

**IN THE
SUPREME COURT OF PENNSYLVANIA**

IN RE: Technical Amendment of	:	No. 312
Rules of Civil Procedure 3101 –	:	Civil Procedural Rules
4020	:	Docket No. 5

ORDER

PER CURIAM:

AND NOW, this 12th day of April, 1999, the Pennsylvania Rules of Civil Procedure are amended as follows:

Rules 3101, 3105, 3106, 3109, 3110, 3111, 3112, 3118, 3121, 3123, 3126, 3128, 3129.2, 3133, 3134, 3136, 3137, 3139, 3140, 3141, 3143, 3144, 3145, 3165, 3170, 3182, 3201, 3204, 3205, 3206, 3207, 3252, 3253, 3255, 4003.3, 4003.5, 4004, 4007.1, 4007.2, 4007.4, 4008, 4014, 4015, 4017, 4017.1, 4019, 4020 are amended to read as attached hereto.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1999.

NOTE: Underscored material is added.
Bracketed material is deleted.

Rule 3101. Definitions. Garnishee

(a) ***

(b) Any person may be a garnishee and shall be deemed to have possession of property of the defendant if [he] the person

(1) owes a debt to the defendant;

(2) has property of the defendant in his or her custody, possession or control;

NOTE: ***

Rule 3105. Writ. Notation of Time of Receipt

The sheriff shall note on the writ the date and time when [he receives] it is received.

Rule 3106. Substitution, Reissuance and Expiration of Writ

(d) A writ shall not be served nor shall a levy or attachment be made thereunder after the expiration of ninety [(90)] days from the date of issuance or reissuance. After levy or attachment has been made under the writ within the ninety [(90)] -day period it shall remain valid without further reissuance for the purpose of completing the pending execution proceedings under the levy or attachment.

Rule 3109. Manual Possession. Retention of Possession

(a) The sheriff may, or at the direction of the plaintiff shall, take manual possession or custody of any tangible personal property of the defendant upon which [he] the sheriff has made a levy.

(b) ***

(c) If the sheriff does not retain possession of the property taken, [he shall return] it shall be returned to the person from whom it was taken.

(d) ***

Rule 3110. Execution against Contents of Safe Deposit Box

(c) *** If the defendant, the depository or custodian, or a person who has the right to open the box cannot be served personally with the petition and rule, [he] that person shall be served by sending [him] a copy of the petition and rule by registered mail directed to his or her last known address or, if no address is known and an affidavit to that effect is filed, by publication in such manner as the court by local rule or special order shall direct.

NOTE: ***

Rule 3111. Service of the Writ on Garnishee. Effect

(a) ***

(b) Service of the writ upon the garnishee shall attach all property of the defendant which may be attached under these rules which is in the possession of the garnishee. It shall also attach all property of the defendant which may be attached under these rules and which comes into the garnishee's possession thereafter until judgment against [him] the garnishee even though no such property of the defendant was in [his] the garnishee's possession at the time of service.

NOTE: ***

(c) Service of the writ upon the garnishee shall also subject [him] the garnishee to the mandate and injunctive orders of the writ restraining [him] the garnishee from paying any debt to or for the account of the defendant and from delivering any property of the defendant which may be attached under these rules to anyone except the sheriff or otherwise disposing thereof until further order of the court or discontinuance or termination of the attachment.

(d) ***

**Rule 3112. Service of the Writ upon Garnishee. Real Property of Defendant in
Name of Third Party**

(a) The sheriff shall execute the writ against real property of the defendant, title to which is recorded in the name of a third party, by serving the third party as garnishee and

noting upon the writ a description of the real property and a statement that [he] the sheriff has levied upon defendant's interest therein.

(b) ***

(c) [If the] A garnishee who cannot be served as provided in Rules 3111(a) or 3112(b)[, he] shall be served by (1) posting a copy of the writ on a public part of the property and (2) handing a copy of the writ to the person in actual possession of the property or, if no one is in actual possession, by sending the garnishee a copy of the writ together with an inventory of the property attached, by registered mail directed to [his] the garnishee's last known address or, if no address is known and an affidavit to that effect is filed, by publication in such manner as the court by special order shall direct.

