THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 5]

Amendment of Rule 507; No. 233 Judicial Administration Doc. no. 1

Order

Per Curiam:

And Now, this 28th day of November, 2001, Pennsylvania Rule of Judicial Administration 507 is amended as follows.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective 30 days after the date of publication in the *Pennsylvania Bulletin*.

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 5. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

Rule 507. Record Retention Schedules.

(a) *Offices* **[** ***scheduled*** **]** ***Scheduled*** *by the County Records Committee.* ***Counties of the First Class.***

(1) ***Offices Scheduled by the County Records Committee.*** Common Pleas Court Prothonotaries, Clerks of Courts, Clerks of Orphans' Courts, Registers of Wills, District Attorneys, Sheriffs, Coroners, and Jury Commissioners or their Home-Rule equivalents when disposing of records shall do so in conformity with the applicable record retention schedules and the conditions stipulated therein promulgated from time to time by the County Records Committee under the act of August 14, 1963 (P. L. 839, No. 407) (16 P. S. § 13001 et seq.).

(2) Counties of the First Class. **Prothonotaries, Clerks of Courts, Clerks of Orphans' Courts, Registers of Wills, and Jury Commissioners of counties of the first class when disposing of records shall do so in conformity with the record retention schedules and the conditions stipulated therein promulgated from time to time by the County Records Committee for counties of the second through eighth classes under the act of August 14, 1963 (P. L. 839, No. 407) (16 P. S. § 13001 et seq.), as amended.**

(b) *Offices* **[** ***scheduled*** **]** ***Scheduled*** *by the Supreme Court.* System and related personnel engaged in clerical functions in offices **which support the offices** covered by general or specific record retention and disposition schedules promulgated from time to time by the Supreme Court when disposing of records shall do so in conformity with the **[applicable] record** retention **and disposition** schedules and the conditions stipulated therein.

(c) Non-scheduled offices. System and related personnel in offices not covered under subdivisions **[A or B] (a) or (b)** when disposing of records shall submit to the Administrative Office **of Pennsylvania Courts** and to the Pennsylvania Historical and Museum Commission duplicate copies of a record disposal certificate form and a written statement explaining the nature and the content of the records. After consultation with the Commission, the Administrative Office may authorize the destruction of such records, either with or without the retention of a permanent copy.

(d) ***Disposal Certification Requests. Disposal Logs.*** **All requests for disposition of permanent records shall be made on forms adopted from time to time by the Administrative Office of Pennsylvania Courts. No permanent records may be disposed unless authorization is sought, and received, utilizing the appropriate disposal certification request form. All non-permanent records disposed upon expiration of the retention period provided in the applicable record retention and disposition schedules shall be listed on record disposal log forms adopted from time to time by the Administrative Office of Pennsylvania Courts. The record disposal log forms shall be filed with the Administrative Office of Pennsylvania Courts on an annual basis, or as otherwise provided by the Administrative Office of Pennsylvania Courts.**

Official Note: **The record retention schedules promulgated by the County Records Committee are only applicable to county offices of counties of the second through eighth classes, since the County Records Act, as amended, is only applicable to counties of the second through eighth classes. Accordingly, none of the county offices of the counties of the first class are governed by the County Records Act. Nonetheless, many of the county offices of the counties of the first class which support the Unified Judicial System unofficially utilize the record retention schedules promulgated by the County Records Committee in disposing official records within their control. In order to foster uniformity among these offices, subsection (a)(2) was added, specifically listing the offices within the counties of the first class which must henceforth comply with the record retention schedules promulgated by the County Records Committee.**

UNIFIED JUDICIAL SYSTEM SCHEDULED COURT RECORDS DISPOSAL CERTIFICATION REQUEST

[Pursuant to PA RJA 507(b)]

COUNTY	JUDICIAL DISTRICT	IF APPLICABLE	
		MAGISTERIAL DISTRICT	DISTRICT JUSTICE NAME
OFFICE OF ORIGIN		PERSON MAKING DISPOSAL REQUEST (RECORD CUSTODIAN)	
ADDRESS			

Approval Requested For: ☐ Records Destruction ☐ Records Transfer to PHMC

RECORD TITLE AND INCLUSIVE DATES *(one series per form)*

DESCRIPTION OF RECORD *(include type of information contained and purpose of record)*

RETENTION PERIOD IN SCHEDULE	PAGE AND SECTION IN SCHEDULE	HAVE ALL AUDIT REQUIREMENTS BEEN MET?
		☐ Yes ☐ No ☐ Not Applicable

QUANTITY

_____ TOTAL CUBIC FEET

No. of cartons _____ Length _____ Width _____ Height _____ OF AVERAGE CARTON

No. of volumes _____ Length _____ Width _____ Height _____ OF AVERAGE VOLUME

No. of file drawers _____ ☐ Legal ☐ Letter ☐ Other _____

HAVE RECORDS BEEN MICROFILMED? ☐ Yes ☐ No

Size: ☐ 16mm ☐ 35mm ☐ Other _____

Form: ☐ Roll ☐ Cartridge ☐ Cassette ☐ Fiche

☐ Other _____

ARCHIVAL MEDIUM UTILIZED

LOCATION OF SECURITY COPY

FOR USE BY RECORD CUSTODIAN

_____ hereby requests that the Record Retention Officer seek approval from the Administrative Office of Pennsylvania Courts for permission to dispose of or transfer the records identified above.

Date *Signature* *Phone Number*

FOR USE BY DISTRICT RECORDS RETENTION OFFICER

Authorization to dispose of or transfer the above-identified records is requested. If destruction of the records is requested, I certify that the records have been reproduced on a medium approved by the Administrative Office of Pennsylvania Courts.

Date *Signature* *Judicial District*

FOR USE BY THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

Review by the Pennsylvania Historical and Museum Commission ☐ is ☐ is not requested.

Date *Signature* *Title*

FOR USE BY THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION ONLY IF REVIEW REQUESTED BY AOPC

☐ Concur With Request ☐ Recommend Denial of Request ☐ Recommend Disposal Request Be Amended As Follows:

Date *Signature* *Title*

FOR USE BY THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

Approval is given for: ☐ Destruction ☐ Destruction as Amended ☐ Transfer to PHMC
☐ Disapproved ☐ Retain Pending Further Instructions

Comments/Amendments:

Date *Signature* *Title*

Original must be sent to the Administrative Office of Pennsylvania Courts, 1515 Market Street, Suite 1414, Philadelphia, PA 19102.
Keep a copy for your records.

Unified Judicial System Disposal Log for Non-Permanent Records

Page ___ of ___

1. _____ *County/Agency*

2. _____ *Judicial District*

3. _____ *Record Custodian*

4. _____ *Office/Department*

5. _____ *Address*

6. _____ *Telephone #*

7. Record Title	8. Authorization for Disposal		9. Inclusive Dates of Records		10. Volume in Cubic Feet	11. Format	12. Mf (Y-N)	13. Primary Copy (Y-N)	14. Date Approved	15. Record Retention Officer Initials
	Schedule [§ Name (e.g. 5.7 Juvenile)]	Page No.								

FOR USE BY RECORD CUSTODIAN

I, _____ *Record Custodian's Name* hereby request that the Record Retention Officer authorize the disposal of the listed records.

_____ *Record Custodian's Signature*

_____ *Title*

_____ *Date*

FOR USE BY THE DISTRICT RECORD RETENTION OFFICER

I, _____ *Record Retention Officer's Name* hereby approve of the disposal of the records listed as requested.

_____ *Record Retention Officer's Signature*

_____ *Title*

_____ *Date*

Original to be retained by the District Record Retention Officer. Copy to be provided to Record Custodian. Copy to be provided to the AOPC on or before January 15th each year.

[Pa.B. Doc. No. 01-1282-1. Filed for public inspection December 14, 2001, 9:00 a.m.]

Title 204—JUDICIAL SYSTEMS GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

[204 PA. CODE CH. 211]

Promulgation of Consumer Price Index and Judicial Salaries Pursuant to Act 51 of 1995; No. 234; Judicial Administration Doc. No. 1

Order

Per Curiam:

And Now, this 29th day of November, 2001, pursuant to Article V, Section 10(c) of the Pennsylvania Constitution and Section 1721 of the Judicial Code, 42 Pa.C.S. § 1721, it is hereby *Ordered* that the Court Administrator of Pennsylvania is authorized to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD, Consumer Price Index for All Urban Consumers (CPI-U) for the most recent 12-month period and the judicial salary amounts effective January 1, 2002, as required by Act 51 of 1995, amending the Public Official Compensation Law, Act of September 30, 1983 (P. L. 160, No. 39), 65 P. S. § 366.1 et seq.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

CHAPTER 211. CONSUMER PRICE INDEX

§ 211.1. Consumer Price Index.

Pursuant to Article V, Section 10(c) of the Pennsylvania Constitution and Section 1721 of the Judicial Code, 42 Pa.C.S. § 1721, the Supreme Court of Pennsylvania has authorized the Court Administrator to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Consumer Price Index for the most recent 12-month period and the judicial salaries effective January 1, 2002, as required by Act 51 of 1995, amending the Public Official Compensation Law, Act of September 30, 1983 (P. L. 160, No. 39), 65 P. S. § 366.1 et seq. See, No. 224 Judicial Administration Docket No. 1.

The Court Administrator of Pennsylvania reports that the percentage of increase in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD, Consumer Price Index for All Urban Consumers (CPI-U), for the 12-month period ending October 2001, was 2.8 percent. (See, U.S. Department of Labor, Bureau of Labor Statistics, Series CUURA102SAO, Friday, November 16, 2001).

The Court Administrator of Pennsylvania also reports that the following judicial salaries are adopted to implement Act 51 of 1995:

§ 211.2. Judicial salaries effective January 1, 2002.

(a) *Supreme Court*.—The annual salary of the Chief Justice of the Supreme Court shall be $141,114 and the annual salary of each of the other justices of the Supreme Court shall be $137,386.

