

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS [204 PA. CODE CH. 213]

Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts; No. 477 Judicial Administration Doc.

Order

Per Curiam

And Now, this 6th day of January, 2017, upon the recommendation of the Administrative Office of Pennsylvania Courts, the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* having been published for public comment before adoption at 45 Pa.B. 661 (February 7, 2015):

It is *Ordered* that:

- 1) The Policy is approved in the following form.
- 2) The Administrative Office of Pennsylvania Courts shall publish the Policy, accompanying Explanatory Report and chart entitled *Limits on Public Access to Unified Judicial System Case Records of the Appellate and Trial Courts* on the Unified Judicial System's website.
- 3) Every court and custodian's office, as defined in the Policy, shall continuously make available for public inspection a copy of the Policy in appropriate physical locations as well as on their website.
- 4) The continued necessity of existing local rules concerning topics addressed by the Policy shall be reviewed by the President Judge or his or her designee in light of the adoption of the Policy.
- 5) A local rule deemed necessary by the President Judge or his or her designee, and not inconsistent with the Policy, shall be submitted to the Administrative Office of Pennsylvania Courts for review no later than July 1, 2017.
- 6) Any local rule governing topics addressed by the Policy that is not reviewed by the Administrative Office of Pennsylvania Courts or adopted in accordance with Pa.R.J.A. No. 103(c) shall be vacated effective January 6, 2018.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and the Policy shall be effective January 6, 2018.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

CHAPTER 213. COURT RECORDS POLICIES

Subchapter D. PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA: CASE RECORDS OF THE APPELLATE AND TRIAL COURTS

Sec.

213.81. Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts.

§ 213.81. Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts.

Section 1.0. Definitions.

A. "Abuse Victim" is a person for whom a protection order has been granted by a court pursuant to Pa.R.C.P. No. 1901 et seq. and 23 Pa.C.S. § 6101 et seq. or Pa.R.C.P. No. 1951 et seq. and 42 Pa.C.S § 62A01 et seq.

B. "Case Records" are (1) documents for any case filed with, accepted and maintained by a court or custodian; (2) dockets, indices, and documents (such as orders, opinions, judgments, decrees) for any case created and maintained by a court or custodian. This term does not include notes, memoranda, correspondence, drafts and work product of judges and court personnel. Unless otherwise provided in this policy, this definition applies equally to case records maintained in paper and electronic formats.

C. "Clerical errors" are errors or omissions appearing in a case record that are patently evident, as a result of court personnel's action or inaction.

D. "Court" includes the Supreme Court, Superior Court, Commonwealth Court, Courts of Common Pleas, and Philadelphia Municipal Court, excluding the Traffic Division of Philadelphia Municipal Court.

E. "Court Facility" is the location or locations where case records are filed or maintained.

F. "Custodian" is any person responsible for maintaining case records or for processing public requests for access to case records.

G. "Docket" is a chronological index of filings, actions, and events in a particular case, which may include identifying information of the parties and counsel, a brief description or summary of the filings, actions, and events, and other case information.

H. "Financial Account Numbers" include financial institution account numbers, debit and credit card numbers, and methods of authentication used to secure accounts such as personal identification numbers, user names and passwords.

I. "Financial Source Documents" are:

1. Tax returns and schedules;
2. W-2 forms and schedules including 1099 forms or similar documents;

3. Wage stubs, earning statements, or other similar documents;

4. Credit card statements;

5. Financial institution statements;

6. Check registers;

7. Checks or equivalent; and

8. Loan application documents.

J. "Medical/psychological records" are records relating to the past, present, or future physical or mental health or condition of an individual.

K. "Minor" is a person under the age of eighteen.

L. "Party" is one who commences an action or against whom relief is sought in a matter.

M. "Public" is any person, member of the media, business, non-profit entity, organization or association. The term does not include a party to a case; the attorney(s) of record in a case; Unified Judicial System officials or employees if acting in their official capacities; or any federal, state, or local government entity, and employees or officials of such an entity if acting in their official capacities.

N. "Remote Access" is the ability to electronically search, inspect, print or copy information in a case record without visiting the court facility where the case record is maintained or available, or requesting the case record from the court or custodian pursuant to Section 4.0.

Commentary

Regarding Subsection B, "documents for any case filed with, accepted and maintained by a court or custodian" are those not created by a court or custodian, such as pleadings and motions. Indices are tools for identifying specific cases.

Regarding Subsection C, examples of clerical errors are the docket entry links to the wrong document or court personnel misspells a name in the caption.

Regarding Subsection F, the definition of "custodian" does not include those entities listed in Pa.R.A.P. 3191 who receive copies of briefs filed in an appellate court.

Regarding Subsection J, this definition is derived from the definition of "health information" provided in 45 C.F.R. § 160.103 (HIPAA). Examples of case records that would fall within this exclusion are: drug and alcohol treatment records, psychological reports in custody matters, and DNA reports.

Regarding Subsection L, *amici curiae* are not parties. See Pa.R.A.P. 531.

Regarding Subsection M, Unified Judicial System officials or employees include: judicial officers and their personal staff, administrative staff and other central staff, prothonotaries, clerks of the courts, clerks of the orphans' court division, sheriffs, prison and correctional officials, and personnel of all the above.

Section 2.0. Statement of General Policy.

A. This policy shall govern access by the public to case records.

B. Security, possession, custody, and control of case records shall generally be the responsibility of the applicable custodian and designated staff.

C. Facilitating access by the public shall not substantially impede the orderly conduct of court business.

D. A court or custodian may not adopt more restrictive or expansive access protocols than provided for in this policy. Nothing in this policy requires a court or custodian to provide remote access to case records. However, if a court or custodian chooses to provide remote access to any of its case records, access shall be provided in accordance with Section 10.0.

Commentary

The Supreme Court of Pennsylvania has adopted other policies governing public access to Unified Judicial System case records: the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* that provides for access to the statewide case management systems' web docket sheets and requests for bulk data and the *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts* that provides for access to case records of the magisterial district courts maintained in a paper format.

Section 3.0. Access to Case Records.

All case records shall be open to the public in accordance with this policy.

Section 4.0. Requesting Access to Case Records.

A. When desiring to inspect or copy case records, a member of the public shall make an oral or written request to the applicable custodian, unless otherwise provided by court order or rule. If the request is oral, the custodian may require a written request.

B. Requests shall identify or describe the records sought with specificity to enable the custodian to ascertain which records are being requested.

Commentary

Public access requests to the courts and custodians are routinely straightforward and often involve a limited number of records. Therefore, artificial administrative barriers should not be erected so as to inhibit making these requests in an efficient manner.

This policy provides the courts and custodians latitude to establish appropriate administrative protocols for viewing/obtaining case records remotely. However, the definition of "remote access" in Section 1.0 clarifies that a request under this section is neither necessary nor expected under this policy.

Nonetheless, Subsection A provides a custodian with the flexibility to require that a more complex request be submitted in writing to avoid misunderstandings and errors that can often result in more time being expended to provide the requested information than is necessary. This approach is not novel; submission of a written request form has been a longstanding practice under the Unified Judicial System's *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* and *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts*.

Subsection B does not require a requestor to identify a case by party or case number in order to have access to the files, but the request shall clearly identify or describe the records requested so that court personnel can fulfill the request.

Written requests should be substantially in the format designed and published by the Administrative Office of Pennsylvania Courts.

Section 5.0. Responding to Requests for Access to Case Records.

A. A custodian shall fulfill a request for access to case records as promptly as possible under the circumstances existing at the time of the request.

B. If a custodian cannot fulfill the request promptly or at all, the custodian shall inform the requestor of the specific reason(s) why access to the information is being delayed or denied.

C. If a custodian denies a written request for access, the denial shall be in writing.

D. Relief from a custodian's written denial may be sought by filing a motion or application with the court for which the custodian maintains the records.

Commentary

Given that most public access requests for case records are straightforward and usually involve a particular case or matter, custodians should process the same in an expeditious fashion.

There are a number of factors that can affect how quickly a custodian may respond to a request. For example, the custodian's response may be slowed if the request is vague, involves retrieval of a large number of case records, or involves information that is stored off-site. Ultimately, the goal is to respond timely to requests for case records.

In those unusual instances in which access to the case records cannot be granted in an expeditious fashion, the custodian shall inform the requestor of the specific reason(s) why access to the information is being delayed or denied, which may include:

- the request involves such voluminous amounts of information that the custodian is unable to fulfill the same without substantially impeding the orderly conduct of the court or custodian's office;
- records in closed cases are located at an off-site facility;
- a particular file is in use by a judge or court staff. If a judge or court staff needs the file for an extended period of time, special procedures should be considered, such as making a duplicate file that is always available for public inspection;
- the requestor failed to pay the appropriate fees, as established pursuant to Section 6.0 of this policy, associated with the request;
- the requested information is restricted from access pursuant to applicable authority, or any combination of factors listed above.

An aggrieved party may seek relief from a denial of a written request for access consistent with applicable authority (for example, in an appellate court, Pa.R.A.P. 123 sets forth procedures for applications for relief under certain circumstances, or pertinent motion practice at the trial court level).

Section 6.0. Fees.

A. Unless otherwise provided by applicable authority, fees for duplication by photocopying or printing from electronic media or microfilm shall not exceed \$0.25 per page.

B. A custodian shall establish a fee schedule that is (1) posted in the court facility in an area accessible to the public, and (2) posted on the custodian's website.

Commentary

Reasonable fees may be imposed for providing public access to case records pursuant to this policy and in accordance with applicable authority. This section does not authorize fees for viewing records that are stored at the court facility.

To the extent that the custodian is not the court, approval of the fee schedule by the court may be necessary.

An example of applicable authority setting forth photocopying fees is 42 Pa.C.S. § 1725(c)(1)(ii) that provides the Clerk of Orphans' Court of the First Judicial District shall charge \$3 per page for a copy of any record. *See also* 42 P.S. § 21032.1 (providing authority for the establishment of fees in orphans' court in certain judicial districts). In addition, the copying fees for appellate court records are provided for in 204 Pa. Code § 155.1. However, copies of most appellate court opinions and orders are available for free on the Unified Judicial System's website, www.pacourts.us.

Section 7.0. Confidential Information.

A. Unless required by applicable authority or as provided in Subsection C, the following information is confidential and shall be not included in any document filed with a court or custodian, except on a Confidential Information Form filed contemporaneously with the document:

1. Social Security Numbers;
2. Financial Account Numbers, except an active financial account number may be identified by the last four digits when the financial account is the subject of the case and cannot otherwise be identified;
3. Driver License Numbers;
4. State Identification (SID) Numbers;
5. Minors' names and dates of birth except when a minor is charged as a defendant in a criminal matter (see 42 Pa.C.S. § 6355); and
6. Abuse victim's address and other contact information, including employer's name, address and work schedule, in family court actions as defined by Pa.R.C.P. No. 1931(a), except for victim's name.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority.

B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Information Form.

C. Instead of using the Confidential Information Form, a court may adopt a rule or order permitting the filing of any document in two versions, a "Redacted Version" and "Unredacted Version." The "Redacted Version" shall not include any information set forth in Subsection A, while the "Unredacted Version" shall include the information. Redactions must be made in a manner that is visibly evident to the reader.

D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form: "I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing

confidential information and documents differently than non-confidential information and documents.”

