

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CH. 200]

#### Proposed Amendment to Rule 223 Governing Conduct of Jury Trial; Proposed Recommendation No. 154

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 223 governing conduct of a jury trial be amended as set forth in the recommendation. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed recommendation should be sent not later than March 5, 1999 to: Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, Pennsylvania 17055, or E-Mail to [civil.rules@supreme.court.state.pa.us](mailto:civil.rules@supreme.court.state.pa.us).

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure nor will it be officially adopted or promulgated by the Court.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

#### Rule 223. Conduct of the Jury Trial.

(a) Subject to the requirements of due process of law and of the constitutional rights of the parties, the court may make and enforce rules and orders covering any of the following matters, inter alia:

(1) Limiting the number of witnesses whose testimony is similar or cumulative;

(2) Limiting the number of attorneys representing the same party or the same group of parties, who may actively participate in the trial of the case or may examine or cross-examine a witness or witnesses;

(3) Regulating the number and length of addresses to the jury or to the court;

(4) Regulating or excluding the public or persons not interested in the proceedings whenever the court deems such regulation or exclusion to be in the interest of the public good, order or morals.

**Official Note: [ Berks Rules 308 and 314 limit the number of witnesses. The rules of several counties limit the number of trial counsel who may address the jury. Time limits are placed upon addresses to the jury in the rules of about ten counties. ]**

Trial courts in Pennsylvania customarily exercise discretion as to the exclusion of persons from the court room in the interest of good order and morals.

The [ subject matter of former Rule 223(b) regulating the ] exclusion of the taking of photographs or radio or television broadcasting is [ now ] governed by Canon 3A(7) of the Code of Judicial Conduct [ , adopted November 21, 1973 and effective January 1, 1974 ].

(b) [ Rescinded. ]

(1) The court may use one or more of the procedures provided in paragraphs (2) and (3) as may be appropriate in the particular case.

**Official Note: It is not intended that this rule limit the inherent power of the court.**

(2) The court may permit jurors to

(i) take notes and use them throughout the trial and during the jury's deliberation,

**Official Note: Jurors' notes should remain in the custody of the court officer when court is not in session.**

(ii) submit questions to the court to be asked of the witnesses, and

(iii) view a premises or a thing in or on a premises.

**Official Note: See Rule 219 governing view of premises.**

(3) The court may

(i) permit specified testimony to be read back to the jury upon the jury's request,

(ii) charge the jury at any time during the trial,

**Official Note: The court is not limited to charging the jury after the closing argument by the attorneys,**

(iii) make exhibits and a portion of trial transcripts, excluding videotaped exhibits and transcripts, available to the jury during its deliberations, and

(iv) provide the jury with a written charge or written instructions.

#### Explanatory Comment

The jury trial has been the subject of recent national attention. For example, this attention has been manifested in the adoption by the American Bar Association of Civil Trial Practice Standards, the publication by the Council for Court Excellence, District of Columbia Jury Project, of *Juries for the Year 2000 and beyond, Proposals to Improve the Jury Systems in Washington D.C.* (1998) and the promulgation of court rules in Arizona.

The Civil Procedural Rules Committee is proposing the amendment of Rule 223 governing the conduct of a jury trial by adding new subdivision (b). The purpose of the proposed amendment is to facilitate the jurors' understanding of the case.

It is not the Committee's purpose to devise an elaborate rule or detailed procedure. The rule is designed to be a catalog of options available to the court, advising both the bench and bar of the options and the court's power to invoke them. Thus, the proposed revision is not meant to restrict the court's inherent powers in conducting a jury trial.

Proposed subdivision (b) of Rule 223 lists two categories of procedures. Paragraph (2) contains procedures through which the court may allow the jurors to actively participate in the trial: (i) taking notes, (ii) submitting questions to the court to be asked of the witnesses, and (iii) viewing a premises or a thing in or on a premises. Paragraph (3) contains procedures which the court may employ for the benefit of the jurors: (i) permitting specified testimony to be read back to the jury upon the jury's request, (ii) charging the jury at any time during the trial, (iii) making exhibits and portions of trial transcripts, other than videotaped exhibits and transcripts, available to the jury during its deliberations, and (iv) providing the jury with a written charge or written instructions.

The use of these procedures is subject to the discretion of the court as set forth in paragraph (1) of new Rule 223(b): "The court may use one or more of the procedures provided in paragraphs (2) and (3) as may be appropriate in the particular case."

*By the Civil Procedural  
Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 99-39. Filed for public inspection January 8, 1999, 9:00 a.m.]

