

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CHS. 1 AND 5 ]

### Order Adopting New Rule 576.1 and Amending Rules 113, 114 and 576 of the Rules of Criminal Procedure; No. 502 Criminal Procedural Rules Doc.

#### Order

*Per Curiam*

And Now, this 25th day of January, 2018, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 46 Pa.B. 1643 (April 2, 2016), and a Final Report to be published with this Order:

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Criminal Procedure 576.1 is adopted and Pennsylvania Rules of Criminal Procedure 113, 114, and 576 are amended, in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective May 1, 2018.

#### 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. Criminal Case File and Docket Entries.

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

\* \* \* \* \*

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

**(D) If a judicial district has provided for electronic filing pursuant to Rule 576.1, the criminal case file in which electronic filing has been utilized may be maintained solely in an electronic format as long as copies of the documents maintained in the criminal case file may be produced in a physical paper format.**

#### Comment

This rule sets forth the mandatory contents of the list of docket entries and the criminal case files. This is not intended to be an exhaustive list of what is required to be recorded in the docket entries. The judicial districts may require additional information be recorded in a case or in all cases.

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**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effective April 1, 2001; rescinded March 3, 2004 and replaced by Rule 114(C), effective July 1, 2004. New Rule 113 adopted March 3, 2004, effective July 1, 2004; amended July 31, 2012, effective November 1, 2012; Comment revised October 22, 2013; effective January 1, 2014; **amended January 25, 2018, effective May 1, 2018.**

*Committee Explanatory Reports:*

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Final Report explaining the October 22, 2013 revisions to the Comment regarding the unexecuted search warrants published with the Court's Order at 43 Pa.B. 6652 (November 9, 2013).

**Final Report explaining January 25, 2018 amendment providing for maintenance of electronically filed documents published with the Court's Order at 48 Pa.B. 861 (February 10, 2018).**

#### Rule 114. Orders and Court Notices: Filing; Service; and Docket Entries.

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#### (B) Service

(1) A copy of any order or court notice promptly shall be served on each party's attorney, or the party if unrepresented.

(2) The clerk of courts shall serve the order or court notice, unless the president judge has promulgated a local rule designating service to be by the court or court administrator.

#### (3) Methods of Service

Except as otherwise provided in Chapter 5 concerning notice of the preliminary hearing, service shall be:

\* \* \* \* \*

(c) A party's attorney, or the party if unrepresented, may request to receive service of court orders or notices pursuant to this rule by facsimile transmission or other electronic means by

(i) filing a written request for this method of service in the case or including a facsimile number or an electronic address on a prior legal paper filed in the case; or

(ii) filing a written request for this method of service to be performed in all cases, specifying a facsimile number or an electronic address to which these orders and notices may be sent.

The request for electronic service in all cases filed pursuant to paragraph (ii) may be rescinded at any time by the party's attorney, or the party if unrepresented, by filing a written notice that service of orders and notices shall be accomplished as otherwise provided in this rule.

**(d) In a judicial district that permits electronic filing pursuant to Rule 576.1, service of court orders or notices shall be made as provided in Rule 576.1(D)(2) and (H)(1).**

#### (C) Docket Entries

\* \* \* \* \*

#### Comment

This rule was amended in 2004 to provide in one rule the procedures for the filing and service of all orders and court notices, and for making docket entries of the date of

receipt, date appearing on the order or notice, and the date of service. This rule incorporates the provisions of former Rule 113 (Notice of Court Proceedings Requiring Defendant's Presence). *But see* Rules 511, [ 540(F)(2) ] 540(G)(2), and 542(G) for the procedures for service of notice of a preliminary hearing, which are different from the procedures in this rule.

Historically, some orders or court notices have been served by the court administrator or by the court. Paragraph (B)(2) permits the president judge to continue this practice by designating either the court or the court administrator to serve orders and court notices. When the president judge makes such a designation, the designation must be in the form of a local rule promulgated in compliance with Rule 105 (Local Rules) **and Rule of Judicial Administration 103 (Procedures for Adoption, Filing, and Publishing Rules)**.

\* \* \* \* \*

Paragraph (D), 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) **and Rule of Judicial Administration 103 (Procedures for Adoption, Filing, and Publishing 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 ] **Note to Pa.R.J.A. No. 103**. The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. *See* [ Rule 105(A) ] **Pa.R.J.A. No. 103(d)(1)**.

For the definition of "carrier service," see Rule 103.

*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 March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005; amended July 20, 2006, effective September 1, 2006; Comment revised September 18, 2008, effective February 1, 2009; amended December 6, 2010, effective February 1, 2011; **amended January 25, 2018, effective May 1, 2018.**

*Committee Explanatory Reports:*

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Final Report explaining the December 6, 2010 amendment concerning consent to electronic service published with the Court's Order at 40 Pa.B. 7336 (December 25, 2010).

**Final Report explaining January 25, 2018 amendments for service where a court has adopted electronic filing published with the Court's Order at 48 Pa.B. 861 (February 10, 2018).**

**CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES**

**PART G(1). Motion Procedures**

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

(A) FILING

(1) All written motions and any written answers, and any notices or documents for which filing is required, shall be filed with the clerk of courts.

