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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

ELIAS MAKERE,

)

Petitioner,

)

)

Case No. 18-0373

vs.

)

2017-01432

)

ALLSTATE CORPORATION,

)

Respondent

)

**PETITIONER’S MOTION FOR OFFICIAL RECOGNITION OF
RULE 4017.1 OF THE PENNSYLVANIA RULES OF CIVIL PROCEDURE**

The Petitioner, ELIAS MAKERE (“Petitioner”), on this 29th day of May, 2018, respectfully moves this Court to take official recognition of the following:

Rule 4017.1 *Pennsylvania Rules of Civil Procedure*

Key Points:

- | | |
|-----------------|---|
| A.) Precedence | The DOAH has previously ruled on similar motions |
| B.) Depositions | PA Rules allow depositions to be videotaped by one of the parties |

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Background: Videotaped depositions are a part of discovery, according to the Fla. R. Civ. P.

Problem: The Fla. R. Civ. P. do not explicitly state who a deposition videographer must be.

Request: The Court takes Official Recognition of the deposition rules of another US State, Pennsylvania.

§120.569(2)(i) Florida Statutes

“(i) When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material. ”

§90.202 Florida Statutes

“A court may take judicial notice of the following matters...

(5) Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States.

(7) Rules of court of any court of this state or of any court of record of the United States or of any other state, territory, or jurisdiction of the United States. ”

Legal Citations

- §120.569(2)(i) - Florida Statutes
- §90.202 - Florida Statutes

Precedence

- DOAH Case No. 16-4358 - Case Law
The DOAH granted a similar motion (recognition of a **foreign statute/rule**).

MOTION

Rule 4017.1 is from the Pennsylvania Rules of Civil Procedure (ie, "rules of any court...")

Pennsylvania is a state of the United States (ie, "...any state, territory, or jurisdiction of the United States").

"The interests of judicial economy, the avoidance of unnecessary and repetitious litigation and administrative proceedings, the avoidance of inconsistent judicial results, and the administration of justice will all be served by this Honorable Administrative Law Judge taking judicial notice of the documents which are the subject of this Motion for Official Recognition."

- M. Drew Parker, *Motion for Official Recognition*, 12/4/2005, DOAH Case No. 05-4067

CONFERRAL

On May 24, 2018, the Petitioner emailed the Respondent. He asked the Respondent if it understood Rule 4017.1. He also informed the Respondent that he would probably file this motion.

The Respondent never responded.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests that this Court take official recognition of PACRP 4017.1.

Dated this 29th Day of May, 2018.

Respectfully submitted,

ELIAS MAKERE

s/ Elias Makere

Pro Se

3709 San Pablo Rd. S # 701

Jacksonville, FL 32224

Tel: (904) 294-0026

E-mail: justice.actuarial@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May, 2018, I electronically filed the foregoing with the Clerk of Courts by using the Florida Courts E-filing Portal which will send a notice of electronic filing to the following:

Liebler, Gonzalez & Portuondo
44 West Flagler Street
Courthouse Tower 25th Floor
Miami, FL 33130
(respondent's lawyer)

on behalf of:
Allstate Corporation
2775 Sanders Road F5
Northbrook, IL 60062
(respondent)

Tammy S. Barton, Agency Clerk
Florida Commission on Human Relations
Room 110
4075 Esplanade Way
Tallahassee, Florida 32399-7020
(agency)

Elias Makere
3709 San Pablo Rd. S #701
Jacksonville, FL 32224
(petitioner)

s/ Elias Makere

EXHIBIT A

**Pennsylvania Rules of Civil Procedure
4017.1**

THE COURTS

Title 231--RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 4000]

Amendment of Rule 4017.1 Governing Video Depositions; No. 475 Civil Procedural Rules; Doc. No. 5

[37 Pa.B. 2178]

[Saturday, May 12, 2007]

Order

Per Curiam:

And Now, this 25th day of April, 2007, Pennsylvania Rule of Civil Procedure 4017.1 is amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 2007.