E. A court or custodian is not required to review or redact any filed document for compliance with this section. A party’s or attorney’s failure to comply with this section shall not affect access to case records that are otherwise accessible.

F. If a filed document fails to comply with the requirements of this section, a court may, upon motion or its own initiative, with or without a hearing order the filed document sealed, redacted, amended or any combination thereof. A court may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

G. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

Commentary

There is authority requiring information listed in Subsection A to appear on certain documents. For example, Pa.R.C.P. No. 1910.27 provides for inclusion of the plaintiff’s and defendant’s social security number on a complaint for support.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority, for example, cases filed under the Juvenile Act that are already protected by 42 Pa.C.S. § 6307, and Pa.Rs.J.C.P. 160 and 1160.

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from inserting confidential information in court-generated case records (e.g., orders, notices) when inclusion of such information is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court’s opinion contains confidential information and, therefore, must be sealed or heavily redacted to avoid release of such information, this could impede the public’s access to court records and ability to understand the court’s decision.

Whether using a Confidential Information Form or filing a redacted and unredacted version of a document, the drafter shall indicate where in the document confidential information has been omitted. For example, the drafter could insert minors’ initials in the document, while listing full names on the Confidential Information Form. If more than one child has the same initials, a different moniker should be used (e.g., child one, child two, etc.).

While Pa.R.C.P. No. 1931 is suspended in most judicial districts, the reference to the rule is merely for definitional purposes.

With regard to Subsection D, the certification of compliance is required whether documents are filed in paper form or via an e-filing system.

With regard to Subsection E, a court or custodian is not required to review or redact documents filed by a party or attorney for compliance with this section. However, such activities are not prohibited.

Any party may make a motion to the court to cure any defect(s) in any filed document that does not comport with this section.

Section 8.0. Confidential Documents.

A. Unless required by applicable authority, the following documents are confidential and shall be filed with a court or custodian under a cover sheet designated “Confidential Document Form”:

1. Financial Source Documents;
2. Minors’ educational records;
3. Medical/Psychological records;
4. Children and Youth Services’ records;
5. Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33;
6. Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c); and
7. Agreements between the parties as used in 23 Pa.C.S. § 3105.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority.

B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Document Form.

C. Confidential documents submitted with the Confidential Document Form shall not be accessible to the public, except as ordered by a court. However, the Confidential Document Form or a copy of it shall be accessible to the public.

D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form “I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.”

E. A court or custodian is not required to review any filed document for compliance with this section. A party’s or attorney’s failure to comply with this section shall not affect access to case records that are otherwise accessible.

F. If confidential documents are not submitted with the Confidential Document Form, a court may, upon motion or its own initiative, with or without a hearing, order that any such documents be sealed. A court may also impose appropriate sanctions for failing to comply with this section.

G. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

Commentary

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority, such as Juvenile Act cases pursuant to 42 Pa.C.S. § 6307, and Pa.Rs.J.C.P. 160 and 1160.

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from attaching confidential documents to court-generated case records (e.g., orders, notices) when inclusion of such information is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court’s opinion contains confidential infor-

mation and, therefore, must be sealed or heavily redacted to avoid release of such information, this could impede the public's access to court records and ability to understand the court's decision.

Examples of "agreements between the parties" as used in Subsection (A)(7) include marital settlement agreements, post-nuptial, pre-nuptial, ante-nuptial, marital settlement, and property settlement. See 23 Pa.C.S. § 3105 for more information about agreements between parties.

With regard to Subsection D, the certification of compliance is required whether documents are filed in paper form or via an e-filing system.

With regard to Subsection E, if the party or party's attorney fails to use a cover sheet designated "Confidential Document Form" when filing a document deemed confidential pursuant to this section, the document may be released to the public.

Any party may make a motion to the court to cure any defect(s) in any filed document that does not comport with this section.

Section 9.0. Limits on Public Access to Case Records at a Court Facility.

The following information shall not be accessible by the public at a court facility:

A. Case records in proceedings under 20 Pa.C.S. § 711(9), including but not limited to case records with regard to issues concerning recordation of birth and birth records, the alteration, amendment, or modification of such birth records, and the right to obtain a certified copy of the same, except for the docket and any court order or opinion;

B. Case records concerning incapacity proceedings filed pursuant to 20 Pa.C.S. §§ 5501—5555, except for the docket and any final decree adjudicating a person as incapacitated;

C. Any Confidential Information Form or any Unredacted Version of any document as set forth in Section 7.0;

D. Any document filed with a Confidential Document Form as set forth in Section 8.0;

E. Information sealed or protected pursuant to court order;

F. Information to which access is otherwise restricted by federal law, state law, or state court rule; and

G. Information presenting a risk to personal security, personal privacy, or the fair, impartial and orderly administration of justice, as determined by the Court Administrator of Pennsylvania with the approval of the Chief Justice. The Court Administrator shall publish notification of such determinations in the *Pennsylvania Bulletin* and on the Unified Judicial System's website.

Commentary

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from inserting confidential information in or attaching confidential documents to court-generated case records (e.g., orders, notices) when inclusion of such information is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court's opinion contains confidential information and, therefore, must be sealed or heavily redacted to avoid

release of such information, this could impede the public's access to court records and ability to understand the court's decision.

With respect to Subsection F, Pennsylvania Rule of Appellate Procedure 104(a), Pa.R.A.P. 104(a), provides that the appellate courts may make and amend rules of court governing their practice. The Administrative Office of Pennsylvania Courts shall from time to time publish a list of applicable authorities that restrict public access to court records or information. This list shall be published on the Unified Judicial System's website and in the *Pennsylvania Bulletin*. In addition, all custodians shall post this list in their respective court facilities in areas accessible to the public and on the custodians' websites.

With respect to Subsection G, the Administrative Office of Pennsylvania Courts shall include any such determinations in the list of applicable authorities referenced above. The same provision appears in existing statewide public access policies adopted by the Supreme Court: *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* and *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts*. The provision is intended to be a safety valve to address a future, extraordinary, unknown issue of statewide importance that might escape timely redress otherwise. It cannot be used by parties or courts in an individual case.

Section 10.0. Limits on Remote Access to Case Records.

A. The following information shall not be remotely accessible by the public:

1. The information set forth in Section 9.0;

2. In criminal cases, information that either specifically identifies or from which the identity of jurors, witnesses (other than expert witnesses), or victims could be ascertained, including names, addresses and phone numbers;

3. Transcripts lodged of record, excepting portions of transcripts when attached to a document filed with the court;

4. *In Forma Pauperis* petitions;

5. Case records in family court actions as defined in Pa.R.C.P. No. 1931(a), except for dockets, court orders and opinions;

6. Case records in actions governed by the Decedents, Estates and Fiduciaries Code, Adult Protective Services Act and the Older Adult Protective Services Act, except for dockets, court orders and opinions; and

7. Original and reproduced records filed in the Supreme Court, Superior Court or Commonwealth Court as set forth in Pa.R.A.P. 1921, 1951, 2151, 2152, and 2156.

B. With respect to Subsections A(5) and A(6), unless otherwise restricted pursuant to applicable authority, dockets available remotely shall contain only the following information:

1. A party's name;

2. The city, state, and ZIP code of a party's address;

3. Counsel of record's name and address;

4. Docket number;

5. Docket entries indicating generally what actions have been taken or are scheduled in a case;

6. Court orders and opinions;

7. Filing date of the case; and

8. Case type.

C. Case records remotely accessible by the public prior to the effective date of this policy shall be exempt from this section.

Commentary

Remote access to the electronic case record information residing in the Pennsylvania Appellate Court Case Management System (PACMS), the Common Pleas Case Management System (CPCMS) and the Magisterial District Judges System (MDJS) is provided via web dockets, available on <https://ujportal.pacourts.us/>, and is governed by the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania*.

Depending upon individual court resources, some courts have posted online docket information concerning civil matters. If a court elects to post online docket information concerning family court actions and actions governed by the Decedents, Estates and Fiduciaries Code, Adult Protective Services Act and the Older Adult Protective Services Act, the docket may only include the information set forth in Subsection B. This information will provide the public with an overview of the case, its proceedings and other pertinent details, including the court's decision. Release of such information will enhance the public's trust and confidence in the courts by increasing awareness of the procedures utilized to adjudicate the claims before the courts as well as the material relied upon in reaching determinations. This provision does not impact what information is maintained on the docket available at the court facility.

Access to portions of transcripts when attached to a document filed with the court in family court actions is governed by Subsection A(5). While Pa.R.C.P. No. 1931 is suspended in most judicial districts, the reference to the rule is merely for definitional purposes.

Section 11.0. Correcting Clerical Errors in Case Records.

A. A party, or the party's attorney, seeking to correct a clerical error in a case record may submit a written request for correction.

1. A request to correct a clerical error in a case record of the Supreme Court, Superior Court or Commonwealth Court shall be submitted to the prothonotary of the proper appellate court.

2. A request to correct a clerical error in a case record of a court of common pleas or Philadelphia Municipal Court shall be submitted to the applicable custodian.

B. The request shall be made on a form designed and published by the Administrative Office of Pennsylvania Courts.

C. The requestor shall specifically set forth on the request form the information that is alleged to be a clerical error and shall provide sufficient facts, including supporting documentation, that corroborate the requestor's allegation that the information in question is in error.

D. The requestor shall provide copies of the request to all parties to the case.

E. Within 10 business days of receipt of a request, the custodian shall respond in writing to the requestor and all parties to the case in one of the following manners:

1. The request does not contain sufficient information and facts to determine what information is alleged to be in error, and no further action will be taken on the request.

2. The request does not concern a case record that is covered by this policy, and no further action will be taken on the request.

3. A clerical error does exist in the case record and the information in question has been corrected.

4. A clerical error does not exist in the case record.

5. The request has been received and an additional period not exceeding 30 business days is necessary to complete a review of the request.

F. A requestor may seek review of the custodian's response under Subsections E(1)—(4) within 10 business days of the mailing date of the response.

1. The request for review shall be submitted on a form that is designed and published by the Administrative Office of Pennsylvania Courts.

2. The request shall be reviewed by the judge(s) who presided over the case.

Commentary

Case records are as susceptible to clerical errors and omissions as any other public record. The power of the court to correct errors in its own records is inherent. E.g., *Jackson v. Hendrick*, 746 A.2d 574 (Pa. 2000). It is important to emphasize that this section does not provide a party who is dissatisfied with a court's decision, ruling or judgment a new avenue to appeal the same by merely alleging there is an error in the court's decision, ruling or judgment. Rather, this section permits a party to "fix" information that appears in a case record which is not, for one reason or another, correct.

Particularly in the context of Internet publication of court records, a streamlined process is appropriate for addressing clerical errors to allow for prompt resolution of oversights and omissions. For example, to the extent that a docket in a court's case management system incorrectly reflects a court's order, or a scanning error occurred with regard to an uploaded document, such clerical inaccuracies may be promptly corrected by the appropriate court staff, upon notification, without a court order. Since 2007, the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* has provided a similar procedure for any errors maintained on the web docket sheets of the PACMS, CPCMS and MDJS. The procedure has successfully addressed clerical errors on docket entries in a timely and administratively simple manner.

A party or party's attorney is not required to utilize the procedures set forth in this section before making a formal motion for correction of a case record in the first instance. Alleged inaccuracies in orders and judgments themselves must be brought to the attention of the court in accordance with existing procedures.

