

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

Proposed Recommendation No. 241

**Proposed Rescission of Rule 4014, Promulgation of New Rules 4014.1, 4014.2 and
4014.3 Governing Request for Admission, and Amendment of Rule 4019**

Governing Sanctions

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 4014 be rescinded, that new Rules 4014.1, 4014.2 and 4014.3 governing the request for admission be promulgated, and that Rule 4019 governing sanctions be amended as set forth herein. 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 no later than **October 2, 2009** to:

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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.

Rule 4014. Request for Admission

Rescinded.

[(a) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rules 4003.1 through 4003.5 inclusive set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness, authenticity, correctness, execution, signing, delivery, mailing or receipt of any document described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or available for inspection and copying in the county. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the original process upon that party.

(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 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 the answer or deny only a part of the matter of which an admission is requested, 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 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. 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: The requirements of an answer are governed by this rule and not by Rule 1029(b).

(c) The party who has requested the admission may move to determine the sufficiency of the answer or objection. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial.

(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 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 the party for any other purpose nor may it be used against the party in any other proceeding.】

Rule 4014.1. Request for Admission. Statement or Opinion of Fact or Law. Genuineness of Document

(a) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rules 4003.1 through 4003.5 inclusive set forth in the request that relate to statement or opinion of fact or of the application of law to fact, and including the genuineness, authenticity, correctness, execution, signing, delivery, mailing or receipt of any document described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or available for inspection and copying in the county.

(b) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the original process upon that party.

Rule 4014.2. Response to Request for Admission. Denial

(a) Each matter of which an admission is requested shall be separately set forth. 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 shall serve upon the party requesting the admission an answer verified by the party or an objection, signed by the party or by 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.

(b) 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 the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.

(c)(1) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless 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.

(2) 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. 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: The requirements of an answer are governed by this rule and not by Rule 1029(b).

Rule 4014.3. Request for Admission. Motion to Compel Answer or to Determine Sufficiency of Answer or Objection

If a party fails to serve an answer, a sufficient answer or proper objections to a request for admission, the court, on motion, may enter an order pursuant to Rule 4019(a). If the party fails to comply with the order entered pursuant to Rule 4019(a), the court may enter an appropriate order pursuant to Rule 4019(c), including an order that the matter as to which an admission was sought is admitted.

Rule 4019. Sanctions

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

(i) a party fails to serve answers, sufficient answers or objections to written interrogatories under Rule 4005;

(ii) a corporation or other entity fails to make a designation under Rule 4004(a)(2) or 4007.1(e);

(iii) a person, including a person designated under Rule 4004(a)(2) to be examined, fails to answer, answer sufficiently or object to written interrogatories under Rule 4004;

(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 the deposition;

(v) a party or deponent, or an officer or managing agent of a party or deponent, induces a witness not to appear;

(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 such party or person to be sworn or to answer designated questions or an order of court made under Rule 4010;

(vii) a party, in response to a request for production or inspection made under Rule 4009, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested;

(viii) a party fails to serve an answer, a sufficient answer or a proper objection to a request for admission under Rules 4014.1, 4014.2, and 4014.3;

(ix) a party or person otherwise fails to make discovery or to obey an order of court respecting discovery.

(2) A failure to act described in subdivision (a)(1) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order.

NOTE: Motions for sanctions are governed by the motion rules, Rule 208.1 et seq. A court of common pleas, by local rule numbered Local Rule 208.2(e), may require that the motion contain a certification that counsel has conferred or attempted to confer with all interested parties in order to resolve the matter without court action.

(b) *** (relating to depositions)

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

(1) an order that the matters regarding which the questions were asked or the admissions were requested, or the character or description of the thing or land, or the contents of the paper, or any other designated fact shall be taken to be established or admitted for the purposes of the action in accordance with the claim of the party obtaining the order;

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

(3) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or entering a judgment of non pros or by default against the disobedient party or party advising the disobedience;

(4) an order imposing punishment for contempt, except that a party may not be punished for contempt for a refusal to submit to a physical or mental examination under Rule 4010;

(5) such order with regard to the failure to make discovery as is just.

(d) If at the trial or hearing, a party who has requested admissions as authorized by Rule 4014 proves the matter which the other party has failed to admit as requested, the court on motion may enter an order taxing as costs against the other party the reasonable expenses incurred in making such proof, including attorney's fees, unless the court finds that

(1) the request was or could have been held objectionable pursuant to Rule 4014, or

(2) the admission sought was of no substantial importance, or

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

(4) there was other good reason for the failure to admit.

(e) *** (relating to depositions and costs)

(f) *** (relating to depositions)

(g) *** (relating to award of expenses)

(h) *** (relating to award of costs for bad faith)

(i) *** (relating to identify of witnesses)

(j) *** (relating to award of expenses and attorney's fees against the Commonwealth)

Explanatory Comment

Current Rule 4014(b) provides for a request for admission to be deemed admitted if the party upon whom the request is served fails to serve an answer or objections. Rule 4014(d) provides that an admission is conclusively established unless a court on motion permits withdrawal or amendment of the admission. Subdivision (d) also provides that a 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 the action or defense on the merits.

The Civil Procedural Rules Committee is proposing that Rule 4014 be amended so that the procedure governing requests for admission follows that governing interrogatories and requests for production of documents. Using this new procedure, if a party does not respond to the request for admission or raises objections to the request, the party who has made the request will seek a court order compelling a response. Upon violation of the court order, the party making the request may obtain appropriate sanctions which may include that the matter is admitted.

The format of Rule 4014 is also proposed to be revised by designating subdivisions (a), (b), and (c) of the current rule as new Rules 4014.1, 4014.2, and 4014.3 respectively. Subdivision (d) of the current rule would be deleted as unnecessary. The proposed format creates a “mini chapter” of rules and is intended to make its use easier for the practitioner. Rule 4019(a) and (c) governing sanctions would be amended to conform to the requirements of the proposed amendment of Rule 4014.

By the Civil Procedural
Rules Committee

Stewart L. Kurtz
Chair