with particularity how the discovery will materially advance the preparation of the

complaint. In deciding the motion or other objection, the court shall weigh the importance of the discovery request against the burdens imposed on any person or party from whom the discovery is sought.

#### Rule 4005. Written Interrogatories to a Party.

(a) Subject to the limitations provided by Rule 4011, any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or similar entity or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served upon any party at the time of service of the original process or at any time thereafter. Interrogatories which are to be served prior to service of the complaint shall be limited to the purpose of preparing a complaint and shall contain a brief statement of the nature of the cause of action. Interrogatories shall be prepared in such fashion that sufficient space is provided immediately after each interrogatory or subsection thereof for insertion of the answer or objection.

**Official Note:** Rule 440 requires the party serving interrogatories upon any other party to serve a copy upon every party to the action.

**See Rule 4003.8 governing pre-complaint discovery.**

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#### Rule 4007.1. Procedure in Deposition by Oral Examination.

\* \* \* \* \*

(c) The purpose of the deposition and matters to be inquired into need not be stated in the notice unless the action has been commenced by writ of summons and the plaintiff desires to take the deposition of any person upon oral examination for the purpose of preparing a complaint. In such case the notice shall include a brief statement of the nature of the cause of action and of the matters to be inquired into.

**Official Note:** See Rule 4003.8 governing pre-complaint discovery.

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#### Explanatory Comment

Case law governing pre-complaint discovery has not developed a general rule of application. In his opinion addressing pre-complaint discovery in *McNeil v. Jordan*, 894 A.2d 1260 (2006), Justice Baer stated in a footnote that the matter would be referred to the Civil Procedural Rules Committee to consider the adequacy of the existing rules and "to recommend any amendments that might clarify this vexing area of civil procedure."

The Committee in proposing new Rule 4003.8 has established in subdivision (a) a two-prong test for pre-complaint discovery: (1) the information sought must be material and necessary to the filing of the complaint and (2) "the discovery will not cause unreasonable annoyance, embarrassment, oppression, burden or expense to any person or party." The first prong incorporates the language of the opinion quoted above that the information sought be both "material and necessary" to the filing of a complaint in a pending action. The requirement of the opinion that there be "probable cause" that the information sought is material and necessary has not been

included in the rule. The language of the second prong that the discovery not cause "unreasonable annoyance, embarrassment, oppression, burden or expense" is taken verbatim from present Rule 4011(b) governing limitation of scope of discovery and deposition.

New Rule 4003.8(b) governs a motion for protective order or other objection to pre-complaint discovery. The court may require the plaintiff "to state with particularity how the discovery will materially advance the preparation of the complaint." The language "materially advance" is also derived from the opinion quoted above. The requirement set forth in the *McNeil* opinion of "probable cause for believing" the information will materially advance the pleading has not been retained.

Subdivision (b) confers discretion on the court in deciding a motion for pre-complaint discovery. It also incorporates the language of the opinion in the *McNeil* case, 894 A.2d at 1278-1279:

In practice, of course, a trial court addresses a discovery request not in abstract terms but in the context of the case at bar. In doing so, the court exercises significant discretion, weighing the importance of the request against the burdens imposed on the subject party to determine, as a practical matter, whether the discovery request should be permitted.

Rule 4001(c) refers to discovery for preparation of pleadings. Rules 4005(a) and 4007.1(c) refer, *inter alia*, to written interrogatories and depositions for the purpose of preparing a complaint. Notes are to be added to these rules cross-referring to new Rule 4003.8.

*By the Civil Procedural Rules Committee*

R. STANTON WETTICK, Jr.,  
*Chair*

[Pa.B. Doc. No. 07-1. Filed for public inspection January 5, 2007, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Transfer of Attorneys to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated November 15, 2006, pursuant to Pennsylvania Rules of Disciplinary Enforcement 219 which requires that all attorneys admitted to practice in any court of this Commonwealth must pay an annual assessment of \$175.00. The Order became effective December 15, 2006.