(b) *Superior Court*.—The annual salary of the President Judge of the Superior Court shall be $135,092 and the annual salary of the other judges of the Superior Court shall be $133,083.

(c) *Commonwealth Court*.—The annual salary of the President Judge of the Commonwealth Court shall be $135,092. The annual salary of each of the other judges of the Commonwealth Court shall be $133,083.

(d) *Courts of common pleas*.—

(1) The annual salary of a president judge of a court of common pleas shall be fixed in accordance with the following schedule:

(i) Allegheny County, $121,611.

(ii) Philadelphia County, $122,185.

(iii) Judicial districts having six or more judges, $120,464.

(iv) Judicial districts having three to five judges, $119,890.

(v) Judicial districts having one or two judges, $119,315.

(vi) Administrative judges of the divisions of the Court of Common Pleas of Philadelphia County with divisions of six or more judges, $120,464.

(vii) Administrative judges of the divisions of the Court of Common Pleas of Philadelphia County with divisions of five or less judges, $119,890.

(viii) Administrative judges of the divisions of the Court of Common Pleas of Allegheny County with divisions of six or more judges, $120,464.

(ix) Administrative judges of the divisions of the Court of Common Pleas of Allegheny County with divisions of five or less judges, $119,890.

(2) The other judges of the courts of common pleas shall be paid an annual salary of $119,315.

(e) *Philadelphia Municipal Court*.—The President Judge of the Philadelphia Municipal Court shall receive an annual salary of $118,169. The annual salary for the other judges of the Philadelphia Municipal Court shall be $116,162.

(f) *Philadelphia Traffic Court*.—The President Judge of the Philadelphia Traffic Court shall receive an annual salary of $63,101. The annual salary for the other judges of the Philadelphia Traffic Court shall be $62,528.

(g) *District justices*.—A district justice shall receive an annual salary payable by the Commonwealth of $59,085.

(h) *Senior judges*.—The compensation of the senior judges pursuant to 42 Pa.C.S. § 4121 (relating to assignment of judges) shall be $365 per day. In any calendar year the amount of compensation which a senior judge shall be permitted to earn as a senior judge shall not when added to retirement income paid by the Commonwealth for such senior judge exceed the compensation payable by the Commonwealth to a judge then in regular active service on the court from which said senior judge retired. A senior judge who so elects may serve without being paid all or any portion of the compensation provided by this section.

[Pa.B. Doc. No. 01-1282-10. Filed for public inspection December 14, 2001, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 5]
Statewide Uniformity

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Pa.Rs.Crim.P. 113 (Criminal Case File and Docket Entries) and 577 (Procedures Following Filing of Motion), amend Pa.Rs.Crim.P. 103 (Definitions), 114 (Notice and Docketing of Orders), 573 (Pretrial Discovery and Inspection), 575 (Answers), and 576 (Filing), revise the Comment to Pa.R.Crim.P. 581 (Suppression of Evidence), and rescind Pa.Rs.Crim.P. 113 (Notice of Court Proceeding(s) Requiring Defendant's Presence), 574 (Motions), and 577 (Service). These rule changes clarify the procedures governing motions, orders, and court notices in criminal cases, achieve more statewide uniformity in criminal motions practice, and eliminate the local rules and practices governing motions practice that are hampering the statewide practice of law. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report. Additions are shown in boldface; deletions are in boldface and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, 5035 Ritter Road, Suite 800, Mechanicsburg, PA 17055, fax: (717) 795-2106, e-mail: criminal.rules@supreme.court.state.pa.us no later than Monday, January 14, 2002.

JOSEPH P. CONTI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART A. Business of the Courts

Rule 113. **[Notice of Court Proceeding(s) Requiring Defendant's Presence] (Rescinded).**

[Notice of a court proceeding requiring a defendant's presence shall be either:

(1) in writing and served by

(a) personal delivery to the defendant or defendant's attorney; or

(b) leaving a copy for or mailing a copy to the defendant's attorney at the attorney's office; or

(c) sending a copy to the defendant by certified, registered, or first class mail addressed to the defendant's place of residence, business, or confinement; or

(2) given to the defendant orally in open court on the record.]

[Comment]

[Some judicial districts use a document called a "subpoena" to give a defendant notice of required court appearances. Nothing in this rule is intended to change this practice.

See Rule 577 for the procedures for serving all written motions and any document for which filing is required.

See Rule 451 for the procedures for service in summary cases.]

Official Note: Former Rule 9024 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 June 2, 1994, effective September 1, 1994. New Rule 9024 adopted June 2, 1994, effective September 1, 1994; renumbered Rule 113 and amended March 1, 2000, effective April 1, 2001; **rescinded, _____ 2002, and replaced by Rule 114(C), effective, _____ 2002**.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed rescission of the rule published at 31 Pa.B. 6792 (December 15, 2001).

(*Editor's Note*: This rule is new and is printed in regular face to enhance readability.)

Rule 113. Criminal Case File and Docket Entries.

(A) The clerk of courts shall maintain the criminal case file for the court of common pleas. The criminal case file shall contain all original records, papers, and orders filed in the case, and copies of all court notices. These records, papers, orders, and copies shall not be taken from the custody of the clerk or court without order of the court, but the parties shall be permitted to make copies.

(B) The clerk of courts shall maintain a list of docket entries, a chronological list, in electronic or written form, of documents and entries in the criminal case file and of all proceedings in the case.

(C) The docket entries shall include at a minimum the following information:

(1) the defendant's name, last known address, and date of birth;

(2) the names and addresses of all attorneys who have appeared or entered an appearance, the date of the entry of appearance, and the date of any withdrawal of appearance;

(3) notations concerning all papers filed with the clerk, all court notices, appearances, pleas, motions, orders, verdicts, findings and judgments, and sentencings, briefly showing the nature and title, if any, of each paper filed, writ issued, plea entered, or motion made and the substance of each order or judgment of the court and of the returns showing execution of process;

(4) notations concerning oral motions made or oral orders issued in the courtroom when the clerk of courts has the capacity to do so and when ordered by the court;

(5) a notation of every judicial proceeding, continuance, and disposition;

(6) the location of exhibits made part of the record during the proceedings; and

(7) all other information required by Rules 114 and 576.

(D) The clerk of courts in the performance of his or her duties shall be under the direction of the president judge.

Comment

This rule sets forth the mandatory contents of the list of docket entries and the criminal case files. The list of docket entries is a running record of all information related to any action in a criminal case in the court of common pleas of the clerk's county, such as dates of filings, of orders, and of court proceedings. The clerk of courts is required to make docket entries at the time the information is made known to the clerk, and the practice in some counties of creating the list of docket entries only if an appeal is taken is inconsistent with this rule.

The requirement in paragraph (C)(2) that all attorneys and their addresses be recorded makes certain there is a record of all attorneys who have appeared for any litigant in the case. The requirement also ensures that attorneys are served as required in Rules 114 and 576. See also Rule 576(B)(4) concerning certificates of service.

Official Note: Adopted _____, 2002, effective _____, 2002.

Committee Explanatory Reports:

Report explaining the provisions of the proposed new rule published at 31 Pa.B. 6792 (December 15, 2001).

Rule 114. **[Notice and] Filing, [Docketing] Docket Entries and Service** of Orders **and Court Notices**.

(A) The president judge shall ensure that all orders and court notices promptly are filed in the criminal case file and docket entries made, and promptly are served.

(B) Upon receipt of an order **[from a judge] or a court notice,** the clerk of courts **shall time stamp the order or court notice with the date of receipt, and promptly** shall **[immediately docket] file** the order **or court notice in the criminal case file,** and **[record in the docket] make a docket entry of** the date **of receipt [it was made] and the date on the order or court notice.**

(C) (1) The clerk **of courts promptly** shall **[forthwith furnish] serve** a copy of the order **[, by mail or personal delivery,] or court notice** to each party or attorney, and shall **[record in the docket] make a docket entry of** the **[time] date** and manner **[thereof] of service**.

(2) The president judge may designate the court administrator to serve orders or court notices. Concurrently with service, the order or court notice shall be filed in the criminal case file and a docket entry made.

(D) Service shall be:

(1) in writing by

(a) personal delivery to the party's attorney or, if unrepresented, the party; or

(b) personal delivery to the party's attorney's employee at the attorney's office; or

(c) mailing a copy to the party's attorney or leaving a copy for the attorney at the attorney's office; or

(d) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the party's attorney in the box in the courthouse assigned to the attorney for service; or

(e) sending a copy to an unrepresented party by certified, registered, or first class mail addressed to the party's place of residence, business, or confinement; or

(f) sending a copy by facsimile transmission if the party's attorney, or if unrepresented, the party, has filed a written request for this method of service or has included a facsimile number on a prior legal paper filed in the case; or

(2) orally in open court on the record.

(E) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a party to file or serve orders or court notices.

Comment

This rule was amended in 2002 to provide in one rule the procedures for the filing, making docket entries, and service of all orders and court notices, and incorporates the provisions of former Rule 113 (Notice of Court Proceedings Requiring Defendant's Presence).

Historically, some orders or court notices have been served by the court administrator or by the court. Paragraph (C)(2) permits the president judge to continue this practice. Pursuant to paragraph (A), the president judge must ensure that all orders and court notices promptly are filed and docket entries made, and are served in a prompt and efficient manner. See 42 Pa.C.S. §§ 2756 and 2757 concerning clerks of courts' duties.

When the court administrator serves the order or court notice pursuant to paragraph (C)(2), the docket entry must include the date and manner of service as required by paragraph (C)(1).

[The] This rule makes it clear that the **[notice and] filing,** recording **of docket entries, and service** procedures are mandatory and may not be modified by local rule.

Paragraphs (B) and (C) requires the clerk of courts to enter three dates in the list of docket entries with regard to the court's orders and notices: the date of receipt of the order or notice; the date on the order or notice; and the date the order or notice is served. The date of receipt is the date of filing under these rules. Concerning appeal periods and entry of orders, see Rule 720 (Post-sentence Procedures; Appeal) and Pa.R.A.P. 108 (Date of Entry of Orders).

