

# THE COURTS

## Title 225—RULES OF EVIDENCE

[ 225 PA. CODE ART. IV ]

### Proposed Amendment of Rule 408 and Revision of Comment

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the Amendment of Pa.R.E. 408 and Revision of Comment. The changes are being proposed to adopt certain changes as a consequence of the adoption of new F.R.E. 408.

This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Additions are bolded, and deletions are in bold and brackets.

This proposal is *Republished* to reflect the change in the third paragraph of the Comment as published in Vol. 37, No. 28, July 14, 2007.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel:

Richard L. Kearns, Staff Counsel  
Supreme Court of Pennsylvania  
Committee on Rules of Evidence  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055

no later than December 21, 2007.

*By the Committee on Rules of Evidence*

SANDRA D. JORDAN,  
*Chair*

#### Annex A

#### TITLE 225. RULES OF EVIDENCE

#### ARTICLE IV. RELEVANCY AND ITS LIMITS

#### Rule 408. Compromise and Offers to Compromise.

[ Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

#### Comment

This rule is identical to F.R.E. 408.

The 2000 amendments abolish the common law rule that distinct admissions of fact made during settlement discussions are admissible, see *Rochester*

*Marine Corp. v. Mulach Steel Corp.*, 449 A.2d 1366 (Pa. 1982) (plurality), bringing Pennsylvania in line with F.R.E. 408 and most of the states.

The 2000 amendments are consistent with the Mediation Act of 1996. See 42 Pa.C.S. § 5949 (Confidential mediation communications and documents).

Like the federal rule, Pa.R.E. 408 permits evidence relating to compromises and offers to compromise to be admitted for purposes other than proving liability, such as showing bias or prejudice. See *Heyman v. Hanauer*, 152 A. 910 (Pa. 1930) (if proposal was offer to settle, it could have been used to impeach witness).

Pa.R.E. 408 is consistent with 42 Pa.C.S. § 6141 which provides, in pertinent part, as follows:

#### § 6141. Effect of certain settlements

(a) *Personal injuries.*—Settlement with or any payment made to an injured person or to others on behalf of such injured person with the permission of such injured person or to anyone entitled to recover damages on account of injury or death of such person shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(b) *Damages to property.*—Settlement with or any payment made to a person or on his behalf to others for damages to or destruction of property shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(c) *Admissibility in evidence.*—Except in an action in which final settlement and release has been pleaded as a complete defense, any settlement or payment referred to in subsections (a) and (b) shall not be admissible in evidence on the trial of any matter.

See *Hatfield v. Continental Imports, Inc.*, 610 A.2d 446 (Pa. 1992) (evidence of “Mary Carter” agreement admissible to show bias or prejudice, and not excluded by § 6141(c)).

Under Pa.R.E. 408, as under F.R.E. 408, evidence of offers to compromise or completed compromises is admissible when used to prove an effort to obstruct a criminal investigation or prosecution. This is consistent with prior Pennsylvania case law. See *Commonwealth v. Pettinato*, 520 A.2d 437 (Pa. Super. 1987). Pa.R.E. 408 does not permit, however, the use of evidence relating to good faith compromises or offers to compromise when made for the purpose of reaching an agreement such as those sanctioned by Pa.R.Crim.P. 586 (relating to dismissal of criminal charges not committed by force or violence upon payment of restitution) or Pa.R.Crim.P. 546 (relating to dismissal upon satisfaction or agreement). The court may need to conduct, out of the hearing of the jury, a preliminary inquiry into the circumstances surrounding compromises in criminal matters to determine whether to permit such evidence. ]

(a) *Prohibited uses.* Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:

(1) furnishing or offering or promising to furnish—or accepting or offering or promising to accept—a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or statements made in compromise negotiations.

(b) *Permitted uses.* This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or prejudice, negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

#### Comment

This rule differs from to F.R.E. 408 as follows:

The federal rule in paragraph (a)(2) permits the use in criminal cases of statements made to government investigators, regulators, or enforcement authority in negotiations in civil cases.

The federal rule does not contain the last sentence of Pa.R.E. 408(b).