(2) Filing shall be [ by ]:

(a) **by** personal delivery to the clerk of courts; [ or ]

(b) **by** mail addressed to the clerk of courts. 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[ . ]; **or,**

**(c) in a judicial district that permits electronic filing pursuant to Rule 576.1, as provided in Rule 576.1(E).**

(3) The clerk of courts shall accept all written motions, answers, notices, or documents presented for filing. When a document, which is filed pursuant to paragraph (A)(1), is received by the clerk of courts, the clerk shall time stamp it with the date of receipt and make a docket entry reflecting the date of receipt, and promptly shall place the document in the criminal case file.

\* \* \* \* \*

(B) SERVICE

\* \* \* \* \*

(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 the party if unrepresented, and shall include the date and manner of service, and the names, addresses, and phone numbers of the persons served.

**(5) In a judicial district that permits electronic filing pursuant to Rule 576.1, service shall be made as provided in Rule 576.1(D)(2) and (H)(1).**

(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 the defendant if unrepresented, the attorney for the Commonwealth, and the court administrator as provided in paragraph (B).

**Comment**

**For the procedures for electronic filing and service as a local option, see Rule 576.1.**

Paragraph (A)(1) requires the filing of all written motions and answers. 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 802 (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).

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*, [ 549 Pa. 58, ] 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”).

The 2004 amendments to paragraph (A)(4) modified the procedure by which the clerks of courts handle filings by represented defendants when the defendant’s attorney has not signed the document being filed by the defendant. As amended, paragraph (A)(4) requires, in all cases in which a represented defendant files a document, that the clerk of courts make a docket entry of the defendant’s filing and place the document in the criminal case file, and then forward a copy of the document to both the attorney of record and the attorney for the Commonwealth. See *Commonwealth v. Castro*, 766 A.2d 1283 (Pa. Super. 2001). Compare Pa.R.A.P. 3304 (Hybrid Representation). The requirement that the clerk time stamp and make docket entries of the filings in these cases only serves to provide a record of the filing, and does not trigger any deadline nor require any response. See Rules 120 (Attorneys—Appearance and Withdrawals) and 122 (Assignment of Counsel) concerning the duration of counsel’s obligation under the rules.

Paragraph (A)(4) only applies to cases in which the defendant is represented by counsel, not cases in which the defendant is proceeding *pro se*.

The purpose of paragraph (A)(5) is to ensure documents raising cognizable legal issues submitted to the judge are transmitted to the clerk of courts, and does not relieve the defendant from complying with the other requirements of the rules. When a document is forwarded to the clerk from a judge, if the defendant is unrepresented, the clerk is to proceed as provided in paragraph (A)(3) and the defendant is to be treated like any other party. If the defendant is represented, the clerk is to proceed pursuant to paragraph (A)(4).

Paragraph (A)(6), titled “Unified Practice,” was added in 2004 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) **and Rule of Judicial Administration 103 (Procedures for Adoption, Filing, and Publishing 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** ] **Note to Pa.R.J.A. No. 103**. The term “local rule” includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See [ **Rule 105(A)** ] **Pa.R.J.A. No. 103(d)(1)**.

\* \* \* \* \*

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

**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 March 3, 2004, effective July 1, 2004. Rules 576 and 577 combined and amended March 3, 2004, effective July 1, 2004, Comment revised June 4, 2004, effective November 1, 2004; Comment revised September 18, 2008, effective February 1, 2009; Comment revised September 21, 2012, effective November 1, 2012; **amended January 25, 2018, effective \_\_\_\_\_, 2018**.

*Committee Explanatory Reports:*

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Final Report explaining the September 21, 2012 revision of the Comment correcting a typographical error in the thirteenth paragraph published with the Court’s Order at 42 Pa.B. 6251 (October 6, 2012).

**Final Report explaining the January 25, 2018 amendment regarding electronic filing and service pursuant to Rule 576.1 published with the Court’s Order at 48 Pa.B. 861 (February 10, 2018).**

(*Editor’s Note:* The following rule is added and printed in regular type to enhance readability.)

**Rule 576.1. Electronic Filing and Service of Legal Papers.**

(A) The president judge of a judicial district by local rule promulgated pursuant to Rule 105 and Rule of Judicial Administration 103 may authorize electronic filing of legal papers with the clerk of courts in cases in the courts of common pleas and in the Philadelphia Municipal Court through the statewide electronic filing system as provided in this rule.

(B) Local Rule

(1) The local rule required under this rule shall include the following provisions:

(a) subject to the provisions in paragraph (B)(4), a statement that the electronic filing system is permissive and specify the legal papers subject to the rule, but in no case shall legal papers prohibited from being filed electronically by this rule be permitted to be filed electronically;

(b) a provision for the procedures to ensure that any party who declines to participate in the system, or who is unable to electronically file or accept service of legal papers which were filed electronically, or who is otherwise unable to access the system, at a minimum, shall be able to file legal papers in a physical paper format and be served legal papers in a physical format which were electronically filed;

(c) any additional provisions as the court may deem necessary to provide a full and complete procedure for the use of the system within the judicial district; and

(d) a notation that the Administrative Office of Pennsylvania Courts and the judicial district have agreed upon an implementation plan for PACFile in the judicial district.