Court notices, as used in this rule, are communications that ordinarily are issued by a judge or the court administrator concerning, for example, calendaring or scheduling, including proceedings requiring the defendant's presence.

Paragraph (D)(1)(d) recognizes the practice in some judicial districts of assigning boxes in the

courthouse for receipt of service, and these boxes are generally assigned to local counsel. This form of service may not be made on other counsel, such as members of the Attorney General's office, who do not have courthouse boxes or on local counsel who do not agree to this method of service.

A facsimile number set forth on letterhead is not sufficient to authorize service by facsimile transmission under paragraph (D)(1)(f).

Nothing in this rule is intended to preclude the use of advanced communication technology for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts.

Under the post-sentence motion procedures, the clerk of courts must comply with this rule after entering an order denying a post-sentence motion by operation of law. See Rule 720(B)(3)(c).

[As used in this rule, "clerk of courts" is intended to mean that official in each judicial district who has the responsibility and function under state or local law to maintain the official court file and docket, without regard to that person's official title.]

Paragraph (E), titled "Unified Practice," emphasizes that local rules must not conflict with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all criminal rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See the first paragraph of the Rule 105 Comment. The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See Rule 105(A).

See Rule 103 for the definitions of clerk of courts and court administrator.

See Rule 113 (Criminal Case File and Docket Entries) for the requirements concerning the contents of the criminal case file and the minimum information to be included in the docket entries.

Official Note: Formerly Rule 9024, adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 and Comment revised June 2, 1994, effective September 1, 1994; renumbered Rule 114 and Comment revised March 1, 2000, effective April 1, 2001**[.]; amended _____, 2001, effective _____, 2001.**

Committee Explanatory Reports:

* * * * *

Report explaining the proposed rule changes concerning filing, making docket entries, and service of orders and court notices published at 31 Pa.B. 6792 (December 15, 2001).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART F(1). Motion Procedures

Rule 574. [Motions] (Rescinded).

[(A) All motions, challenges, and applications or requests for an order or relief shall be made by written motion, except as otherwise provided in these rules, or as permitted by the court, or when made in open court during a trial or hearing.

(B) A written motion shall comply with the following requirements:

(1) The motion shall be signed by the person or attorney making the motion. The signature of an attorney shall constitute a certification that the attorney has read the motion, that to the best of the attorney's knowledge, information, and belief there is good ground to support the motion, and that it is not interposed for delay.

(2) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested. The motion shall be divided into consecutively numbered paragraphs, each containing only one material allegation as far as practicable.

(3) If the motion sets forth facts that do not already appear of record in the case it shall be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under Crimes Code § 4904, 18 Pa.C.S. § 4904.

(C) Any motion may request such alternative relief as may be appropriate.

(D) The failure, in any motion, to state a type of relief or order, or a ground therefor, shall constitute a waiver of such relief, order, or ground.]

Official Note: Rule 9020 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 574 and amended March 1, 2000, effective April 1, 2001; **rescinded and replaced by Rule 575 _____, 2002, effective _____, 2002**.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed rescission of Rule 574 published at 31 Pa.B. 6792 (December 15, 2001).

Rule 575. **Motions and** Answers.

(A) MOTIONS

(1) All motions shall be in writing, except as permitted by the court or when made in open court during a trial or hearing.

(2) A written motion shall comply with the following requirements:

(a) The motion shall be signed by the person or attorney making the motion. The signature of an attorney shall constitute a certification that the attorney has read the motion, that to the best of the attorney's knowledge, information, and belief there is good ground to support the motion, and that it is not interposed for delay.

(b) The motion shall include the court, caption, term, and number of the case in which relief is requested.

(c) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested.

(d) The motion shall be divided into consecutively numbered paragraphs, each containing only one material allegation as far as practicable.

(e) The motion shall include any requests for hearing or argument, or both.

(f) The motion shall include a certificate of service as required by Rule 576(B)(4).

(g) If the motion sets forth facts that do not already appear of record in the case it shall be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under Crimes Code (4904, 18 Pa.C.S. § 4904.

(3) The failure, in any motion, to state a type of relief or a ground therefor shall constitute a waiver of such relief or ground.

(4) Any motion may request such alternative relief as may be appropriate.

(5) Rules to show cause and rules returnable are abolished. Notices of hearings are to be provided pursuant to Rules 114(C) and 577(A)(2).

(B) ANSWERS

[(A)] (1) An answer to a motion is not required unless **[ordered by the court] the judge orders an answer in a specific case as provided in Rule 577,** or **an answer** otherwise **is [provided in] required by** these rules. Failure to answer shall not constitute an admission of the **[well-pleaded]** facts alleged in the motion **[unless an answer has been required by the court or otherwise by these rules.**

(B) The court may order a written answer, or it may order an oral response at the time of a hearing or argument on a motion.

(C)] (2) A party may file a written answer, or may respond orally at the time of a hearing or argument on a motion, even though an answer **[has] is** not **[been]** required **[by the court and has not been otherwise required by these rules]**.

[(D)] (3) A written answer shall comply with the following requirements:

[(1)] (a) * * *

[(2)] (b) [The answer shall be divided into consecutively numbered paragraphs corresponding to the numbered paragraphs of the motion.] The answer shall meet the allegations of the motion and shall specify the type of relief, order, or other action sought.

(c) The answer shall include a certificate of service as required by Rule 576(B)(4).

[(3)] (d) If the answer sets forth facts that do not already appear of record in the case **[it], the answer** shall be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under Crimes Code § 4904, 18 Pa.C.S. § 4904.

[(4)] (e) * * *

(C) UNIFIED PRACTICE

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a party to attach a proposed order to a motion, requiring an answer to every motion, or requiring a cover sheet for any motion or answer.

Comment

For the definition of motions, see Rule 103.

Rules to Show Cause and Rules Returnable were abolished in 2002 because the terminology is arcane, and the concept of these "rules" has become obsolete. These "rules" have been replaced by the plain language notice of hearings provided in Rule 577(A)(2).

Pursuant to paragraphs (A)(2)(f) and (B)(3)(c), and Rule 576(B)(4), all filings by the parties must include a certificate of service setting forth the date and manner of service, and the names, addresses, and phone numbers of the persons served.

Although paragraph (B)(1) does not require an answer to every motion, the rule permits a judge to order an answer in a specific case. See Rule 114 for the requirements for the filing, making docket entries, and serving of orders.

Paragraph (B)(1) changes prior practice by providing that the failure to answer a motion in a criminal case never constitutes an admission. Although this prohibition applies in all cases, even those in which an answer has been ordered in a specific case or is required by the rules, the judge would have discretion to impose other appropriate sanctions if a party fails to file an answer ordered by the judge or required by the rules.

See Rule 906(E) that requires an answer to all first counseled PCRA petitions in death penalty cases.

Paragraph (C), titled "Unified Practice," was added in 2002 to emphasize that local rules must not be inconsistent with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all criminal rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See the first paragraph of the Rule 105 *Comment.* The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See Rule 105(A).

The prohibition on local rules mandating cover sheets was added because cover sheets are no longer necessary with the addition of the Rule 576(B)(1) requirement that the court administrator be served a copy of all motions and answers.

Although paragraph (C) precludes local rules that require a proposed order be included with a motion, a party may include a proposed order.

***Official Note*: Former Rule 9020 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 574 and amended March 1, 2000, effective April 1, 2001; rescinded _____ , 2002, effective _____, 2002. Former** Rule 9021 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 575

and amended March 1, 2000, effective April 1, 2001; **combined with Rule 574 and amended _____, 2002, effective _____, 2002**.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed rule changes combining Rule 574 with Rule 575 published at 31 Pa.B. 6792 (December 15, 2001).

Rule 576. Filing **and Service by Parties**.

(A) **FILING**

(1) [Except as otherwise provided in these rules, all] All written motions **and any written answers**, and any **[notice] notices** or **[document] documents** for which filing is required, shall be filed with the clerk of courts.

[D)] (2) Filing **[may] shall** be **[accomplished]** by:

[(1)] (a) * * *

[(2)] (b) mail addressed to the clerk of courts **[, provided, however, that]. Except as provided by law,** filing by mail shall be timely only when actually received by the clerk **of courts** within the time fixed for filing.

[(B)] (3) [Except as provided in paragraph (C), when] The clerk of courts shall accept all written motions, answers, notices, or documents presented for filing. [a written motion, notice, or] When a document**, which is filed pursuant to paragraph (A)(1),** is received by the clerk of courts, the clerk shall **[docket] file** it **in the criminal case file,** and **[record] make a docket entry of** the **[time] date** of filing **[in the docket]**. **[A copy of these papers shall be promptly transmitted to such person as may be designated by the court.]**

[(C)] (4) In any case in which a defendant is represented by an attorney, if the defendant submits for filing a written motion, notice, or document that has not been signed by the defendant's attorney, the clerk of courts shall not **[docket or record it] file it in the criminal case file or make a docket entry**, but shall forward it to the defendant's attorney within 10 days of receipt.

(5) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring that a document has to be presented in person before filing or requiring review by a court or court administrator before a document may be filed.

(B) SERVICE

(1) All written motions and any written answers, and notices or documents for which filing is required, shall be served upon each party and the court administrator concurrently with filing.

(2) Service on the parties shall be by:

(a) personal delivery of a copy to a party's attorney, or, if unrepresented, the party; or

(b) personal delivery of a copy to the attorney's employee at the attorney's office; or

(c) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or

(d) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box; or

(e) sending a copy to an unrepresented party by certified, registered, or first class mail addressed to the party's place of residence, business, or confinement.

(3) Service on the court administrator shall be by:

(a) mailing a copy to the court administrator; or

(b) in those judicial districts that maintain in the courthouse assigned boxes for the court administrator to receive service, leaving a copy for the court administrator in the court administrator's box; or

(c) leaving a copy for the court administrator at the court administrator's office.

(4) Certificate of Service

(a) All documents that are filed and served pursuant to this rule shall include a certificate of service.

