

**SUPREME COURT OF PENNSYLVANIA
JUVENILE COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.J.C.P. 1167

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rule of Juvenile Court Procedure 1167 governing the service of court orders and notices for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

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

**Daniel A. Durst, Chief Counsel
Juvenile Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
P.O. Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9541
juvenerules@pacourts.us**

All communications in reference to the proposal should be received by **October 27, 2023**. 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 Juvenile Court Procedural Rules Committee,

Renée D. Merion, Chair

Rule 1167. Filings and Service of Court Orders and Notices.

[A.](a) Filings.

- (1) All orders and court notices shall be transmitted promptly to the clerk of courts for filing. Upon receipt by the clerk of courts, the order or court notice shall be time-stamped promptly with the date of receipt.
- (2) All orders and court notices shall be filed in the official court record.

[B.](b) Service.

- (1) A copy of any order or court notice shall be served promptly on each party's attorney, and the party, if unrepresented.
- (2) The clerk of courts shall serve the order or court notice, unless the president judge has promulgated a local rule designating service to be by the court or its designee.
- (3) **Methods of Service.** Service shall be:

[a) by:]

- (i) **by** personal delivery to the party's attorney, and if unrepresented, the party;
- (ii) **by** mailing a copy to the party's attorney or leaving a copy for the attorney at the attorney's office;
- (iii) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, **by** leaving a copy for the attorney in the attorney's box;
- (iv) **by** sending a copy to an unrepresented party by first class mail addressed to the party's place of business, residence, or detention;
- (v) **by** sending a copy by facsimile transmission or other electronic means if the party's attorney, and if unrepresented, the party has filed written **[request] authorization** for this method of service **[or has included] with** a facsimile number or an electronic address **[on a prior legal paper filed in the case];**

(vi) **by** delivery to the party's attorney, and if unrepresented, the party by carrier service; **[or]**

[b)](vii) orally in open court on the record; or

[c)](viii) in a judicial district that permits electronic filing pursuant to Rule 1205, service of court orders or notices shall be made as provided in Rule 1205(D)(2) and (H)(1).

[C.](c) Unified Practice. Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a person to file or serve orders or court notices.

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

The methods of service set forth in subdivision (b)(3) are not mutually exclusive. The clerk of courts can utilize multiple methods to ensure service.

Subdivision (b)(3)(v) is intended to permit service by facsimile machine, email, or social media messaging provided that a copy of the document is included in the transmission. A facsimile number or electronic address set forth on the letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under **[paragraph (B)(3)(a)(v)] subdivision (b)(3)(v)**. The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization **[is to] must** be filed in each case by the party, if unrepresented, or by the attorney who wants to receive documents by this method of service.

An authorization for service pursuant to subdivision (b)(3)(v) shall be substantially in the following form:

[CAPTION]

Authorization for Service
Pursuant to Pa.R.J.C.P. 1167(b)(3)(v)

I, _____, hereby authorize service of all court orders and notices by transmission to me at:

Fax Number: _____ or

Email: _____ **or**

Social Media Address: _____

I understand that I am under a continuing obligation to provide current contact information to the court.

I have confirmed that the clerk of courts can accommodate this authorization.

No one, other than I, will be able to read the documents transmitted.

Print Name

Signature

Date

Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time-stamping.

[Official Note: Rule 1167 adopted August 21, 2006, effective February 1, 2007. Amended December 24, 2009, effective immediately. Amended December 12, 2019, effective April 1, 2019.]

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1167 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1167 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Report explaining the amendments to Rule 1167 published with the Court's Order at 49 Pa.B. 7573 (December 28, 2019).]

**SUPREME COURT OF PENNSYLVANIA
JUVENILE COURT PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

Proposed Amendment of Pa.R.J.C.P. 1167

The Juvenile Court Procedural Rules Committee (“Committee”) proposes to amend Pennsylvania Rule of Juvenile Court Procedure 1167 to recognize that social media may be a mode of service for court orders and notices.

As background, the Administrative Office of Pennsylvania Courts and the Pennsylvania Conference of State Trial Judges authored a report concerning the “continued use” of ACT in various court proceedings. See *Remote Proceedings Task Force: Continued Use of Advanced Communication Technology (ACT) Following the Termination of Judicial Emergencies* (June 2021) (“Report”). The Report also recommended study of the use of ACT for the service of orders and filings, other than original process. This Committee agreed to undertake a review of this concept.

