Proposed Amendments to Pa.R.Crim.P. 114 (Orders and Court Notices: Filing; Service; and Docket Entries)

INTRODUCTION

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule114 to permit a party to consent generally to receive orders and notices electronically in all cases. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed amendments to the rule precedes the Report. Additions are shown in bold and are underlined; deletions are in bold and brackets.

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

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Criminal Procedural Rules Committee
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no later than Tuesday, June 22, 2010.

April 30, 2010 *BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:*

Risa Vetri Ferman, Chair

Anne T. Panfil
Chief Staff Counsel

Jeffrey M. Wasileski
Staff Counsel

RULE 114. ORDERS AND COURT NOTICES: FILING; SERVICE; AND DOCKET ENTRIES.

(A) Filing

(1) All orders and court notices promptly shall be transmitted to the clerk of courts' office for filing. Upon receipt in the clerk of courts' office, the order or court notice promptly shall be time stamped with the date of receipt.

(2) All orders and court notices promptly shall be placed in the criminal case file.

(B) Service

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

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

(3) Methods of Service

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

(a) in writing by

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

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

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

(iv) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, when counsel has agreed to receive service by this method, leaving a copy for the party's attorney in the box in the courthouse assigned to the attorney for service; or

(v) sending a copy to an unrepresented party by certified,

registered, or first class mail addressed to the party's place of residence, business, or confinement; or

(vi) sending a copy by facsimile transmission or other electronic means if the party's attorney, or the party if unrepresented, has filed a written request for this method of service **[or has included a facsimile number or an electronic address on a prior legal paper filed in the case]** **as provided in paragraph (B)(3)(c)**; or

(vii) delivery to the party's attorney, or the party if unrepresented, by carrier service; or

(b) orally in open court on the record.

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

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

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

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

(C) Docket Entries

(1) Docket entries promptly shall be made.

(2) The docket entries shall contain:

(a) the date of receipt in the clerk's office of the order or court notice;

(b) the date appearing on the order or court notice; and

(c) the date of service of the order or court notice.

(D) Unified Practice

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

COMMENT: This rule was amended in 2004 to provide in one rule the procedures for the filing and service of all orders and court notices, and for making docket entries of the date of receipt, date appearing on the order or notice, and the date of service. This rule incorporates the provisions of former Rule 113 (Notice of Court Proceedings Requiring Defendant's Presence). *But see* Rules 511, 540(F)(2), and 542(D) for the procedures for service of notice of a preliminary hearing, which are different from the procedures in this rule.

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

Paragraph (C)(2) requires three dates to be entered in the list of docket entries with regard to the court's orders and notices: the date of receipt of the order or notice; the date appearing on the order or notice; and the date the order or notice is served. The date of receipt is the date of filing under these rules. Concerning appeal periods and entry of orders, see Rule 720 (Post-Sentence Procedures; Appeal) and Pa.R.A.P. 108 (Date of Entry of Orders).

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

Although paragraph (B)(3)(a)(iv) permits the use of assigned mailboxes for service under this rule, the Attorney General's office never may be served by this method.

Paragraph (B)(3)(c) provides two methods for consenting to the receipt of orders and notices electronically. The first method, added to this rule in 2004, permits electronic service on a case-by-case basis with an authorization for such service required to be filed in each case. A facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph **[(B)(3)(a)(vi)]** **(B)(3)(c)(i**). 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 must be filed in each case the party or attorney wants to receive documents by this method of service.

The second method was added in 2010 to provide the option of entering a "blanket consent" to electronic service in all cases. It is expected that this would be utilized by those offices that work frequently in the criminal justice system, such as a district attorney's office or public defender's office, or by a judicial district that has the capability, based upon the availability of local technological resources, to accept a general request from a party to receive court orders and notices electronically. For example, a judicial district may have a system for electronically scanning documents that are stored on the courthouse computer system. In such a situation, an office that is part of the system, such as the District Attorney's Office or the Public Defender's Officer, could consent to the receipt of all court orders and notices generally. As with service under paragraph (B)(3)(c)(i), a facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(c)(ii). This consent may be rescinded as provided in paragraph (B)(3)(c)(iii).

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 or making docket entries.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

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

This rule makes it clear that the procedures for filing and service, and making docket entries are mandatory and may not be modified by local rule.

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

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

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

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

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

revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005; amended July 20, 2006, effective September 1, 2006; *Comment* revised September 18, 2008, effective February 1, 2009. **[.]** **;** **amended ______, 2010, effective ______, 2010.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Report explaining the June 2, 1994 rule changes published at 23 Pa.B. 5008 (October 23, 1993).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 3, 2004 rule changes concerning filing and service, making docket entries, and orders and court notices published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the August 24, 2004 changes concerning notice of preliminary hearing published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the July 20, 2006 deletion of "manner of service" from paragraph (C)(2)(c) published with the Court's Order at 36 Pa.B. 4173 (August 5, 2006).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. ___ (______, 2008).