This rule does not follow the common law rule that distinct admissions of fact made during settlement discussions are admissible. See *Rochester Marine Corp. v. Mulach Steel Corp.*, 449 A.2d 1366 (Pa. 1982). Instead, like the federal rule, Pa.R.E. 408 permits evidence relating to compromises and offers to compromise to be admitted for purposes other than proving liability, such as showing bias or prejudice of a witness, but specifically prohibits use of such evidence to impeach a witness through a prior inconsistent statement or contradiction.

Admissibility of conduct and statements in mediations pursuant to the Mediation Act of 1996, 42 Pa.C.S. 5949, are governed by that statute.

The rule is consistent with the Mediation Act of 1996. See 42 Pa.C.S. § 5949 (Confidential mediation communications and documents).

Pa.R.E. 408 is consistent with 42 Pa.C.S. § 6141 which provides, in pertinent part, as follows:

#### § 6141. Effect of certain settlements

(a) *Personal Injuries.* Settlement with or any payment made to an injured person or to others on behalf of such injured person with the permission of such injured person or to anyone entitled to recover damages on account of injury or death of such person shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(b) *Damages to Property.* Settlement with or any payment made to a person or on his behalf to others for damages to or destruction of property shall not constitute an admission of liability by the

person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(c) *Admissibility in Evidence.* Except in an action in which final settlement and release has been pleaded as a complete defense, any settlement or payment referred to in subsections (a) and (b) shall not be admissible in evidence on the trial of any matter.

See *Hatfield v. Continental Imports, Inc.*, 610 A.2d 446 (Pa. 1992)(evidence of "Mary Carter" agreement admissible to show bias or prejudice, and not excluded by § 6141(c)).

Under Pa.R.E. 408, as under F.R.E. 408, evidence of offers to compromise or completed compromises is admissible when used to prove an effort to obstruct a criminal investigation or prosecution. This is consistent with prior Pennsylvania case law. See *Commonwealth v. Pettinato*, 520 A.2d 437 (Pa. Super. 1987). Pa.R.E. 408 does not permit, however, the use of evidence relating to good faith compromises or offers to compromise when made for the purpose of reaching an agreement such as those sanctioned by Pa.R.Crim.P. 586 (relating to dismissal of criminal charges not committed by force or violence upon payment of restitution) or Pa.R.Crim.P. 546 (relating to dismissal upon satisfaction or agreement). The court may need to conduct, out of the hearing of the jury, a preliminary inquiry into the circumstances surrounding compromises in criminal matters to determine whether to permit such evidence.

#### REPORT

#### Proposed Amendments to Pa. R.E. 408 and Revision of Comment Compromise and Offers to Compromise

The language of Federal Rule of Evidence 408 was changed substantially. The changes were aimed at clarifying the meaning of the rule, and answering several questions that had arisen in the application of the rule. Prior to the amendment, Pa.R.E. 408 was identical to the federal rule. We recommend that we adopt some, but not all of the changes. First, we recommend the adoption of the changes aimed at clarifying the meaning of the rule. Essentially, this is accomplished by breaking up one long paragraph into several, and placing in the first paragraph some language that was previously in the middle of the paragraph. These changes have no substantive impact.

The second change in the rule is the language at the end of the first paragraph, prohibiting the use of the prohibited evidence to impeach through a prior inconsistent statement or contradiction. This had been a question in the federal courts. May a witness (usually a party) be impeached with a statement made during compromise negotiations that is arguably inconsistent with the witness's trial testimony? The federal courts had been split on this question. The federal drafters amended the rule, so that it now prohibits the use of statements made in negotiations as inconsistent statements. The drafters believed this was most consistent with the purpose of the rule, which is to encourage parties to engage in frank and open negotiations in order to compromise disputes. There is no authority on this question in Pennsylvania. We think that the federal drafter's approach is better, and, therefore, recommend adoption of this portion of the rule.

The federal rule in paragraph (a)(2) permits the use in criminal cases of statements made to government investigators, regulators, or enforcement authority in negotia-

tions in civil cases. We do not recommend the adoption of this portion of the federal rule, because we believe it will deter parties in civil matters from frank and open negotiations with government regulators, if there is a risk that their statements will then be used in criminal prosecutions.