Mr. Justice Fitzgerald did not participate in the consideration or decision of this matter.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES

Rule 4017.1. **[Videotape] Video** Depositions.

(a) Any deposition **[taken]** upon oral examination may be **[recorded by videotape] taken as a matter of course as a video deposition by means of simultaneous audio and visual electronic recording**. Except as provided by this rule, the rules of this chapter governing the practice and procedure in depositions and discovery shall apply.

(1) Any party may have a **[videotape] video** deposition recorded simultaneously by stenographic means as provided by this chapter.

(2) A **[videotape] video** deposition may be used in court only if accompanied by a transcript of the deposition.

(b) Every notice or subpoena for the taking of a **[videotape] video** deposition shall state

(1) that **[it] the deposition** is to be **[videotaped] taken as a video deposition**,

(2) the name and address of the person whose deposition is to be taken,

(3) the name and address of the officer before whom it is to be taken,

(4) whether the deposition is to be simultaneously recorded by stenographic means, and

(5) the name and address of the **[videotape] video** operator and of his or her employer. The operator may be an employee of the attorney taking the deposition.

(c) The deposition shall begin by the operator stating on camera (1) his or her name and address, (2) the name and address of his or her employer, (3) the date, time and place of the deposition, (4) the caption of the case, (5) the name of the witness, and (6) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken shall then identify himself or herself and swear the witness on camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. When the length of the deposition requires the use of more than one **[tape] videotape**, the end of **[each tape] the videotape** and the beginning of each succeeding **[tape] videotape** shall be announced on camera by the operator.

(d) The deposition shall be timed by a digital clock on camera which shall show continually each hour, minute and second of each **[tape] videotape** of the deposition.

(e) No signature of the witness shall be required.

(f) The attorney for the party taking the deposition shall take custody of and be responsible for the safeguarding of the videotape and shall permit the viewing of and shall provide a copy of the videotape or the audio portion thereof upon the request and at the cost of a party.

(g) In addition to the uses permitted by Rule 4020 a **[videotape] video** deposition of a medical witness or any witness called as an expert, other than a party, may be used at trial for any purpose whether or not the witness is available to testify.

(h) At a trial or hearing that part of the audio portion of a **[videotape] video** deposition which is offered in evidence and admitted, or which is excluded on objection, shall be transcribed in the same manner as the testimony of other witnesses. The videotape shall be marked as an exhibit and may remain in the custody of the court.

Official Note: Local rules and practice shall regulate the procedure for handling objections to questions and answers on the **[tape] videotape**. Suggested devices include inter alia, previewing by the judge and counsel and withholding from the evidence material to which objections are sustained; or having the operator turn off the audio portion of the **[tape]videotape** at the trial or

hearing to exclude objectionable material or the use of "fast forward" by the operator at the trial or hearing to eliminate both the image and the sound of the objectionable material.

(i) As used in this rule, "videotape" includes all media on which a video deposition may be recorded.

Explanatory Comment

Rule 4017.1 governing video depositions has been amended in two respects. First, the amendment allows a party to take video depositions as a matter of course. Although the present rule contains no limitation upon or prerequisite to the taking of a video deposition, some courts have imposed limitations citing the cost of the deposition and the burden to the party being deposed. See for example, *Tillett v. Shento*, 131 P.L.J. 297 (C.P. Allegheny 1982). However, technological advances have lowered the cost of a video deposition and either reduced or eliminated the burden to the parties.

There has been a noted lack of civility of parties, deponents and attorneys in connection with depositions upon oral examination. There also occurs the abusive practice of attorneys who raise objections which suggest an answer to the deponent or who instruct the deponent not to answer a question without reasonable basis. The ability of a party to use video depositions as a matter of course may have the salutary effect of discouraging egregious conduct during depositions.

Second, advancements in technology have provided new methods of video recording an oral deposition in addition to videotaping. The terminology of the rule has been changed to reflect those advancements.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 07-835. Filed for public inspection May 11, 2007, 9:00 a.m.]

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