This section is not intended to provide relief for a party's or attorney's failure to comply with Sections 7.0 and 8.0 of this policy. Sections 7.0 and 8.0 already provide for remedial action in the event that non-compliance occurs.

With respect to this section, a custodian includes, but is not limited to, the county prothonotaries, clerks of orphans' court, and clerks of the court.

A log of all corrections made pursuant to this section may be maintained by the custodian, so that there is a record if an objection is made in the future. Such a log should remain confidential. It is suggested that custodians include a registry entry on the case docket when a request is received and a response is issued.

Section 12.0. Continuous Availability of Policy.

A copy of this policy shall be continuously available for public inspection in every court and custodian's office and posted on the Unified Judicial System's website.

**LIMITS ON PUBLIC ACCESS TO UNIFIED JUDICIAL SYSTEM CASE RECORD OF THE
APPELLATE AND TRIAL COURTS**

<i>Subject Area</i>	<i>Record Description</i>	<i>Accessibility</i>	<i>Authority</i>
Civil	Jurors Notes.	No Public Access. Collected and destroyed post-trial.	Pa.R.C.P. No. 223.2.
Commonwealth Court	Child Line Registry Cases.	No Public Access to documents in the case except Orders and Opinions wherein the court shall use initials of the minor child involved rather than full name.	Admin. Order No. 126 Misc. Docket No. 3 (February 8, 2013).
Criminal	Juror's Address.	No Public Access.	<i>Commonwealth v. Long</i> , 922 A.2d 892 (Pa. 2007).
Criminal	Sealed affidavit of probable cause for a search warrant.	No Public Access while sealed. The affidavit may not be sealed for more than 60 days unless an extension is received. Extensions may not be longer than 30 days, but an unlimited number of extensions are available. Public may access the affidavit after it has been unsealed.	Pa.R.Crim.P. 211.
Criminal	Unexecuted Search Warrant.	No Public Access until warrant is executed.	Pa.R.Crim.P. 212(A).
Criminal	Arrest Warrant Information.	A court may delay public access for good cause for up to 72 hours. In addition, a court may seal arrest warrant information for a longer period of time.	Pa.R.Crim.P. 513(C), Pa.R.Crim.P. 513.1.
Criminal	Motion filed by attorney for the Commonwealth to present the matter to an indicting grand jury and subsequent order.	No Public Access—the motion and order are sealed.	Pa.R.Crim.P. 556.2.
Criminal	All indicting grand jury proceedings and related documents.	No Public Access. Disclosure may be granted to attorney for the Commonwealth, defendant in a criminal case, witnesses, law enforcement personnel, and upon motion when necessary.	Pa.R.Crim.P. 556.10.
Criminal	Sealed indictments.	No Public Access.	Pa.R.Crim.P. 556.11(E).
Criminal	Sealed records concerning mental health experts.	No Public Access.	Pa.R.Crim.P. 569.
Criminal	Sealed written statements pertaining to protective orders.	No Public Access. The entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.	Pa.R.Crim.P. 573(F).
Criminal	Sealed plea agreement.	No Public Access.	Pa.R.Crim.P. 590.
Criminal	Juror qualification forms.	No Public Access.	Pa.R.Crim.P. 625(A)(3).

<i>Subject Area</i>	<i>Record Description</i>	<i>Accessibility</i>	<i>Authority</i>
Criminal	Juror information questionnaires.	No Public Access. Questionnaires are retained in a sealed file and shall be destroyed upon completion of the jurors' service, unless otherwise ordered by the trial judge.	Pa.R.Crim.P. 632.
Criminal	Sealed verdict.	No Public Access.	Pa.R.Crim.P. 649.
Criminal	Notes taken by jurors.	No Public Access.	Pa.R.Crim.P. 644(B)(7).
Criminal	Pre-sentence reports and related psychiatric psychological reports.	No Public Access.	Pa.R.Crim.P. 703(A).
Criminal	Records revealing the names of human trafficking victims.	No Public Access, unless otherwise ordered by a court in a prosecution involving a victim of human trafficking.	18 Pa.C.S. § 3019(a).
Criminal	Wiretap applications, final reports and orders.	No Public Access except upon showing of good cause before a court of competent jurisdiction.	18 Pa.C.S. § 5715.
Criminal	Names of minor victims of sexual or physical abuse.	No Public Access. Records revealing a victim's name are sealed. A minor victim who is 18 years of age or older at the time of the commencement of the prosecution may waive this protection and allow the court to release the name of the minor victim.	42 Pa.C.S. § 5988.
Domestic Relations	Information regarding the registration, filing of a petition for, or issuance of a protection from abuse in either the issuing or enforcing State.	No Public Access via internet publication, if such publication would be likely to publically reveal the identity or location of the protected party.	18 U.S.C. § 2265(d)(3).
Domestic Relations	Social security number of any individual subject to a divorce decree, support order, paternity determination, or acknowledgement of paternity, which is required in all records of those matters.	No Public Access.	23 Pa.C.S. § 4304.1(a)(3).
Domestic Relations	Child Support Records	No Public Access, except for PACSES dockets, court orders and opinions.	42 U.S.C. §§ 654(26)(A), 654a(d)(1)(A); 45 CFR §§ 303.21(c)—(d), 307.13(a)(1); 23 Pa.C.S. § 4304.1(d); Sections 2.4 and 3.4 of the Cooperative Agreement.

<i>Subject Area</i>	<i>Record Description</i>	<i>Accessibility</i>	<i>Authority</i>
Domestic Relations	<p>(a) Subject to any inconsistent general rules and to the supervision and direction of the court, the domestic relations section shall have the power and duty to: . . .</p> <p>(10) Implement safeguards applicable to all confidential information received by the domestic relations section in order to protect the privacy rights of the parties, including: . . .</p> <p>(ii) prohibitions against the release of information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered; and</p> <p>(iii) prohibitions against the release of information on the whereabouts of one party or the child to another person if the domestic relations section has reason to believe that the release of the information on the whereabouts of one party or the child to another person if the domestic relations section has reason to believe that the release of the information may result in physical or emotional harm to the party or the child.</p>	No Public Access.	23 Pa.C.S. § 4305(a)(10)(i)—(iii).
Domestic Relations	List of weapons ordered to be relinquished by the defendant in an action for protection from abuse.	No Public Access, except (A) upon an order of the court granted upon cause shown; (B) as necessary, by law enforcement and court personnel; or (C) after redaction of information listing any firearm, other weapon or ammunition.	23 Pa.C.S. § 6108(a)(7)(v).
Domestic Relations	All records pertaining to a confidential address for individuals participating in the Office of Victim Advocate's Address Confidentiality Program.	No Public Access, except for the substitute address provided by the Office of Victim Advocates.	23 Pa.C.S. § 6703(d); <i>see also</i> 23 Pa.C.S. § 5336(b)(1).
Juvenile Court	Juvenile Dependency and Delinquency records.	No Public Access; except as set forth in 42 Pa.C.S. § 6307, Pa.Rs.J.C.P. 160 and/or 1160, including with leave of court.	42 Pa.C.S. § 6307; Pa.Rs.J.C.P. 160, 1160.

<i>Subject Area</i>	<i>Record Description</i>	<i>Accessibility</i>	<i>Authority</i>
Orphans' Court	Proceedings related to appointment of guardianship for incapacitated persons.	Shall be closed to the public upon request of the alleged incapacitated person or his counsel. After the individual's death his/her estate may access the record of the guardianship proceedings.	20 Pa.C.S. § 5511(a); <i>In re Estate of duPont</i> , 2 A.3d 516 (Pa. 2010).
Orphans' Court	Records required for foreign adoption decrees.	No Public Access unless a court order is granted upon good cause.	23 Pa.C.S. § 2908(F); Pa.O.C.R. 15.7.
Orphans' Court	Adoption records.	No Public Access unless otherwise ordered.	23 Pa.C.S. § 2915; <i>see also</i> 23 Pa.C.S. § 2906; Pa.O.C.R. 15.7.
Orphans' Court (Family Court in Philadelphia County or Juvenile Court Section of Family Division in Allegheny County Pa.R.J.A. 2157)	Applications of a minor for judicial approval of decision to have an abortion, under the Abortion Control Act, as well as proceedings and the name of the minor.	No Public Access; sealed dockets, and documents shall be maintained in a closed file marked "confidential" and identified by case number only.	18 Pa.C.S. § 3206(f); Pa.O.C.R. 16.2 and 16.6. Note also Pa.R.J.A. No. 2157 and Pa.R.A.P. 3801.
General	For certain offenses graded as a misdemeanor of the second or third degree, any information relating to the conviction, arrest, indictment or other information leading to the conviction, arrest, indictment or other information.	No public access. The court shall not release the information to an individual, noncriminal justice agency or an internet website.	* Act 5 of 2016 effective November 14, 2016 which in part creates 18 Pa.C.S. § 9122.1 and amends 18 Pa.C.S. § 9121.
General	Records concerning persons in treatment under the Mental Health Procedures Act.	Limited Public Access in compliance with the Mental Health Procedures Act and controlling case law.	50 P.S. § 7111.
General	Court documents, rules, or orders in Gaming Law proceedings.	Any party may request proceeding and record to be sealed if in best interest of any person or Commonwealth.	4 Pa.C.S. § 1518.2(b).
General	Proceedings and records involving juveniles charged with a summary offense before the minor judiciary, the Philadelphia Municipal Court or a Court of Common Pleas.	No Public Access.	42 Pa.C.S. §§ 6303(c), 6307(c), and 6336(g).

* Note this may not be a complete listing; the public and court staff are directed to consult federal and state statutes, court rules or case law.

EXPLANATORY REPORT

Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts

General Introduction

Recognizing the importance of the public's access to the courts and with the Supreme Court's approval, the Administrative Office of Pennsylvania Courts (AOPC) has developed statewide policies governing access to court records. Protocols have been implemented for access to electronic case records in the Judiciary's statewide case management systems, magisterial district court case records, and financial records of the Unified Judicial System (UJS). In 2013, the AOPC embarked on the next

phase of policy development designed to address access to case records of the trial and appellate courts.

This latest effort is necessitated by the confluence of several factors. The proliferation of e-filing systems and related decisions to post (or not post) case records online (as part of document imaging or e-filing systems) on a county-by-county basis has resulted in disjointed accessibility to the UJS's trial court case records. A county may post all divorce and custody records online for viewing, perhaps for free, and a neighboring county may not. Online posting of sensitive information contained in case records, such as social security numbers, currently depends upon geography. Surveys conducted by the AOPC also revealed the treatment of sensitive information con-

tained in paper case records maintained by the filing offices varies widely. For example, whether a social security number is available to a member of the public who wishes to view the records of a particular case in a filing office depends upon local practices.

The implementation of e-filing in Pennsylvania's appellate courts and future initiatives at other court levels is also a catalyst for policy development. While appellate court opinions, orders and dockets have been online via the UJS's website for over a decade, the e-filing of appellate briefs and related legal papers raises basic questions that should be considered when a court undertakes such a project, for instance: What sensitive information must be redacted? Who is responsible for ensuring the appropriate information is redacted?

At the state and local level, the Judiciary is moving forward into the digital age, and it clearly needs to give thoughtful consideration to its systems and procedures to ensure equal access to the UJS's trial and appellate case records. Disparate filing and access protocols certainly impede the statewide practice of law in the Commonwealth. Litigants and third parties, some of whom are unrepresented or are not voluntary participants in the judicial process, may be left in the dark as to whether their private, personal identifiers and intimate details of their lives will be released (online) for public viewing.

