

Rule 39-206.1. Petitions

206.1(a) Purpose and Designation.

The procedure after issuance of rules to show cause shall be as set forth in Pa.R.C.P. 206.7. If argument is ordered by the court the case shall be listed, briefed and decided as set forth in the court's order. All applications for which the procedure for the relief sought is not otherwise specifically addressed elsewhere in the rules and which require the assertion of facts not of record are hereby designated as petitions. A petition, generally speaking, is a request for relief ancillary to a given cause of action. Each petition shall be accompanied by a verification or affidavit verifying the facts stated in the petition.

206.4(c) Procedures for Rule to Show Cause

- (i) Title: A petition should state in its title exactly what is being sought, by whom, and against whom (e.g. rather than merely "petition", it should be designated Defendant Jones' Petition for Extension of Time to Join Smith as Additional Defendant)
- (ii) Contents: All petitions shall be in writing and shall be accompanied by a proposed form of order; a petition shall also be accompanied by an order allowing a rule to show cause in form as set forth below, which order is hereinafter sometimes referred to as a "rule" or a "rule to show cause." Every motion or petition shall refer to the procedural rule, statute, or other authority relied upon to justify the relief requested and shall display the counsel's name, address, I.D. number and telephone number. No motion, petition or preliminary objection shall be dismissed for failure to be accompanied by a form of proposed order or for failure to refer to the procedural rule, statute or other authority relied upon or for failure to display counsel's name, address, attorney identification number or telephone number.

COMMENT: For discovery motions and petitions, see certification requirements under rule 39th Jud. Dist. R.C.P. 208.2(e).

- (iii) Proposed Order, generally: The petitioner shall attach to any petition a proposed order substantially in the following form:

**[CAPTION]
ORDER**

AND NOW, this _____ day of _____, 200____, upon consideration of the foregoing petition, it is hereby ordered that

1. A rule is issued upon the respondent to show cause why the petitioner is not

entitled to the relief requested.

2. The respondent shall file a verified Answer to the Petition within twenty (20) days of service upon the respondent;

3. The petition shall be decided under Pa.R.C.P. No. 206.7.

4. Depositions shall be completed within _____ days of the service upon petitioner of the Answer to the Petition.

5. Hearing and/or argument shall be held on _____, _____, 200__, at ___ o'clock ___ m. in Courtroom No. _____ of the Franklin/Fulton County Courthouse, Chambersburg/McConnellsburg, PA;

6. If Items 4 and 5 above are left blank, depositions and or argument or hearing will be considered upon request of any party; and

7. Notice of the entry of this order shall be provided to all parties by the petitioner.

8. In the case of Preliminary Objections [Local Rule 1028(a)], Motions for Judgment on Pleadings [Local Rule 1034(a)] and Motions for Summary Judgment [Local Rule 1035(a)], parties shall follow the procedures for disposition set forth in those rules.

By the Court,

Judge

- (iv) Proposed Order, substantive relief or stay sought: In instances where the order seeks a stay order or other substantive relief or seeks to have a hearing date set immediately or otherwise requests special immediate relief, the form of the order shall be modified accordingly and the order shall contain such of the following provisions as are appropriate:

A hearing on the within petition is hereby scheduled to be held on _____, the _____ day of _____, 200__, at _____ o'clock ___ m. in Courtroom No. _____ of the Franklin/Fulton County Courthouse, Chambersburg/Mcconnellsburg, PA

and/or

[If a stay is being requested]

All proceedings shall stay in the meantime. The petitioner is directed to file a bond in the amount of \$ _____ by the following date: _____. Upon cause shown by the respondent, the court may increase the amount of the bond or security.

(v.) Service and Certification Requirements: The following service and certification requirements apply to all rules to show cause:

- (a.) Not later than immediately after filing with the prothonotary, each party shall serve upon all other counsel and unrepresented parties complete copies of all rules, proposed orders, petitions, motions preliminary objections and answers to them.
- (b.) Each party shall, not later than five (5) days after the filing of any document, file with the prothonotary a separate document in the form specified by 39th Jud. Dist. R.C.P. 206.4(c)(v.) (d), *below*, certifying that service of a complete copy has been made.
- (c.) The court, at its discretion, may strike, dismiss, or deny, any petition, motion or preliminary objection for failure of the moving party to comply with the service and certification requirements of this rule.
- (d.) Certification of service shall be substantially in the following form:

**[CAPTION]
CERTIFICATION OF SERVICE**

This is to certify that in this case, assigned to Judge [*insert the name of the judge to whom the case is assigned*], complete copies of all papers contained in [*insert specifically the title of the petition/motion/preliminary objections/praecepe, etc. served*] have been served upon the following persons by the following means and on the dates stated:

Name and Address:	Means of Service:	Date of Service:
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_____	_____	_____
_____	_____	_____
_____	_____	_____

Attorney's signature
Attorney's Name
I.D. Number
Telephone Number

- (vi.) Discretionary Issuance of Rule: The procedure of Pa.R.C.P. 206.5 is adopted. An order containing a rule to show cause, including one which by its terms grants substantive relief or which contains a stay order or seeks to require an answer by respondent(s) in less than twenty (20) days, shall be delivered promptly after filing to the assigned judge or to the motion judge's law clerk or to the Court Administrator for prompt delivery to the motion judge's law clerk.

COMMENT: Unless otherwise designated as motions, all applications are designated as petitions. The issuance of a rule to show cause shall be discretionary with the court as provided in Pa.R.C.P. 206.5. A petitioner seeking the issuance of a rule to show cause shall attach to the petition the proposed order in the form prescribed by 39th Judicial Dist. R.C.P. 206.4(c)(iii.) or (iv.) *above*. Under Pa.R.C.P. 206.7, the issue raised in the petition may be decided without the necessity of argument. However, if the court orders argument on the petition, the matter shall be listed for argument, briefed and decided pursuant to the court's order.

- (vii.) When No Answer is Filed: If no answer has been timely filed, the petitioning party, not less than five (5) days after the rule return date, may move to have the rule made absolute, granting the prayer of the petition, and the Court may consider such petition as unopposed and grant such motion as of course. The motion to make the rule absolute shall be accompanied by a proposed order and a certification of service but no brief shall be required. The provisions of Rule 206.4(c)(iii.) and (iv.) shall not apply to motions to make a rule absolute filed pursuant to this section.

COMMENT: A party upon whom a petition is served has an obligation to answer the petition if the relief sought is opposed.

- (viii.) When Answer is Filed: When an answer has been timely filed and the issue raised in the petition, motion or preliminary objection is ripe for consideration, pursuant to provisions of Pa.R.C.P. 206.7, any party may file a praecipe for determination in the form prescribed by 39th Jud. Dist. R.C.P. No. 206.4(c)(ix.) along with a supporting brief. If a petitioner files a praecipe

for determination on petition and answer, all averments of fact responsive to the petition and properly pleaded in the answer shall be deemed admitted. If a respondent orders the matter for argument on petition and answer without having taken depositions or such other discovery as the court may have allowed, then all averments of fact properly pleaded in the petition shall be deemed admitted for the purposes of the rule, unless the petitioner shall have failed to take depositions or such other discovery as the court may have allowed within the time required, in which event the petition shall be decided on petition and answer and all averments of fact responsive to the petition and properly pleaded in the answer shall be deemed admitted pursuant to Pa.R.C.P. No. 206.7(c). Responsive briefs shall be filed within fifteen (15) days of the filing of the praecipe for determination. The assigned judge may, at his or her discretion, extend the time for filing briefs.

- (ix.) Praecipe for Determination: To have any matter submitted to the court for a decision, a party shall file with the prothonotary a Praecipe for Determination. Immediately after filing the Praecipe with the Prothonotary, each party shall serve upon all other counsel and unrepresented parties a copy of the Praecipe for Determination as well as any other documents filed therewith. The Praecipe for Determination shall be in substantially the following form:

**[CAPTION]
PRAECIPE FOR DETERMINATION**

To the Prothonotary:

Kindly submit the following matter to Judge *[insert the name of the assigned judge]* for determination. *[insert specifically the title of petition/motion/preliminary objections, etc. to be submitted for determination]*

Date of filing/service: _____.

Attorney's signature
Attorney's Name
Address
I.D. Number
Telephone Number

COMMENT: This praecipe is to be filed with the Prothonary, not the Court Administrator.

Adopted by Order of Court dated February 7, 2001
Published in the Pennsylvania Bulletin, Vol. 31, Number 8, February 24, 2001
Amended by Order of Court dated January 27, 2005