The last sentence of the proposed rule was deleted from the federal rule, because it was believed to be superfluous. We recommend its retention as a precaution against frivolous argument.

We have not used the usual markup signals for the changes to the proposed Rule and Comment, because the changes are so many that the documents would be difficult to read.

*We are republishing this proposal to reflect the change in paragraph three of the Comment as published in Vol. 37, No. 28, July 14, 2007.*

[Pa.B. Doc. No. 07-2141. Filed for public inspection November 30, 2007, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [ 231 PA. CODE CHS. 200 AND 2950 ]

**Amendment of Rule 205.4 Governing Electronic Filing and Service of Legal Papers, Amendment of Notes to Rules 2951 and 2952 Governing Confession of Judgment, and Promulgation of New Rule 239.9 governing Local Rules; No. 488 Civil Procedural Rules; Doc. No. 5**

#### Order

*Per Curiam:*

*And Now*, this 14th day of November, 2007, the Pennsylvania Rules of Civil Procedure are amended as follows:

- I. Rule 205.4 is amended to read as attached hereto.
- II. The Notes to Rules 2951 and 2952 are amended to read as attached hereto.
- III. New Rule 239.9 is promulgated to read as attached hereto.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective December 14, 2007.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

**Rule 205.4. Electronic Filing and Service of Legal Papers.**

(a)(1) A court by local rule may permit or require electronic filing of legal papers with the prothonotary and shall specify the actions and proceedings and the legal papers subject to the rule.

**Official Note:** This rule does not require the implementation of electronic filing by a local court. If a court determines that legal papers may be filed electronically with the prothonotary, Rule 239.9(a)

**requires the court to promulgate Local Rule 205.4 which shall describe the electronic filing system program and set forth the practice and procedure for the matters required by this rule.**

**If a court provides that electronic filing is mandatory, it must also provide the necessary technical assistance to those parties who lack the capability to file legal papers electronically.**

(2) As used in this rule, the following words shall have the following meanings:

“electronic filing,” the electronic transmission of legal papers by means other than facsimile transmission,

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

“legal paper,” a pleading or other paper filed in an action, **including exhibits and attachments. [ but not including**

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

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

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

(1) The electronic filing of a legal paper constitutes

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

(ii) a certification as provided by the signature to a legal paper under Rule 1023.1(c), the violation of which shall be subject to the sanction provision of Rule 1023.1(d).

(2)(i) The filing party shall maintain the original hard copy of the document filed.

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

(b)(1) Legal papers shall be presented for filing in portable document format (“pdf”) or any other electronic format, if any, that the court by local rule designates. A paper presented for filing in a format other than portable document format shall be converted to portable document format and maintained by the prothonotary in that format.

**Official Note:** Rule 239.9(b)(2) requires that subdivision (b)(1) of Local Rule 205.4 specify the electronic format for presenting legal papers for filing.

(2) A legal paper filed electronically shall be deemed the original document.

(3) The electronic filing of a legal paper constitutes a certification

(i) by the filing party that a hard copy of the legal paper was properly signed and, where applicable, verified, and

(ii) as provided by Rule 1023.1(c) governing the signature to a legal paper, the violation of which shall be subject to the sanction provision of Rule 1023.1(d).

(4) The filing party shall maintain the signed hard copy of the document filed for two years after the later of

(i) the disposition of the case,

(ii) the entry of an order resolving the issue raised by the legal paper, or

(iii) the disposition by an appellate court of the issue raised by the legal paper.

(5) Any other party at any time may serve upon the filing party a notice to produce for inspection the signed hard copy within fourteen days of the service of the notice. The court upon motion may grant appropriate sanctions for failure to produce the signed hard copy pursuant to the notice.

(c)(1) The prothonotary when authorized to accept filings by electronic transmission shall provide electronic access at all times. [ The time and date of filing and receipt shall be that registered by the prothonotary's computer system. ]

(2) The prothonotary may designate a website for the electronic filing of legal papers. Access to the website shall be available by the attorney identification number issued by the Court Administrator of Pennsylvania [ or an identification number issued by the website administrator ]. The court by local rule shall designate the manner of access to the website for a filing party who is not an attorney.