Government and the private sector collect extensive amounts of personal data concerning individuals' finances, unique identifiers, medical history and so on. Many of these types of data are relevant to the cases that are before the courts for decision, and some data is provided in court filings even though irrelevant to the matter before the court. Therefore, like other branches of government and the private sector, the courts are constantly considering issues regarding the need for openness and transparency and the concern for personal privacy and security.

With regard to the courts, however, the constitutional and common law presumption of openness has to be carefully weighed against relevant practical, administrative considerations when crafting solutions to avert breaches of privacy and security. Striking the right balance is not an easy task.

The public's right to access court proceedings and records is grounded in the First and Sixth Amendments of the U.S. Constitution, Article I §§ 7, 9, and 11 of the Pennsylvania Constitution, and the common law. While there is overlap between the common law and constitutional analyses, there is a distinction between the two. Specifically, the constitutional provisions provide a greater right of access than the common law.¹ However, these constitutional and common law rights are not absolute and may be qualified by overriding interests. A more extensive discussion of the right to access is contained in the Explanatory Report of the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania*.²

Therefore, with the approval of the Supreme Court, the Court Administrator of Pennsylvania convened a working group to study and develop a proposed policy for public comment. Under the experienced and dedicated leadership of Commonwealth Court Judge Renée Cohn Jubelirer and Montgomery County Court of Common Pleas Judge Lois E. Murphy, the working group under-

took its charge with an open mind and an aim to appropriately balance the competing interests at hand. The group consisted of judges, appellate court filing office personnel, local court personnel, two Prothonotaries/Clerks of Courts, one Register of Wills/Clerk of Orphans' Court, and representatives from the Pennsylvania Bar Association and the rules committees of the Supreme Court, as well as AOPC staff.

Before developing a proposed policy, the working group studied and discussed the different types of records pertaining to criminal, domestic relations, civil, juvenile, orphans' court and appellate matters filed in the courts. Tackling each case type individually, the working group considered existing legal restrictions and other jurisdictions' access policies on the release of data and documents. In formulating whether information and documents should be considered confidential, the group also determined how access would be limited. There are categories of information that are completely restricted, such as social security numbers, and categories that are restricted from online viewing by the public but remain available for public inspection at a court facility, such as original and reproduced records filed in the appellate courts.

The working group published its proposal for a 60-day public comment period³ and received thirty-two submissions. The comments reflected diverse, and sometimes conflicting, viewpoints, which helped the working group define the issues and find solutions. In doing so, the working group endeavored to find as much "common ground" as it could in reviewing and addressing the various comments.

In crafting its proposal, the group was guided at all times by the long-standing tradition of access to court records and the important interests it serves, as follows:

to assure the public that justice is done evenhandedly and fairly; to discourage perjury and the misconduct of participants; to prevent decisions based on secret bias or partiality; to prevent individuals from feeling that the law should be taken into the hands of private citizens; to satisfy the natural desire to see justice done; to provide for community catharsis; to promote public confidence in government and assurance that the system of judicial remedy does in fact work; to promote the stability of government by allowing access to its workings, thus assuring citizens that government and the courts are worthy of their continued loyalty and support; to promote an understanding of our system of government and courts. *Commonwealth v. Fenstermaker*, 530 A.2d 414, 417 (Pa. 1987) (citing *Commonwealth v. Contankos*, 453 A.2d 578, 579-80 (Pa. 1982)).

However, the group also recognized that transparency of judicial records and proceedings must be balanced with other considerations in this Internet age. The group attempted to strike the appropriate balance between access and interests involving the administration of justice, personal privacy and security—particularly with regard to online records. Also essential to the group's evaluation were practical considerations, such as the methods of redaction to be implemented and identification of various "best practices" that should be instituted statewide.

The working group provides the following relevant Commentary for the sections of the policy.

¹ See *Commonwealth v. Long*, 922 A.2d 892 (Pa. 2007).

² Explanatory Report is found at: <http://www.pacourts.us/assets/files/page-381/file-833.pdf?cb=1413983484884>

³ <http://www.pabulletin.com/secure/data/vol45/45-6/222.html>

Section 1

The definitions incorporate elements of those found in existing UJS public access policies and other authorities.

This policy governs access to (1) official paper case records of appellate courts, courts of common pleas, and Philadelphia Municipal Court, (2) images of scanned or e-filed documents residing in the three statewide case management systems, (3) images of scanned or e-filed documents residing in the case management systems of the judicial districts, and (4) case record information posted online by judicial districts via their own “local” case management systems. This approach ensures a more equitable and systematic approach to the case records filed in and maintained for the trial and appellate courts.

It is important to note how this policy intersects with existing UJS policies, namely the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* (hereinafter referred to as “*Electronic Policy*”) and *MDC Paper Policy*. The *Electronic Policy* governs access to the electronic case record information, excluding images of scanned documents, residing in the three statewide case management systems: Pennsylvania Appellate Courts Case Management System, Common Pleas Case Management System and the Magisterial District Judge System. Put simply, the *Electronic Policy* governs what information resides on the public web docket sheets accessible via the UJS web portal or is released to a member of the public requesting electronic case record information from one of the systems.

The *MDC Paper Policy* governs access to the paper case records on file in a magisterial district courts.

The definition of “financial source document” is derived from the definition of “sealed financial source documents” used in Minnesota (Minn.G.R.Prac. Rule 11.01) and Washington (WA.R.Gen. Rule 22(b)).

Section 2

This section’s provisions are similar to those contained in the *MDC Paper Policy*, which have been successfully implemented.

Section 4

Requestors may be unable to complete a written request, if required by a court. In such circumstances, access should not be denied but may be delayed until the custodian or designated staff is available to assist the requestor. If the request is granted, it may be necessary for the custodian or designated staff to sit with the requestor and monitor the use of the file to ensure its integrity. This is consistent with the responsibility placed upon the custodian and designated staff for the security, possession, custody and control of case records in Section 2.0(B). Such a practice is also consistent with the requirement that addressing requests for access cannot impede the administration of justice or the orderly operation of a court, pursuant to Section 2.0(C).

This section’s provisions are similar to those contained in the *MDC Paper Policy*.

Section 5

While implementing the provisions of this policy should not unduly burden the courts and custodians or impinge upon the delivery of justice, it is reasonable for the public to expect that courts and custodians shall respond to requests for access in a consistent fashion. This section brings uniformity, in general, as to when and how courts and custodians must respond to requests. Similar sections are found in the *Electronic Policy* and *MDC Paper Policy*.

Section 6

Judicial districts have adopted different approaches to imposition of fees, especially with regard to remote access to court records. Some impose a fee for providing remote access because the costs associated with building and maintaining such systems are often substantial. Given that remote access is a value-added service, not a requirement, it is thought that those who avail themselves of this service should be charged for the convenience of maintaining these systems.

Others do not impose fees for remote access because providing this service reduces the “foot traffic” in the filing offices for public access requests. This, in turn, frees staff to attend to other business matters, resulting in a financial benefit by reducing costs associated with dealing with the requests over the counter. The AOPC has provided “free” online access to public web docket sheets for cases filed in the appellate courts, criminal divisions of the courts of common pleas and Philadelphia Municipal Court, as well as the magisterial district courts for years. In 2014, 59 million of those web dockets sheets were accessed online.

It is interesting to note that the two largest judicial districts in the Commonwealth are at opposite ends of the spectrum (i.e., one has posted virtually all dockets and documents for free, and the other posts some dockets for free but not documents). While the working group recognizes that other factors play into these determinations (such as, technological capabilities, statutorily mandated fees), judicial districts should ensure that fees do not become a barrier to public access. Completion of statewide case management systems in all levels of court will likely bring about standardization in remote access to case records.

The working group notes that this section’s provisions are similar to those contained in the *MDC Paper Policy*.

Section 7

The concept of restricting access to particular, sensitive identifiers is not novel. The *Electronic Policy* and *MDC Paper Policy* restrict access to social security numbers and financial account numbers, for example. The federal courts, and many state court systems, have restricted access to the types of identifiers that are listed in Section 7.0.

The *Electronic Policy* and *MDC Paper Policy* provide that access to social security numbers is shielded from release. Moreover, there are scores of authorities at both the federal and state level that protect the release of this information. While some of these authorities are not applicable to court records, they require access to this information in government records be limited or wholly restricted. For example: 65 P.S. § 67.708(b)(6)(i)(A), 74 P.S. § 201, 42 U.S.C.A. § 405(c)(2)(C)(viii), F.R.Civ.P. 5.2(a)(1), F.R.Crim.P. 49.1(a)(1), Alaska (AK R Admin Rule 37.8(a)(3)), Arizona (AZ ST S CT Rule 123(c)(3)), Arkansas (Sup. Ct. Admin. Order 19(VII)(a)(4)), Florida (FL ST J ADMIN Rule 2.420(d)(1)(B)(iii)), Idaho (ID R Admin Rule 32(e)(2)), Indiana (Ind. St. Admin. Rule 9(G)(1)(d)), Maryland (MD. Rules 16-1007), Michigan (Administrative Order 2006-2), Minnesota (Minn.Gen.R.Prac. Rule 11.01(a)), Mississippi (Administrative Order dated August 27, 2008 paragraph 8), Nebraska (Neb Ct R § 1-808(a) and Neb. Rev. Stat § 84-712.05(17)), New Jersey (NJ R GEN APPLICATION Rule 1:38-7(a)), North Dakota (N.D.R.Ct. Rule 3.4(a)(1) and A.R. 41(5)(B)(10)(a)), Ohio (OH ST Sup Rules 44(h) and 45(d)), South Dakota (SDCL § 15-15A-8), Texas (TX ST J ADMIN Rule 12.5(d)), Utah (UT R J

ADMIN Rules 4-202.02(4)(i) and 4-202-03(3)), Vermont (VT R PUB ACC CT REC § 6(b)(29)), Washington (WA. R. Gen. Rule 31(3)(1)(a)) and West Virginia (WV R RAP Rule 40(e)(3)).

With regard to financial account numbers, the *Electronic Policy* and *MDC Paper Policy* provide that this information is not accessible. Many other jurisdictions have taken a similar approach. For example: F.R.Civ.P. 5.2(a)(1), F.R.Crim.P. 49.1(a)(1), Alaska (AK R Admin Rule 37.8(a)(5)), Arizona (AZ ST S CT Rule 123(c)(3)), Arkansas (Sup. Ct. Admin. Order 19(VII)(a)(4)), Florida (FL ST J ADMIN Rule 2.420(d)(1)(B)(iii)), Idaho (ID R Admin Rule 32(e)(2)), Indiana (Ind. St. Admin. Rule 9(G)(1)(f)), Minnesota (Minn.Gen.R.Prac. Rule 11.01(a)), Nebraska (Neb Ct R § 1-808(a) and Neb. Rev. Stat § 84-712.05(17)), New Jersey (NJ R GEN APPLICATION Rule 1:38-7(a)), North Dakota (N.D.R.Ct. Rule 3.4(a)(1) and A.R. 41(5)(B)(10)(a)), Ohio (OH ST Sup Rules 44(h) and 45(d)), South Dakota (SDCL § 15-15A-8), Vermont (VT R PUB ACC CT REC § 6(b)(29)), Washington (WA. R. Gen. Rule 31(3)(1)(b)) and West Virginia (WV R RAP Rule 40(e)(4)).