(b) The certificate of service shall be in substantially the form set forth in the *Comment,* signed by the party's attorney, or, if unrepresented, the party, and shall include the date and manner of service, and the names, addresses, and phone numbers of the persons served.

(C) Any non-party requesting relief from the court in a case shall file the motion with the clerk of courts as provided in paragraph (A), and serve the defendant's attorney, or if unrepresented, the defendant, the attorney for the Commonwealth, and the court administrator as provided in paragraph (B).

Comment

[This rule] Paragraph (A)(1) requires the filing of all written motions **and answers. [, but it] The provision also** applies to notices and other documents only if filing is required by some other rule or provision of law. **See, e.g., the notice of withdrawal of charges provisions in Rule 561 (Withdrawal of Charges by Attorney for the Commonwealth), the notice of alibi defense and notice of insanity defense or mental infirmity defense provisions in Rule 573 (Pretrial Discovery and Inspection), the notice that offenses or defendants will be tried together provisions in Rule 582 (Joinder—Trial of Separate Indictments or Informations), the notice of aggravating circumstances provisions in Rule 801 (Notice of Aggravating Circumstances), and the notice of challenge to a guilty plea provisions in Municipal Court cases in Rule 1007 (Challenge to Guilty Plea). [As used here, "written motions" includes all motions, challenges, and applications or requests for an order or relief that must be made by written motion under Rule 574(A).]**

When a motion, notice, document, or answer is presented for filing pursuant to paragraph (A)(1), the clerk of courts must accept it for filing even if the motion, notice, document, or answer does not comply with a rule or statute or appears to be untimely filed. It is suggested that the judicial district implement procedures to inform the filing

party when a document is not in compliance with these rules or a local rule so the party may correct the problem.

See *Commonwealth v. Jones,* 700 A.2d 423 (Pa. 1997); and *Commonwealth v. Little,* 716 A.2d 1287 (Pa. Super. 1998) concerning the timeliness of filings by prisoners proceeding pro se (the "prisoner mailbox rule").

[Those rules that provide for filing with the trial court or the sentencing court are not exceptions to the general requirement of this rule that filing be with the clerk of courts.]

Paragraph (A)(5), titled "Unified Practice," was added in 2002 to emphasize that local rules must not conflict with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all criminal rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See the first paragraph of the Rule 105 Comment. The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See Rule 105(A).

Any local rule that requires personal appearance in addition to filing with the clerk of courts is inconsistent with this rule.

See Rule 113 (Criminal Case File and Docket Entries) for the requirements concerning the contents of the criminal case file and the minimum information to be included in the docket entries.

See Rule 103 (Definitions) for the definitions of court administrator, clerk of courts, and motions.

[As used in this rule, "clerk of courts" is intended to mean that official in each judicial district who has the responsibility and function under state or local law to maintain the official court file and docket, without regard to that person's official title.

The second sentence of paragraph (B) is intended to provide flexibility to the local courts to designate the court official, such as a local court administrator, who processes motions and other matters for appropriate scheduling and disposition.]

Paragraph **[(C)] (A)(4)** was added in 1996 to provide a uniform, statewide procedure for the clerks of courts to handle filings by represented defendants when the defendant's attorney has not signed the document being filed by the defendant. See Pa.R.A.P. 3304 (Hybrid Representation). Paragraph **[(C)] (A)(4)** only applies to cases in which the defendant is represented by counsel, not cases in which the defendant is proceeding pro se.

Paragraph (B)(1) requires that, concurrently with filing, the party must serve a copy on the court administrator. This requirement provides flexibility to accommodate the various practices for scheduling. However, it is not intended to replace the requirement that the party must file with the clerk of courts.

When a judge is assigned to a case, in addition to the requirements of paragraph (B)(1), it is suggested counsel send the judge a courtesy copy of any filings.

Under any system of scheduling, once a hearing or argument is scheduled, the court or court administrator must give notice of the hearing or argument to the parties, and a copy of the notice must be filed in the criminal case file and a docket entry made. See Rule 114(C)(2).

Paragraph (B)(2)(d) recognizes the practice in some judicial districts of assigning boxes in the courthouse for receipt of service, and these boxes are generally assigned to local counsel and the court administrator. This method of service may not be made on other counsel, such as members of the Attorney General's office, who do not have courthouse boxes or on local counsel who do not agree to this method of service.

Paragraph (B)(4) requires the filing party to include with the document filed a certificate of service. The certificate of service should be in substantially the following form:

I hereby certify that I am this day serving upon the persons and in the manner indicated below. The manner of service satisfies the requirements of Pa.R.Crim.P. 575.

Service by first class mail addressed as follows:

(NAME) (717) 787-0000
Deputy Attorney General
Office of the Attorney General
16 Floor Strawberry Square
Harrisburg PA 17120
(Attorney for the Commonwealth)

Service in person as follows:

(NAME) (717) 240-0000
Assistant District Attorney
Cumberland County Courthouse
Carlisle, PA
(Attorney for the Commonwealth)

Service by leaving a copy at the office of:

(NAME) (717) 240-0000
Court Administrator
Cumberland County Courthouse
Carlisle, PA

Service by certified mail, return receipt requested, as follows:

(NAME) (no phone)
Drawer 00000000
Camp Hill, PA

Dated:

S _____
(NAME), Esq. (Attorney Registration No. 00000)

Under 18 Pa.C.S. § 4904 (unsworn falsification to authorities), a knowingly false certificate of service constitutes a misdemeanor of the second degree.

See Rule 451 for the procedures for service in summary cases.

See Rule 114 for the requirements for docketing and service of court orders and notices.

***Official Note*: Former** Rule 9022 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective January 1, 1994; amended July 9, 1996, effective September 1, 1996; renumbered Rule 576 and amended March 1, 2000, effective April 1, 2001. **Former Rule 9023 adopted October 21, 1983, effective January 1, 1984; amended June 2, 1994, effective September 1,**

1994; renumbered Rule 577 and amended March 1, 2000, effective April 1, 2001, rescinded _____ , 2002, effective _____, 2002. Rule 576 combined with Rule 577 and amended _____ , 2002, effective _____ , 2002.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed amendments and combining of Rule 576 with former Rule 577 published at 31 Pa.B. 6792 (December 15, 2001.)

Rule 577. **[Service] (Rescinded)**.

[(A) Except as otherwise provided in these rules, all written motions and any document for which filing is required shall be served upon each party concurrently with filing.

(B) Except as otherwise provided in these rules, service may be accomplished by:

(1) personal delivery of a copy to a party or a party's attorney; or

(2) leaving a copy for or mailing a copy to a party's attorney at the attorney's office; or

(3) sending a copy to a party by certified, registered, or first class mail addressed to the party's place of residence, business, or confinement.

(C) Proof of service need not be filed unless ordered by the court.]

[Comment]

[This rule requires service of all written motions, but it applies to other documents only if filing is required by some other rule or provision of law. As used here, "written motions" includes all motions, challenges, and applications or requests for an order or relief that must be made by written motion under Rule 574.

See Rule 451 for the procedures for service in summary cases.

See Rule 113 for the procedures for giving a defendant notice of a court proceeding requiring the defendant's appearance.]

Official Note: Rule 9023 adopted October 21, 1983, effective January 1, 1984; amended June 2, 1994, effective September 1, 1994; renumbered Rule 577 and amended March 1, 2000, effective April 1, 2001; **rescinded _____, effective _____ , and replaced by Rule 576(B)**.

Committee Explanatory Reports:

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Report explaining the rescission of the rule published at 31 Pa.B. 6792 (December 15, 2001).

(*Editor's Note*: This rule is new and is printed in regular face to enhance readability.)

Rule 577. Procedures Following Filing of Motion.

(A) Following the filing of a motion,

(1) if the court determines an answer is necessary, the court may order a written answer, or it may order an oral response at the time of a hearing or argument on a motion. Any written order shall be filed, a docket entry made, and served by the clerk of courts pursuant to Rule 114(B), (C), and (D).

(2) If it is determined a hearing or argument is necessary, the court or the court administrator shall schedule the date and time for the hearing or argument. Pursuant to Rule 114(C), notice of the date and time for the hearing or argument shall be served by the clerk of courts, unless the president judge has designated the court administrator to serve these notices as provided in Rule 114(C)(2). When the court administrator serves the notice, a copy shall be filed and a docket entry made.

(B) The court promptly shall dispose of any motion.

(C) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a personal appearance as a prerequisite to a determination of whether a hearing or argument is scheduled.

Comment

Paragraph (A)(2) is intended to accommodate the variation in practice among judicial districts concerning scheduling responsibilities. For example, in some judicial districts, the court has determined that there will be hearings or arguments on all motions and the court administrator is authorized to schedule these hearings or arguments, while in other judicial districts, the judges review all the motions, or review only those motions in certain categories of motions, to determine whether a hearing or argument is necessary and set their own schedules for these hearings or arguments.

In those judicial districts in which the judge schedules hearings or arguments, the court administrator must ensure that the judge promptly receives the motion.

In all cases, the notice of the date and time of the hearing or argument must be served as provided in Rule 114(C) and (D). When the court administrator serves the notice, the date and manner of service must be included in the docket entries when the copy of the notice is filed in the criminal case file as provided in Rules 113 and 114(D).

Paragraph (C), titled "Unified Practice," emphasizes that local rules must not conflict with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all criminal rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See the first paragraph of the Rule 105 *Comment*. The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See Rule 105(A).

The practice in some counties of requiring an attorney to take a motion to a judge for the scheduling of a hearing is inconsistent with this rule.

Official Note: Adopted _____ , 2001, effective , 2001.

Committee Explanatory Reports

Report explaining the provisions of the proposed new rule published at 31 Pa.B. 6792 (December 15, 2001).

CORRELATIVE AMENDMENTS

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART A. Business of the Courts

Rule 103. Definitions.

The following words and phrases, when used in any Rule of Criminal Procedure, shall have the following meanings:

* * * * *

CLERK OF COURTS is that official**, without regard to that person's title,** in each judicial district who**, pursuant to 42 §§ 2756 and 2757,** has the responsibility and function **[under state or local law]** to maintain the official criminal **[court] case** file and **[docket] list of docket entries, and to perform such other duties as required by rule or law [,without regard to that person's official title]**.