Report explaining the proposed amendment concerning consent to electronic service published at 40 Pa.B. ___ (______, 2010).

REPORT

Proposed Amendments to Pa.R.Crim.P.114

ELECTRONIC DISTRIBUTION OF ORDERS

As part of its duty of reviewing the impact of technology on criminal practice, the Committee examined the possibility of broadening the methods for consent to be served court orders and notices electronically. This issue was first raised to the Committee by a judicial district that has a document scanning function in their local computer system that provides immediate distribution of documents to users when an order is scanned into the system. They raised the question of whether frequent users, such as the District Attorney's Office or Public Defender's Office, could avoid the requirement to provide consent to electronic service in each case by providing a general consent. [1]

The problem arises from the language in Rule 114(B)(3)(a)(vi) that permits the distribution of orders "by facsimile transmission or other electronic means" but only if the party or counsel for the party files a written request for this method of service in each case or "has included a facsimile number or an electronic address on a prior legal paper filed in the case…" Additionally, the *Comment* to Rule 113 states, "In those cases in which the attorney has authorized receiving service by facsimile transmission or electronic means, the docket entry required in paragraph (C)(2) must include the facsimile number or electronic address."

The Committee examined the history of the Rule 114 requirement for case-by-case consent. The language regarding electronic service of orders was added to Rule 114 in 2004.[2] The *Final Report* to that amendment specifically discusses the rationale for the allowance for electronic service:

> In addition, the Committee discussed service by electronic means. We noted both that Pa.R.Civ.P. 236(d) permits service of orders by facsimile or electronic transmission, and that the use of electronic technology for transmitting documents is proliferating. However, the Committee expressed concern about issues such as proof of service and signatures

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[1] This proposal applies only to the service of court orders and notices by the court and does not apply to service by the parties.

[2] See 34 PaB. 1547 (March 20, 2004).

that arise with the various means of electronically transmitting documents. Following several meetings at which this issue was debated at length, the Committee ultimately concluded there is nothing in Civil Rule 236(d) that is contrary to the purposes of service in criminal cases and having uniform means of service in civil and criminal cases is a salutary purpose. Accordingly, Rule 114(B)(3)(a)(vi), modeled on Civil Rule 236(d), permits this method of service. To alleviate the members' concerns about service by electronic means, the new provision incorporates two safeguard provisions. First, the paragraph permits the use of electronic means of service, but only if counsel or, the defendant if unrepresented, requests this method of service either by filing a specific request or including the facsimile number or an electronic address on a prior legal paper filed in the case. The *Comment* includes a paragraph clarifying that the facsimile number or electronic address on letterhead is not sufficient to authorize service by facsimile. Second, the paragraph requires the authorization for the use of electronic means for service by the court to be on a case-by-case basis. A *Comment* provision explains this, and notes a new authorization must be made for each case of the attorney or defendant.

As indicated in the report, the electronic service provision was based on Civil Rule 236(d) that reads:

> (d) The prothonotary may give he notice required by subdivision (a) or notice of other matters by facsimile transmission or other electronic means if the party to whom notice is to be given or the party's attorney has filed a written request for such method of notification or has included a facsimile or other electronic means if the prothonotary chooses to use such a method.

A Note[3] to Rule 236(d) contains language identical to that contained in the Rule 114 *Comment* that a fax number or electronic address on letterhead is insufficient to authorize electronic service.

In reviewing the Committee's earlier discussion that lead to the inclusion of this provision in the amendment to Rule 114, it became clear that the case-by-case requirement was due to a concern that electronic distribution would not be as effective as more traditional means of serving these orders. It was felt that an electronic

[3] The Civil Rules are structured differently than the Criminal Rules. The Civil Rules contain annotations that are titled "Notes" scattered through the particular rule providing information similar to that contained in the Criminal Rules' *Comments*.

message could more easily fall astray due to a technical glitch or that a party could more easily claim never to have received the transmission.

The Committee concluded that this requirement was established five year ago when the electronic service of documents was a still a relative novelty. In the intervening time, electronic service of documents, usually as part of a larger electronic filing system, has become more routine. Based on a review of the practice of the electronic transfer of documents in a number of jurisdictions, the federal system being a foremost example, the Committee believes that many of the concerns about problems with the technology have proven unfounded. The Committee therefore concluded that permitting “blanket consent” for electronic service would be efficient and practical.

The Committee also concluded that, if a method of providing consent that was not case specific were added to the rule, some mechanism for rescinding such consent should be included as well.

Therefore, a new paragraph (B)(3)(c) would be added to Rule 114 that provides the two methods of consent to receive orders electronically as well as the method for rescinding the general consent. Paragraph (B)(3)(c)(i) would retain the case-by-case method of the present rule while paragraph (B)(3)(c)(ii) would provide for the general, non-case-specific consent. Language also would be added to the *Comment* to indicate that the practice of providing a general consent is not mandatory and should be utilized only in those judicial districts where existing technology makes this practical.