## PART I. GENERAL

### [231 PA. CODE CHS. 200 AND 400]

#### Proposed Amendments Governing Electronic Filing of Legal Papers; Proposed Recommendation No. 153

The Civil Procedural Rules Committee proposes that the Rules of Civil Procedure be amended by adding new Rule 205.4 governing electronic filing of legal papers and amending Rule 440 governing service of legal papers other than original process. The recommendation is being published to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed recommendation should be sent not later than March 5, 1999 to: Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, Pennsylvania 17055, or E-Mail to [civil.rules@supreme.court.state.pa.us](mailto:civil.rules@supreme.court.state.pa.us).

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules nor will it be officially adopted or promulgated by the Court.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

#### Rule 205.1. Filing Legal Papers. Mailing. Personal Presentation by Attorney Not Necessary.

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**Official Note: For the electronic filing of legal papers, see Rule 205.4.**

#### Rule 205.3. Filing Pleadings and Other Legal Papers with the Prothonotary. Originals and Copies.

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**Official Note: For the electronic filing of legal papers, see Rule 205.4.**

*(Editor's Note: The following is a new rule. It is printed in regular type to enhance readability.)*

#### Rule 205.4. Electronic Filing of Legal Papers.

(a) As used in this rule,

"electronic filing" means the electronic transmission of legal papers by means other than by facsimile transmission, and

"filing party" means an attorney, party or other person who files a legal paper by means of electronic filing, and

"legal paper" means a pleading or other paper filed in an action, but does not include

(1) a writ of summons or a complaint that is original process naming an original defendant or an additional defendant, unless the court by local rule provides otherwise, or

(2) a notice of appeal from an award of a board of arbitrators or a notice of appeal or other legal paper, the filing of which is prescribed by the Rules of Civil Procedure Governing Actions and Proceedings before District Justices.

(b) A party may file a legal paper with the prothonotary by means of electronic filing if electronic filing is permitted by general rule, rule of court or special order of court. The filing shall be in the format of Adobe PDF, WordPerfect for Windows, Microsoft Word for Windows or such other format as permitted by the rule or order. Except as otherwise provided by law, a legal paper filed electronically shall be deemed the equivalent of the original document.

(1) The electronic filing of a legal paper constitutes

(i) a certification by the filing party that the original hard copy was properly signed and, where applicable, verified, and

(ii) a certification as provided by the signature to a legal paper under Rule 1023(b), the violation of which shall subject to the sanction provision of Rule 1023(c).

(2)(i) The filing party shall maintain the original hard copy of the document filed and produce it upon request.

(ii) Any other party at any time may require the filing party to file the original hard copy by filing with the prothonotary and serving upon the filing party a notice to file the original hard copy with the prothonotary within fourteen days of the filing of the notice.

(c)(1) A prothonotary who is authorized to accept filings by electronic transmission shall provide electronic access at all times. A legal paper filed electronically and received before five o'clock p.m. shall be considered filed on that date. A legal paper filed electronically and received after five o'clock p.m. shall be considered filed on the next business day of the court. The time and date of filing and receipt shall be that registered by the prothonotary's computer.

(2) The prothonotary may designate a website for the electronic filing of legal papers. Access to the website shall be available to

(i) an attorney through the use of the attorney's current certificate number issued by the Court Administrator of Pennsylvania, and

(ii) a party, an attorney who does not have a current certificate number issued by the Court Administrator of Pennsylvania or other person by means of an identification number issued by the website administrator.

(d) A filing party shall pay the cost of the electronic filing of a legal paper in advance by depositing with the prothonotary sufficient funds or by authorizing payment by credit or debit card.

(e)(1) A filing party shall be responsible for

(i) any delay, disruption, interruption of the electronic signals and readability of the document electronically filed, and

(ii) the maintenance of sufficient funds deposited with the prothonotary or of a credit or debit account to cover the cost of electronic filing.

(2) The filing party accepts the risk that a document filed by means of electronic filing may not be properly or timely filed with the prothonotary.

(f) When electronic filing is permitted as set forth in subdivision (b), the court by local rule shall provide for

(1) the maintenance by the prothonotary of an electronic file only, or of an electronic and such hard copy files as set forth in the rule,

**Official Note:** A hard copy file is not required by this rule. If the local rule requires a hard copy file, the requirement may extend to all case or only to certain specified cases. For example, the court may require hard copy files for cases listed for trial or scheduled for argument while maintaining only electronic files for all other cases.

(2) additional procedures, if necessary, to ensure the security of the web site and the electronic files,

(3) procedures for the payment of prothonotary's fees and costs, and

(4) such other procedures and matters necessary to the operation of a system of electronic filing.