Concerning driver license numbers, the *Electronic Policy* provides that driver license numbers should be protected. Moreover, there are many authorities at both the federal and state level that protect the release of this information. While some of these authorities are not applicable to court records, they require access to this information in government records be limited or wholly restricted. For example: 65 P.S. § 67.708(b)(6)(i)(A), 75 Pa.C.S. § 6114, 18 U.S.C. §§ 2721—2725, Alaska (AK R Admin Rule 37.8(a)(4)), Idaho (ID R Admin Rule 32(e)(2)), New Jersey (NJ R GEN APPLICATION Rule 1:38-7(a)), Utah (UT R J ADMIN Rules 4-202.02(4)(i) and 4-202-03(3)), Vermont (VT R PUB ACC CT REC § 6(b)(29)) and Washington (WA. R. Gen. Rule 31(3)(1)(c)).

State Identification Numbers (“SID”) have been defined as “[a] unique number assigned to each individual whose fingerprints are placed into the Central Repository of the State Police. The SID is used to track individuals for crimes which they commit, no matter how many subsequent fingerprint cards are submitted.” See 37 Pa. Code § 58.1. The *Electronic Policy* prohibits the release of SID. Furthermore, in *Warrington Crew v. Pa. Dept. of Corrections*, (Pa. Cmwlth., No. 1006 C.D. 2010, filed Nov. 19, 2010)⁴, the Commonwealth Court upheld a ruling by the Office of Open Records that a SID number is exempt from disclosure through a right-to-know request because such numbers qualify as a confidential personal identification number.

Other jurisdictions provide similar protections to minors’ names, dates of births, or both. For example: F.R.Civ.P. 5.2(a)(1), F.R.Crim.P. 49.1(a)(1), Alaska (AK R Admin Rule 37.8(a)(6)), North Dakota (N.D.R.Ct. Rule 3.4(a)(3) and A.R.41(5)(B)(10)(c)), Utah (UT R J ADMIN Rules 4-202.02(4)(l) and 4-202-03(3)) and West Virginia (WV R RAP Rule 40(e)(1)).

With regard to abuse victims’ address and other contact information, Pennsylvania through the enactment of various statutes has recognized the privacy and security needs of victims of abuse. For example, Pennsylvania’s Domestic and Sexual Violence Victim Address Confidentiality Act (23 Pa.C.S. §§ 6701—6713) provides a mechanism whereby victims of domestic and sexual violence can shield their physical address (even in court documents)

and hence protect their ability to remain free from abuse. The Pennsylvania Right To Know Law (65 P.S. §§ 67.101—67.1304) recognizes the potential risk of harm which can be caused by the disclosure by the government of certain personal information. For example, 65 P.S. § 67.708(b)(1)(ii) prohibits the disclosure that “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.” Moreover, 23 Pa.C.S. § 5336(b) prohibits the disclosure of the address of a victim of abuse in a custody matter to the other parent or party. 23 Pa.C.S. § 4305(a)(10)(ii) and (iii) provides that the domestic relations section shall have the power and duty to:

“implement safeguards applicable to all confidential information received by the domestic relations section in order to protect the privacy rights of the parties, including: prohibitions against the release of information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered; and prohibitions against the release of information on the whereabouts of one party or the child to another person if the domestic relations section has reason to believe that the release of the information may result in the physical or emotional harm to the party or the child.”

In addition, other jurisdictions have taken a measure to protect similarly situated individuals, such as: Alaska (AK R Admin Rule 37.8(a)(2)), Florida (FL ST J ADMIN Rule 2.420(d)(1)(B)(iii)), Indiana (Ind. St. Admin. Rule 9(G)(1)(e)(i)), New Jersey (NJ R GEN APPLICATION Rule 1:38-3(c)(12)), and Utah (UT R J ADMIN Rules 4-202.02(8)(E)(i) and 4-202-03(7)).

To maintain the confidentiality of the information listed in subsection (A), parties and their attorneys can set forth the listed information on a Confidential Information Form, designed and published by the AOPC. This is akin to the procedure set forth in the *MDC Paper Policy*; the Confidential Information Form used by that policy is posted on the UJS’s website at www.pacourts.us.

Alternatively, parties and their attorneys can file two versions of each document with the court/custodian—one with sensitive information redacted (“redacted copy”) and the other with no information redacted (“unredacted copy”). The redacted copy shall omit any information not accessible under this policy in a visibly evident manner, and be available for public inspection. The unredacted copy shall not be accessible by the public. At least one other jurisdiction has implemented a similar approach. See WA. R. Gen. R. 22(e)(2) (Washington). Some contend that a redacted copy of a document will be more readable than an unredacted copy containing monikers as placeholders for sensitive information not included in the document. This approach was also identified as a more amenable solution given the current design of the statewide e-filing initiative.

While a court or custodian is not required to review any pleading, document, or other legal paper for compliance with this section, such activity is not prohibited. If a court or custodian wishes to accept the burden of reviewing such documents and redacting the same, such a process must be applied uniformly across all documents or cases. This provision, however, does not alter or expand upon existing legal authority limiting a custodian’s authority to reject a document for filing. See *Nagy v. Best Home Services, Inc.*, 829 A.2d 1166 (Pa. Super. 2003).

⁴ Pursuant to Section 414(a) of the Commonwealth Court’s Internal Operating Procedures, an unreported panel decision issued by the Court after January 15, 2008 may be cited “for its persuasive value, but not as binding precedent.” 210 Pa. Code § 69.414(a).

Courts that permit e-filing should consider the development of a compliance “checkbox” whereby e-filers could indicate their compliance with this policy.

This section only applies to documents filed with a court or custodian on or after the effective date of this policy. There will be a period of transition prior to full implementation of this policy; that is, some documents filed with a court or custodian prior to the effective date of this policy will contain information that the policy restricts from public access. To expect full and complete implementation of this policy by applying it retroactively to those documents filed prior to the effective day of this policy is impractical and burdensome.

However, it is important to remember with regard to pre-policy records, a party or attorney always has the option to file a motion with the court to seal, in whole or part, a document or file. This includes the ability to request sealing and/or redaction of only some information that resides on a document in the court file (e.g., a social security number on a document).

Section 8

The protocol of submitting to a court or custodian certain documents under a cover sheet so that the documents are not accessible to the public has been instituted in other jurisdictions, such as Minnesota (Minn.G.R.Prac. Rule 11.03), South Dakota (SDCL § 15-15A-8), and Washington (WA.R.Gen. Rule 22(b)(8) and (g)). One manner in which to implement this protocol (e.g., the need to separate a confidential document within a file accessible to the public) is to maintain a confidential electronic folder or confidential documents file within the case file, thus ensuring that the file folder with the non-public information can be easily separated from the public case file, when access is requested.

Concerning financial source documents, other jurisdictions have similar provisions regarding such documents including Minnesota (Minn.G.R.Prac. Rule 11.03), South Dakota (SDCL § 15-15A-8), and Washington (WA.R.Gen. Rule 22(b)(8) and (g)).

Similar protocols with regard to minors’ education records are found in other jurisdictions, such as Nebraska (Neb Ct R § 1-808(a) and Neb. Rev. Stat § 84-712.05(1)) and Wyoming (WY R Gov Access Ct Rule 6(a) and WY ST § 16-4-203(d)(viii)).

With regard to medical records, other jurisdictions have similar provisions including Indiana (Ind. St. Admin. Rule 9(G)(1)(b)(xi)), Maryland (MD. Rules 16-1006(i)), Nebraska (Neb Ct R § 1-808(a) and Neb. Rev. Stat § 84-712.05(2)), Utah (UT R J ADMIN Rules 4-202.02(4)(k) and 4-202-03(3)), Vermont (VT R PUB ACC CT REC § 6(b)(17)), West Virginia (WV R RAP Rule 40(e)(1)) and Wyoming (WY R Gov Access Ct Rule 6(t)).

Section 7111 of the Mental Health Procedures Act, 50 P.S. § 7111, provides that all documentation concerning an individual’s mental health treatment is to be kept confidential and may not be released or disclosed to anyone, absent the patient’s written consent, with certain exceptions including a court’s review in the course of legal proceedings authorized under the Mental Health Procedures Act (50 P.S. § 7101). While it is unclear if this provision is applicable to the public accessing an individual’s mental health treatment records in the court’s possession, the working group believes this provision provides guidance on the subject. Thus, such records should not be available to the public except pursuant to a court order. See *Zane v. Friends Hospital*, 575 Pa. 236, 836 A.2d 25 (2003). Other jurisdictions have similar protocols, such as

Maryland (MD. Rules 16-1006(i)), New Mexico (NMRA Rule 1-079(c)(5)), Utah (UT R J ADMIN Rules 4-202.02(4)(k) and 4-202-03(3)), Vermont (VT R PUB ACC CT REC § 6(b)(17)) and Wyoming (WY R Gov Access Ct Rule 6(p)).

Children and Youth Services’ records introduced in juvenile dependency or delinquency matters are not open to public inspection. See 42 Pa.C.S. § 6307 as well as Pa.Rs.J.C.P. 160 and 1160. Introduction of such records in a different proceeding (e.g., a custody matter) should not change the confidentiality of these records; thus, the records should be treated similarly. These records are treated similarly by other jurisdictions, such as Florida (FL ST J ADMIN Rule 2.420(d)(1)(B)(i)), Indiana (Ind. St. Admin. Rule 9(G)(1)(b)(iii)) and New Jersey (NJ R GEN APPLICATION Rule 1:38-3(d)(12) and (15)).

The extent of financially sensitive information required by Pa.R.C.P. No. 1910.27(c) and 1920.33 that must be listed on income and expense statements, marital property inventories and pre-trial statements rivals information contained in a financial source document. Therefore, these documents should also be treated as confidential. Vermont has a similar protocol (VT R PUB ACC CT REC § 6(b)(33) and 15 V.S.A. § 662).

Courts that permit e-filing should consider the development of a compliance “checkbox” whereby e-filers could indicate their compliance with this policy.

This section only applies to documents filed with a court or custodian on or after the effective date of this policy. There will be a period of transition prior to full implementation of this policy; that is, some documents filed with a court or custodian prior to the effective date of this policy will contain information that the policy restricts from public access. To expect full and complete implementation of this policy by applying it retroactively to those documents filed prior to the effective day of this policy is impractical and burdensome.

However, it is important to remember with regard to pre-policy records, a party or attorney always has the option to file a motion with the court to seal, in whole or part, a document or file. This includes the ability to request sealing and/or redaction of only some information that resides on a document in the court file (e.g., a social security number on a document).

Section 9

This section safeguards certain sensitive information that is already protected by existing authority or was deemed to require protection by the working group from access at the court facility. The latter category included two specific types of records: birth records and incapacity proceeding records.

Access to a birth certificate from the Department of Health, particularly an amended birth certificate, such as in an adoption case, is limited pursuant to various statutes. 35 P.S. §§ 450.603, 2915 and 2931. Unrestricted access to records filed in proceedings about birth records could have the unintended effect of circumventing the purposes of the confidentiality provisions of the above statutory framework. Moreover, at least one jurisdiction, Florida (FL ST J ADMIN Rule 2.420(d)(1)(B)(vi)), provides similar protections to these records. However, concerned that the lack of transparency may erode the public’s trust and confidence, dockets and any court order, decree or judgment in these cases are exempted by the policy. Releasing the dockets as well as any order, decree or judgment disposing of the case is believed to strike the appropriate balance between access to the court’s deci-

sion, and hence the public's understanding of the judicial function, and personal privacy.