Note: ***

Rule 3118. Supplementary Relief in Aid of Execution

NOTE: Service of a writ of execution against a garnishee enjoins [him] the garnishee as provided in Rule 3111 but supplementary aid may be obtained under this rule against any party or person without the necessity of separate proceedings in equity in aid of execution.

Rule 3121. Stay of Execution. Setting Aside Execution

(e) All objections by the defendant shall be raised at one time.

NOTE: The garnishee may however raise the defenses of exemption or immunity of property from execution by preliminary objection or in [his] answers to interrogatories.

See Rules 3142(a) and (c) and 3145(b).

Rule 3123. Debtor's Exemption

(a) A defendant entitled to a statutory exemption may claim it in kind or in cash at any time before the date of sale by notifying the sheriff of his or her claim and, if the exemption is claimed in kind, by designating the property which he or she elects to retain as exempt. Failure of the defendant to claim [his] the statutory exemption shall not constitute a waiver thereof.

NOTE: See Mayhugh v. Coon, 460 Pa. 128, 331 A.2d 452 (1975).

(b) Upon receipt of a claim for exemption in kind the sheriff shall set aside, from the designated property, enough thereof as appraised by [him] the sheriff, to equal the value of the exemption, unless the property is incapable of division. In the event of failure of the defendant to claim [his] the statutory exemption, the sheriff shall similarly choose, appraise, and set aside property in kind. Real property claimed shall be described by metes and bounds and the description shall be included in the sheriff's return.

(c) If the property held by the sheriff in kind cannot be set aside [property in kind] because [the property in his hands] it is not capable of appropriate division, [he] the sheriff shall set aside from the proceeds of the sale and pay to the defendant in cash the amount of [his] the statutory exemption.

Rule 3126. Sale of Inventory in Course of Trade

Merchandise, inventory or stock in trade of a defendant engaged in trade or business may, after levy, be sold by the defendant for cash in the ordinary course of trade or business if the plaintiff shall consent by writing directed to the sheriff. If the sheriff [has in his hands] holds writs of more than one plaintiff against the defendant, all the plaintiffs must consent in writing to the sale. The sale shall be under the supervision of the sheriff. The proceeds of sale shall be immediately collected by or delivered to the sheriff until all writs [in his hands] held by the sheriff against the defendant are satisfied. Any plaintiff may withdraw his or her consent at any time.

Rule 3128. Notice of Sale. Personal Property

(a) ***

(b) The notice of sale shall include a notice that all claims to the property must be filed with the sheriff before sale and all claims to the proceeds before distribution; that a sheriff's schedule of distribution will be filed in [his] the sheriff's office on a date specified by [him] the sheriff, not later than five [(5)] days after sale; and that distribution will be made in accordance with the schedule unless exceptions are filed within ten [(10)] days thereafter. No further notice of the filing of the schedule of distribution need be given.

NOTE: ***

Rule 3129.2. Notice of Sale. Handbills. Written Notice. Publication

(a) ***

(b) The handbills shall be posted by the sheriff in [his] the sheriff's office and upon the property at least thirty days before the sale, and shall include

(1) ***

(2) ***

Rule 3133. Lien Creditor as Purchaser

Whenever real or personal property sold on execution is purchased by the plaintiff or any other lien creditor entitled to receive all or part of the proceeds of the sale, the sheriff upon proof of that fact shall accept on account of the purchase price the receipt of the purchaser up to the amount of the proceeds to which [he] the purchaser is entitled. The sheriff may require payment in cash of all legal costs distributable from the proceeds of the sale.

Rule 3134. Transfer of Personal Property to Purchaser

When [the sheriff sells] selling personal property in execution [he] the sheriff shall, upon request of the purchaser, execute and deliver to the purchaser a sheriff's bill of sale setting forth the caption of the case and a description of the property. When [the sheriff sells] selling securities or documents of title, [he] the sheriff shall, upon request, endorse said document in the name of the defendant as follows:

"Defendant _____ by _____, Sheriff of
(Name of Defendant)

_____ County, pursuant to execution upon a judgment against the above named in the Court of _____ County, at Number _____[, _____ Term 19____.]"