* * * * *

COURT is a court of record.

COURT ADMINISTRATOR is that official in each judicial district who has the responsibility for case management and such other responsibilities as provided by the court.

* * * * *

MOTION shall include any challenge, petition, application, or other form of request for an order or relief.

ORDINANCE is a legislative enactment of a political subdivision.

* * * * *

Official Note: Previous Rules 3 and 212 adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present Rule 3 adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993; amended February 27, 1995, effective July 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 103 and Comment revised March 1, 2000, effective April 1, 2001; **amended _____, 2001, effective _____, 2001**.

Committee Explanatory Reports:

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Report explaining the proposed addition of definitions of court administrator and motion published at 31 Pa.B. 6792 (December 15, 2001).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART F. Procedures Following Filing of Information

Rule 573. Pretrial Discovery and Inspection.

(A) INFORMAL

Before any disclosure or discovery can be sought under these rules by either party, counsel for the parties shall make a good faith effort to resolve all questions of discovery, and to provide information required or requested under these rules as to which there is no dispute. When there are items requested by one party which the other party has refused to disclose, the demanding party may make appropriate motion **[to the court]**. Such motion shall be made within 14 days after arraignment, unless the time for filing is extended by the court. In such motion the party must set forth the fact that a good faith effort to discuss the requested material has taken place and proved unsuccessful. Nothing in this provision shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

* * * * *

(C) DISCLOSURE BY THE DEFENDANT

(1) MANDATORY:

(a) Notice of Alibi Defense:

A defendant who intends to offer the defense of alibi at trial **[shall], [at] within** the time required for filing the omnibus pretrial motion under Rule **[578] 579**, **[file of record notice signed by the defendant or the attorney for the defendant, with proof of service upon the attorney for the Commonwealth, specifying intention to claim such defense.] shall file with the clerk of courts notice specifying the intention to claim the defense of alibi, and a certificate of service on the attorney for the Commonwealth. The notice and certificate shall be signed by the attorney for the defendant, or the defendant if unrepresented.** Such notice shall contain specific information as to the place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of witnesses whom the defendant intends to call in support of such claim.

(b) Notice of Insanity Defense or Mental Infirmity Defense:

A defendant who intends to offer at trial the defense of insanity, or a claim of mental infirmity, **[shall, at] within** the time required for filing an omnibus pretrial motion under Rule **[578] 579**, **[file of record notice signed by the defendant or the attorney for the defendant, with proof of service upon the attorney for the Commonwealth, specifying intention to claim such defense.] shall file with the clerk of courts notice specifying the intention to claim the defense of insanity or a claim of mental infirmity, and a certificate of service on the attorney for the Commonwealth. The notice and certificate shall be signed by the attorney for the defendant, or the defendant if unrepresented.** Such notice shall contain specific available information as to the nature and extent of the alleged insanity or claim of mental infirmity, the period of time that the defendant allegedly suffered from such insanity or mental infirmity, and the names and addresses of witnesses, expert or otherwise, whom the defendant intends to call at trial to establish such defense.

* * * * *

Comment

This rule is intended to apply only to court cases. However, the constitutional guarantees mandated in *Brady v. Maryland*, 373 U.S. 83 (1963), and the refinements of the Brady standards embodied in subsequent judicial decisions, apply to all cases, including court cases

and summary cases, and nothing to the contrary is intended. For definitions of "court case" and "summary case," see Rule 103.

Any motion under this rule must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

* * * * *

See Rule 576(B)(4) and Comment for the contents and form of the certificate of service.

It is intended that the remedies provided in paragraph (E) apply equally to the Commonwealth and the defendant as the interests of justice require.

* * * * *

Official Note: Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; Comment revised July 28, 1997, effective immediately; Comment revised August 28, 1998, effective January 1, 1999; renumbered Rule 573 and amended March 1, 2000, effective April 1, 2001**; amended _____, 2002, effective _____, 2002**.

Committee Explanatory Reports:

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Report explaining the proposed changes to paragraphs (C)(1)(a) and (b) published at 31 Pa.B. 6792 (December 15, 2001).

PART F(1). Motion Procedures

Rule 581. Suppression of Evidence.

* * * * *

Comment

* * * * *

It should be noted that failure to file the **[application] motion** within the appropriate time limit constitutes a waiver of the right to suppress. However, once the **[application] motion** is timely filed, the hearing may be held at any time prior to or at trial.

All motions to suppress must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

* * * * *

Official Note: Rule 323 adopted March 15, 1965, effective September 15, 1965; amended November 25, 1968, effective February 3, 1969. The 1968 amendment, suspended, amended, and consolidated former Rules 323, 324, 2000 and 2001 of the Pennsylvania Rules of Criminal Procedure. This was done in accordance with Section 1 of the Act of July 11, 1957, P. L. 819, 17 P. S. § 2084. Paragraph (f) amended March 18, 1972, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraphs (f) and (g) and Comment amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 581 and amended March 1, 2000, effective April 1, 2001**; Comment revised _____, 2001, effective _____, 2001**.

Committee Explanatory Reports:

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Report explaining the proposed Comment revision referencing Rules 575 and 576 published at 31 Pa.B. 6792 (December 15, 2001).

REPORT

Proposed new Rules 113 and 577, amendments to Rules 103, 114, 573, 575, and 576, revision of the Comment to Rule 581, and rescission of Rules 113, 574, and 577.

STATEWIDE UNIFORMITY: MOTIONS, ANSWERS, ORDERS, AND COURT NOTICES IN CRIMINAL CASES

INTRODUCTION

The Committee has continued its review of the Criminal Rules to determine how best to (1) promote the statewide uniformity of practice and procedure and (2) eliminate the local rules and local practices that are hampering the statewide practice of law.[1] As the result of this ongoing review, the Committee has developed the following proposal for changes to the Criminal Rules governing motions and answers, and the filing and service of motions, answers, orders, and notices.[2]

BACKGROUND

For a number of years, the Committee has been receiving correspondence from attorneys with practices in more than one judicial district, including counsel from the State Police and the Attorney General's office, questioning the validity of specific local rules or local practices that appear to conflict with current Rules 114, 574, 575, 576, and 577, and are hampering their ability to practice in multiple judicial districts.[3] In an effort to better understand the problems related to motions practice, the Committee first contacted current and former Committee members engaged in private practice concerning their experience with local rules and local practices regulating motions practice. Subsequently, we surveyed the members of the Pennsylvania Association of Criminal Defense Lawyers for their input concerning the impact of local rules on their multi-judicial district practices. From the information we received from these surveys, as well as the correspondence from the other attorneys, the Committee identified several aspects of local motions practice that seem to be the major troublemakers for attorneys with multi-judicial district practices, including local rules and local practices

- requiring counsel personally appear to file motions
- requiring counsel personally appear to present motions to the judge before filing with the clerk of courts
- requiring counsel to personally obtain hearing dates and serve the other parties
- requiring counsel to use rules to show cause and rules returnable
- requiring cover sheets, answers, hearings, oral arguments, briefs, or proposed orders in every case.

[1] The first phase of our review resulted in the Court's amendment of Pa.R.Crim.P. 105 (Local Rules) to more clearly define local rules and set forth the procedures for local rules to be effective and enforceable. See Court's Order and Committee explanatory Final Report at 30 Pa.B. 5842 (November 11, 2000). The present proposal is the second phase of the project.

[2] The Judicial Council's Local Rules Subcommittee, under the supervision of Madame Justice Newman, also is studying statewide local rules governing motions practice, and has been apprised of this proposal.

[3] We repeatedly have heard that, notwithstanding the requirements of Rule 105 (Local Rules), frequently the local requirements are not memorialized as local rules or vary from judge to judge within a judicial district, are difficult for out-of-county practitioners to find, and are not lodged with the Committee making it difficult for us to monitor.

In addition, although not a major troublemaker, there are problems in ensuring prompt service under the rules.

The Committee also surveyed all president judges to gather general information about motions practice in their respective judicial districts, and to determine whether they use cover sheets, rules to show cause or rules returnable, and require proposed orders. We received responses from about half the judicial districts, and found that most do not use cover sheets or rules to show cause or rules returnable, and they were equally divided concerning requiring a proposed order, or answers, hearings, oral arguments, or briefs.

Armed with all this information, after extensive review and discussions, the Committee agreed the rules should be changed to incorporate the following points:

(1) clarify in a new rule the procedures for maintaining the criminal case file and maintaining a list of docket entries (new Rule 113);

(2) require a certificate of service (Rules 575 and 576);

(3) no longer allow the failure to file an answer to be deemed an admission (Rule 575);

(4) abolish rules to show cause and rules returnable and provide for a notice of hearing (Rule 575);

(5) prohibit local rules requiring a proposed order in every case or an answer to every motion (Rule 575);

(6) abolish cover sheets (Rule 575);

(7) make it clear that a motion must be filed with the clerk of courts first, and any local rules to the contrary are prohibited by the rules (Rule 576);

(8) make it clear that any local rules that require personal appearance to file, or court review before filing, or personal appearance to get a hearing date are prohibited by the rules (Rule 576);

(9) provide for service on the court administrator of any document that is filed (Rule 576);

(10) acknowledge that there are variations in how scheduling is handled in the judicial districts, and those variations should be permitted to continue (Rules 114 and 577); and

(11) include provisions governing what happens after a motion is filed and served (new Rule 577).

The proposed rule changes incorporating the above ideas and making other conforming and correlative changes are discussed more fully below.