Given the extent of financial and sensitive information that is provided in order that a court may determine whether a person is incapacitated and, if so, that must subsequently be reported in a guardian's report, these records are not be accessible. Similar provisions are found in many other jurisdictions including: California (Cal. Rules of Court, Rule 2.503(c)(3)), Florida (F.S.A. §§ 744.1076 and 744.3701), Georgia (Ga. Code Ann. § 29-9-18), Idaho (ID. R. Admin. Rule 32), Maryland (MD. Rules 16-1006), New Jersey (NJ R GEN APPLICATION Rule 1:38-3(e)), New Mexico (NMRA Rule 1-079(c)(7)), South Dakota (SDCL § 15-15A-7(3)(m)), Utah (UT R J Admin. Rule 4-202.02(4)(L)(ii)), Washington (WA.R.Gen. Rule 22(e)) and Wyoming (WY R Gov Access Ct Rule 6(g)). For the reasons of transparency, the case docket and any court order, decree or judgment for these cases is exempted pursuant to this policy.

The provisions of Subsection G are consistent with those contained in the *Electronic Policy, MDC Paper Policy* and Rule of Judicial Administration 509. The Judiciary's commitment to the principle of open and accessible case records is reflected in the inclusion of a publication requirement.

Section 10

Any information to which access is limited pursuant to Sections 7, 8 or 9 is also not accessible remotely pursuant to Subsection A(1). As to Subsections A(2) through A(7), it is important to note that this information will remain available at the courthouse or court facility where access has been traditionally afforded. There is a difference between maintaining "public" records for viewing/copying at the courthouse and "publishing" records on the Internet. Thus, there is certain information for which at the present time courthouse access remains the appropriate forum.

Concerning Subsection A(2)'s restriction on remote access to information that identifies jurors, witnesses, and victims in criminal cases, similar provision exist in the *Electronic Policy* and have been implemented by other jurisdictions, including Alaska (AK R ADMIN Rule 37.8(a)(1) and (2)), Indiana (Ind. St. Admin. Rule 9(G)(1)(e)), Mississippi (Administrative Order dated August 27, 2008 paragraph 8), Nebraska (NE R CT § 1-808(b)(3)), Texas (TX ST J ADMIN Rule 12.5(d)) and Utah (UT R J ADMIN Rules 4-202.02(8)(e) and 4-202-03(7)).

As pertains to Subsection A(5), in considering family court records (i.e., divorce, custody, and support), individual courts have implemented protocols to shield some of these records from access. Sensitive to these concerns, prohibiting online posting of any family court records (save for a docket, court orders and opinions), along with the requirements that certain information and documents filed with the court or custodian be restricted from access via the use of a Confidential Information Form, redacted filings or a Confidential Document Form, removes a significant amount of the personal, sensitive information from access, while allowing public access to ensure accountability and transparency of the judicial system.

With regard to Subsection A(6), New Mexico has a similar protocol protecting Older Adult Protective Services Act matters (NMRA Rule 1-079(c)(4)). For the reasons expressed above, remote access should be afforded to dockets, court orders and opinions in these cases, to the extent that the judicial districts have developed systems and procedures that facilitate such access.

While case records remotely accessible to the public prior to the effective date of this policy may remain online in unredacted form, judicial districts are not prohibited from taking steps to safeguard sensitive case records designated by this section. To expect full and complete implementation of the policy by applying it retroactively to records remotely accessible prior to the effective date of this policy is impractical and burdensome.

However, it is important to remember with regard to pre-policy records, a party or attorney always has the option to file a motion with the court to seal, in whole or part, a document or file. This includes the ability to request sealing and/or redaction of only some information that resides on a document in the court file (e.g., a social security number on a document).

It is essential that courts and custodians in designing systems, such as those for document imaging, e-filing, or both consider the requirements of this policy and ensure such systems are in compliance. This is imperative as the Judiciary moves toward statewide e-filing for all levels of courts.

As for systems currently in existence, the policy may require changes to current protocols and processes.

Section 11

A similar provision is included in the *Electronic Policy*. This policy delineates a procedure by which an individual may correct a clerical error that appears in a case record accessible remotely. As noted in the Explanatory Report to the *Electronic Policy*, these provisions borrow heavily from the correction provisions in the Criminal History Record Information Act. For the same reasons outlined in the Explanatory Report, a similar protocol was included in this policy.

Best Practices

The following are various "best practices" that should be considered by the courts, parties and their attorneys to promote the successful implementation of this policy.

1. The Judiciary should remain cognizant of this policy in the development of e-filing and case management systems, procedures and forms. The following "best practices" should be considered as courts develop systems for e-filing:

a. Access to the courts should be promoted by the e-filing processes;

b. Court control over its own records should be preserved;

c. Systems should have consistent functionality, compatible protocols and rules to facilitate statewide practice;

d. Processes for *pro se* litigants should be defined to provide equal and secure access to the system;

e. Issues involving public access to e-documents, and the sensitive data that may be contained therein, should be fully studied before the e-filing system is developed (e.g., separate e-filing of exhibits from other documents);

f. Payment of any required filing fees should be accomplished via electronic methods;

g. Bi-directional exchange of data should be facilitated between e-filing and case management systems; and

h. Maximum flexibility in the design of a system should be sought to accommodate future evolutions of technology.

2. Compliance with this policy and the Judiciary's commitment to open records may be assisted by various technological and administrative solutions, such as:

a. Implementation of redaction and "optical character recognition" software may assist parties and their attorneys in complying with the policy. Some judicial districts also employ redaction software to protect sensitive data as a "best practice."

b. Due consideration and routine review by custodians should be given to the standards for record retention as applied to those records in paper form and electronic form.

[Pa.B. Doc. No. 17-95. Filed for public inspection January 20, 2017, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

Proposed Revision of the Comment to Pa.R.Crim.P. 578

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the revision of the Comment to Rule 578 (Omnibus Pretrial Motion for Relief) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
fax: (717) 231-9521
e-mail: criminalrules@pacourts.us

All communications in reference to the proposal should be received by no later than Friday, February 24, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Criminal Procedural
Rules Committee*

CHARLES A. EHRLICH,
Chair

PENNSYLVANIA BULLETIN, VOL. 47, NO. 3, JANUARY 21, 2017

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART G(1). Motion Procedures

Rule 578. Omnibus Pretrial Motion for Relief.

Unless otherwise required in the interests of justice, all pretrial requests for relief shall be included in one omnibus motion.

Comment

Types of relief appropriate for the omnibus pretrial motions include the following requests:

* * * * *

(11) for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322[.];

(12) proposing or opposing the admissibility of scientific or expert evidence.

The omnibus pretrial motion rule is not intended to limit other types of motions, oral or written, made pretrial or during trial, including those traditionally called motions *in limine*, which may affect the admissibility of evidence or the resolution of other matters. The earliest feasible submissions and rulings on such motions are encouraged.

See Pa.Rs.E. 702 and 703 regarding the admissibility of scientific or expert testimony. Pa.R.E 702 codifies Pennsylvania's adherence to the test to determine the admissibility of expert evidence first established in *Frye v. United States*, 293 F. 1013 (App. D.C. 1923) and adopted by the Pennsylvania Supreme Court in *Commonwealth v. Topa*, 369 A.2d 1277 (Pa. 1977). Given the potential complexity when the admissibility of such evidence is challenged, such challenges should be raised in advance of trial as part of the omnibus pretrial motion if possible. However, nothing in this rule precludes such challenges being raised in a motion *in limine* when circumstances necessitate it.

See Rule 556.4 for challenges to the array of an indicting grand jury and for motions to dismiss an information filed after a grand jury indicts a defendant.

Official Note: Formerly Rule 304, adopted June 30, 1964, effective January 1, 1965; amended and renumbered Rule 306 June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended October 21, 1983, effective January 1, 1984; Comment revised October 25, 1990, effective January 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; renumbered Rule 578 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised June 21, 2012, effective in 180 days; Comment revised July 31, 2012, effective November 1, 2012; **Comment revised , 2017, effective , 2017.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the July 31, 2012 Comment revision adding motions for transfer published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Report explaining the proposed Comment revision regarding pretrial challenges to the admissibility of expert evidence published for comment at 47 Pa.B. 307 (January 21, 2017).

REPORT

*Proposed Revision of the Comment to
Pa.R.Crim.P. 578***Rule 578: Pretrial Resolution of Admissibility of
Expert Testimony**

The Committee recently examined the question of the pretrial determination of the admissibility of expert testimony. This was prompted by a dissenting opinion penned by Justice Dougherty in the case of *Commonwealth v. Safka*, 141 A.3d 1239 (Pa. 2016). *Safka* was a vehicular manslaughter case in which there was a dispute over the admissibility of evidence of the vehicle's speed from the vehicle's Event Data Recorder (EDR). Although there was no pretrial challenge to this evidence, the defense, at trial, questioned the reliability and accuracy of the data retrieved from the EDR. After provisionally admitting the EDR evidence, following closings, the trial judge *sua sponte*, reopened the record for the limited purpose of providing the parties the opportunity to present expert testimony to address the reliability of the manner in which data was recorded in the EDR. The Commonwealth subsequently produced an expert on the question and the trial judge confirmed the original tentative decision to admit the EDR evidence.

On appeal to the Supreme Court, the majority upheld the trial court and Superior Court decisions, finding that it was not improper for the trial court, *sua sponte*, to allow the Commonwealth to establish the reliability of the scientific evidence after the Commonwealth had rested, particularly when the parties are permitted to seek a reopening under similar circumstances. In his dissent, Justice Dougherty maintained that, since the Commonwealth bears the burden of establishing the reliability of its evidence, the record should not have been reopened on this issue. More importantly from a procedural standpoint, he noted that this issue could have been avoided had the EDR's reliability been challenged earlier than at trial as it had been. Acknowledging that the defense did nothing improper under the current rules, he recommended that the Committee examine rule changes that would encourage the pretrial resolution of these types of challenges.

Frye v. United States, 293 F. 1013 (App. D.C. 1923) is the seminal case establishing the test for the admissibility of scientific evidence. The *Frye* test requires the proponent of scientific evidence to establish that the theory and method used by the expert witness were generally accepted within the relevant scientific community. Although modified in a number of jurisdictions by acceptance of the holding in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), Pennsylvania still adheres generally to the *Frye* test and this standard is recognized in Rule of Evidence 702. Rule of Evidence 703 also enumerates the bases for expert opinion testimony.

Neither of these rules of evidence addresses procedures for raising such challenges. Rule of Civil Procedure 207.1 provides specific procedures for raising challenges to scientific evidence. However, as Justice Dougherty notes, the civil rule does not provide for specific timing but is primarily a content rule. In fact, paragraph (b) of Rule 207.1 states that a party is not required to raise the admissibility of expert testimony pre-trial unless the court so orders. There is language in the Official Note to Rule 207.1 providing some guidance as to the pretrial determination of such issues:

In deciding whether to address prior to trial the admissibility of the testimony of an expert witness, the following factors are among those which the court should consider: the dispositive nature or significance of the issue to the case, the complexity of the issue involved in the testimony of the expert witness, the degree of novelty of the proposed evidence, the complexity of the case, the anticipated length of trial, the potential for delay of trial, and the feasibility of the court evaluating the expert witness' testimony when offered at trial.

