

**CHAPTER 4. PRE-TRIAL PROCEEDINGS****DISCOVERY**

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**Source**

The provisions of this Chapter 4 adopted November 16, 1994, effective January 1, 1995, 24 Pa.B. 5835; amended April 12, 1996, effective April 13, 1996, 26 Pa.B. 1677, unless otherwise noted. Immediately preceding text appears at serial pages (192891) to (192894).

**DISCOVERY****Rule 401. Discovery Generally.**

(A) All discovery shall be completed within 60 days of the service of the Board Complaint, unless extended by the Conference Judge for good cause shown.

(B) Any challenges or objections raised during discovery shall be resolved at the pre-trial conference.

(C) The Conference Judge shall, before the pre-trial conference, set a date for the exchange of the names and addresses of all witnesses whom the parties intend to call at the trial.

(D) *Other Evidence.* The Board and the Judicial Officer shall exchange:

(1) Non-privileged evidence relevant to the charges contained in the Board Complaint, documents to be presented at the trial and statements of witnesses who will be called to testify; and

(2) Other material, in the Conference Judge's discretion, upon cause shown.

(E) *Disclosure by the Board.* Upon filing of the Board Complaint, the Board shall provide the Judicial Officer with any exculpatory evidence relevant to the charges contained in the Board Complaint.

**Official Note:** This rule is derived from former interim Rule 19.

#### Source

The provisions of this Rule 401 adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995; amended July 16, 2002, effective immediately, 32 Pa.B. 3698. Immediately preceding text appears at serial pages (213053) to (213054).

### Rule 402. Depositions.

Upon Motion of the Judicial Officer or the Board, after notice and hearing, the Conference Judge may order the deposition of any person, when due to exceptional circumstances, the interests of justice require that the person's testimony be preserved.

**Official Note:** This rule is derived from former interim Rule 19(B).

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994.

### Rule 403. Resolution of Disputes.

Disputes concerning discovery shall be determined by the Conference Judge. Decisions concerning discovery shall not constitute a final Order for purposes of appeal.

**Official Note:** This rule is derived from former interim Rule 19(C).

Adopted March 16, 1994, effective March 16, 1994.

### Rule 404. Continuing Duty to Disclose.

The Board and the Judicial Officer have a continuing duty to supplement information required to be exchanged or disclosed under Rule 401 until the trial is concluded and the record is closed.

**Official Note:** This rule is derived from former interim Rule 19(D).

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

### Rule 405. Remedy.

If at any time during the course of the proceedings it is brought to the attention of the Conference Judge that a party has failed to comply with Rules 401 through 404 relating to discovery, the Conference Judge may order compliance, grant a

continuance, prohibit the party from introducing the evidence not disclosed, other than testimony of the Judicial Officer, or the Conference Judge may enter any other order as is just.

**Official Note:** This rule is derived from former interim Rule 19(G).

Adopted March 16, 1994, effective March 16, 1994. Amended November 1, 1994, effective January 1, 1995.

### OMNIBUS MOTION FOR RELIEF; REPLY; ANSWER

#### **Rule 411. Omnibus Motion.**

(A) All motions, challenges, and applications or requests for an order or relief on behalf of the Judicial Officer shall be consolidated in one written motion, except as otherwise provided in these rules, or as permitted by the Conference Judge. The omnibus motion shall be filed no later than 30 days of the service of the Board Complaint.

(B) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the type of relief or order requested. The motion shall be divided into consecutively numbered paragraphs, each containing only one material allegation as far as practicable.

(C) If the motion sets forth facts that do not already appear of record, it shall be verified by the Judicial Officer subject to the penalties for unsworn falsification to authorities under the Crimes Code, 18 Pa.C.S. § 4904.

(D) The Judicial Officer may challenge the validity of the charges on any legal ground including:

- (1) that the facts charged do not constitute misconduct;
- (2) that the Board or the Court is without jurisdiction;
- (3) that the Board violated the procedures governing it; or
- (4) that the charges do not provide sufficient notice of the allegations to be defended against.