NOTE: ***

Rule 3136. Distribution of Proceeds

(a) Not later than thirty [(30)] days after the sale of real property and not later than five [(5)] days after the sale of personal property, the sheriff shall prepare a schedule of proposed distribution of the proceeds of sale which shall be kept on file and shall be available for inspection in [his] the sheriff's office. No schedule of distribution or list of liens need be filed when the property is sold to the plaintiff for costs only.

(b) When a receipt of the plaintiff or other lien creditor has been accepted on account of the purchase price, the schedule shall set forth [his] the name and address of the plaintiff or lien creditor, the amount of [his] the judgment or lien, identifying it, and the amount of credit claimed and allowed upon the purchase price.

(c) In sales of real property the sheriff shall attach to the schedule a list of liens upon the property sold as certified [to him] from the record by the proper officers or a guaranteed search from any title company authorized to do business within the county. The cost of certifying the list of liens or the title search, the acknowledgment, recording and registry of the deed and transfer or documentary stamps shall be charged as an expense of distribution.

(d) The sheriff shall distribute the proceeds of sale in accordance with the proposed schedule of distribution, unless written exceptions are filed with [him] the sheriff not later than ten (10) days after the filing of the proposed schedule.

(e) Upon the filing of exceptions, [with] the sheriff [he] shall transmit them to the prothonotary together with a copy of the proposed schedule of distribution.

(h) If the sheriff receives any money for costs or in connection with a stay, adjournment or postponement of sale or otherwise, [he] the sheriff shall account for it on returning the writ.

Rule 3137. Priority of Distribution as Between Competing Plaintiffs

(a) ***

(b) When property is attached by service upon the garnishee of two or more writs of separate plaintiffs, priority of distribution between them shall be determined by the date of service of their respective writs upon the garnishee as to all property then in the hands of

the garnishee or coming into [his] the garnishee's possession up to time of judgment against [him] the garnishee.

(c) ***

NOTE: ***

Rule 3139. Sheriff's Return

(d) If real property is sold by the sheriff under a writ of execution from another county, a copy of the sheriff's return shall also be filed by [him] the sheriff with the prothonotary of the county in which the real property is located.

Rule 3140. Notice by Garnishee

(a) ***

(b) Upon filing [his] answers to interrogatories the garnishee shall promptly forward a copy to the defendant.

(c) A copy is forwarded within the requirement of this rule when it is delivered to the defendant by a competent adult at any place within or without the Commonwealth in the manner prescribed by Rule 402(a) for service of original process or when it is mailed to the defendant by registered mail directed to [his] the defendant's last known address.

NOTE: ***

Rule 3141. Garnishee's Duty to Defend. Venue of Proceedings

(a) [If the] A garnishee who forwards copies of the writ and [his] answers to interrogatories to the defendant[, he] shall thereafter be under no duty to resist the attachment or defend the action against the defendant in any manner but may do so as provided by these rules.

NOTE: ***

(b) When the writ is issued to another county, preliminary objections, proceedings for stay, or release of property from attachment, answers to interrogatories, or other matters relating to the attachment, may at the option of the garnishee be filed or taken by [him] the garnishee in the county to which the writ is directed or from which it issued. ***

Rule 3143. Dissolution of Attachment. Release of Property. Bond

(a) ***

(b)(1) An attachment is dissolved when any person or party

(a) ***

(b) deposits with the prothonotary, or with the sheriff for the prothonotary, to be held by [him] the prothonotary or the sheriff upon the same condition as the bond, security in the form of legal tender of the United States in an amount equal to the plaintiff's judgment, including probable interest and costs, or in such lesser amount as the court may direct.

(2) ***

(c) Specific property is released without dissolving the attachment when any person or party gives bond or security, as provided by Subdivision (b) of this rule, in an amount based upon the value of the property to be determined by the court, and conditioned to pay the plaintiff the amount of [his] the final judgment against the defendant or the value of the property released, whichever is less.

NOTE: ***

(f) The prothonotary, on praecipe of the garnishee or defendant, shall enter a rule on the plaintiff to file interrogatories. If the plaintiff fails to comply with the rule within twenty [(20)] days after service, the prothonotary, upon praecipe of the garnishee, shall enter judgment of non pros against the plaintiff and in favor of the garnishee, which shall dissolve the attachment as to the garnishee.