However, this guidance is directed toward the judge in deciding the issue and not toward the parties regarding the time for raising such issues.

The Rules of Criminal Procedure do not provide specific procedures for raising *Frye* issues. *Frye* challenges generally are raised as motions *in limine* but the rules do not provide for any specific timing for raising these motions. Rules 578 and 579 require an omnibus pretrial motion to be served within 30 days of arraignment and a court to determine all pretrial motions before trial. However, motions *in limine* are distinguished from the omnibus pre-trial motion (and its timing provisions) in the Rule 578 Comment.

The Committee noted that the federal system encourages the pretrial determination of challenges to expert testimony. For example, the Third Circuit has emphasized the importance of conducting *in limine* hearings under Fed. R. Evid. 104 (resolution of preliminary questions) when making reliability determinations required by Fed. R. Evid. 702 and *Daubert. Padillas v. Stork-Gamco, Inc.*, 186 F.3d 412, 417 (3d Cir. 1999). However, this is based heavily on the gatekeeping function that is placed on the trial court by *Daubert* and such motions may still be brought during trial. *See, e.g., Smoot v. Mazda Motors of America, Inc.*, 469 F.3d 675, 676 (7th Cir. 2006).

Based on a review of the foregoing, the Committee concluded that the rules should encourage the pre-trial determination of the admissibility of expert testimony. However, the Committee believes that it would not be effective to create a specific deadline by which time the motion must be filed, given the wide variations of the types of evidence involved and the circumstances under which the evidence is discovered. The Committee decided that the question would be best addressed by adding a general provision to encourage pre-trial determination of these issues. The Committee is proposing a revision to the Comment to Rule 578 that contains a list of suggested types of pretrial motions to be included in the omnibus pretrial motion by adding to that list those motions that would "establish a challenge to the admissibility of scientific or expert evidence."

One of the issues that the Committee discussed was the question of whether or not adding these types of motions to the Rule 578 Comment list of suggested motions would now tie them to the time limitations for omnibus pretrial motions. The Committee first noted that the time limitations for filing omnibus motions often are treated more flexibly by most courts, given the wide variations of issues raised. More specifically, the Committee believes that if there is a legitimate question concerning the reliability of scientific evidence, a trial judge would permit it to be raised even if it was after the Rule 578 time limit. The Committee discussed removing the Rule 578 Comment language referring to motions *in limine* but decided that there are motions *in limine* unrelated to *Frye* issues that should continue to be exempt and did not want to confuse the issue.

The Committee ultimately agreed to add language to the Comment that would state that the pre-trial determination of *Frye* issues should be encouraged but that raising these issues in a later motion *in limine* is permissible as well. The Committee concluded that a cross-reference in the Rule 578 Comment to Rules of Evidence 702 and 703, which address more substantive aspects of the admissibility of expert testimony, would be helpful. Additionally, the Comment should also contain a cross-reference to *Frye* and the chief Pennsylvania cases applying it.

[Pa.B. Doc. No. 17-96. Filed for public inspection January 20, 2017, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BEAVER COUNTY

Local Rules of Administration Governing Court Reporting and Transcripts; No. 10013 of 2016

Administrative Order

It is hereby Ordered and Directed that, effective thirty (30) days following publication in the *Pennsylvania Bulletin*, the Court of Common Pleas of Beaver County adopts the following Local Rules Governing Court Reporting and Transcripts for the 36th Judicial District.

The Beaver County District Court Administrator is Ordered and Directed to:

1. file one (1) copy of the Local Rules with the Administrative Office of Pennsylvania Courts via email to adminrules@pacourts.us.
2. file two (2) paper copies and one (1) electronic copy of the Local Rules in a Microsoft Word format only to bulletin@palrb.us with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. publish the Local Rules on the Court of Common Pleas of Beaver County website at <http://www.beavercounty.pa.gov/courts>.
4. incorporate the Local Rules into the Local Rules of this Court within thirty (30) days after publication of the Local Rules in the *Pennsylvania Bulletin*.
5. file one (1) copy of the Local Rules in all appropriate filing offices and the Beaver County Law Library for public inspection and copying.

Local Rules of Judicial Administration

LR4007. Requests for Transcripts.

A. Rough draft transcripts shall not be available in this Court.

B. In accordance with Pa.R.J.A. 4007, the party requesting either a full or partial transcript of any proceeding shall file the original request, on the "Transcript Request Form" which has been adopted by the Court Administrator of Pennsylvania, with the District Court Administrator's Office, and the requesting party is also required to serve copies of the completed "Transcript Request Form" on:

1. Chambers of the Judge who presided over the proceeding to be transcribed;
2. the office of the Court Reporters;

3. all counsel involved in the proceeding, and

4. all parties who were not represented by counsel in the proceeding, who appeared as self-represented litigant(s).

C. Any request for transcript shall only be processed and approved by Order of the presiding Judge.

D. Upon receipt of a Transcript Request Form approved by the presiding Judge, the District Court Administrator shall obtain an estimate of transcription costs from the Court Reporters and shall communicate the estimated costs of transcription to the requesting party. The requesting party shall be required to deposit a partial payment representing ninety (90%) percent of the estimated cost, which shall be totally nonrefundable. Payments shall be made payable to and shall be delivered to the appropriate filing office involved in the proceeding (i.e., Prothonotary, Clerk of Courts, Register of Wills, Clerk of the Orphans' Court) for deposit.

E. Upon receipt of the required deposit, the appropriate filing office will notify the office of the Court Reporters. The Court Reporters' Supervisor will then direct preparation of the transcript.

F. The office of the Court Reporters will notify the requesting party and the office Supervisor upon completion of the transcript, together with the balance due, if any.

G. Final balance due shall be made payable to and shall be delivered to the appropriate filing office. Upon payment of the balance owed, the Court Reporter will obtain the signature of the presiding Judge on the original transcript and file the original transcript in the appropriate filing office with the original Court records. The Court Reporter shall then deliver copies as required by Local Rule 4008.1.

H. Any requests for a transcript pursuant to Local Rule 4008.1(B) alleging an inability to pay, in full or in part, due to economic hardship, must be directed to the presiding Judge for determination, as set forth at Local Rule 4008.1(B).

LR4008. Transcript Costs Payable by the Commonwealth or a Subdivision Thereof.

A. Costs payable (paper format only)

1. For an ordinary transcript—\$1.75 per page;
2. For an expedited transcript—\$2.75 per page; and
3. For a daily transcript—\$3.75 per page.

LR4008.1. Transcript Costs Payable by Requesting Party, Other Than the Commonwealth or a Subdivision Thereof.

A. Costs payable (paper format only)

1. For an ordinary transcript—\$2.75 per page;
2. For an expedited transcript—\$3.75 per page; and
3. For a daily transcript—\$4.75 per page.

B. Economic hardship—minimum standards

1. Transcript costs for ordinary transcripts, in matters under appeal or where the transcript is necessary to advance the litigation, shall be waived for a litigant who has been permitted by the Court to proceed in forma pauperis or whose income is less than 125 percent of the poverty line as defined by the U.S. Department of Health and Human Services (HHS) poverty guidelines for the current year.

2. Transcript costs for ordinary transcripts, in matters under appeal or where the transcript is necessary to advance the litigation, shall be reduced by one-half (1/2) for a litigant whose income is less than 200 percent of the poverty line as defined by the HHS poverty guidelines for the current year.

3. Transcript costs for ordinary transcripts in matters that are not subject to an appeal, where the transcript is not necessary to advance the litigation, may be waived at the Court's discretion for parties who qualify for economic hardship under subdivision (B)(1) or (B)(2), but only upon good cause shown.

4. The application to waive all or a portion of costs for ordinary transcripts shall be supported by an affidavit substantially in the form required by Rule 240(h) of the Pennsylvania Rules of Civil Procedure. Such application should be prepared in the form of a Petition to Waive All or a Portion of the Transcript Costs, submitted with the Request for Transcript and approved by the presiding Judge.

C. Assignment and allocation of transcripts costs

1. *Assignment of costs.* The requesting party, or party required by general rule to file a transcript, shall be responsible for the cost of the transcript. Costs shall not be assessed against any party for transcripts prepared at the initiation of the Court.

2. *Allocation of costs.* When more than one party requests the transcript, or are required by general rule to file the transcript, the cost shall be divided equally among the parties.

D. Copies of transcript

A request for a copy of any transcript previously ordered, transcribed and filed of record shall be provided at a cost of \$0.75 per page, paper format only.

Said Local Rules of Judicial Administration shall be effective in the 36th Judicial District of the Commonwealth of Pennsylvania thirty (30) days after publication in the *Pennsylvania Bulletin* and upon publication on the Beaver County website.

By the Court

JOHN D. McBRIDE,
President Judge

[Pa.B. Doc. No. 17-97. Filed for public inspection January 20, 2017, 9:00 a.m.]

**DELAWARE COUNTY
Local Rule 227.3; Doc. No. MD-411-2016**

And Now, this 29th day of December, 2016, It is hereby Ordered and Decreed that the existing Local Rule 227.3 is amended and shall be entirely replaced by New Local Rule 227.3 in accordance with the following language effective January 1, 2017.

Rule *227.3. Transcript of Testimony.

The party requesting transcription of the record or any portion thereof in a motion for post-trial relief, or where the transcript is needed to advance the litigation, shall pay the cost thereof. Where any other party files an objection requesting that an additional portion of the record be transcribed, the trial judge, in the absence of agreement by the parties, shall in his discretion and to the extent this matter is not covered in the Pennsylvania

Rules of Judicial Administration 4000, et seq., assign the cost of such additional transcription to any or all parties or to the county.

The designation of the portion of the record to be transcribed required by Pa.R.J.A. 4000, et seq. shall include the date the trial started and the courtroom where the trial was held utilizing the state standardized form. A copy of this designation shall be submitted contemporaneously with the filing of the motion for post-trial relief to the Office of the Director of the Recording Center.

By the Court

CHAD F. KENNEY,
President Judge

[Pa.B. Doc. No. 17-98. Filed for public inspection January 20, 2017, 9:00 a.m.]

**DELAWARE COUNTY
Local Rule 4009; Doc. No. MD-411-2016**

And Now, this 29th day of December, 2016, the Court hereby adopts Delaware County Local Rule of Judicial Administration 4009—Court Reporting and Transcripts—Fees and Procedures. This Local Rule shall become effective on January 1, 2017.

Rule *4009. Court Reporting and Transcripts. Fees and Procedures.

(A) Transcript Costs

(1) The costs payable by a requesting party, other than the Commonwealth or a subdivision thereof, for a transcript in an electronic format shall not exceed:

- a. For an ordinary transcript, \$2.50 per page;
- b. For an expedited transcript, \$3.50 per page;
- c. For a Daily transcript, \$4.50 per page.

(2) When the transcript is prepared in bound paper format, the costs shall be in accordance with paragraph (1) relating to electronic format plus a surcharge of \$0.25 per page.

(3) *Copies of Transcript:* A request for a copy of any transcript previously ordered, transcribed and filed of record shall be provided according to the following schedule:

- a. \$0.75 per page bound, paper format; and
- b. \$0.50 per page electronic copy.