The Committee took notice that, on July 22, 2021, the Court adopted, *inter alia*, new Pa.R.O.C.P. 15.4 (Notice of Hearing to Terminate Parental Rights; Method and Time). A method of service for the hearing notice includes:

electronic transmission provided such person has signed a writing consenting that notice be sent by electronic transmission, providing an electronic mail address or social media account to which such notice shall be sent, and verifying that he or she regularly accesses and reviews such electronic mail address or social media account;

Pa.R.O.C.P. 15.4(b)(1)(C); see *also* Pa.R.O.C.P. 15.4(b)(2)(C) (same). This form of service may be used for voluntary relinquishment of parental rights or confirming consent. For involuntary terminations of parental rights, service may include “electronic transmission [of the notice] as the court may require under the facts of the individual case” or publication. Once original service has been obtained in that type of case, the person may then consent to further service via electronic mail address or social media account. See Pa.R.O.C.P. 15.4(b)(3)(A)(iii), (b)(6).

At this juncture, the Committee questioned the merits of sanctioning social media as a mode of service given the availability of PACFile in the juvenile courts. That system contains a functionality whereby users are notified of orders and filings in lieu of traditional service methodologies. See Pa.R.J.C.P. 205(H); 1205(H). However, the Committee believed that service by social media could accommodate unrepresented participants who do not have a stable mailing address or access to PACFile.

While “Advanced Communication Technology” has traditionally included facsimile transmissions and email, see Pa.R.J.C.P. 120, 1120 (Definitions), the Committee thought the phrase could be broadly interpreted to include the use of “social media,” subject to certain criteria. The Committee next considered what criteria should guide the use of social media as a mode of service for orders, notices, and filings.

The first criterion was “capacity.” Obviously, the sender must have access to the social media technology capable of transmitting the document to be served. Not all forms of social media have the capacity to “attach” a document.

The second criterion was “consent.” The recipient must consent to the use of social media for service and provide an “address” to the sender. Any consent should be in writing. With a consent requirement, service by social media would not be available for original process, *i.e.*, used to initiate a legal proceeding.

The third criterion was “security.” The mode of service must be reasonably secure against unauthorized access to or interception of the document by anyone other than the recipient. This requirement was informed by Pennsylvania Rule of Professional Conduct 1.6(d) (“A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”). Additionally, in juvenile court proceedings, court records are confidential.

The Committee contemplated whether service by social media should be permitted in both delinquency and dependency proceedings. The Committee elected to first focus on dependency proceedings. The Committee then considered the types of matters that may be served using social media. See, *e.g.*, Pa.R.J.C.P. 1123(B) (subpoenas); Pa.R.J.C.P. 1124(B) (summons and notice); Pa.R.J.C.P. 1167(B) (court orders and notices); Pa.R.J.C.P. 1331 (service of petition); Pa.R.J.C.P. 1345(B) (motions and answers); Pa.R.J.C.P. 1363(A) (summons and notice). The Committee elected to first focus on Pa.R.J.C.P. 1167 and the service of court orders and notices. An incremental approach would permit the Committee to evaluate the effectiveness of using social media as a mode of service before any expansion to other proceedings and matters.

Pa.R.J.C.P. 1167(b)(3)(v) already provides for “other electronic means” for service. Thus, the Committee discussed revisions to the Comment to recognize the permissibility of using social media as “other electronic means.” The recipient-authorization approach was retained to satisfy the “consent” criterion.

The Committee considered Pa.R.Civ.P. 1930.8, which requires the entry of appearance by self-represented parties in family court proceedings, *e.g.*, support, custody. This rule serves three purposes. First, it ensures that the court and other party have contact information for the self-represented party. Second, it obligates the self-

represented party to keep the contact information current. Three, it permits counsel to withdraw without motion. That rule suggested that a form authorization located in the Comment to Pa.R.J.C.P. 1167 would be beneficial.

The proposed form requires the disclosure of the facsimile number, email, or social media address to be used for transmission. The form also contains declarations that the person authorizing this method of service would advise the court of any changes to the contact information and that no one other than the person would be able to read the documents transmitted. The latter declaration is intended to address the “security” criterion. Finally, to address the “capacity” criterion, the form contains a declaration that the person has confirmed that the clerk of courts can accommodate the authorization.

No statewide requirement is proposed to be placed on the clerks of courts to adopt any form of social media to accommodate that mode of service. That would be a local decision.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.