(g) At any time after the filing of answers to the interrogatories and service of a copy upon the plaintiff, the prothonotary, on praecipe of the garnishee, shall enter a rule on the plaintiff to (1) seek judgment against the garnishee under Rule 3146(b) or (2) place the

issue between the plaintiff and garnishee upon the list for trial. If the plaintiff fails to comply with the rule within twenty [(20)] days after service, the prothonotary, on praecipe of the garnishee, shall enter judgment of non pros against the plaintiff in favor of the garnishee, which shall dissolve the attachment as to the garnishee.

(h) ***

Rule 3144. Interrogatories to Garnishee

(a) The plaintiff may, at the time of issuance of the writ or thereafter, file and serve interrogatories directed to the garnishee respecting property of the defendant in [his] the garnishee's possession. The plaintiff in [his] the interrogatories may require the garnishee to include in [his] the answer, so far as relevant, the names and addresses of persons taking part in any transaction, the specific amount of any debt, the value and location of any property and the nature and amount of consideration given for any transfer of property.

NOTE: ***

(b) The interrogatories shall contain a notice to answer within twenty [(20)] days after service.

NOTE: ***.

Rule 3145. Interrogatories. Procedure

(a) ***

(b) The garnishee in [his] the answer under "new matter" may include

(1) the defenses of the immunity or exemption of property;

(2) any defense or counterclaim which [he] the garnishee could assert against the defendant if sued by [him] the defendant but [he] the garnishee may not assert any defense on behalf of the defendant against the plaintiff or otherwise attack the validity of the attachment;

NOTE: ***

(3) any claim which [he] the garnishee could assert against the plaintiff if sued by [him] the plaintiff.

Rule 3165. Reentry by Defendant. New Writ of Possession

After execution and return of the writ, if the defendant shall reenter into possession, the prothonotary, upon praecipe and affidavit setting forth the facts, filed within three [(3)] years after the return of the writ on which execution was completed, shall issue a new writ of possession.

Rule 3170. Judgment. Enforcement

(a) If judgment is entered for the party in possession, [he] that party may recover [his] damages and costs by execution or by recovery upon the bond.

(b) If judgment is entered for a party not in possession, [he] that party may obtain [the] possession of the property by a writ of possession, or in the alternative may obtain the value of the property by execution on the judgment or by recovery upon the bond. In any case, [he] the party may recover [his] damages and costs by execution or by recovery upon the bond.

NOTE: ***

Rule 3182. Service of Writ. Levy

Service of the writ shall be made by the sheriff noting upon the writ a brief description of the mortgaged property and a statement that [he] the sheriff has levied upon defendant's interest therein.

NOTE: ***

Rule 3201. Scope

NOTE: ***

These rules do not apply where tangible property is attached under Rule 3108(a) rather than levied upon. If the garnishee [himself] claims the property [he] the garnishee may interplead under Rules 2301 et seq. If an outside person claims the property, [he] such person may intervene in the garnishment proceedings or the garnishee may defend the attachment by asserting the outside person's title and denying that [he] the garnishee holds any property of the defendant.

Rule 3204. Sheriff’s Determination of Claimant’s Title

Within ten [(10)] days after the claim is filed the sheriff shall, with or without formal hearing, determine whether the claimant is prima facie the owner of the property in whole or in part.

Rule 3205. Appraisal of Property. Appraisal Fees

(a) Unless a party in interest files a request for appraisal with the sheriff within ten [(10)] days after the date specified in the sheriff’s notice, the sheriff without making an appraisal shall accept the value of the property set forth in the claim.

(b) ***

NOTE: ***

Rule 3206. Sheriff’s Determination in Favor of Claimant. Objections. Amount of Bond. Delivery of Property. Interpleader

(a) ***

(b) Any execution creditor or defendant may, within ten [(10)] days after the date of mailing of the copy of the determination and valuation, file with the prothonotary and with the sheriff an objection to the determination substantially in the form provided by Rule 3260. ***

(e) If an execution creditor or a defendant files an objection, the claimed property shall remain subject to the levy unless the claimant within ten [(10)] days from the filing of the objection files a bond as provided in Rules 3207(d) and 3208, in which event the sheriff shall withdraw all levies on the claimed property and deliver the same as provided in Rule 3207(d).

