

Rule 39-208. Motions

Rule 208.2(c). Applicable Authority

All motions should include a brief statement of applicable authority.

Rule 208.2(d). Uncontested Motions - Certification.

A motion may be treated as uncontested when the moving party appends to it a certificate that counsel has conferred with all interested parties in respect to the matter and has been affirmatively advised that there are no objections to the relief sought in the proposed order.

COMMENT: Non-responsiveness on the part of the opponent shall not be equated by the moving party to the lack of contest or concurrence in the relief sought.

Rule 208.2(e). Discovery Motions and Petition Certification

- (i.) **Good Faith Requirement:** All counsel have an affirmative obligation to confer and discuss discovery matters and make a good faith effort to resolve such differences as exist.
- (ii.) **Certificate of Efforts; Specificity:** Any motion or petition relating to discovery must be accompanied by a certificate of counsel for the moving party certifying that counsel has conferred with opposing counsel with respect to each matter set forth in the discovery motion or petition in good faith, but has been unable to resolve the issue. The certificate shall set forth the exact time, place and manner (which may be telephonic) of the conference or, in a case in which counsel for the moving party cannot furnish such a certificate, counsel shall furnish an alternative certificate stating that opposing counsel has refused to so confer. The alternative certificate shall also set forth the efforts made by counsel for the moving party to obtain compliance by opposing counsel by opposing counsel and such other facts and circumstances as exist to justify the absence of the required certificate. In all instances, counsel shall certify the details of the time, place manner and content of efforts to confer, including, when necessary, te attachment of related correspondence. See, for example, Pa.R.C.P. 1019(i).
- (iii.) **Sanctions for Failure to Cooperate:** The court at its discretion may strike, dismiss or deny the petition or motion for failure of the moving party to comply with the certification requirements of this rule, or may grant relief based solely on the unreasonable refusal of opposing counsel to confer despite reasonable and good faith efforts of the moving party to comply with the certification requirements of this rule or may grant relief based solely upon the unreasonable refusal of opposing counsel to confer despite

reasonable and good faith efforts of moving counsel to arrange such conference.

Rule 208.3(a). Motions - Titles and Attachments

- (i.) **General; Attachments:** Generally, motions may be used to obtain relief upon undisputed facts of record, with several exceptions, one of which shall be that averments by counsel that pleadings, documents, or discovery requests have been exchanged or transferred. In the latter event copies of all such documents shall be attached, unless already of record, in which event that can be incorporated by reference. Every motion shall be in writing and shall be signed by its moving counsel or party; and shall be accompanied by a proposed form of order.
- (ii.) **Title:** The motion or reply should state in its title exactly what is being sought, by whom, and against whom (e.g. rather than merely "motion", it should be designated Defendant's Motion for Sanctions Against Plaintiff or Additional Defendant's Second Motion for Sanctions Against Defendant Smith, etc.).
- (iii.) **Discovery Motions:** To promote uniformity of civil practice the following types of discovery matters shall be treated as motions, not as petitions, even though they may contain limited assertions of fact not of record:
 - a. motion for sanctions for failure to answer interrogatories;
 - b. motion for sanctions for failure to produce documents or things;
 - c. motion for sanctions for failure to appear for deposition;
 - d. motion to compel mental or physical examination;
 - e. motion to compel further answers to interrogatories; and
 - f. motion to compel further production of documents.
- (iv.) **Briefing Requirements; Exceptions:** Generally, a supporting brief in accordance with 39th Jud. Dist. R.C.P. 210 and praecipe for determination in the form described in 39th Jud. Dist. R.C.P. 206.4(c)(ix.) must be filed by the moving party with the motion and proposed order. No brief is necessary in the following motions:
 - a. motion for sanctions and/or to compel in discovery matters where the only relief sought is to compel answers to interrogatories, to compel a response to a request for production of documents or things, to compel a party to appear for his or her deposition, physical examination or mental examination, or to permit entry upon land for inspection, where the motion is based upon the failure of the other party or parties to have responded to the discovery or other request

and the motion is believed to be uncontested, but if the party from whom discovery, examination, or inspection, etc. is sought or any other party to the action has objected to the requested discovery, examination, inspection, etc. and/or the moving party believes the motion to be contested, then briefs, in accordance with 39th Jud. Dist. R.C.P. 210 shall be submitted as set forth above;

- b. Any motion supported by a stipulation of counsel.
- (v.) **Failure to file Brief or Praecipe for Determination**: If the moving party has failed to file a praecipe for determination, any non-moving party may file a praecipe for determination to bring the motion before the court; if the moving party has not filed a brief, the non-moving party shall not be required to file one, and the court may consider the moving party to have abandoned his or her position.
- (vi.) **Service and Certification**: For service and certification requirements, see Rule 206.4(c)(v).
- (vii.) **Decision**: For the procedure for getting motions decided, see Rule 206.4(c)(viii.) And (ix.)

Rule 208.3(b). Responses.

All other parties shall file their responses, in any, to the motion and their briefs, in accordance with 39th Jud. Dist. R.C.P. 210, within twenty (20) days of the filing of the motion, except with respect to motions for summary judgment, to which responses and briefs must be filed within thirty (30) days after service of the motion. The assigned judge may, in his or her discretion, extend the time for filing of briefs or waive the requirement. The court may treat a motion as uncontested if no response is filed. Upon the filing of a praecipe for determination, as described in Rule 206.4(c)(ix.), the matter will be referred to the court for disposition.

Promulgated by Order of Court dated January 27, 2005