*Official Note:* Rule 239.9(b)(3) requires that subdivision (c)(2) of Local Rule 205.4 specify the manner of access to the website by a filing party who is not an attorney.

(3) The time and date of filing submission and receipt of the legal paper to be filed electronically shall be that registered by the electronic filing system. The prothonotary shall provide, through the electronic filing system's website, an acknowledgement that the legal paper has been received, including the date and time of receipt, in a form which can be printed for retention by the filing party.

(d)(1) A filing party shall pay the cost of the electronic filing of a legal paper by [ depositing with the prothonotary, in advance, sufficient funds or by authorizing payment by credit or debit card ] approved credit or debit card, or by advance deposit of sufficient funds with the prothonotary if the court by local rule so provides.

(2) A filing party who presents the legal paper for electronic filing in person at the office of the prothonotary shall pay the cost by a method prescribed by paragraph (1) or by check or cash.

(3) If a court has designated a third party to operate the electronic filing system, the filing party shall pay the cost of the electronic filing to the prothonotary or to the third party operator in the manner provided by local rule.

*Official Note:* Rule 239.9(b)(4) requires that subdivision (d)(1) of Local Rule 205.4 list the credit and debit cards approved by the court or the prothonotary, and state whether the filing fee may be paid by depositing, in advance, sufficient funds with the prothonotary.

Rule 239.9(b)(5) provides for subdivision (d)(3) of Local Rule 205.4 to govern the payment of the filing fee to a third party operator, if applicable.

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

[ (i) ] any delay, disruption, interruption of the electronic signals and [ readability ] legibility of the document electronically filed, except when caused by the failure of the electronic filing system's website. [ and

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

*Official Note:* The filing party accepts the risk that a document filed by means of electronic filing may not be properly or timely filed with the prothonotary.

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

No pleading or other legal paper that complies with the Pennsylvania Rules of Civil Procedure shall be refused for filing by the prothonotary or the electronic filing system based upon a requirement of a local rule or local administrative procedure or practice pertaining to the electronic filing of legal papers.

*Official Note:* See also Rule 205.2 governing filing legal papers with the prothonotary.

(3) If a pleading or other legal paper is not accepted upon presentation for filing or is refused for filing by the electronic filing system, the prothonotary or the electronic filing system, as may be appropriate, shall immediately notify the party presenting the legal paper for filing of the date of presentation, the fact that the document was not accepted or refused for filing by the system, and the reason therefor.

(4)(i) The court upon motion shall resolve any dispute arising under paragraphs (1) and (2) of this subdivision.

(ii) If a party makes a good faith effort to electronically file a legal paper but it is not received, accepted or filed by the electronic filing system, the court may order that the paper be accepted and filed nunc pro tunc upon a showing that reasonable efforts were made to timely present and file the paper.

(f) When electronic filing is permitted as set forth in subdivision [ (b) ] (a)(1), the court by local rule shall provide for

(1) a filing status message to the filing party,

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

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

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

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

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

**Official Note:** Rule 239.9(b)(6) provides that subdivision (f) of Local Rule 205.4 must set forth the practice and procedure with respect to the matters required by subdivision (f) of this rule.

(g)(1) Copies of all legal papers other than original process filed in an action or served upon any party to an action may be served

[ (1) ] (i) as provided by Rule 440 or

[ (2) ] (ii) by electronic transmission, other than facsimile transmission, if the parties agree thereto or an electronic mail address is included on an appearance or prior legal paper filed with the court in the action. **[ Service is complete when the legal paper is sent. ]**

A paper served electronically is subject to the certifications set forth in subdivision (b) [ (1) ] (3).

**(2) Service by electronic transmission is complete when a legal paper is sent**

(i) to the recipient's electronic mail address, or

(ii) to an electronic filing system website and an e-mail message is sent to the recipient by the electronic filing system that the legal paper has been filed and is available for review on the system's website.

**Official Note:** Upon the electronic filing of a legal paper other than original process, the electronic filing system may automatically send notice of the filing to all parties who have agreed to service by electronic transmission or whose e-mail address is included on an appearance or prior legal paper filed in connection with the action. If the electronic filing system sends notice of such filing, the party filing the legal paper only need serve those parties who are not served by the electronic filing system.