DISCUSSION

1. *UNIFIED PRACTICE*

One of the primary goals of the rule changes the Committee is proposing is to eliminate the local rules and local practices that conflict with the statewide rules and adversely affect motions practice and the statewide practice of law within the unified judicial system. After a great deal of discussion trying to come up with the best way to address this matter, we settled on a "sledgehammer" approach—adding specific prohibitions in the rules and highlighting the prohibitions in the Comments. To accomplish this, we are proposing that a new section, titled "Unified Practice," be added to Rules 114, 575, 576, and new Rule 577. This section includes the general prohibition against local rules that are inconsistent with the provisions of the rule, tying in with the Rule 105 (Local Rules) general prohibition against all local rules that are inconsistent with the statewide rules, and specific prohibitions against the local rules and local practices that are creating the most significant impediments to the statewide practice of law.

(a) *Rules 114 and 577*

Rule 114 addresses the filing and service of orders and court notices. The troublesome local practices identified as impediments to the statewide practice of law related to Rule 114 are the requirements in some judicial districts or by some judges that, in every case, counsel must appear in person to obtain a hearing date, and then counsel must file the notice of the hearing date and serve it on the parties. The Committee agreed these local practices specifically should be prohibited, see Rule 114(E), not only because they are impediments to the statewide practice of law, but also because they are contrary to the intent and spirit of the statewide rules. Similarly, the "Unified Practice" provision in Rule 577(C) prohibits local rules that require a personal appearance as a prerequisite to a determination whether a hearing or argument is scheduled.

(b) *Rule 575*

Rule 575 governs motions and answers. Three specific local rule or local practice requirements have been identified as causing problems, and are prohibited by paragraph (C). These are the requirements in some judicial districts or by some judges that all motions include cover sheets or proposed orders, and that there be an answer filed to every motion. Because we are proposing in Rule 576 that the court administrator be served with a copy of any motion that is filed, and because our survey of president judges revealed that few judicial districts are using cover sheets, the Committee agreed there is no need for cover sheets. To avoid confusion and to eliminate a possible hurdle for statewide practitioners, we are proposing that the use of cover sheets be prohibited. Similarly, from our survey of the president judges, we learned that very few judicial districts require proposed orders. Furthermore, the Committee noted it is often difficult when making a motion to know what should be the precise nature of the order to propose for the motion. Accordingly, the Committee agreed proposed orders should not be mandated for every motion or answer. However, as explained in the Rule 575 Comment, a party has the option of attaching a proposed order in the appropriate case. Finally, the local rules requiring answers in every case conflict with the provisions of present Rule 575,[4] and are being prohibited.

(c) *Rule 576*

The area of motions practice that generates the most local rules and the greatest variance in local practice concerns filing of motions. Although the 1983 amendments to the rules governing filing required all filings to be with the clerk of courts first, either by mail or in person, before transmission to other court officials, the proliferation of local rules and local practices governing filing that are inconsistent with Rule 576 continues to plague multi-judicial district practitioners, as well as the Committee. We still are hearing about local rules or local practices that require a party to bring the motion in person, frequently on specified days or at specified times, to a judge or court administrator before filing with the clerk of courts. The Committee spent a great deal of time revamping Rule 576 to make it absolutely clear that filing may be accomplished only by personally delivering the motion to the clerk of courts or by mail to the clerk. The

[4] Rule 575 provides that an answer is not required unless ordered by the court, which does not mean a general order for an answer in all cases, but rather an order issued in a specific case.

"Unified Practice" provision, Rule 576(A)(5), prohibits any local rules that require a document to be presented in person or reviewed by the court or court administrator before filing.

(d) *Comments to Rules 114, 575, 576, and 577*

The Comments to Rules 114, 575, 576, and 577 all include a provision explaining the purpose of the "Unified Practice" provision, and its relationship to the general prohibition in Rule 105 (Local Rules) against local rules that are inconsistent with the statewide rules. To emphasize the definition of local rule, this explanatory paragraph includes the Rule 105 definition of "local rule." In addition to this general explanatory paragraph, the Rule 575 Comment explains the Committee's reasoning for prohibiting cover sheets. Finally, because of the pervasiveness of the local rules and local practices requiring personal appearances for filing or for securing a hearing date, the Comments to Rules 576 and 577 include a specific statement that these practices are inconsistent with the rules.

2. *CERTIFICATE OF SERVICE*

The second significant change being proposed is the addition of the requirement that all motions, Rule 575(A)(2)(e), and all answers, Rule 575(B)(3)(c), include a certificate of service. The Committee thought this an important addition to ensure all the proper parties are served.[5] This requirement is consistent with similar provisions in the Rules of Civil Procedure and the Rules of Appellate Procedure. The contents of the certificate of service are enumerated in Rule 576(B)(4), and must include the date and manner of service, and the names, addresses, and phone numbers of the persons served. A sample form modeled on Pa.R.A.P. 122 is included in the Rule 576 Comment.

In developing the form of certificate of service, the question of who should sign the certificate arose. The Committee considered whether the rule should require the attorney or party, if unrepresented, to sign, or the person, such as a secretary, who actually mails or delivers the documents. Since the attorney, or the party, if unrepresented, has the responsibility for service under Rule 576, we concluded the attorney or party should sign the certificate of service.

Finally, to conform with these changes, the Committee is proposing that Rule 573(C)(1)(a) and (b) (Pretrial Discovery and Inspection) be amended by changing "proof of service" to "certificate of service."

3. *New Rule 113 (Criminal Case File and Docket Entries)*

During the Committee's discussions about the filing and service of motions, answers, orders, and court notices, a number of questions came up about capturing the information concerning a criminal case, such as the dates of filing and service, and maintaining the papers filed in the case. As we considered these questions, we noted the term "docket" is used to mean different things in different rules and even within one rule.[6] In Pennsylvania, for example, the term "docket" is used as a verb to mean either the act of bringing something to the clerk of courts, with "docketing" used to mean "filing," or the act of the clerk of courts entering information on the docket, with "docketing" used to mean "entering." "Docket" also is used as a noun to mean the "record."[7] In addition, from our research, we learned that some counties do not keep a running record of docket entries, but merely construct the docket if an appeal is taken. In these counties, everything is kept in the case file, and it appears anyone can have access to this file. In view of these considerations, the Committee agreed it would be useful to have a rule governing the "docket," and is proposing new Rule 113 to fill this gap.[8]

The new rule places the burden of maintaining both the criminal case file, paragraph (A), and the list of docket entries, paragraph (B), on the clerk of courts. As explained in paragraph (A), the criminal case file contains all the original records, papers, and orders filed in the case, and copies of all court notices. Paragraph (A) prohibits the removal of these documents from the criminal case file without a court order, but provides that the parties must be permitted to make copies of the documents. This change is needed to prevent the court's papers from being lost, a problem that from time to time is alluded to in case law because of the difficulties lost documents create in reproducing the record of the case for the appeal.

Paragraph (B) is proposed to address two issues. First, by using the terminology "list of docket entries" to replace "docket" to describe the entity in which all the information that is required to be maintained in a criminal case is recorded, we are accommodating both the manual system of recording and maintenance of information that is currently being used in a number of judicial districts and the electronic recording and maintenance of information that is used in others.[9] Second, the definition in paragraph (B) of "list of docket entries" as a "chronological list, in electronic or written form, of documents and entries in the criminal case file, and of all proceedings in the case," is intended to end the practice in some judicial districts of not creating the list of docket entries unless an appeal is taken. This is explained further in the first paragraph of the Comment.

Paragraph (C) outlines the minimum information that must be included in the list of docket entries.[10] Paragraph (C)(2) requires the names and addresses of all attorneys who have appeared or entered an appearance. The Committee agreed it was important to capture this information to make sure there is a record of all attorneys who appear in a case, not only for the defendant and the Commonwealth, but also for witnesses or any other litigant in the case. In addition, having the attorneys' addresses ensures proper service under Rules 114 and 576. Paragraph (C)(4) requires notations concerning oral motions and oral orders that are made or issued in the courtroom. Recognizing that not all judicial districts currently have the capacity to make docket entries from the courtroom, the provision is limited to "when the clerk of courts has the capacity to do so or when ordered by the court." Paragraph (C)(6) requires information concerning "the location of exhibits made part of the record during the proceedings" and was added to address a serious problem in the criminal justice system. The Committee

[5] For example, this will be helpful in cases in which the Attorney General's office is representing the Commonwealth, so the court will know whether that office has received service.

[6] Black's Law Dictionary defines docket as a verb meaning "to abstract and enter in a book. To make a brief entry of any proceeding in a court of justice in the docket." As a noun, it is defined as "A minute, abstract, or brief entry; or the book containing such entries. A formal record, entered in brief of the proceedings in a court of justice. A book containing an entry in brief of all the important acts done in court in the conduct of each case, from its inception to its conclusion. The name 'docket' or 'trial docket' is sometimes given to the list or calendar of causes set to be tried at a specified term, prepared by the clerks for the use of the court and bar."

[7] A rule example is current Rule 114, which provides "the clerk of courts shall immediately docket the order and record in the docket the date. . . ."

[8] Because the Committee is proposing that present Rule 113 be rescinded as part of the changes proposed for Rule 114 discussed in Part 4, Rule 113 is an available number.

[9] This also is intended to accommodate the statewide automation of the criminal divisions of the courts of common pleas that is expected to be in place by 2004.

[10] It is expected that some judicial district may require additional information be included in the list of docket entries for administrative purposes.

expects this information in the list of docket entries will aid the courts and the parties in keeping track of the location of exhibits.

Finally, paragraph (F) addresses another problem the Committee has been advised about in numerous communications and which is addressed in case law—supervision of clerks of courts to ensure the timely filing of papers and making of docket entries. The Committee discussed this matter at length and reviewed the constitutional and statutory authorization for clerks of courts. Sections 2756 and 2757 of the Judicial Code, 42 Pa.C.S. §§ 2756 and 2757, establish the duties of the clerks of courts. Section 2757 provides, inter alia, that the office of the clerk of courts shall have the power and duty to:

(5) Exercise such other powers and perform such other duties as may now or hereafter be vested in or imposed upon the office by law, home rule charter, *order or rule of court*, or ordinance of a county governed by home rule charter or optional plan of government. (Emphasis added.)

Based on this statutory provision, paragraph (F) has been added to specifically authorize the president judge to supervise the clerk of courts.

