

Rule 4007.1. Procedure in Deposition By Oral Examination.

- (a) **General Rule.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action, except that no notice need be given a defendant who was served by publication and has not appeared in the action. A party noticed to be deposed shall be required to appear without subpoena.
- (b) **General Notice Requirements.** The notice shall:
- (1) conform with the requirements of subdivision (c) of this **[Rule] rule** and **[of]** Rule 4007.2(b) and (c), **[where] if** appropriate **[and shall]**;
 - (2) state the time and place of taking the deposition¹; and
 - (3) **state** the name and address of each person to be examined if known, **[and] or**, if the name is not known, a general description sufficient to identify the deponent or the particular class or group to which the deponent belongs.

[Note: The court upon cause shown may make a protective order with respect to the time and place of taking the deposition. See Rule 4012.]

- (c) **Notice Requirements for Deposition in Pre-Complaint Discovery.** 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 case¹, 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.]

- (d) **Additional Notice Requirements on Party or Witness.**
- (1) If the person to be examined is a party, the notice may include a request made in compliance with Rule 4009.1 **[et seq.] et seq.**, for the production of documents and tangible things at the taking of the deposition.
 - (2) If the person to be examined is not a party, and is to be served with a subpoena **[duces tecum] duces tecum** to produce designated materials, the notice shall specify the materials to be produced. The

materials shall be produced at the deposition and not earlier, except upon the consent of all parties to the action.

- (e) **Notice to Public or Private Corporations, Partnerships, Associations, or Governmental Agencies.** [A party may in 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 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.]

(1) In the notice or an issued subpoena, a party may:

- (i) name as the deponent a public or private corporation, a partnership, an association, or a governmental agency; and**
- (ii) describe with reasonable particularity the matters to be inquired into and the materials to be produced.**

(2) Any organization named pursuant to subdivision (e)(1)(i):

- (i) shall serve a designation of one or more officers, directors, managing agents, or other persons who consent to testify on its behalf; and**
- (ii) may set forth for each designated person the matters on which each person will testify.**

(3) A subpoena shall advise a non-party organization of its duty to make such a designation. The designated person or persons shall testify as to matters known or reasonably available to the organization.

(4) Subdivision (e) does not preclude taking a deposition by any other procedure authorized in these rules.

[(f) An application for an order pursuant to Section 5326(a) of the Judicial Code may be filed only in the county in which the person who is the subject of the order resides, is employed or regularly transacts business in person.]

[Note:] Comment:

Regarding subdivision (b), the court upon cause shown may make a protective order with respect to the time and place of taking the deposition. See Pa.R.Civ.P. 4012.

Regarding subdivision (c), see Pa.R.Civ.P. 4003.8 governing pre-complaint discovery.

[Section 5326 of the Judicial Code, 42 Pa.C.S. § 5326, a part of the Uniform Interstate and International Procedure Act provides for assistance to tribunals and litigants outside the Commonwealth] See the Uniform Interstate Depositions and Discovery Act, 42 Pa.C.S. §§ 5331 et seq., for the issuance of a foreign subpoena from outside the Commonwealth.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

Explanatory Comment—1978

Former Rule 4007 has been rescinded. The subject matter of former subdivision (a), dealing with the scope of discovery, has been enlarged and transposed to Rule 4003.1, supra. The provisions of former subdivision (b), dealing with the requirement of leave of court, have been transposed to Rule 4007.2. The provisions of former subdivision (c), dealing with notice, are enlarged in Rule 4007.1. The provisions of former subdivision (d)(1), authorizing local option rules for the content of the notice, are deleted and all local rules under former subdivision (d) will be invalid. The provisions of former subdivision (d)(2) for the filing of objections are deleted. A protective order under Rule 4012 is available.

In place of former Rule 4007 are new Rule 4007.1, which prescribes the procedure in deposition by oral examination, Rule 4007.2, which prescribes when leave of court is required, and Rules 4007.3 and 4007.4, which govern the sequence and timing of discovery and supplementary responses, subjects not previously governed by the Rules. These new Rules will be commented on separately.

Subdivisions (a) and (b) repeat the substance of former Rule 4007(c). A provision has been added to make it clear that a party noticed to be deposed need not be subpoenaed. The notice is sufficient to support subsequent sanction procedures under Rule 4019 for failure to appear.

Subdivision (c) is new. It provides that the purpose of the deposition and the matters to be inquired into need not be stated in the notice, except in the relatively infrequent case where the action has been commenced by a writ of summons and the plaintiff desires to take a deposition upon oral examination for the purpose of preparing a complaint. In this situation the inquirer must provide a brief statement of the nature of the cause of action and of the matters to be inquired into. The reason for the Rule is obvious. The party who has not yet been served with a complaint may in some instances not be aware of the nature of the action and thus be totally unprepared to submit to oral examination.

