

**IN THE
SUPREME COURT OF PENNSYLVANIA**

IN RE: Amendment of Rule of : No. 309
Civil Procedure 4007.2 and Note : Civil Procedural Rules
to Rule 4001(a) : Docket No. 5

O R D E R

PER CURIAM:

AND NOW, this 19th day of March, 1999, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rule 4007.2 is amended to read as attached hereto.
2. The note to Rule 4001(a) is amended to read as attached hereto.

Whereas publication of proposed rulemaking would otherwise be required, it has been determined under Pennsylvania Rule of Judicial Administration No. 103(a)(3) that the immediate amendment of these rules is required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration No. 103(b) and shall be effective July 1, 1999.

NOTE:

Underscored material is added.
Bracketed material is deleted.

I. The preface to the Discovery Rules which immediately precedes Rule 4001 is amended to read as follows:

DEPOSITIONS AND DISCOVERY

EXPLANATORY NOTE

Finally, the Rules are expressly made applicable to eminent domain proceedings. [Leave of court is required] They are also applicable in divorce and in support and custody proceedings to the extent provided by the rules governing those proceedings.

II. The note to Rule 4001(a) and the Explanatory Note to Rule 4001 are amended, and an Explanatory Note 1999 is added, to read as follows:

Rule 4001. Scope. Definitions

(a) ***

Note: Rule 1701(b)(4) of the Pennsylvania Rules of Appellate Procedure permits a lower court to authorize the taking of depositions or the preservation of testimony in the interest of justice after an appeal is taken. The procedure under these rules is applicable to such depositions.

See Rule 1930.5 governing discovery in domestic relations matters and specifying when leave of court is and is not required. See also Rules 1910.9 and 1915.5(c) governing discovery in actions for support and custody, respectively.

EXPLANATORY NOTE

[Prior to the 1968 Constitution, support proceedings were considered quasi-criminal and were docketed with the clerk of the Quarter Sessions Court. This applied to support proceedings brought pursuant to the complaint procedure of the Civil Procedural Support Law. After the consolidation of the former separate courts into a unified Common Pleas Court, lower courts were not agreed on the applicability of discovery in support proceedings.]

[The amendment excludes any automatic right to discovery in support proceedings. The vast majority of support proceedings involve wage earners of relatively modest means. The present intake and conference procedures and questionnaires to employers supply the basic discovery needed as to earnings. The parties are generally familiar with the extent of each other's finances. Further discovery will not be needed in routine cases. To avoid the possibility of a defendant spouse using discovery as a tool for harassment, abuse and delay, the amendment requires leave of court in all support proceedings. This should be freely given where it is essential to a just disposition of the matter.]

[Proceedings for custody of minor children are subject to the same provision for leave of court.]

[In actions for divorce, lower courts were divided as to the availability and extent of discovery. Some courts held that the bill of particulars procedure authorized by Divorce Rule 1128 was intended to supply all the discovery permitted. The amendment adopts a more flexible rule. With leave of court, the full scope of discovery is now available in divorce. In the vast majority of divorce actions, discovery may be unnecessary and will not

be allowed. But where it is essential to the just disposition of a contested action, it should be freely granted.]

EXPLANATORY NOTE - 1999

Rule of Civil Procedure 4001(a) was amended in 1997 to eliminate reference to discovery in the domestic relations actions of support, custody of minor children and divorce or annulment of marriage. Discovery in those actions is governed by Rule 1930.5.

III. Rule 4007.2(a) and the Explanatory Note to Rule 4007.2 are amended, and an Explanatory Note 1999 is added, to read as follows:

Rule 4007.2. When Leave of Court Required

(a) Except as provided by Rule[s 4001(a) and] 4003.5(a)(2) and by subdivisions (b) and (d) of this rule, a deposition may be taken without leave of court.

NOTE: See Rule 1930.5(a) providing that there shall be no discovery in specified domestic relations matters unless authorized by the court. See also Rules 1910.9 and 1915.5(c) governing discovery in actions for support and custody, respectively.

EXPLANATORY NOTE

This Rule consolidates in one Rule various provisions for leave of court which are now scattered through the prior rules. It substantially follows present practice.

[As noted in the comment to Rule 4001, supra, which is incorporated by reference, leave of court will be required in actions of support, divorce, and custody of minor children.]

Rule 4003.5(a)(2), [also] incorporated by reference, requires leave of court for further examination of experts whose opinions or reports have already been disclosed in response to the interrogatories.

EXPLANATORY NOTE - 1999

Rule 4007.2(a) has been amended to delete the reference to Rule 4001(a). Rule 4001(a) was amended in 1997 by the deletion of the reference to domestic relations actions, the rules of which formerly contained a broad prohibition against discovery except upon leave of court. That broad prohibition has now been narrowed and discovery is available to the extent provided by Rule 1930.5 governing discovery in domestic relations matters generally and Rules 1910.9 and 1915.5 governing discovery in the actions of support and custody, respectively. At the same time, those rules continue to require leave of court in specified instances.