The Committee also has conformed the terminology in Rules 103, 114, 576, and 577 with the changes being proposed in new Rule 113 concerning filing in the criminal case file and making docket entries.

4. *Rule 114 (Filing, Docket Entries, and Service of Orders and Court Notices)*

In developing this proposal, as noted above in Part 1, the Committee has been working toward statewide uniformity in the procedures governing motions practice. We recognized that the procedures governing orders and court notices are not uniform statewide, and the practice in many judicial districts are creating problems for the statewide practice of law. In addition to the "Uniform Practice" provision being added to Rule 114(E), discussed above in Part 1, the Committee is proposing a number of other changes to Rule 114 that will tighten up the procedures governing orders and court notices.[11]

First, the title to Rule 114 is being changed to more accurately reflect the application of the rule; that it addresses the filing and service of orders and court notices, and making docket entries with regard to the filing and service of orders and court notices.

Throughout its discussions, a recurring issue the Committee encountered concerned the problems that arise because not all the court papers are filed in a timely manner, accurate docket entries are not always made promptly, and service of orders and court notices is not always made in a timely manner. These problems impact other Criminal Rules[12] and cause unnecessary delays in cases. From our research, the Committee noted the problems are exacerbated not only by the varied practices for handling these duties in the judicial districts, but also by the failure of some judicial districts to provide any uniform supervision. After considerable discussion, the Committee concluded that it is the responsibility of the president judge to ensure that orders and court notices are filed, docket entries are made, the orders and notices are served as required by the rules, and all these duties are performed in a timely manner. The Committee also agreed that this responsibility should be made clear in Rule 114, and are proposing a new paragraph (A) to specifically provide for the president judge's authority to oversee the court officials who are given the responsibility to perform these duties.

A related issue debated at length by the Committee concerned which court officials should have the responsibility to file, make docket entries of, and serve orders and court notices. We are aware that in many judicial districts the clerk of courts is responsible for filing and for making the docket entries, and either the clerk of courts or the court administrator serves the orders and court notices. Because determining who has the responsibility is an administrative matter, we initially considered requiring the president judge to designate which court officials would have the responsibilities for these duties, but were concerned that until the president judge made the designation, there would be confusion and this would only make the problems worse. The Committee concluded the better procedure would be to have the rule "default" to the clerk of courts; that is, under paragraphs (B) and (C), the clerk of courts is the official responsible for filing, making docket entries, and serving orders and court notices. However, we agreed that this was one area where local practice should be accommodated as long as the president judge ensures the duties are performed in a timely manner. In recognition of this, new paragraph (C)(2) authorizes the president judge to designate the court administrator as the official to serve some or all orders and court notices.

During our review of Rule 114, the Committee discussed what information concerning orders and court notices should be included in the docket entries. First, although we recognize that most clerks of courts time stamp documents that come into their offices, to ensure accuracy concerning when the clerk of courts receives orders or court notices for filing and to eliminate variations in practice in this area, the Committee is proposing that Rule 114(B), which is taken from the first sentence of current Rule 114, should require the clerk of courts to time stamp the order or court notice with the date of receipt, which is the date the order or court notice is received in the clerk's office for filing. In addition, paragraph (B) requires the clerk also to make a docket entry of the date on the order or court notice, because frequently this will be different from the date of receipt, and this information could be important in the case.

Paragraph (C)(1), which is taken from the second sentence of current Rule 114, requires the clerk to make a docket entry of the date of service, and retains the requirement that the clerk make a docket entry of the manner of service. To ensure that the provisions of (C)(1) are complied with when the court administrator serves an order or court notice, paragraph (C)(2) includes the requirement that the order or court notice be filed in the criminal case file and a docket entry made.

Paragraph (D) incorporates the service provisions of current Rule 113 with the following changes. First, in our review of current Rule 113(1)(a), which provides for service by "personal delivery to the defendant or defendant's attorney," some members questioned whether service could be on a defendant instead of his or her attorney as implied by this language. The Committee concluded service should always be on the attorney unless the party is unrepresented, and is proposing this provision be

[11] As pointed out in footnote 5, the Committee is proposing that Rule 113 be rescinded and the provisions added to Rule 114. We are making this change because with the other changes being proposed for Rule 114, the two rules would cover the same procedures, thus making Rule 113 unnecessary.

[12] See, for example, Rule 720(B)(3)(c) that requires the clerk of courts to "forthwith enter an order on behalf of the court, and shall forthwith furnish a copy of the order . . . to the attorney for the Commonwealth, the defendant(s), and defense counsel . . . ."

amended accordingly. See paragraph (D)(1)(a).[13] During our discussion of this provision, the Committee considered whether service could be on an attorney's employee, noting that in practice this frequently occurs but is not specifically provided for in former Rule 113. We agreed Rule 114 should permit this practice but that it should be limited to service on the employee at the attorney's office. See paragraph (D)(1)(b).[14]

The Committee also considered the practice in some judicial districts of assigning mail slots/boxes in the courthouse for service on members of the local bar and the court administrator. We agreed this practice was a legitimate manner of service as long as the courthouse mailboxes are not used to serve a party who does not have a box or who has not given their permission to be served in the box. Accordingly, paragraph (1)(d) specifically permits service in courthouse mailboxes, with a Comment provision elaborating on the caveat.[15]

Finally, concerning methods of service, the Committee considered whether the rule should permit service of orders and court notices by facsimile or electronic transmission, similar to what is permitted by Pa.R.Civ.P. 236(d). Although fully cognizant that the use of electronic technology for transmitting documents is proliferating, the Committee was concerned about issues such as proof of service and signatures that arise with the various means of electronically transmitting documents, and agreed this matter required further research before proposing such a change for the criminal courts. Accordingly, the Committee concluded that for this proposal, we only would include facsimile transmissions as an acceptable method of service. Following the lead of Civil Rule 236(d), new paragraph (D)(1)(f) limits this method of service to cases in which the party's attorney, or, if unrepresented, the party, has authorized this method of service either by filing a specific request or including the facsimile number on a prior legal paper filed in the case. The Comment includes a paragraph clarifying that the facsimile number on letterhead is not sufficient to authorize service by facsimile.

The Committee's final consideration concerning Rule 114 was whether the court administrator or judge should be able to electronically transmit documents from their offices to the clerk of courts if the technology is available in the judicial district. We agreed that they should, but that this should not be mandatory. We, therefore, have added an explanation to this effect in the Comment.

5. *Rule 575 (Motions and Answers)*

As part of our review of the motions rules in general, the Committee noted that the rule governing motions, current Rule 574, and rule governing answers, current Rule 575, are similar in nature and closely related in process: motions and answers are documents that a party files, have similar contents, and must be served. In view of this, the Committee is proposing that Rules 574 and 575 be combined into one rule. Accordingly, current Rule 574 has been merged into current Rule 575 as new paragraph (A).[16]

Rule 575(A)(1) is taken from former Rule 574(A). The Committee agreed to define "motion" in Rule 103 rather than having to enumerate the laundry list of documents considered motions—motions, challenges, and applications or requests for an order or relief—each time we refer to "motions" in the rules.[17] In addition, consistent with our goal of statewide uniform motions procedures, the Committee is proposing the "except as otherwise provided by these rules" language be deleted from paragraph (A)(1) because (1) there does not appear to be any motion that would not be in writing, or as permitted by the court, or when made in open court during a trial or hearing,[18] and (2) the language could be used as support by the judicial districts for enacting conflicting local rules that could be construed as falling within the "except as otherwise provided by the rules" provision.

Paragraphs (2)(a)—(c) and (f) are the same as present Rule 574(B)(1)—(3). Paragraphs (A)(2)(d) and (e) are new to the motions rule. Paragraph (A)(2)(d) adds the requirement that the motion include any requests for a hearing or argument or both, which is in accord with current practice. Paragraph (A)(2)(e) adds the requirement that the motion include a certificate of service. See discussion in Part 2 above.

A major change being proposed by the Committee is the abolition of rules to show cause and rules returnable in paragraph (A)(5). The Committee agreed these "rules" are confusing and no longer serve any useful purpose, and should be replaced by "plain language" notices of hearings issued by the court or court administrator as provided in Rules 114 and 557. The basis for this change is highlighted in the Comment.

Paragraph (B) incorporates the provisions of current Rule 575. The first sentence of current Rule 575(A) raised two questions for the Committee. The first question was whether the "or otherwise provided in these rules" language was necessary. Noting that Rule 906(E)(1)(a) requires an answer to all first counseled PCRA petitions in death penalty cases, and that down the road there may be other rules requiring answers, the Committee agreed the provision is necessary and should be retained. See paragraph (B)(1). For purposes of clarity, the Committee also is proposing that a cross-reference to Rule 906(E) be added to the Rule 575 Comment.

The second question was whether the "ordered by the court" language could be construed as authorizing a judicial district to establish a local rule requiring answers in every case. Agreeing there is a potential for the phrase to be misconstrued, and to avoid any language that could be read as encouraging local rules, the Committee has modified that portion of current Rule 575(A) by deleting "ordered by the court" and replacing it with "the judge orders an answer in a specific case as provided in Rule 577," see paragraph (B)(1), with an explanation in the Comment that the court may order an answer in specific cases. We also are proposing that a cross-reference to Rule 114 be added to the Rule 575 Comment to emphasize that the orders must be filed and served, and docket entries made.