(2) Any judicial district that authorized electronic filing for a period of two years thereafter may amend their local rule, subject to the requirements of Rule 105 and Rule of Judicial Administration 103, to make participation in electronic filing mandatory.

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

“electronic filing,” the electronic submission of legal papers by means other than facsimile transmission and the acceptance of the document by the clerk of courts;

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

“legal paper,” a pleading or other submission to the court, including motions, answers, notices, or other documents, of which filing is required or permitted, including orders, exhibits, and attachments, but excluding

- (1) applications for search warrants,
- (2) applications for arrest warrants,
- (3) any grand jury materials, except the indicting grand jury indictment or the investigating grand jury presentment,
- (4) submissions filed *ex parte* as authorized by law, and
- (5) submissions filed or authorized to be filed under seal;

“original document,” a legal paper filed electronically shall be deemed the original document, but copies of exhibits electronically filed do not constitute the original of the exhibit for evidentiary purposes; and

“the system,” the PACFile electronic filing system, developed and administered by the Administrative Office of Pennsylvania Courts, is the exclusive system for electronic filing.

(D) Participation

(1) The system shall permit attorneys and defendants proceeding without counsel to file electronically.

(a) In order to participate in the system, an attorney shall establish an account in the system by procedures established by the Administrative Office of Pennsylvania Courts.

(b) A defendant who is proceeding without counsel shall be permitted to utilize the system through an authorization process established by the Administrative Office of Pennsylvania Courts.

(2) Establishment of an account by an attorney or authorization by a defendant proceeding without counsel in the system shall constitute consent to participate in electronic filing, including acceptance of service electronically of any document filed on the system in any judicial district that permits electronic filing.

(3) An attorney or defendant participating in the system is permitted to file a legal paper either in an electronic format or in a physical paper format. Service upon an attorney or defendant participating in the system shall be done electronically.

(E) Filing

(1) When a legal paper is to be electronically filed, it shall be submitted to the system at the Unified Judicial System web portal at <http://ujportal.pacourts.us>, in accordance with this rule, any local rule adopted pursuant to this rule, and any filing instructions as may be otherwise provided at the web portal site.

(2) Electronic filings may be submitted at any time, except during times of periodic maintenance. The electronic submission must be completed by 11:59:59 p.m. EST/EDT to be considered filed that day.

(3) The time and date on which a legal paper is submitted to the system shall be recorded by the system. The system shall provide an acknowledgement to the filing party that the legal paper has been submitted.

(4) The time and date on which the legal paper is accepted by the clerk of courts office also shall be recorded by the system. The system shall provide an acknowledgement to the filing party that the legal paper has been accepted.

(5) A legal paper shall be considered filed upon submission of the legal paper to the system and acceptance of the filing by the clerk of courts. If the clerk of courts determines that the requirements for filing have been met, the time and date of filing shall be the time and date that the legal paper was submitted to the system. If the clerk of courts finds that the requirements for filing are not met, the clerk may reject the filing.

(6) A filing party shall be responsible for any delay, disruption, and interruption of the electronic signals and legibility of the document electronically filed, except when caused by the failure of the system’s website.

(7) The system shall attribute the filing of an electronic legal paper to the party whose account is used to log onto the system and file the legal paper.

(8) Legal papers shall be presented for filing in portable document format (“.pdf”).

(9) All legal papers electronically filed shall be maintained and retained by the clerk of courts in an electronic format. Neither the clerk of courts nor the court is required to maintain in a physical paper format any legal paper filed electronically as provided in this rule.

(10) Any legal paper submitted for filing to the clerk of courts in a physical paper format shall be accepted by the clerk of courts in that format and shall be retained by the clerk of courts as may be required by applicable rules of court and record retention policies. The clerk of courts shall convert such legal paper in a physical paper format to .pdf and add it to the system. However, those submissions that are excluded from the definition of “legal paper” under paragraph (C) shall not be converted and added to the system.

(11) No legal paper that complies with the Pennsylvania Rules of Criminal Procedure shall be refused for filing by the clerk of courts 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.

(F) Signature

(1) Except as provided in paragraph (F)(3), an electronic signature of the filer as provided for in the system is permitted on electronic filings in the following form: /s/ John L. Doe.

(2) The electronic filing of a motion or answer that includes an electronic signature constitutes a certification pursuant to Pa.R.Crim.P. 575 that the filing party or attorney has read the legal paper, that to the best of the filing party’s or attorney’s knowledge, information and belief there is good ground to support the motion or answer, and that it is not interposed for delay.

(3) Any motion that, pursuant to Rule 575(A)(2)(g), avers facts not of record and requiring a sworn affidavit

must be created in a physical paper form, have a physical signature placed on it, and then be converted into a .pdf before it may be electronically filed.

(4) The original of a sworn or verified legal paper that is an electronic filing or is contained within an electronic filing shall be maintained by the electronic filer in either electronic or paper format and made available upon direction of the court or reasonable request of the signatory or opposing party.