An electronic mail address set forth on letterhead is not a sufficient basis under this rule to permit electronic service of legal papers.

See Rule 236(d) providing for the prothonotary to give notice of orders and judgments, and also other matters, by facsimile transmission or other electronic means.

See Rule 440(d) governing service of legal papers other than original process by facsimile transmission.

#### **Rule 239.9. Electronic Filing. Local Rule 205.4.**

(a) If a court permits or requires the electronic filing of legal papers with the prothonotary, the court must promulgate a local rule designated Local Rule 205.4 which

sets forth in detail the practice and procedure to file a legal paper electronically and includes the matters set forth in this rule.

(b) Local Rule 205.4 shall include the following subdivisions as required by Pa.R.C.P. No. 205.4:

(1) subdivision (a)(1) stating whether the electronic filing system is permissive or mandatory and specifying the actions and proceedings and the legal papers subject to the rule,

(2) subdivision (b)(1) setting forth one or more formats in which legal papers shall be submitted to the prothonotary for filing. The formats shall include portable document format (pdf) and such other electronic format, if any, that the court may designate,

(3) subdivision (c)(2) providing a method of access to the electronic filing website for persons who are not attorneys,

(4) subdivision (d)(1) listing the credit and debit cards approved by the court or the prothonotary, and stating whether the filing fee may be paid by depositing, in advance, sufficient funds with the prothonotary,

(5) subdivision (d)(3) providing the manner of payment when the court has designated a third party to operate the electronic filing system, and

(6) subdivision (f) providing the practice and procedure to govern the matters provided for in Rule 205.4(f).

(c) Local Rule 205.4 may contain such additional subdivisions as the court deems necessary to provide a full and complete description of the electronic filing system.

(d) Local Rule 205.4 shall be promulgated in accordance with the provisions of Rule 239.8(b) through (d).

### **CHAPTER 2950. CONFESSION OF JUDGMENT FOR MONEY**

#### **Rule 2951. Methods of Proceeding.**

(a)(1) Upon filing of the documents by subparagraph (2), the prothonotary shall enter judgment by confession on a note, bond or other instrument confessing judgment or authorizing confession by an attorney at law or other person against the person who executed it in favor of the original holder or, unless expressly forbidden in the instrument, in favor of the assignee or other transferee, without the agency of an attorney and without the filing of a complaint, for the amount which may appear to be due from the instrument. The judgment may include interest computable from the instrument.

(2) The documents to be filed in support of the entry of judgment are

(i) the instrument,

(ii) an affidavit that the judgment is not being entered by confession against a natural person in connection with a consumer credit transaction, and

(iii) a certificate of residence of the plaintiff and of the defendant.

**Official Note:** Section 2737(3) of the Judicial Code provides that the prothonotary shall have the power and the duty to "enter all civil judgments, including judgments by confession."

A judgment by confession may be entered only in the name of a holder, assignee or other transferee. See Rule 2954.

For collection of attorneys' fees under such a judgment see Rule 2957. If an instrument authorizes confession for a penal sum, judgment may be entered in that amount.

**If a judgment by confession on an instrument is to be entered in a judicial district which has implemented electronic filing, an electronic copy of the instrument should be filed in support thereof. Should an issue arise concerning the instrument, any party at any time may request the production of the original instrument for inspection pursuant to Pa.R.C.P. No. 205.4(b)(5).**

\* \* \* \* \*

**Rule 2952. Complaint; Contents.**

(a) The complaint shall contain the following:

\* \* \* \* \*

(2) the original or a photostatic copy or like reproduction of the instrument showing the defendant's signature; if the original is not attached, an averment that the copy attached is a true and correct reproduction of the original; if neither the original nor a reproduction can be attached, an explanation why they are not available;

**Official Note:** If the original instrument is not attached to the complaint, a method of securing inspection thereof is provided by Discovery Rule 4009.1 et seq.

