

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

IN RE:

NO.

**AMENDMENT TO LOCAL RULE OF CIVIL PROCEDURE 208.3(b)
RESCISSION OF LOCAL RULE OF CIVIL PROCEDURE 208.4**


ORDER

AND NOW, this 16 day of Aug, 2004, the Court approves and adopts the attached Amendment to Montgomery County Local Rule of Civil Procedure 208.3 (b) and Rescission of Local Rule of Civil Procedure 208.4. In conformity with Pa.R.C.P. 239(c)(7), this Amendment and Rescission shall become effective upon publication on the web site of the Administrative Office of Pennsylvania Courts (www.ujsportal.pacourts.us).

The Court Administrator is directed to publish this Order once in the Montgomery County Law Reporter and in The Legal Intelligencer. In further conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Civil Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, and (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.



2004-00001-0004
Orders Montco (Subsequent)
Montgomery County Prothonotary
William E Donnelly
Monday, September 13, 2004 02:51:00 PM

BY THE COURT:

S. GERALD CORSO, P.J.

CERTIFIED FROM THE RECORDS OF THE
PROTHONOTARY, COURT OF COMMON PLEAS,
MONTGOMERY COUNTY, PA.

WILLIAM E. DONNELLY, PROTHONOTARY
DATE: 9-13-04  CLERK

Rule 208.3(b). Motion Practice. Rule to Show Cause. Disposition of Motions.

(1) *Filing.* All other “motions” as defined by Rule 208.1, excepting those listed above in Local Rule 208.3(a), shall be governed by this Rule. All such motions shall be faced with a cover sheet of the moving party in the form set forth in Local Rule 205.2(b) and shall be accompanied by the moving party’s proposed order. The motion, together with the cover sheet, shall be presented to the Court Administrator, after filing with the Prothonotary, for a return day on the rule.

(2) *Listing.* Excepting motions for sanctions or contempt of a prior court order, the Court Administrator shall fix promptly a return day which **shall not be less than thirty (30) days** from the date of filing of said motion, and the moving party shall forthwith serve the respondent with a copy of the motion and the cover sheet indicating the return day thereon. The moving party shall thereafter file a certification that the motion and the rule return date were served upon all parties, in substantially the following form:

See Form *Certificate of Service*

Motions for sanctions or contempt of a prior court order shall be forwarded by the Court Administrator to the assigned Judge for the scheduling of a hearing.

Motions that are alleged to be “emergencies” will not initially be given a rule return date, but rather the Court Administrator will forward the emergency motion to the assigned Judge. If the matter is deemed to be an emergency by the assigned Judge, the Judge will process the matter accordingly. If the matter is not deemed to be an emergency, the matter will be returned to the Court Administrator for listing pursuant to this Rule.

(3) *Response.* At or before the call of the list on the return day, the respondent shall file an answer to the motion, even if there are no contested issues of fact. The answer shall be faced with the respondent’s cover sheet in the form set forth in Rule 205.2(b) and shall be accompanied by a proposed order.

(4) *Initial Consideration of Motion – Rule Return Day.* On the return day, the Court Administrator or his/her designee shall call all matters listed. If a response is not filed to the motion at or before the call of the list, the court will treat the motion as uncontested, and grant the requested relief, if appropriate, and if a proper certificate of service was

filed pursuant to Local Rule 208.3(b)(2). In the absence of a proper certificate of service, the motion will be stricken.

Matters relating to discovery in which responses have been filed will proceed by Local Rule 4019*. Motions raising appealable matters in which responses have been filed will proceed pursuant to section (2) herein. All other matters (interlocutory) in which responses have been filed will forthwith be referred to the assigned Judge for disposition, including argument, if requested.

(5) *Praeipie*. On all motions raising appealable matters in which responses have been filed, the Court Administrator, after the return day, will issue an order directing the completion of discovery, if necessary, within sixty (60) days of the date of the order. Upon completion of discovery, if necessary, any party may file with the Prothonotary, in duplicate, a praecipe for argument in the form set forth herein, including a certification that a copy thereof has been served upon all other parties. The Prothonotary shall forthwith deliver a copy of the praecipe to Court Administration. The praecipe shall be in the following form:

See Form <i>Argument Praeipie</i>

(6) *Briefs*. For motions raising appealable matters, the brief of the moving party shall be filed in the Prothonotary's Office within thirty (30) days of the filing of the praecipe for argument, unless otherwise directly by the assigned Judge. Regarding appealable matters, the brief of the respondent shall be filed within thirty (30) days of the date of the filing of the moving party's brief.

For motions raising interlocutory matters, where the Court orders briefs, the brief of the moving party shall be filed in the Prothonotary's Office within thirty (30) days of the date of said order and the respondent's brief shall be filed within thirty (30) days of the filing of the brief of the moving party, unless otherwise directly by the assigned Judge. A party may also voluntarily file a brief regarding interlocutory matters even though not specifically directed by the Court.

If the brief of either party is not timely filed, either per the directive of this Rule or by order of the Court, the assigned Judge may:

- (a) Dismiss the motion where the moving party has failed to comply;
- (b) Grant the requested relief where the respondent has failed to comply, except that no civil action or proceeding shall be dismissed for failure to comply;

- (c) List the matter for argument, at which time only the complying party shall be heard; or
- (d) Impose such other sanctions upon the non-complying party as the Judge shall deem proper.

(7) *Disposition.* Once briefs, if required, are filed, the matter shall be referred to the assigned Judge for disposition. If oral argument was requested by either party on either their respective cover sheets or the argument praecipe, the matter shall be scheduled for argument. If oral argument was not requested by either party, the assigned Judge may direct the scheduling of argument, or may simply decide the matter upon the filings.

Comments:

1. Rule 208.1(b)(1)(iv) specifically excludes motions to exclude expert testimony pursuant to Rule 207.1 and motions in limine from the above process. These motions are filed with the Prothonotary and referred to the trial judge, upon assignment of trial.
2. Rule 208.1(b)(2)(i) specifically excludes asbestos litigation matters from the above process. Motions filed in said matters are handled pursuant to Local Rule 1041.1*.
3. Requests for leave to withdraw an appearance in family court actions pursuant to Rule 1012 and requests under local Rule 229(a)*(1) are considered “motions” that are subject to this Rule.
4. Appealable matters are those that are before the Court for final judgment or adjudication. Please refer to the Pennsylvania Rules of Appellate Procedure for further guidance.
5. Motions relating to discovery in family law actions – excluded from the above process by Rule 208.1(b)(2)(iv) – are governed by Local Rule 4019.1* Family Discovery Master.

Rule 208.4. Disposition of Motions.

Rescinded.