(G) The court by local rule shall provide for the maintenance by the clerk of courts of an electronic file only, or of such electronic and physical paper format files as set forth in the local rule. Those legal papers that are not permitted to be electronically filed pursuant to paragraph (C) shall be maintained in a physical paper format only.

(H) Service

(1) Upon the submission of a legal paper for electronic filing, the system shall provide an electronic notification to other parties and attorneys to the case who are participating in electronic filing that the legal paper has been submitted. This notification upon submission shall satisfy the service requirements of Rules 114(B) and 576(B) on any attorney or party who has established a system account.

(2) Upon the acceptance by the clerk of courts office of a legal paper for electronic filing, the system shall provide an electronic notification to other parties and attorneys to the case who are participating in electronic filing that the legal paper has been accepted.

(3) Service of electronic filings on any attorney or party who has not established a UJS web portal account or who is unable to file or receive legal papers electronically or otherwise unable to access the system shall be made by the procedures provided under Rules 114(B) and 576(B).

**Comment**

This rule, adopted in 2018, permits as a local practice the electronic filing of legal papers. This rule does not require the implementation of electronic filing by a local court. To provide a uniform system for electronic filing, the Administrative Office of Pennsylvania Courts has developed the PACFile electronic filing system. This is the only authorized system for electronic filing of legal documents in criminal court cases in the courts of common pleas and Philadelphia Municipal Court.

Paragraph (B) requires that a judicial district that desires to participate in the electronic filing system must adopt a local rule to that effect. As part of the initial “opting into” electronic filing, this local rule must provide that participation is voluntary. Once a judicial district has allowed electronic filing for two years, participation may be made mandatory. Paragraph (B)(1)(b) requires that all judicial districts in which electronic filing is allowed must make accommodations for those parties who are unable to participate. In no event shall access to the court filing be precluded solely on the basis of participation in the electronic filing system.

This rule is applicable to cases in courts of record. *See* Rule 103 for the definition of a “court.”

The UJS Portal contains other automated services beside PACFile. There may be circumstances when an attorney, who has registered as a user on another service of the UJS Portal, may have an established account that would be usable for PACFile. Any questions about the

requirements of registration or accessibility to PACFile should be referred to the Administrative Office of Pennsylvania Courts.

The system permits a user to designate other users as proxies on individual cases. These proxies all receive notice of any filing in the case. It is anticipated that offices such as those of a district attorney or public defender would be able to establish general user accounts with particular attorneys assigned and their supervisors or back-ups listed as proxies in individual cases.

An attorney is responsible for the actions of other individuals whom the attorney authorizes to use the attorney’s account.

The local rule required by this rule must conform to the requirements of Rule 105 (Local Rules) and Rule of Judicial Administration 103 (Procedures for Adoption, Filing, and Publishing Rules).

A file in physical paper format is not required by this rule. If the local rule requires a file in physical paper format, the requirement may extend to all cases or only to certain specified cases. For example, the court may require files in physical paper format for cases listed for trial or scheduled for argument while maintaining only electronic files for all other cases.

Upon submission of the electronic filing of a legal paper, the electronic filing system shall 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 case. 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.

Nothing in this rule is intended to prohibit the use of advanced communication technology to submit an application for search warrant as provided in Rule 203(A) or to submit an application for an arrest warrant using advanced communications technology as provided in Rule 513(B)(1).

In addition to the filing fees now applicable, an online payment convenience fee for use of the PACFile system may be imposed. *See* 204 Pa. Code § 207.3.

*See* Rule 114(B) providing for the clerk of courts to serve orders and court notices by facsimile transmission or other means.

Legal papers filed electronically should be consistent with the formatting requirements of Rule 575(C).

*See* Rule 576(B) governing service of motions and any written answers, and any notices or documents for which filing is required by facsimile transmission or other means.

*See* Rule 1002, for the applicability of this rule to summary cases filed in the Philadelphia Municipal Court.

**Official Note:** New Rule 576.1 adopted January 25, 2018, effective May 1, 2018.

*Committee Explanatory Reports:*

Final Report explaining new Rule 576.1 providing for electronic filing published with the Court’s Order at 48 Pa.B. 861 (February 10, 2018).

## FINAL REPORT<sup>1</sup>

### *Adoption of New Pa.R.Crim.P. 576.1; Amendment of Pa.Rs.Crim.P. 113, 114, and 576*

#### Electronic Filing

On January 25, 2018, effective May 1, 2018, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rule 576.1 (Electronic Filing and Service of Legal Papers) and the amendment of Rules 113 (Criminal Case File and Docket Entries), 114 (Orders and Court Notices; Service; and Docket Entries), and 576 (Filing and Service by Parties) to provide procedures for the use of the statewide electronic filing system as a local option.

The Committee has been working on procedures for electronic filing for several years. This began in 2012 when representatives of the First Judicial District (FJD) approached the Committee requesting rule changes that would require the electronic filing of pleadings in criminal cases as a local option. This was part of an initiative to implement an electronic filing system in criminal cases similar to the electronic filing system already in place in Philadelphia for civil and orphans' court cases.