**If the complaint is to be filed in a judicial district which has implemented electronic filing, an electronic copy of the instrument should be attached to the complaint. Should an issue arise concerning the instrument, any party at any time may request the production of the original instrument for inspection pursuant to Pa.R.C.P. No. 205.4(b)(5).**

\* \* \* \* \*

**Explanatory Comment**

Rule 205.4 governing electronic filing of legal papers has been amended to give greater flexibility to the courts of common pleas in creating a program of electronic filing. In addition, new Rule 239.9 mandates that any court that by local rule permits or requires electronic filing adopt Local Rule 205.4 that fully explains the program.

**Rule 205.4—Electronic Filing and Service**

**Subdivision (a)**

Subdivision (a) has been amended by adding new subdivision (a)(1) authorizing local courts to institute a program of electronic filing and by designating the definitions found in former subdivision (a) as subdivision (a)(2).

New subdivision (a)(1) is derived from the introductory paragraph to former subdivision (b) and provides that a court by local rule "may permit or require electronic filing of legal papers with the prothonotary. . . ." The note advises that the rule does not require that the court implement electronic filing; this is left to the discretion of the court.

The court must determine whether electronic filing shall be permissive or mandatory and the scope of electronic filing "with respect to the actions and proceedings and the legal papers subject to the rule." These matters must be set forth in Local Rule 205.4(a)(1) to be promulgated by the court.

Subdivision (a) prior to its amendment defined the term "legal papers." The definition excluded (1) original process and (2) notices of appeal from both awards in compulsory arbitration and judgments of magisterial district courts.

Former subdivision (a) has been redesignated subdivision (a)(2) and has been revised in two respects. First, the term "legal papers" now specifically includes "exhibits and attachments." Second, the two exceptions noted above have been deleted so that "legal paper" encompasses all documents to be filed in an action or proceeding. However, the local court is given discretion under new subdivision (a)(1) to determine the scope of the rule with respect to legal papers that may be filed electronically.

**Subdivision (b)**

Subdivision (b) has been revised as to both substance and structure. The introductory paragraph to former subdivision (b) has been transferred to subdivision (a) as paragraph (1). The remaining text of present subdivision (b) has been deleted and replaced although the subject matter of the rule remains unchanged.

New subdivision (b)(1) names only one format for electronic filing, "pdf" or portable document format, but it allows the court by local rule to specify other formats, whether as alternatives to or in place of "pdf." However, the rule recognizes portable document format as the standard by providing that legal papers presented for filing in other electronic formats must be "converted to portable document format and maintained by the prothonotary in that format."

New subdivision (b)(2) is derived from the last sentence of former subdivision (b)(1). Whereas the former rule provided that a paper filed electronically is deemed to be "the equivalent of the original document," new subdivision (b)(2) states that a paper filed electronically "shall be deemed the original document."

Usually, the original instrument is filed with the prothonotary when seeking a judgment by confession under Rules 2951 and 2952. The note to both rules is revised to accommodate electronic filing since the "original instrument," i.e. the signed hard copy, probably will not be filed.

New subdivision (b)(3) contains the text of former subdivision (b)(1) without change. It provides that the electronic filing of a legal paper constitutes a certification that the paper was properly signed and verified and also a certification as prescribed by Rule 1023.1 et seq. governing the signing of legal papers.

New subdivision (b)(4) continues the requirement of former subdivision (b)(5) that the filing party retain possession of the "original hard copy of the document filed." Only the terminology has changed from "original" hard copy to "signed" hard copy. The new subdivision is modeled on Supreme Court Orphans' Court Rule 3.7(c)(3) but adopts a two-year period following specified events for maintaining the legal document rather than the five-year period of the Orphans' Court rule.

New subdivision (b)(5) replaces former Rule 205.4(b)(2)(ii) and is concerned with those occasions when it is necessary to see the signed hard copy of a document. The prior rule provided for service upon the filing party of a notice to file the original hard copy with the prothonotary. The new subdivision provides for service upon the filing party of a motion to produce the signed hard copy for inspection. The signed hard copy will not be filed.

**Subdivision (c)**

Subdivision (c)(1) has been revised by deleting the second sentence relating to the date and time of filing and receipt by the prothonotary's computer system. That subject is governed by new subdivision (c)(3).

Revised subdivision (c)(2) provides that access to a website by an attorney shall be by the attorney's identifi-

cation number issued by the Court Administrator of Pennsylvania. However, the local court shall “designate the manner of access to the website for a filing party who is not an attorney.”