(E) The failure, in any motion, to request a type of relief or order, or to state a ground therefor, may constitute a waiver of such relief, order, or ground.

#### **Source**

The provisions of this Rule 411 adopted March 16, 1994, effective March 16, 1994; amended May 31, 1994, effective May 31, 1994; amended January 24, 2002, effective immediately, 32 Pa.B. 733; amended July 16, 2002, effective immediately, 32 Pa.B. 3698. Immediately preceding text appears at serial page (286927).

#### **Rule 412. Reply.**

(A) Within 10 days of the filing of the omnibus motion, the Board shall file a reply.

(B) The reply shall be divided into consecutively numbered paragraphs corresponding to the numbered paragraphs of the motion. The reply shall meet the allegations of the motion.

(C) If the reply sets forth facts that do not already appear of record, it shall be verified by Counsel for the Board subject to the penalties for unsworn falsification to authorities under the Crimes Code, 18 Pa.C.S. § 4904.

(D) Failure to file a reply as required by this rule shall constitute an admission of the facts alleged in the omnibus motion.

**Official Note:** This rule is derived from former interim Rule 20(B).

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994.

### **Rule 413. Answer.**

Within 30 days after the service of a Board Complaint, if no omnibus motion is filed, or within 20 days after the dismissal of all or part of the omnibus motion, the Judicial Officer may file an answer admitting or denying the allegations contained in the Board Complaint. Failure to file an answer shall be deemed a denial of all factual allegations contained in the Board Complaint. Unless otherwise ordered by the Court, no additional pleading will be accepted.

#### **Source**

The provisions of this Rule 413 adopted May 31, 1994, effective May 31, 1994; amended October 16, 2002, effective immediately, 32 Pa.B. 5402. Immediately preceding text appears at serial page (290382).

### **Rule 414. Disposition of Omnibus Motion.**

(A) The Conference Judge may schedule hearing or argument on the motion, as is appropriate, and shall rule upon the motion. The Conference Judge may defer any ruling, as necessary, to be decided by the Court before the time of the pre-trial conference.

(B) No ruling on the motion shall constitute a final order for the purpose of appeal.

(C) A decision which dismisses a charge or terminates the case shall be reviewed and voted upon by the full Court. A majority vote shall be required to sustain such a decision.

**Official Note:** This rule is derived from former interim Rule 21.

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

## **PRE-TRIAL CONFERENCE**

### **Rule 421. Pre-Trial Conference.**

(A) At the Pre-Trial Conference the following administrative matters shall be considered:

- (1) clarification of the issues;
- (2) amendments to the pleadings;
- (3) stipulations and agreements to admit documents or other physical evidence;
- (4) limitations on the number of expert and character witnesses;
- (5) any disputes concerning discovery not previously resolved; and
- (6) any other matters which may aid in the prompt disposition of the matter.

(B) The Pre-Trial Conference shall be conducted by the Conference Judge, and shall be attended by counsel for the Board, counsel of record for the Judicial Officer, if any, and the Judicial Officer.

(C) Where the Judicial Officer is represented by counsel, the Judicial Officer may file with the Clerk a waiver of his or her presence at the Pre-Trial Conference. The waiver shall include a statement authorizing the Judicial Officer's counsel to act on the Judicial Officer's behalf as to all matters considered at the Pre-Trial Conference.

(D) At the conclusion of the Pre-Trial Conference, the Conference Judge shall on the record enter an order stating the agreements and objections made by the parties, and rulings made by the Conference Judge on any matter considered during the Pre-Trial Conference. The order shall control subsequent proceedings before the Court on the record, unless modified by the Court or a panel of the Court on the record. The parties shall have the right to file objections to any part of the Order within 15 days of its entry.

**Official Note:** This rule is derived from former interim Rule 22.

**Source**

The provisions of this Rule 421 adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995; amended June 25, 2003, effective immediately, 33 Pa.B. 3359. Immediately preceding text appears at serial pages (293542) to (293543).

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