While the Committee believed that the goal of implementing electronic filing was a good one, the Committee had a number of concerns with the specifics of such a proposal that would have made a statewide rule change problematic. The Committee concluded that the best approach was to seek the Court's permission for the FJD to conduct a pilot project during which the electronic filing system could be implemented on a trial basis. The parameters of this experimental electronic filing system would be spelled out in a local rule. In February 2013, upon the Committee's recommendation, the Court issued an Order permitting the Criminal Section of the Trial Division of the First Judicial District to implement a pilot project for the electronic filing of documents by the parties.

One of the Committee's goals for the pilot project was to obtain information as to whether statewide rule changes should be made to accommodate those judicial districts that may wish to implement electronic filing programs. In late 2014, after reviewing data indicating the success of the FJD pilot project and the interest in electronic filing in other judicial districts throughout the Commonwealth, the Committee concluded that it was appropriate to develop statewide rule changes to accommodate this practice.

While working to develop these statewide procedures in cooperation with the Administrative Office of the Pennsylvania Courts Information Technology Department ("AOPC IT"), it was learned that AOPC was working on a statewide electronic filing system for criminal and juvenile cases based on the electronic filing system used in the Appellate Courts, the PACFile system. It was therefore decided that the electronic filing rules should be based on this statewide system rather than on any locally developed systems.

#### *New Rule 576.1*

The main provisions for electronic filing are contained in new Criminal Rule 576.1. The basic statement of authority for establishing local e-filing is contained in paragraph (A). Paragraph (B) lists the contents of the local rule required to establish electronic filing locally.

<sup>1</sup> The Committee's Final Reports 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 Committee's explanatory Final Reports.

Paragraph (C) is a definitional section. Paragraph (D) provides the procedures for establishing participation in the system. Paragraph (E) discusses the filing and receipt of documents. Paragraph (F) contains provisions regarding electronic signatures. Paragraph (G) permits, with some exceptions, paperless files. Paragraph (H) contains service provisions.

Paragraph (A) of new Rule 576.1 provides the general scope of the procedures. The Committee agreed that electronic filing should not be required in every judicial district but rather available as a local option. Therefore, the rule provides that a judicial district's use of electronic filing is voluntary. The Committee also concluded that those judicial districts that wish to participate in electronic filing should be required to create a local rule permitting electronic filing within the judicial district as was done in the Philadelphia pilot project. This latter provision will permit the Committee to retain some oversight of the process by the local rule review process contained in Rule of Judicial Administration 103 and Criminal Rule 105. The rule also mandates the PACFile system as the only system that is permitted to be used for electronic filing. This is consistent with uniformity of practice and judicial economy.<sup>2</sup> Additionally, any judicial district desiring to "opt-into" electronic filing must consult with AOPC and agree upon an implementation plan to ensure that AOPC resources are not overtaxed should a large number of judicial districts decide to opt-in at one time.

One of the issues debated at length by the Committee was the question of whether the statewide rules should provide that use of the system was strictly voluntary or should permit a local court to make it mandatory if desired. Ultimately, the Committee agreed to a provision that would provide that a judicial district that opts into electronic filing must initially allow it on a voluntary basis only. After two years from the date of opting into electronic filing, the judicial district would have the option to make it mandatory. Allowing a time period during which it was voluntary with a judicial district-based sunset provision when it could become mandatory would put all practitioners on notice that the change would be upcoming. This coupled with provisions that allow filing by those who were unable to be part of the system, such as *pro se* defendants without computer access, provides sufficient protection in those counties that opted to make it mandatory. This provision is contained in paragraph (B)(2) and language expanding on this concept has been added to the Comment, including a statement that electronic filing should not deny access to court filing.

#### *Legal Papers*

Paragraph (C) of Rule 576.1 contains definitions of various terms used in the rule. One of these is a definition of "original document" that includes the electronically filed version of the document as the original. However, the definition makes it clear that electronic copies of exhibits would not be considered originals. This is consistent with Rule of Evidence 1002 (Requirement of the Original).

Also included in paragraph (C) is a definition of "legal paper" that broadly defines the types of documents that may be filed electronically. The Committee discussed how to handle those documents that are physically filed

<sup>2</sup> The PACFile system will include Philadelphia Municipal Court non-summary and summary cases. Therefore, cases in the Municipal Court are included under paragraph (A). Electronic filing capabilities for magisterial district judge offices currently are not intended to be part of the extension of the PACFile system but may be incorporated into the Magisterial District Judge System at a later date.

because the party does not have the ability or willingness to file electronically even though the documents are permitted to be filed electronically and other parties to the case may have agreed to electronic filing. Using a practice similar to that used in the Philadelphia pilot project, the rule provides that such physical documents must be accepted and then scanned into the system by the Clerk of Courts Office staff. Even after uploading these converted documents into the system, the physical documents would be retained. These provisions are contained in paragraph (E)(10).

The definition of “legal paper” also lists the types of documents that are excluded from electronic filing. If a document is excluded from being filed electronically, it has to be physically filed and the physical document maintained in the case file. While the new rule does contemplate that most legal papers that are filed in a physical paper format may be scanned into the system for the convenience of the user, those documents excluded from the definition of legal papers may not be scanned into the system.