Rule 3207. Sheriff's Determination against Claimant. Objection. Amount of Bond.

Delivery of Property. Interpleader

(a) ***

(b) The claimant may, within ten [(10)] days after the date of the mailing of the copy of the determination and valuation, file with the prothonotary and with the sheriff an objection to the determination substantially in the form provided by Rule 3260, with or without bond. ***

Rule 3252. Writ of Execution. Money Judgments

(a) ***

CLAIM FOR EXEMPTION

NOTE: ***

Under paragraph (2) of the writ, if attachment of a named garnishee is desired, [his] the garnishee's name should be set forth in the space provided.

(b) ***

Rule 3253. Interrogatories in Attachment

Interrogatories of the plaintiff to the garnishee shall be substantially in the following form:

[Caption]

To _____:
(Garnishee)

You are required to file answers to the following interrogatories within twenty (20) days after service upon you. Failure to do so may result in judgment against you:

1. At the time you were served or at any subsequent time did you owe the defendant any money or were you liable to [him] the defendant on any negotiable or other written instrument, or did [he] the defendant claim that you owed [him] the defendant any money or were liable to [him] the defendant for any reason?

6. At any time after you were served did you pay, transfer or deliver any money or property to the defendant or to any person or place pursuant to [his] the defendant's direction or otherwise discharge any claim of the defendant against you?

Rule 3255. Writ of Possession

The writ of possession shall be substantially in the following form:

[Caption]

WRIT OF POSSESSION

Commonwealth of Pennsylvania)
County of _____)

To the Sheriff of _____ County:

NOTE: ***

(2) To satisfy the costs against _____ you are directed to levy upon any property of _____ and sell his or her interest therein.

Rule 4003.3. Scope of Discovery. Trial Preparation Material Generally

Subject to the provisions of Rules 4003.4 and 4003.5, a party may obtain discovery of any matter discoverable under Rule 4003.1 even though prepared in anticipation of litigation or trial by or for another party or by or for that other party's representative, including his or her attorney, consultant, surety, indemnitor, insurer or agent. The discovery shall not include disclosure of the mental impressions of a party's attorney or his

or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories. With respect to the representative of a party other than the party's attorney, discovery shall not include disclosure of his or her mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics.

Rule 4003.5. Discovery of Expert Testimony. Trial Preparation Material

(a) Discovery of facts known and opinions held by an expert, otherwise discoverable under the provisions of Rule 4003.1 and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

(1) A party may through interrogatories require

(a) ***

(b) the other party to have each expert so identified [by him] state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. The party answering the interrogatories may file as his or her answer a report of the expert or have the interrogatories answered by [his] the expert. The answer or separate report shall be signed by the expert.

(b) [If the identity of an expert witness is not disclosed] An expert witness whose identity is not disclosed in compliance with subdivision (a)(1) of this rule[, he] shall not be permitted to testify on behalf of the defaulting party at the trial of the action. However, if the failure to disclose the identity of the witness is the result of extenuating circumstances

beyond the control of the defaulting party, the court may grant a continuance or other appropriate relief.

(c) To the extent that the facts known or opinions held by an expert have been developed in discovery proceedings under subdivision (a)(1) or (2) of this rule, [his] the direct testimony of the expert at the trial may not be inconsistent with or go beyond the fair scope of his or her testimony in the discovery proceedings as set forth in [his] the deposition, answer to an interrogatory, separate report, or supplement thereto. However, [he] the expert shall not be prevented from testifying as to facts or opinions on matters on which [he] the expert has not been interrogated in the discovery proceedings.

Rule 4004. Procedure on Depositions by Written Interrogatories

(a)(1) A party taking a deposition by written interrogatories shall serve a copy of the interrogatories upon each party or [his] the attorney of record of each party. Within thirty days thereafter the party so served may serve cross interrogatories upon each party or [his] the attorney of record of each party. Subsequent interrogatories shall be similarly served within ten days.

(2) The interrogatories shall contain a notice stating the name or descriptive title and address of the officer before whom the deposition is to be taken, the time and place of taking the deposition and the name and address of each person to be examined if known, and, if the name is not known, a general description sufficient to identify [him] each person to be examined or the particular class or group to which [he] each person belongs. A

deposition upon written interrogatories may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 4007.1(e).