New subdivision (c)(3) requires the prothonotary to provide an acknowledgement that a legal paper presented for filing has been received. This notice is in addition to the filing status notice under subdivision (f)(1).

#### **Subdivision (d)**

Subdivision (d) governing the payment of the cost of electronic filing has been substantially revised.

Subparagraph (1) is directed to the party who files electronically from a remote location, i.e., a location other than the prothonotary’s office. It lists two methods of payment: an approved credit or debit card and the advance deposit of funds with the prothonotary if the court has approved that method of payment. The court must promulgate Local Rule 205.4(d)(1) specifying the approved card(s) or authorizing the advance deposit of funds.

Subdivision (d)(2) recognizes that a filing party may appear in person at the prothonotary’s office to electronically file a legal paper. That party may pay by a method provided by subdivision (d)(1) and also by cash or check.

If the court has designated an entity other than the prothonotary to operate the electronic filing system, new subdivision (d)(3) provides for the court to promulgate a local rule, Local Rule 205.4(d)(3), authorizing payment of the filing fee to either the prothonotary or to the entity operating the system.

#### **Subdivision (e)**

Subdivision (e) relating to problems encountered with the electronic transmission of a legal paper being presented for filing has been substantially revised:

Former subparagraph (1)(i) has been designated subparagraph (1) and continues to provide that a filing party is responsible for delay, disruption and legibility of a document electronically filed. However, an exception has been added when the problem is “caused by the failure of the electronic filing system’s website.”

Former subparagraph (1)(ii) relating to the responsibility of maintaining a debit or credit card account or depositing sufficient funds with the prothonotary has been deleted as unnecessary. If a filing party is to pay the cost of filing by credit or debit card, or the advance deposit of sufficient funds, then it is presupposed that the party will maintain a credit or debit account or sufficient funds on deposit. The presupposition need not be stated.

Former subdivision (e)(2) provided that the filing party accepts the risk that a legal paper filed electronically may not be properly or timely filed. This is a restatement of revised subparagraph (1). Consequently, former subparagraph (2) has been deleted and the text of the rule has been set forth in a note to subparagraph (1).

New subdivision (e)(2) is derived from Rule 205.2 and ensures that a legal paper that complies with the Pennsylvania Rules of Civil Procedure will be accepted for filing by the electronic filing system.

New subdivision (e)(3) provides for the prothonotary to give immediate notice and reason when the electronic filing system rejects a paper for filing.

New subdivision (e)(4) contains two paragraphs. Paragraph (i) provides that the court “upon motion shall resolve any dispute arising under paragraphs (1) and (2) of this subdivision.”

Subdivision (e)(4)(ii) provides relief where a legal paper is not received, accepted or filed by the electronic filing system despite a good faith effort to file the paper. The “court may order that a legal paper be accepted and filed nunc pro tunc upon a showing that reasonable efforts were made to timely present and file the paper.”

#### **Subdivision (f)**

Subdivision (f) is unchanged except for an updated cross-reference and the addition of a new note referring to the requirement of Rule 239.9(b)(6) that the court promulgate a local rule governing the matters specified in subdivision (f).

#### **Subdivision (g)**

Subdivision (g) continues to provide that if a legal paper is sent electronically directly to another party, service is complete when the paper is sent. However, if the electronic filing system provides notice of the filing to the other party and the document is available for review on the website, service is complete when such notice is given by the system. The note to the rule states that if the notice provided by the system advises the other party that the legal paper is available on the website, there is no need for the filing party to send a separate electronic copy to such other party.

#### **Rule 239.9—Local Rule 205.4**

New Rule 239.9(a) requires that a local court that wishes to institute a program of electronic filing promulgate Local Rule 205.4 that “sets forth in detail the practice and procedure to file a legal paper electronically.”

Pa.R.C.P. 205.4 leaves certain matters pertaining to electronic filing to the discretion of the local court. Rule 239.9(b) lists these six matters and requires that they be included in the local rule promulgated by the court. However, since the local rule must set forth the practice for electronic filing in detail, the local rule will not be limited to these six matters.