Notice with respect to attorneys having Pennsylvania registration addresses, which have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

Amacker III, George A.  
Cherry Hill, NJ

Babst, David McNary  
Cleveland, OH

Bailey, Marchelle  
Glendale, CA

Bakst, Daren Lawrence  
Raleigh, NC

Bennetsen, Julia Marie  
Haddon Township, NJ

Bernardo, Paul J.  
Astoria, NY

Bernstein, Leon  
Las Vegas, NV

Blaney, Dana Marie  
Cape May Court House, NJ

Bloom, Michael Jay  
Arlington, VA

Bodnar, Joseph J.  
Wilmington, DE

Booher, Erin Marie  
Bradenton, FL

Brennan, Patricia L.  
Kensington, MD

Brooks, Cornell William  
Woodbridge, VA

Bullion, Andrew Baker  
Washington, DC

Burgess, Susan K.  
Tampa, FL

Burke Jr., Roger William  
Washington, DC

Busby, W. Dawn  
Washington, DC

Butler, Harrison Robert  
Portugal

Carlin, Clair Myron  
Poland, OH

Carroll, Deborah A.  
Columbia, MD

Cessario, Lorraine Christie  
Elkton, MD

Cleaver, Michael David  
Verona, NJ

Colman, Tina Leah  
Honolulu, HI

Davis, Kenneth Robin  
Plano, TX

Dibble, Jaime Sue  
Arlington, VA

Dodd, Sabrina Marie  
Silver Spring, MD

Donnini, Elisabeth Murray  
Horseshoe, NC

Doris, Ian C.  
River Edge, NJ

Drury, John K.  
Charleston, SC

Dunlap II, John Barry  
Hagerstown, MD

Dutton, Melissa T.  
Collingswood, NJ

Elsetinow, Anthony L.  
Santa Ana, CA

Flamm, Aaron, Thomas  
Washington, DC

Forbes, Lance Stuart  
Moorestown, NJ

Gayda, Michael Daniel  
San Antonio, TX

Georges, Marshall P. R.  
Royal Palm Beach, FL

Goldman, Mitchell A.  
Foothill Ranch, CA

Green, Angela T'nia  
Washington, DC

Guerrero, Carol Velasquez  
New York, NY

Hartjen, Lee Christian  
Apalachin, NY

Haumann, William Andrew  
Hamilton, NJ

Jagadesan, Dev  
Washington, DC

Jennifer, Nancie Susan  
Las Vegas, NV

Jones, Robert J.  
South Plainfield, NJ

King, Jolie Kahn  
Plano, TX

Konar, Malanchika  
Voorhees, NJ

Kucskar, Kathryn A.  
Raleigh, NC

Kutzenco, Allan Neal  
Boston, MA

Leary III, John James  
Washington, DC

Leddy III, Francis James  
Hackensack, NJ

Legere, Theresa Diane  
Yuma, AZ

Levin, Robert G. B.  
Lutherville, MD

Levin, John Stuart  
Washington, DC

Levy, Jonathan Deitz  
Newark, NJ

Lombardo, Adriana C.  
Orlando, FL

Luby Jr, John E.  
Williamstown, NJ

Madden, Matthew P.  
Haddonfield, NJ

Madrid, Daniel V.  
Freehold, NJ

Maher, Steven J.  
Naples, FL

Malkin, Arthur David  
Lake Hiawatha, NJ

Mallace, Anthony N.  
Audubon, NJ

Marullo, Lori Rose  
Woodstown, NJ

McIntyre Jr., Carl H.  
Silver Spring, MD

Meacham, Shani A.  
Blackwood, NJ

Mecleary Jr., George Howard  
Long Neck, DE

Mendez Jr., Joaquin  
Coral Gables, FL

Messam Jr., Patrick Alonzo  
Bowie, MD

Metzler, Suzanne Gisler  
College Park, MD

Micklin, Brad Michael  
Roseland, NJ

Miller, Stephen Howard  
Anniston, AL

Mitchell, Robyn Charlene  
Atlanta, GA

Mohnacs, John P.  
West Deptford, NJ

Naumoff-Dulski, Hannah Hull  