The Committee discussed the provision in the second sentence of current Rule 575(A) that failure to answer is

[13] A similar change is being proposed for Rule 576(B)(2)(a). See Part 6 below.
[14] A similar change is being proposed for Rule 576(B)(2)(b). See Part 6 below.
[15] Similar changes are being proposed for Rule 576(B)(2)(d) and (B)(3)(b). See Part 6 below.
[16] Although the motion rule provisions are indicated in bold and underlined, for the most part, except where indicated in the discussion in this Part, the provisions of Rule 574 have been incorporated into Rule 575 without change, although the provisions have been reorganized. In addition, as part of this proposal, current Rule 574 would be rescinded and the number reserved for future use.
[17] The changes to Rule 103 are explained in the "correlative amendments" section below.
[18] A review of the Committee's Report and Supplemental Report explaining the changes when the motions rules were adopted in 1984 found that the two rules referred to in the Report that provided different filing procedures, or were the "otherwise provided" rules, have been rescinded and replaced by other rules that do not provide different procedures. From a search of the current rules, we found that Rules 573 and Rule 581 have provisions for making a motion "to the court." As explained below in the "correlative amendments" section, the Committee agreed to delete the provision from Rule 573 but retain it in Rule 581, with a Comment in both rules explaining that Rules 575 and 576 must be followed.

deemed an admission when an answer has been required by the court or otherwise by the rules, and whether the Criminal Rules should ever permit the failure to answer to be deemed an admission. We concluded the "deemed admission" is a civil concept and could lead to problems in the criminal context, and therefore, a failure to answer should never be an admission. Accordingly, the Committee is proposing the deletion of the "unless an answer has been required" clause at the end of the second sentence of current Rule 575(A). See paragraph (B)(1). In view of this change, the Committee also agreed the rule had to be clear that the judge could impose other appropriate sanctions on the non-responding party in a specific case, and has added a Comment provision explaining this point.

Paragraph (B)(3), which is essentially the same as current Rule 575(D), has been modified by the deletion of the requirement that the answer "be divided into consecutively numbered paragraphs corresponding to the numbered paragraphs of the motion." See paragraph (B)(3)(b). Several members pointed out that answers may need to be less formally structured for a number of reasons, such as the answer may not respond to an entire motion or may raise other matters that do not correspond to the numbered paragraphs of the motion. The Committee agreed with this assessment, noting the provision is more mischievous than beneficial to the system, and that it makes sense to provide some flexibility in the nature of the answers in criminal cases.

Finally, as explained in Part 2 above, the Committee has added as paragraph (B)(3)(C) the requirement that the answer include a certificate of service.

6. *Rule 576 (Filing and Service By Parties)*

During the development of this proposal, the Committee agreed there should be a separate rule addressing the procedures following the filing and service of motions. See discussion below in Part 7. To accommodate this new rule, the Committee is proposing that Rules 576 (Filing) and 577 (Service) be combined into one rule because they are closely related in process. Accordingly, current Rule 577 has been merged into current Rule 576 as new paragraph (B).[19]

The title to Rule 576 has been changed (1) to reflect the new dual nature of the rule—filing and service—and (2) to distinguish the requirements of this rule, which applies to parties, from the filing and service requirements of Rule 114, which applies to the court.

Paragraph (A) is taken from current Rule 576. The order in which the paragraphs appear in the current rule has been reorganized so the method of filing, former paragraph (D), follows the requirements for filing in paragraph (A)(1).

Paragraph (A)(1) is similar to current Rule 576(A), with two changes. First, the "or otherwise provided in these rules" language has been deleted because of our concerns about the language being misconstrued as permitting inconsistent local rules in this area. See also the discussion in Part 5 above.[20] Second, the Committee has added "written answers" to the list of documents that must be filed to make the rules clear that the same requirements for filing apply to any answers. In addition, because Rule 575(A)(1) applies to "notices or documents for which filing is required," the Committee has added a cross-reference in the Comment to the Criminal Rules that require a notice to be filed. This cross-reference will serve as an aide to the bench and bar by clarifying the scope of the application of this provision of the rule.

Paragraph (A)(2) is the same as current Rule 576(D), except that the "may" has been changed to "shall" in the introductory clause to make the rule clear that these are the only ways to accomplish filing.[21] This clarification is intended to preempt local rules dealing with filing of motions.

As the Committee worked on this proposal, the question of how to handle filings that are untimely or that do not comply with the rules arose. Should the clerk of courts have any role in determining the acceptability of filings? The Committee concluded that the determination of the acceptability of filings was not an issue for the clerk of courts, and that they should accept all filings submitted to their offices. Paragraph (A)(3) has been amended to make this clear, with further elaboration in the Comment. It also is suggested in the Comment that the judicial districts implement procedures to inform the filing party when the filing does not comply with the rules so the party may correct the problem.

Paragraph (B)(1), which is taken from current Rule 577(A), specifically requires the parties to serve not only all parties but also the court administrator. The Committee agreed this additional requirement is necessary to address a problem that had come to our attention; some clerks of courts are not complying with the provision of current Rule 576(B) requiring them to promptly transmit a copy to the designated court official.[22] Because the court administrator frequently is the designated court official who schedules hearings and arguments, or who is responsible for getting the motions to the judge for scheduling, the Committee concluded the court administrator should receive a copy of all filings from the parties concurrently with filing. As noted in the Comment, this requirement however does not replace the requirement that the documents must be filed with the clerk of courts. In addition, recognizing that some counties assign judges to handle designated cases from the time of arraignment, the Committee has included in the Comment the suggestion that, in these cases, the attorney send the assigned judge a courtesy copy of the filings.

Another purpose of providing for service on the court administrator is to acknowledge the variations in practice concerning who does scheduling in each judicial district. The Committee agreed in this one area of the rules that there did not have to be uniformity, that either the court or the court administrator could continue to schedule hearings and arguments and other court proceedings. This point also is explained in the Comment.

Paragraph (B)(2), which is taken from current Rule 577(B), provides the methods of service. The Committee agreed that the same changes made in Rule 114 concerning service of orders and court notices should be made with regard to service by the parties. See discussion in Part 4 above. Paragraph (B)(2)(a) provides for personal service on the attorney unless the party is unrepresented. Paragraph (B)(2)(b) permits service by personal delivery to the attorney's employee at the attorney's office. Paragraph (B)(2)(d) acknowledges the local practice of using courthouse assigned boxes for receipt of service.

[19] Although the service rule provisions are indicated in bold and underlined, for the most part, except where indicated in the discussion in this Part, the provisions of Rule 577 have been incorporated into Rule 576 without change. In addition, as part of this proposal, current Rule 577 would be rescinded and replaced by new Rule 577.

[20] For the same reasons, this language has been deleted from paragraph (B), which is taken from current Rule 577(A).

[21] For the same reason, the same change has been made in paragraphs (B)(2) and (3) concerning methods of service.

[22] The last sentence in (A)(3), formerly Rule 576(B), has been deleted as no longer necessary because of the addition of this requirement.

Paragraph (B)(3) has been added to enumerate the means of service on the court administrator. The Committee is proposing the means of service be limited to mail, a courthouse box, or leaving a copy at the court administrator's office.

Paragraph (B)(4) sets forth the requirements for the certificate of service, discussed more fully above in Part 2.

Another issue the Committee considered at length concerned the application of Rule 576 to non-parties. Several members expressed concern that the addition of "by parties" to the title and using the term "parties" in the rule could be construed as limiting the application of the rule to parties, thereby excluding others who may make a motion in a specific case, such as a member of the press who is challenging, for example, a closure order. The Committee agreed anyone filing any form of request for relief in a criminal case, whether or not a party, should follow the requirements of Rule 576, and therefore, we have added new paragraph (C) to make this clear. Accordingly, any non-party requesting relief from the court in a case must file and serve the motion as required by Rule 576(A) and (B). New paragraph (C), however, in no way is intended to give "party" status to a non-party filing and serving under the rule.

7. *Rule 577 (Procedures Following Filing of Motion)*

As we developed this proposal, the Committee noted a gap in the rule procedures following the filing and service of motions. The current rules do not set forth procedures that would explain what happens after the filing and service of motions. Because most of the changes included in this proposal are intended to reduce the statewide variations in motions practice and procedure, the Committee concluded this gap should be filled, and is proposing a separate rule, new Rule 577.

Rule 577 is divided into 3 parts: (A) procedures following the filing of the motion, including the determination by the court whether an answer is required and scheduling of hearing and arguments; (B) the requirement that the court promptly dispose of any motion; and (C) the "unified practice" section prohibiting local rules concerning personal appearance to request a hearing.

The provisions of paragraph (A) tie in with the provisions of Rule 114 to make it clear that when any order for an answer is issued pursuant to paragraph (A)(1), or any court notice for a hearing or argument is issued pursuant to paragraph (A)(2), the filing, docket entries, and service provisions of Rule 114 must be followed, and that this is the responsibility of the court, not the parties. Furthermore, although the Committee was adamant that hearings, oral arguments, and briefs should not be required in every case, but rather should only be scheduled when necessary to assist the judge in deciding the motion, as noted in Part 4 above in the discussion of Rule 114, the Committee was aware that in a number of counties, the hearings are scheduled by the court administrator as a matter of course. We agreed that, just as is proposed for Rule 114, new Rule 577 must permit either the court administrator or the judge to do the scheduling, leaving the decision to local practice. This concept is reiterated in the Comment.

8. *Correlative Amendments*

(a) *Rule 103 (Definitions)*

Consistent with the changes being made to the motions rules and with new Rule 113, the definition of "clerk of courts" is being modified. In addition, the Committee is proposing that a definition of "court administrator" be added. Both definitions are intended to included the deputies or assistants when acting in the capacity of the clerk of courts or court administrator, as well as to accommodate those judicial districts that use other titles for their "clerks of courts." Finally, as explained in Part 3 above, the Committee agreed to include a definition of "motion" thereby eliminating the need to include the laundry list of documents that are motions every time the term "motion" is used in a rule.

(b) *Rule 573 (Pretrial Discovery And Inspection) and Rule 581 (Suppression Of Evidence)*

To conform with the proposed changes in Rules 575 and 576, and to avoid the misconstruction that Rule 573 provides an exception to the filing requirements of Rule 576(A), the Committee is proposing the deletion of the provision for making an appropriate motion "to the court" from Rule 573(A). Although similar language appears in Rule 581, the Committee agreed to retain "to the court" in Rule 581(A) because there are times when an suppression motion is made orally in open court and on the record, and we did not want to preclude this practice.

The Committee also is proposing that cross-references to Rules 575 and 576 be added to the Comments to Rules 573 and 581 to make it clear that both Rules 575 and 576 must be followed for any motions filed under Rules 573 and 581.

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