

Rule 4001. Scope. Definitions

(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.

NOTE: See Rule 4003.8 governing pre-complaint discovery.

Rule 4003.8. Pre-Complaint Discovery (NEW)

(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.

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.

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.

NOTE: See Rule 4003.8 governing pre-complaint discovery.

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.”

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 protective order or other objection to 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 have been added to these rules cross-referring to new Rule 4003.8.

By the Civil Procedural
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