Denver, CO

O'Grady, Kevin  
Bloomington, IN

O'Rourke, Brian Robert  
Marlton, NJ

Ophaug, Bradley Michael  
Plano, TX

Oshtry, Daniel Ira  
Washington, DC

Ott, Theresa M.  
Oviedo, FL

Pagano, Ralph V.  
Cranbury, NJ

Palchick, Mark J.  
Washington, DC

Pelayo, Socorro Maria  
San Jose, CA

Pellathy, Gabriel B.  
Washington, DC

Peterson, Donald Hamilton  
Washington, DC

Pirozek, Christian Gerard  
Alexandria, VA

Polis II, Robert Arthur  
Wildwood, NJ

Pomar, Olga D.  
Camden, NJ

Porcaro, Kimberly Anne  
Morristown, NJ

Proko Jr., Peter J.  
Sewell, NJ

Rednor, Howard S.  
Trenton, NJ

Reyes, Arcadio Jorge  
Washington, DC

Romney, Norman D'Edward  
Bowie, MD

Rosato, Jennifer L.  
Brooklyn, NY

Rosenberg, Marshall Ethan  
Washington, DC

Rothmel, Michael  
Mt. Holly, NJ

Rynkiewicz, John P.  
Washington, DC

Sapirman, Louis Alan  
Short Hills, NJ

Shaffer, Gary Leigh  
Annapolis, MD

Sheldon, Steven James  
Orlando, FL

Sheppard-Williams, Tselane K.  
Sicklerville, NJ

Sok, Siphana  
Cambodia

Spence, Gregory Keith  
Brooklyn, NY

Stamets, Russell Allen  
India

Strnad, Sonya  
Miami, FL

Strong, Gregory Colleran  
Wilmington, DE

Swoyer III, George William  
Northfield, NJ

Taggart, Ward Shaffer  
Trenton, NJ

Techentin, Julia Beauchamp  
North Kingstown, RI

Tenny, Nathan Andrew  
APO AE

Thaggert III, Henry Laynell  
Arlington, VA

Tower, Elizabeth Corbin  
Washington, DC

Weisberg, Martin S.  
Marlton, NJ

Williams, Nicole J.  
Washington, DC

Wilson, Timothy James  
Wilmington, DE

Zis, Peter J.  
Richton Park, IL

## Notice of Transfer of Attorneys to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated November 21, 2006, pursuant to Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective December 21, 2006 for Compliance Group 1 due April 30, 2006. Notice with respect to attorneys having Pennsylvania registration addresses, which have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

Barbour, Roger A.  
Maple Shade, NJ

Byrer, Robert Glenn  
Washington, DC

Campbell, Kelly Lynn  
Camden, NJ

Drabkin, David Allan  
Springfield, VA

Edwards, Alice Riedman  
West Chicago, IL

Grundy, Jenifer  
Edgefield, SC

Halbreich, Michael M.  
Atlanta, GA

Hammerschmidt, Judith Lynne  
Chevy Chase, MD

Jackson, Paul Reuben  
Muskegon, MI

Kincade, Michael Joseph  
Metairie, LA

Loughney, Robert M.  
Albany, NY

Mastroianni, James J.  
New York, NY

Muhr, William Wayne  
Colorado Springs, CO

Perrucci Jr., Angelo M.  
Washington, NJ

Rai-Choudhury, Indira  
Bellingham, WA

Schaufeld, Karen Grace  
Lovettsville, VA

Wilson, Marian M.  
Long Beach, CA

ELAINE M. BIXLER,  
*Secretary*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

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ELAINE M. BIXLER,  
*Secretary*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

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