#### *Participation*

Paragraph (D) describes how individual participation in electronic filing is initiated. Participation requires that a user establish an account in the PACFile system. The establishment of an account constitutes consent to participate in electronic filing including receipt of service of filed documents. This is a blanket consent for all cases in which that party was participating, including cases in any jurisdiction in which electronic filing is permitted. For *pro se* defendants, there is a requirement for an authorization process based on a similar provision contained in the Court Order for electronic filing in the appellate courts.

There was a question of whether the rules should allow participation that can be initiated for an office, such as the district attorney’s office or public defender, as a whole. The concern was that there may be turn-over or reassignment and, if only the individual attorney was listed on the case, it could fall through the cracks. It was noted that the PACFile system currently permits in appellate cases filing by a named office with specific individuals associated with the office listed as the main filer as well as others being able to be listed as proxies. The Committee concluded that this capability should be utilized in trial court cases, especially since it permits an office to have multiple proxies listed who all would receive notice of a filing and could serve as back-up. However, the Committee concluded that this was more of an administrative matter rather than a rule provision so a reference to this capability is included in the Comment to Rule 576.1.

While the rules generally provide that participation in electronic filing is voluntary (except in those counties that choose to make it mandatory), the Committee discussed whether a party who has agreed to participate in electronic filing should be permitted to file legal papers in a physical paper format. The Committee concluded that this should be permitted since this is a new practice and a filing should not be refused solely because it is not done electronically. However, any party that agrees to participate in electronic filing must accept service electronically. Paragraph (D)(3) therefore includes a statement regarding participation that permits a participating party to file either in a physical paper format or electronically.

#### *Filing and Receipt*

Paragraph (E) contains the provisions related to the filing and receipt of legal papers. The Committee

struggled with the question of what constitutes the actual “filing” of a document submitted electronically. This arose in the context of how a filing that is incorrect for some reason, such as improper docket number, would be handled. The main problem arises from the way documents are placed into the PACFile system. A user will submit a document by uploading it onto the system website. The filing office will receive notice that this has occurred. The filing office must then affirmatively accept the document to be considered filed on the PACFile system. Depending on how busy the filing office is, there may be some delay between having the document uploaded onto the system and then accepted as filed. In addition, there may be occasions when a filing might be rejected or sent back to the filer for correction, for example, when it is uploaded to an incorrect docket or the required filing fees have not been paid by a non-indigent defendant.

The Committee noted that even in traditional paper filings, there may be occasions when a document is not accepted immediately for filing for similar reasons. In current practice, this is not a large problem because the document is date-stamped upon presentation at the clerk of courts’ office, problems can be corrected quickly or, if not, the time and date of presentation can be used as the time of filing once any dispute regarding the document has been resolved.

The Committee concluded that a similar process could be applied to electronic filing. The electronic filing system will record the time that a document is submitted as well as the time when the document is accepted by the filing office. Notice may be sent to parties selected by the filer when the document is submitted. Notice also may be served on selected parties when the document has been accepted. Therefore, the definition for “filing,” contained in paragraph (E)(5), states that filing occurs when the acceptance is made but that once accepted, the time and date of filing shall relate back to the time of submission. However, if the legal paper does not meet the requirements for filing, such as not having the correct docket number or not having paid the applicable filing fee, the filing may be rejected in the same manner in which a physical paper filing may be rejected. In this situation, the time and date of original submission still would be recorded in case there is a dispute regarding whether the document should have been accepted upon submission.

#### *Signatures*

The Committee generally agreed with the allowance of electronic signatures as being sufficient for the filing of most legal papers. Included in paragraph (F)(2) is a provision for motions and answers that specifically states that an electronic filing containing an electronic signature constitutes the certification required under Rule 576 that the filer “has read the document and to the best of their knowledge, information and belief, there is good ground to support the motion or answer, and that it is not interposed for delay.”

A concern was raised regarding motions filed pursuant to Rule 575(A)(2)(g) that aver facts not of record. These motions must be supported by a sworn affidavit averring the facts presented. Given potential consequences for the fraudulent filing of such documents, the Committee concluded that the best way for them to be handled would be by requiring the physical document to be prepared and signed and then scanned into the system for filing. The provision was included in paragraph (F)(3) and is intended to apply only to the motions filed pursuant to Rule 575(A)(2)(g).

*Service*

Paragraph (H) describes how service of electronically filed documents is achieved. The PACFile system provides notice to other parties to a case both when a document is submitted to the system and when the document is accepted. The document will be visible to the other parties to the case upon submission. Since the time of filing of a document, once accepted, will be from the time and date of submission, the notice that the document has been submitted will constitute service as required under Rules 114(B) and 576(B). Those parties or attorneys who are not participating in the system would be served in the traditional manner pursuant to Rules 114 and 576.

*Other Rule Changes*

Finally, several correlative changes have been made to other criminal rules. Rule 113 (Criminal Case File and Docket Entries) has been amended to permit a “paperless” case file in those counties that permit electronic filing. Additionally, Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries) has been amended to recognize electronic service of court orders and notices for those parties who are participating in the electronic filing system. Rule 576 (Filing and Service by Parties) recognizes electronic filing pursuant to Rule 576.1.