(b) Objections to the form of interrogatories are waived unless filed and served upon the party propounding them within the time allowed for serving the succeeding cross or other interrogatories or within ten [(10)] days after service of the last interrogatories. All other objections may be made at the trial except as otherwise provided by Rule 4016.

(c) A copy of all interrogatories for the taking of a deposition shall be transmitted to the person designated to take the deposition, who shall promptly give notice to the witness and thereafter propound the interrogatories to [him] the witness and complete, certify and send [it] the deposition by registered mail to the party taking the deposition, attaching thereto the copy of the interrogatories.

(d) When the deposition is received by the party taking the deposition, [he] the party shall promptly give notice thereof to all other parties.

(e) ***

Rule 4007.1. Procedure in Deposition by Oral Examination

(a) ***

(b) The notice shall conform with the requirements of subdivision (c) of this Rule and of Rule 4007.2(b) and (c) where appropriate and shall state the time and place of taking the deposition and the name and address of each person to be examined if known,

and, if the name is not known, a general description sufficient to identify [him] the deponent or the particular class or group to which [he] the deponent belongs.

NOTE: ***

(e) A party may in [his] the notice and in a subpoena, if issued, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters to be inquired into and the materials to be produced. In that event, the organization so named shall serve a designation of one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated the matters on which [he] each person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The person or persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (e) does not preclude taking a deposition by any other procedure authorized in these rules.

Rule 4007.2. When Leave of Court Required

(a) ***

(b) Leave of court must be obtained if a plaintiff's notice schedules the taking of a deposition prior to the expiration of thirty [(30)] days after service of the original process and the defendant has not served a notice of taking a deposition or otherwise sought discovery, unless the party or person to be examined is

(1) aged or infirm, or

(2) about to leave the county in which the action is pending for a place outside the Commonwealth or a place more than one hundred [(100)] miles from the courthouse in which the action is pending.

(c) If the plaintiff proceeds under subdivision (b)(1) or (2) of this rule the notice of taking the deposition shall set forth the facts which support taking it without leave of court. The plaintiff's attorney shall sign the notice and [his] this signature shall constitute a certification [by him] that to the best of [his] the attorney's knowledge, information and belief the statement of facts is true.

NOTE: ***

(d) ***

Rule 4007.4. Supplementing Responses

A party or an expert witness who has responded to a request for discovery with a response that was complete when made is under no duty to supplement [his] the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement [his] the response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness at trial, the subject matter on which [he] each person is expected to

testify and the substance of [his] each person's testimony as provided in Rule 4003.5(a)(1).

(2) A party or an expert witness is under a duty seasonably to amend a prior response if he or she obtains information upon the basis of which he or she knows that

(a) [he knows that] the response was incorrect when made, or

(b) [he knows that] the response though correct when made is no longer

true.

(3) ***

Rule 4008. Oral Examination. Limitation

If a deposition is to be taken by oral examination more than one hundred [(100)] miles from the courthouse, the court upon motion may make an order requiring the payment of reasonable expenses, including attorney's fees, as the court shall deem proper.

Rule 4014. Request for Admission

(a) ***

NOTE: ***

(b) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission an answer verified by the party or

an objection, signed by the party or by [his] the party's attorney; but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the original process upon him or her. If objection is made, the reasons therefor shall be stated. The answer shall admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully do so. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify [his] the answer or deny only a part of the matter of which an admission is requested, [he] the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless [he] the answering party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable him or her to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request. [He] That party may, subject to the provisions of Rule 4019(d), deny the matter or set forth reasons why he or she cannot admit or deny it.

NOTE: ***

(c) ***

(d) Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 212.3 governing pre-trial conferences, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby

and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him or her in maintaining [his] the action or defense on the merits. Any admission by a party under this rule is for the purpose of the pending action only and is not an admission by [him] the party for any other purpose nor may it be used against [him] the party in any other proceeding.

Rule 4015. Persons Before Whom Depositions May Be Taken

(a) ***

(b) In a foreign country, depositions may be taken

(1) ***

(2) before a person commissioned by the court in which the action is pending, and a person so commissioned shall have the power by virtue of [his] the commission to administer any necessary oath and take testimony, or

(3) ***

(c) ***

Rule 4017. Transcript of Testimony. Objections. Filing

(a) The person before whom the deposition is taken shall put the witness on oath or affirmation and shall personally or by someone acting under his or her direction and in his or her presence record the testimony of the witness.

