

Explanatory Comment to Bucks County Rule of Civil Procedure 208.3(b)

This comment is not meant to be comprehensive, but is to be used as a guide to implementing Rule 208.3(b).

Rule 208.3(b)(1)

Rule 208.3(b) is to be used for matters that must be decided on the merits by the Court. Routine matters, such as issuing a Rule to Show Cause or fixing a hearing date, are not subject to Rule 208.3(b).

1. Applications at Issue [when to file a 208.3(b) Praecipe]

The following applications are at issue when noted, and require the filing of a Rule 208.3(b) praecipe to bring them before the Court for disposition:

A. Preliminary Objections may be at issue when filed if no material facts not of record are alleged.

Preliminary Objections not at issue when filed, i.e., those raising material issues of fact not of record, require a Notice to Plead. The Rule 208.3(b) praecipe may not be filed until the time for a response under Pa.R.C.P. No. 1028 has lapsed or a timely response has been filed.

Examples of Preliminary Objections not at issue at the time of filing:

1. Those raising a question of jurisdiction or venue, or attacking the form of service of a writ or complaint [Pa.R.C.P. No. 1028(a)(1)];
2. Those raising the defense of lack of capacity to sue, non-joinder of a necessary party or misjoinder of a cause of action [Pa.R.C.P. No. 1028(a)(5)];
3. Those raising the pendency of a prior action or agreement for alternate dispute resolution [Pa.R.C.P. No. 1028(a)(6)].b.

B. Motions for Judgment on the Pleadings are treated as at issue when filed. However, the moving party may wait for a response, then file a Rule 208.3(b) praecipe.

C. Motions for Summary Judgment are not at issue until the 30-day response period provided by Pa.R.C.P. No. 1035.3(a) has lapsed. When that period has expired, the moving party may file a Rule 208.3(b) praecipe.

D. Objections to written discovery are considered at issue when propounded. For the purposes of Rule 208.3(b), the objecting party is the moving party. The proponent of the discovery to which the objection is made is the non-moving party, and may therefore use Rule 208.3(b)(5) to expedite the matter. A copy of the discovery and responses must be attached by the party moving the objections for disposition under Rule 208.3(b).

E. Other applications upon which the Court issues a Rule to Show Cause are at issue when a response opposing the application is filed.

2. *Rules to Show Cause*

If the nature of the application is such that the moving party is not entitled to relief as a matter of course, the application will proceed by Rule to Show Cause.

If after the entry of a Rule to Show Cause a response is filed opposing the relief requested by the moving party, the petitioner may proceed under Pa.R.C.P. No. 206.7 to take depositions. If after service of the Rule in accordance with B.C.R.C.P. No. 206.4(c)(2) no response opposing the relief requested by the moving party is filed by the rule returnable date, a Motion to Make Rule Absolute may be filed by the moving party.

Examples of applications requiring a Rule to Show Cause:

1. Petition to Open/Strike Judgment
2. Petition to Open/Strike Confessed Judgment
3. Motion to Amend
4. Motion to Consolidate
5. Motion to Join Additional Defendant
6. Motion to Appoint Neutral Arbitrator
7. Petition to Reactivate Case Marked Terminated
8. Motion to Withdraw as Counsel

9. Motion for Judgment Non Pros
10. Petition for Interpleader

Generally, applications that are not at issue when filed will require a Rule to Show Cause. Exceptions to this general rule are motions for hearing, discovery motions, and applications governed by the provisions of specific statutes and rules. Some examples of applications governed by specific statutes and rules are Petitions for Judicial Change of Name (54 Pa.C.S.A. §701), Petitions for Supplementary Relief in Aid of Execution (Pa.R.C.P. No. 3118) and Petitions for Court Approval of Transfer of Structured Settlement Rights (40 P.S. §4000 et seq.).

3. *Discovery Motions*

1. Motion for Protective Order – proceed by Rule to Show Cause
2. Objections to Discovery – proceed to disposition under Rule 208.3(b)
3. Motion to Compel – proceed under Pa.R.C.P. No. 4019(g)(1) and B.C.R.C.P. No. 4019(g)(1)*(a)
4. Motion for Discovery Sanctions – proceed under Pa.R.C.P. No. 4019(g)(1) and B.C.R.C.P. No. 4019(g)(1)*(b)