[Pa.B. Doc. No. 18-211. Filed for public inspection February 9, 2018, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### BRADFORD COUNTY

#### Local Rules of Judicial Administration; No. 20161R0074

##### Order

*And Now*, this 25th day of January, 2018, it is hereby *Ordered* and *Decreed* that Bradford County Court of Common Pleas amends Local Rule of Judicial Administration, Rule 4008(A) governing costs of transcripts for the 42nd Judicial District to read as set forth hereafter and shall be effective thirty (30) days after publication.

The Bradford County District Court Administrator is Ordered and Directed to do the following:

- 1) File one (1) copy of the local rules with the Administrative Office of Pennsylvania Courts via email to adminrules@pacourts.us.
- 2) Forward two (2) paper copies and one (1) electronic copy in a Microsoft Word format to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
- 3) Publish the local rules on the court’s website after publication in the *Pennsylvania Bulletin*.
- 4) Forward one (1) paper copy and/or (1) electronic copy in a Microsoft Word format for the publication *Bradford County Law Journal*.
- 5) File one copy of the local rules in the appropriate filing offices for public inspection and copying.

*By the Court*

MAUREEN T. BEIRNE,  
*President Judge*

## LOCAL RULES OF JUDICIAL ADMINISTRATION

Rule 4008 Transcript Costs is amended as follows:

(A) *Costs payable:*

(1) *Electronic Format.*

(a) The costs payable by the initial ordering party other than the Commonwealth, County or Court, for a transcript delivered via electronic format shall be \$2.50 per page.

(b) The costs payable by the initial ordering party who is the Commonwealth, County or Court for a transcript delivered via electronic format shall be \$2.00 per page.

(2) *Paper Format.*

(a) The costs payable by the initial ordering party other than the Commonwealth, County or Court for a transcript delivered via paper format shall be \$2.75 per page. This includes the \$0.25 per page surcharge pursuant to Pa.R.Jud.Ad. Rule 4008(A)(2) for paper format.

(b) The costs payable by the initial ordering party who is the Commonwealth, County or Court for a transcript delivered via paper format shall be \$2.25 per page. This includes the \$0.25 per page surcharge pursuant to Pa.R.Jud.Ad. Rule 4008(A)(2) for paper format.

[Pa.B. Doc. No. 18-212. Filed for public inspection February 9, 2018, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### LEHIGH COUNTY

#### Rule 205.4 Authorizing an E-Filing Program for Civil Cases; No. 2018-J-20

##### Administrative Order

*And Now*, this 24th day of January 2018;

*It Is Hereby Ordered* that Lehigh County Local Rule 205.4, Electronic Filing of Legal Documents be and is hereby rescinded effective March 19, 2018 and that the following Lehigh County Local Rule authorizing a mandatory E-Filing Program for Civil Cases be and the same is hereby *Adopted*, effective March 19, 2018;

*It Is Further Ordered That* the Court Administrator of Lehigh County shall file: one (1) certified copy of this Order and Lehigh County Local Rule of Civil Procedure 205.4 with the Administrative Office of Pennsylvania Courts; and two (2) certified copies with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin* at least 30 days prior to the effective date of the local rule. This Local Rule shall also be published on the Court’s website and incorporated into the complete set of Lehigh County Local Rules.

*By the Court*

EDWARD D. REIBMAN,  
*President Judge*

#### Rule 205.4. Electronic Filing of Legal Documents Filed in the Clerk of Judicial Records—Civil Division.

(a)(1) *Authorization for Electronic Filing of Civil Legal Papers*

(i) In accordance with Pa.R.C.P. No. 239.9, the Lehigh County Court of Common Pleas mandates the electronic filing of legal papers and the electronic service of such

papers effective March 19, 2018, as specifically defined within this rule. The applicable general rules of court and court policies that implement the rules shall continue to apply to all filings regardless of the method of filing. Electronic filing and service shall be governed by this rule.

(ii) In the context of this rule, “legal papers” which shall be filed electronically shall be in all civil cases, but not including family court (i.e., custody, divorce, Domestic Relations, and Protection from Abuse) or Orphans’ Court matters.

(iii) All registered participants are eligible to file the legal papers as indicated in paragraph (a)(1)(ii) above.

#### Comment

The primary intent of this rule is to facilitate the filing of all legal papers that are expressly permitted under this subsection.

(b)(1) *Authorized Electronic Format of Legal Papers Electronically Filed.* All legal papers shall be filed electronically in Portable Document Format (PDF). Any legal paper or exhibit submitted in hard copy/paper format shall incur an administrative fee of \$1.00 per page for the Clerk of Judicial Records—Civil Division to convert the legal paper or exhibit to a Portable Document Format (PDF) and the Clerk of Judicial Records—Civil Division shall return the hard copy legal paper or exhibit to the filing party for retention as required by Pa.R.C.P. No. 205.4(b)(4).

(c)(1) A legal paper filed electronically shall be deemed the original document.