(b) ***

(c) When the testimony is fully transcribed a copy of the deposition with the original signature page shall be submitted to the witness for inspection and signing and shall be read to or by [him] the witness and shall be signed by [him] the witness, unless the inspection, reading and signing are waived by the witness and by all parties who attended the taking of the deposition, or the witness is ill or cannot be found or refuses to sign. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the person before whom it was taken with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness within thirty [(30)] days of its submission to [him] the witness, the person before whom the deposition was taken shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(d) The person before whom the deposition is taken shall certify on the deposition that the witness was duly sworn [by him] and that the deposition is a true record of the testimony given by the witness.

Rule 4017.1. Videotape Depositions

(a) ***

(b) Every notice or subpoena for the taking of a videotape deposition shall state

(5) the name and address of the videotape operator and of his or her employer. The operator may be an employee of the attorney taking the deposition.

(c) The deposition shall begin by the operator stating on camera (1) his or her name and address, (2) the name and address of his or her employer, (3) the date, time and place of the deposition, (4) the caption of the case, (5) the name of the witness, and (6) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken shall then identify himself or herself and swear the witness on camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. When the length of the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced on camera by the operator.

Rule 4019. Sanctions

(a)(1) The court may, on motion, make an appropriate order if

(iv) a party or an officer, or managing agent of a party or a person designated under Rule 4007.1(e) to be examined, after notice under Rule 4007.1, fails to appear before the person who is to take [his] the deposition;

(v) ***

(vi) a party or an officer, or managing agent of a party refuses or induces a person to refuse to obey an order of court made under subdivision (b) of this rule

requiring [him] such party or person to be sworn or to answer designated questions or an order of court made under Rule 4010;

(c) The court, when acting under subdivision (a) of this rule, may make

(1) ***

(2) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting [him] such party from introducing in evidence designated documents, things or testimony, or from introducing evidence of physical or mental condition;

(d) ***

(3) the party failing to admit had reasonable ground to believe that he or she might prevail on the matter, or

(e) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by [him] such other party and his or her attorney in so attending, including attorney's fees.

(f) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon [him] the witness and because of such failure the witness does not attend, and if another party attends in person or by attorney [because he expects] expecting the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by [him] such other party and his or her attorney in so attending, including attorney's fees.

Rule 4020. Use of Depositions at Trial

(a) ***

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds

(a) that the witness is dead, or

(b) that the witness is at a greater distance than one hundred [(100)] miles from the place of trial or is outside the Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition, or

(4) If only part of a deposition is offered in evidence by a party, any other party may require [him] the offering party to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

(5) ***

(b) Substitution of parties does not affect the right to use depositions previously taken; and, when an action has been dismissed and another action involving the same subject is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken [and duly filed] in the former action may be used in the latter as if originally taken therein.

(c) ***

(d) A party shall not be deemed to make a person his or her own witness for any purpose by taking [his] the person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in subdivision (a)(2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by [him] that party or by any other party.

Explanatory Comment

The 1999 technical amendments to the rules of civil procedure accomplish three purposes. First, the rules are made gender neutral. For example, rules which contained references to "he" have been revised by substituting the phrase "he or she" or by replacing the pronoun with the original noun, e.g., "the deponent".

Second, there are a few rules containing forms which are revised by eliminating the date reference to the 1900's in light of the turn of the century. For example, the form of order contained in Rule 206.5 governing petitions formerly began, "AND NOW, this ____ day of _____, 199_...". The form is amended by the substitution of a blank line in place of "199_".

Third, the rules have been inconsistent in the use of a word or a word and numeral to represent a number. For example, one rule might refer to "ten days" while another rule referred to "ten (10)" days. The rules are revised to use numerical representation by word only, e.g., "ten days". The use of a word and numeral remains only in forms such as the notice to plead prescribed by Rule 1361 which directs a party to file a response "within twenty (20) days from service hereof...."

By the Civil Procedural
Rules Committee

Edwin L. Klett
Chair