Subdivision (d) clarifies the practice for the production of documents in connection with an oral deposition. Under it, a simple request to a party to produce documents is sufficient. No subpoena is needed. But if the person examined is a witness and not a party, a subpoena duces tecum to produce specified materials and documents must be served.

Subdivision (e) is adapted, almost verbatim, from Fed.R.Civ.P. 30(b)(6). It provides, as an optional alternative to other forms of discovery, that the notice may name as a deponent a public or private corporation or a partnership or association or governmental agency. In this situation, however, the notice must describe with reasonable particularity the matters to be inquired into and the materials to be produced. The organization, if it is a party, is then required to serve on the inquirer a designation of the officers, directors, managing agents or other persons who will testify on its behalf. The purpose of the Rule is to avoid the wholesale subpoenaing of named directors, officers, and others where the inquirer does not know the identity of the exact person or persons who will be able to testify as to the requested information.

If it develops that the designated persons reveal others whose testimony may be relevant, they can also be deposed. The procedure is not exclusive and the inquirer may resort to any other method of discovery and subpoena available.

The reference to the "consent to testify" is limited to persons other than officers, directors or managing agents. The latter may not frustrate the discovery by declining to testify; their position requires them to testify. A subordinate employe is not in the same position and the organization cannot designate such a subordinate employe unless it certifies that he will testify.

Explanatory Comment—1998

Section 5326 of the Judicial Code, 42 Pa.C.S. § 5326, relating to “Assistance to tribunals and litigants outside this Commonwealth with respect to depositions” provides:

- (a) General Rule.--A court of record of this Commonwealth may order a person who is domiciled or is found within this Commonwealth to give his testimony or statement or to produce documents or other things for use in a matter pending in a tribunal outside this Commonwealth....

New subdivision (f) of Rule 4007.1 responds to the concern that there should be a limitation upon the county from which an order may be sought so that the person who is the subject of the order is not put to unreasonable expense or burden. A resident of Erie should not have to travel to Easton to object to an order obtained in connection with litigation outside the Commonwealth.

Rule 4023. Acts of Assembly [not] Not Suspended.

The following Acts of Assembly shall not be deemed suspended or affected:

[(1)](a)[Section 5325 of the Judicial Code, approved July 9, 1976, No. 142,] 42 Pa.C.S. § 5325, relating to when and how a deposition may be taken outside the Commonwealth.

[Note: This section relates to when and how a deposition may be taken outside the Commonwealth.]

(2) Section 5326 of the Judicial Code, approved July 9, 1976, No. 142, 42 Pa.C.S. § 5326.

Note: This section relates to assistance to tribunals and litigants outside the Commonwealth with respect to depositions.]

[(3)](b)Any Act of Assembly relating to shareholder actions for the inspection of corporate records pursuant to 15 Pa.C.S. § 1508, [or] the examination of persons and production of documents and tangible things at a hearing or trial in proceedings upon insolvency pursuant to 39 P.S. § 252, election contests pursuant to 25 P.S. § 3465, or appeals from registration commissions pursuant to 25 Pa.C.S. § 1603.

[Note: This subdivision includes the following statutes relating to shareholder actions, Section 1508 of the Associations Code, 15 Pa.C.S. § 1508; insolvency proceedings, Act of June 16, 1836, P.L. 729, § 12, 39 P.S. § 252; election contests, Act of June 3, 1937, P.L. 1333, § 1765, 25 P.S. § 3465; and appeals from registration commissions, Act of March 30, 1937, P.L. 115, § 43, as amended July 31, 1941, P.L. 710, § 32, 25 P.S. § 623-43 (cities of the first class); Act of April 29, 1937, P.L. 487, § 42 as amended May 31, 1955, P.L. 62, § 33, 25 P.S. § 951-42 (cities of the second class, cities of the second class A, cities of the third class, boroughs, towns and townships).]

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

Explanatory Comment—1978

The statutes preserved or suspended by the above rules have been repealed by the Judiciary Act Repealer Act, effective June 27, 1978. The rules have been devised to

reflect those repeals.

Explanatory Comment—1995

The note to paragraph (3) of Rule 4023 has been revised by deleting the reference to the repealed Act of May 5, 1933, P.L. 364, as amended, 15 P.S. § 1308 and substituting the reference to the successor provision, Section 1508 of the Associations Code, 15 Pa.C.S. § 1508.