(B) Requests for Transcripts Procedure

(1) All Requests for Transcripts shall be set forth on the State Standardized Form and the party requesting a full or partial transcript of a trial or other proceeding shall file the original request with the Electronic Recording Center.

(2) When a litigant requests a transcript,

a. The litigant ordering the transcript shall make a 50% deposit of the estimated cost and make payment at the Court Financial Office.

b. The Electronic Recording Center shall order the Transcription upon receiving a copy of the receipt from Court Financial Office that the deposit was made.

c. The Electronic Recording Center shall notify the ordering party of the completion of the transcript. Payment of the remaining balance must be made at the Court Financial Office.

(C) *Economic Hardship*. Procedures for Requesting a Full or partial Fee Waiver for Transcript Costs Due to Economic Hardship.

(1) Transcript costs for ordinary transcripts in matters under appeal or where the transcript is necessary to advance the litigation shall be waived for a litigant who has been permitted by the Court to proceed in forma pauperis. Litigants who have been approved for representation by Legal Aid Services are not required to prove economic hardship. Legal Aid clients shall be entitled to obtain ordinary transcripts at no cost. However, they must provide Court Services with a letter of certification from Legal Aid Services that the litigant meets financial eligibility and that the matter is under appeal or that the transcript being requested is necessary to advance the current litigation.

By the Court

CHAD F. KENNEY,
President Judge

[Pa.B. Doc. No. 17-99. Filed for public inspection January 20, 2017, 9:00 a.m.]

LEHIGH COUNTY

Adoption of Local Rule of Judicial Administration 4009—Court Reporting and Transcripts—Fees and Procedures

Administrative Order

And Now, this 6th day of January 2017, *It Is Ordered That* Lehigh County Local Rule of Judicial Administration 4009 is hereby *Adopted*, effective 30 days after publication in the *Pennsylvania Bulletin*.

It Is Further Ordered That the Court Administrator of Lehigh County shall file: one (1) certified copy of this Order and Lehigh County Rule of Judicial Administration 4009 with the Administrative Office of Pennsylvania Courts; and two (2) certified copies with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. 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 4009. Court Reporting and Transcripts—Fees and Procedures.

(A) *Procedures for requesting a transcript:*

(1) All requests for transcripts shall be set forth on the standardized form, Request for Transcript or Copy Form, available at www.lccpa.org.

(2) For an ordinary transcript, the party requesting a full or partial transcript of a trial or other court proceeding shall file the original Request for Transcript Form with the appropriate filing office (i.e., Clerk of Judicial Records—Civil Division, Clerk of Judicial Records—Criminal Division, Orphans' Court, or the Domestic Rela-

tions Section) based upon the specific case type. The requesting party shall also serve copies of the Request for Transcript Form upon:

- (a) the Judge presiding over the matter; and
- (b) the Court Reporter

by delivering two (2) copies of the Request for Transcript Form to the Court Administrator's Office located in Room 614; and

(c) opposing counsel or the opposing party, if not represented.

(3) The Court Reporter shall prepare the transcript upon:

- (a) the approval of the Presiding Judge; and

(b) payment of the deposit by the requesting party to the appropriate filing office in accordance with the order of the Presiding Judge.

(4) The Court Reporter shall file the transcript and serve the requesting party with a copy of the transcript upon payment of the balance owed by the requesting party to the appropriate filing office in accordance with the order of the Presiding Judge.

(5) If a party is requesting daily, expedited or same day transcripts, or provisions for secure electronic feed, the request for such transcripts or service shall be filed with the appropriate filing office at least ten (10) days prior to the scheduled proceeding. Copies of the written request shall be delivered in accordance with subsection (2). Such requests will be accommodated only upon approval of the Presiding Judge and the Court Reporter.

(B) *Economic hardship*

(1) Pursuant to Pa.R.J.A. 4008(B), a request to waive or reduce transcript fees shall be noted on the Request for Transcript Form and include a fully completed In Forma Pauperis Petition pursuant to Pennsylvania Rule of Civil Procedure 240, even if IFP status was previously granted on the case.

(2) Litigants who have been approved for representation by Legal Aid Services are not required to further prove economic hardship pursuant to section (B)(1) above; however, they must attach to their Request for Transcript Form a letter of certification from Legal Aid Services that the litigant meets financial eligibility and that the matter is under appeal or that the transcript being requested is necessary to advance the current litigation.

(C) *Fees—original transcript—requesting party*

(1) The fees payable by the party, other than the Commonwealth or a subdivision thereof, initially requesting the transcript in an electronic format shall be as follows:

- (a) for an ordinary transcript, \$2.50 per page;

(b) for an expedited transcript, \$3.50 per page, if the Court Reporter is able to accommodate the request and the Presiding Judge approves; and

(c) for a daily transcript, \$4.50 per page, if the Court Reporter is able to accommodate the request and the Presiding Judge approves; and

(d) for same day delivery, \$6.50 per page, if the Court Reporter is able to accommodate the request and the Presiding Judge approves.

(2) When the transcript is prepared in bound paper format, the costs shall be in accordance with paragraph (1) relating to electronic format plus a surcharge of \$0.25 per page.

(D) *Fees—copies of transcript*

A request for a copy of any transcript, made prior to filing the transcript of record, in excess of the copy provided for in section (A)(4) of this Rule, shall be provided according to the following schedule:

- (1) \$0.75 per page paper format; and
- (2) \$0.50 per page electronic copy.

(E) *Fees—copies of transcript—previously ordered, transcribed and filed of record*

A request for a copy of any transcript previously ordered, transcribed and filed of record shall be provided according to the following schedule:

- (1) \$0.75 per page paper format; and
- (2) \$0.50 per page electronic copy.

(F) *Fees—additional costs*

The Presiding Judge may impose a reasonable surcharge in cases such as mass tort, medical malpractice, or other unusually complex litigation where there is a need for Court Reporters to significantly expand their dictionary. Such surcharges are at the discretion of the Presiding Judge.

(G) *Fees—secure electronic feed*

The Presiding Judge may impose a reasonable surcharge in cases involving a secure electronic feed during the proceeding. Such surcharge is at the discretion of the Presiding Judge.

(H) *Payment of fees*

All fees shall be made payable to the “County of Lehigh” and shall be delivered to the appropriate filing office (i.e., Clerk of Judicial Records—Civil Division, Clerk of Judicial Records—Criminal Division, Orphans’ Court, or the Domestic Relations Section) based on the case type. No fees shall be paid directly to the Court Reporter or Transcriptionist.

(I) *Rule as exclusive method to obtain, reproduce, distribute, or copy transcript of portion thereof*

No person shall obtain, reproduce, distribute, or copy any transcript or portion thereof except in accordance with this rule.

[Pa.B. Doc. No. 17-100. Filed for public inspection January 20, 2017, 9:00 a.m.]

SCHUYLKILL COUNTY

Amendment of Local Civil Rules 1001.0 and 1018.1; S-2228-16

Order of Court

And Now, this 29th day of December, 2016, at 3:00 p.m., the Court hereby adopts the following amended Local Rules of Civil Procedure for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective 30 days after publication in the *Pennsylvania Bulletin*.

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

- 1) File one (1) copy of this Order and Rule with the Administrative Office of the Pennsylvania Courts via email to adminrules@pacourts.us.

- 2) File two (2) paper copies of this Order and Rule and a computer diskette containing the text of the local rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

- 3) Publish a copy of the local rule on the Schuylkill County Court website at www.co.schuylkill.pa.us.

- 4) Incorporate the local rule into the set of local rules on www.co.schuylkill.pa.us within thirty (30) days after publication in the *Pennsylvania Bulletin*.

- 5) File one (1) copy of the local rule in the Office of the Schuylkill County Prothonotary for public inspection and copying.

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

By the Court

WILLIAM E. BALDWIN,
President Judge

Schuylkill County Rules of Civil Procedure

Rule 1001.0(b). Mediation.

(b) *Procedure for Mediation in Non-Jury Civil Trials, Civil Jury Trial and Cases Subject to Arbitration.* Parties and their attorneys in all civil cases which will result in a non-jury civil trial, civil jury trial or arbitration may mutually elect to pursue mediation at any point before a case is listed for trial or arbitration.

Rule 1018.1(d). Notice to Defend. Form.

NOTICE CONCERNING MEDIATION OF ACTIONS PENDING BEFORE THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY

The Judges of the Court of Common Pleas of Schuylkill County believe that mediation of lawsuits is a very important component of dispute resolution. Virtually all lawsuits can benefit in some manner from mediation.

The Court has adopted Schuylkill County Local Rule 1001.0 to encourage the use of mediation. This early alert enables litigants to determine the best time during the life of their lawsuit for a mediation session. The intent of this early alert is to help the parties act upon the requirement to consider good faith mediation at the optimal time.

The Schuylkill County Bar Association provides mediation services and can be reached at (570) 628-1235.

[Pa.B. Doc. No. 17-101. Filed for public inspection January 20, 2017, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Current Schedule of Continuing Legal Education Courses Required for Reinstatement under §§ 89.275 and 89.279 of the Disciplinary Board Rules

Disciplinary Board Rule § 89.279 provides that a formerly admitted attorney who has been disbarred or

suspended for more than one year or on administrative suspension, retired status or inactive status for more than three years shall within one year preceding the filing of the petition for reinstatement take courses meeting the requirements of the current schedule published by the Office of the Secretary.

Evidence that a formerly admitted attorney has attended the required courses and lectures or has viewed videotapes of them shall be considered in determining whether the formerly admitted attorney possesses the required competency and learning in law, but shall not be conclusive on the issue.

Schedule Effective January 1, 2017

Every formerly admitted attorney who petitions for reinstatement under these rules shall take the following:

A minimum of thirty-six (36) hours of accredited PA CLE courses with a minimum twelve (12) of those hours in the area of Ethics. Eighteen (18) credits may be taken in pre-approved, interactive, Internet or computer based CLE programs.

Any petitions filed on or after December 1, 2011, by formerly admitted attorneys who have been disbarred or suspended for more than one year shall include the Bridge the Gap course taken through an accredited PA CLE provider as part of the thirty-six hours of credits.

Note: Accredited PA CLE courses taken for reinstatement may be used to meet CLE requirements once reinstated.

JULIA M. FRANKSTON-MORRIS, Esq.,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 17-102. Filed for public inspection January 20, 2017, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Stephen Harold Lankenau, a/k/a S. Harold Lankenau, (# 162055), having been suspended from the practice of law in the state of Delaware, the Supreme Court of Pennsylvania issued an Order on January 3, 2017, suspending Stephen Harold Lankenau, a/k/a S. Harold Lankenau for a period of eighteen months from the Bar of this Commonwealth, effective February 2, 2017. In accordance with Rule 217(f), Pa.R.D.E. since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

JULIA M. FRANKSTON-MORRIS, Esq.,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 17-103. Filed for public inspection January 20, 2017, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Matthew Michael Carucci, (# 94640), having been suspended from the practice of law in the state of Delaware, the Supreme Court of Pennsylvania issued an Order on January 4, 2017, suspending Matthew Michael Carucci from the Bar of this Commonwealth for a period of eighteen months, retroactive to March 24, 2014. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

JULIA M. FRANKSTON-MORRIS, Esq.,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 17-104. Filed for public inspection January 20, 2017, 9:00 a.m.]