#### (c)(2) *Website—Access to the Website*

(i) *Website.* All legal papers shall be filed electronically through the Clerk of Judicial Records—Civil Division’s Electronic Filing System “Odyssey File and Serve” (OFS) which shall be accessible through the Lehigh County Website, [www.lehighcounty.org](http://www.lehighcounty.org).

(ii) *Access to the Website.* To obtain access to the Electronic Filing System, counsel and any unrepresented party must apply for and receive a User Name and Password.

#### (d)(1) *Payment of Filing Fees*

(i) The Clerk of Judicial Records—Civil Division will accept electronic payment of all filing fees with the following credit and debit cards: Discover, MasterCard, American Express, Visa and eCheck.

(ii) The credit or debit card will be charged with a convenience fee dictated by the credit card vendor.

(iii) The Clerk of Judicial Records—Civil Division will accept payment of electronic filing fees in cash, checks, credit or debit card when filing in person at the counter in the Clerk of Judicial Records—Civil Division.

#### (e) *Reserved*

#### (f) *Local Procedures*

As authorized by Pa.R.C.P. No. 205.4(f), the following local administrative procedures are adopted:

(i) As provided by Pa.R.C.P. No. 1023.1, the required signature on an electronic filing of legal papers is established by submission of a filing and the application of a digitized signature or the name of the filer proceeded by /s/ accompanied by the attorney’s printed name or a scanned document with an original signature. Verification will be achieved through the use of an email address and a password obtained from the OFS System. The OFS

system will verify the user ID against the state ID number. Verification for parties other than attorneys will be verified through the user ID.

(ii) The legal paper must include a signature block, and the name of the filer under whose user name and password the legal filing is submitted.

(iii) The Electronic Filing Application (OFS) shall provide to the filer, using the email address registered by the filer, a Courtesy Email acknowledging that the filing was received. An Official Notification will be displayed in the Electronic Filing System, which includes the time and date, as a pending filing awaiting approval by the Clerk of Judicial Records—Civil Division. Within six (6) business hours of the receipt of the legal paper, the Clerk of Judicial Records—Civil Division shall provide the filer with notification through the Electronic Filing System that the legal paper has been either accepted or rejected.

(iv) If a legal paper is accepted, it shall be deemed to have been filed as of the date and time it was received by the Electronic Filing System; however, if a legal paper is submitted without the requisite filing fee, the legal paper shall be deemed to have been accepted for filing as of the date payment is received pursuant to 42 P.S. Section 21073(b), “The Clerk of Judicial Records—Civil Division shall not be required to enter on the docket any suit or action or order of court or to enter any judgment thereon and perform any services whatsoever for any person, political subdivision or the Commonwealth until the requisite fee is paid.”

*Note:* As required by Pa.R.C.P. No. 205.4(c)(1) access to the Electronic Filing System shall be available at all times, except for routine maintenance; however, legal documents can only be reviewed by the staff of the Clerk of Judicial Records—Civil Division during normal office hours. Therefore, filers are cautioned to file required legal papers well in advance of any filing deadlines to enable timely correction and re-submission in the event a legal paper is not acceptable for filing.

(v) Pa.R.C.P. No. 204.1(3) requires that the first sheet of all pleadings, motions and other legal filings shall contain a 3-inch space from the top of the paper. This space shall be reserved solely for the use of the Clerk of Judicial Records—Civil Division for the electronic date and time stamp, and other official use.

(vi) As required by Pa.R.C.P. 205.5, the filer shall include the statewide cover sheet with the initial filing.

(vii) If a legal document is refused for filing, the Clerk of Judicial Records—Civil Division shall specify a reason. Subject to the Rule 205.4(e)(3), a legal paper refused for filing shall be deemed as not having been filed.

(viii) Neither the Court nor the Clerk of Judicial Records—Civil Division shall be required to maintain a hard copy of any legal paper, notice, or order filed or maintained under this rule.

#### (g) *Service of Legal Papers*

(i) Once an electronic filing has been accepted by the Clerk of Judicial Records—Civil Division, it shall be the responsibility of the filing party to provide to the Sheriff of Lehigh County, the proper service fee and the documents for Original Service and Writs.

[Pa.B. Doc. No. 18-213. Filed for public inspection February 9, 2018, 9:00 a.m.]

**COMMONWEALTH COURT****Request for Bids**

The Commonwealth Court is soliciting bids for audio visual design and installation services. This project includes system design, equipment installation and training for three courtrooms, two conference rooms and a control center in the Pennsylvania Judicial Center in Harrisburg, PA. A prebid tour is scheduled for February 22, 2018, at 9:30 a.m. in the Pennsylvania Judicial Center, Courtroom 3001, 601 Commonwealth Avenue, Harrisburg, PA 17120. Bid documents may be obtained from Kurt Baldwin, Commonwealth Court, P.O. Box 69185, Harrisburg, PA 17106-9185, (717) 255-1623, Kurt.Baldwin@pacourts.us. Bids are due no later than April 6, 2018, at 12 p.m.

GARY L. HOLLINGER,  
*Executive Administrator*

[Pa.B. Doc. No. 18-214. Filed for public inspection February 9, 2018, 9:00 a.m.]