*By the Civil Procedural  
Rules Committee,*

R. STANTON WETTICK, Jr.,  
*Chair*

[Pa.B. Doc. No. 07-2142. Filed for public inspection November 30, 2007. 9:00 a.m.]

## **Title 249—PHILADELPHIA RULES**

### **PHILADELPHIA COUNTY**

#### **General Court Regulation No. 2007-01; Service of Orders and Notices as Provided in Pa.R.Crim.P. No. 114**

Pennsylvania Rule of Criminal Procedure No. 114 provides that the clerk of courts shall serve on each party’s counsel or the party, if unrepresented, all orders and court notices unless the president judge has promulgated a local rule designating service to be by the court or court administrator.

In Philadelphia County, by custom and long-standing local practice, due in part to the Court’s extensive case-load, service of notices and orders has been effectuated not by the Clerk of Quarter Sessions, who is the

clerk of court, but by the Court through various court offices, officials and employees of the First Judicial District of Pennsylvania.

Accordingly, as authorized by Pennsylvania Rule of Criminal Procedure No. 114, employees of the First Judicial District are authorized to continue to serve notices and court orders on each party's counsel or on the party, if unrepresented. The employee of the First Judicial District who serves a particular notice or order shall make a notation on the notice, order, docket or other location concerning the date and manner served.

This General Court Regulation is issued in accordance with Pa.R.Crim.P. 114, will become effective immediately. As required by Pa.R.Crim.P. No. 105, the original General Court Regulation will be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, and with the Clerk of Quarter Sessions. Copies will be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Criminal Procedural Rules Committee. Copies of the Regulation will also be submitted to *American Lawyer Media*, *The Legal Intelligencer*, *Jenkins Memorial Law Library*, and the law library for the First Judicial District, and will be posted on the website of the First Judicial District of Pennsylvania at <http://courts.phila.gov>.

*By the Court*

HONORABLE C. DARNELL JONES, II,  
*President Judge*

[Pa.B. Doc. No. 07-2143. Filed for public inspection November 30, 2007, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### SCHUYLKILL COUNTY

Adopted Civil Rule of Procedure No. 1915.4-2;  
S2818-07

#### Order of Court

*And Now*, this 13th day of November, 2007 at 3:20 p.m., the Court hereby adopts Schuylkill County Civil Rule of Procedure No. 1915.4-2. This rule is adopted for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District) and shall be effective immediately.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.

2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a CD-ROM reflecting the text in the hard copy version.

3) File one (1) certified copy of this Order and Rule with the Pennsylvania Civil Procedural Rules Committee.

4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rule.

It is further *Ordered* that said rules as they existed prior to the adoption are hereby repealed and annulled on the effective date of said rules as adopted, but no right acquired thereunder shall be disturbed.

*By the Court*

WILLIAM E. BALDWIN,  
*President Judge*

#### CUSTODY PROCEDURE

**Rule 1915.4-2, Office Conference. Hearing. Record. Exceptions. Order.**

(g) A party who files exceptions to the hearing officer's report pursuant to Pa.R.C.P. 1915.4-2(g) shall contemporaneously file a supporting brief and serve a copy of the exceptions and brief on all other parties. Any party opposing exceptions to the hearing officer's report shall, within twenty (20) days after being served with exceptions, file a brief in opposition thereto and serve the opposing parties with a copy thereof.

When exceptions are filed to a hearing officer's report, the Custody Office shall immediately notify the stenographer, who shall complete and file the transcript of the proceedings before the hearing officer within thirty (30) days. Unless granted leave by the Court to proceed *in forma pauperis*, the party filing exceptions shall pay the cost of transcription. If exceptions are filed by more than one party, the transcription costs shall be shared by the excepting parties on a pro rata basis. The transcription costs shall be paid within thirty (30) days of the date of filing exceptions. If the costs are not timely paid, the stenographer shall so notify the Court after which the exceptions of the non-paying party may be dismissed.

(i) The exceptions to the hearing officer's report shall be decided on the briefs of the parties unless oral argument is requested by praecipe of one or more parties.

[Pa.B. Doc. No. 07-2144. Filed for public inspection November 30, 2007, 9:00 a.m.]