## CHAPTER 400. SERVICE OF ORIGINAL PROCESS

### SERVICE OF LEGAL PAPERS OTHER THAN ORIGINAL PROCESS

#### Rule 440. Service of Legal Papers Other than Original Process.

(a)(1) Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action. Service shall be made

(i) by handing or mailing a copy to or leaving a copy for each party at the address of the party's attorney of record endorsed on an appearance or prior pleading of the party, or at such other address as a party may agree, or

**Official Note:** Such other address as a party may agree might include a mailbox in the prothonotary's office or an e-mail address.

(ii) by transmitting a copy by facsimile to the party's attorney of record as provided by subdivision (d).

(iii) by transmitting a copy electronically as provided by subdivision (e)

(2)(i) If there is no attorney of record, service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of the party, or by transmitting a copy by facsimile as provided by subdivision (d) **or by transmitting a copy electronically as provided by subdivision (e).**

(ii) If such service cannot be made, service shall be made by leaving a copy at or mailing a copy to the last known address of the party to be served.

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**(e) A legal paper may be served by electronic transmission, other than facsimile transmission, if the parties agree thereto or an electronic mail address is included on an appearance or prior legal paper filed with the court. Service is complete when transmission is confirmed as complete. A paper served electronically is subject to the certifications set forth in Rule 205.4(b)(2).**

#### Explanatory Comment

Proposed Rule 205.4 governing the electronic filing of legal papers and the amendment to Rule 440 to provide for the electronic service of legal papers are being published as a preliminary working draft to solicit comments and suggestions from the bench and bar. The recommendation is the first step in a process of introducing the concept of electronic documents into a system accustomed solely to paper documents and it is anticipated that changes in the procedural rules will be needed as technological progresses.

The purpose of the recommendation is not to provide a comprehensive manual but, rather, guidelines for the electronic filing and service of legal documents. It is an attempt to accommodate the rules of civil procedure with developing technological capabilities in a way which will enhance the efficient practice of law and administration of the courts. These rules are structured in general terms to allow for the varying technological capabilities of the individual courts.

Electronic filing is not an end in itself but just one tool to be used in conjunction with document and case management systems. The availability of such systems within the court is a prerequisite to the establishment of electronic filing.

In reviewing the proposed recommendation, two points should be noted. First, the term "legal paper" is defined as excluding original process unless the court by local rule provides otherwise. The implications of a paper which does not timely commence an action because of varying problems are such as to warrant experience with electronic filing before attempting to toll the statute of limitations by that means. Second, proposed Rule 205.4 explicitly provides that a "filing party accepts the risk that a document filed by means of electronic filing may not be properly or timely filed with the prothonotary." The filing party is not at the prothonotary's office and thus not able to remedy deficiencies in a filing over the counter. The immediacy of the electronic transfer of legal

papers should not foster increased dependency upon the availability of additional time to prepare a document or its last minute preparation.

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 99-40. Filed for public inspection January 8, 1999, 9:00 a.m.]

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## Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Rules for the Court of Common Pleas; No. 1793 S 1989

### Order

*And Now*, the 22nd day of December, 1998, D.C.L.R.C.P. 1308(a)(2) is amended as follows:

**Rule 1308. Appeal. Notice. Compensation.**

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(a)(2) When an appeal is filed to a decision of the Board of Arbitrators, any party appealing shall repay to the County the fees of the members of the Board of

Arbitration, which shall not thereafter be refundable to or recoverable by the said party under any circumstances, under the following schedule:

(a) If the amount in controversy is [ \$1,000.00 or ] less than \$5,000.00—[ \$100.00 ] \$200.00.

(b) If the amount in controversy is [ more than \$1,000.00 ] \$5,000.00 or more, but [ \$3,000.00 or ] less than \$10,000.00—[ \$175.00 ] \$300.00.

(c) If the amount in controversy is [ more than \$3,000.00 ] \$10,000.00 or more, but [ \$5,000.00 or ] less than \$20,000.00—[ \$250.00 ] \$400.00.

(d) If the amount in controversy is [ more than \$5,000.00 ] \$20,000.00 or more, but less than \$35,000.00 —[ \$350.00 ] \$500.00.

**For purposes of determining the appeal fee, "amount in controversy" shall be defined as the amount of the award rendered by the Board of Arbitration, or, in cases of no award, the amount demanded in the complaint.**

These amendments shall be effective February 1, 1999.

*By the Court*

CLARENCE C. MORRISON,  
*President Judge*

[Pa.B. Doc. No. 99-41. Filed for public inspection January 8, 1999, 9:00 a.m.]