

IN THE
SUPREME COURT OF PENNSYLVANIA

IN RE: Amendment of Rules : No. 301
of Civil Procedure to :
Provide for Filing of : Civil Procedural Rules
Copies and for Service by :
Facsimile Transmission : Docket No. 5

O R D E R

PER CURIAM:

AND NOW, this 3rd day of August , 1998, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rules 76 and 440 are amended to read as attached hereto.
2. New Rule 205.3 is promulgated to read as attached hereto.
3. A note is added to Rule 1025 to read as attached hereto.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 1999.

NOTE:

Underscored material is added.
Bracketed material is deleted.
New rules are not underscored.

Rule 76. Definitions

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"facsimile copy," a copy of a document transmitted and received by facsimile equipment;

...

Rule 205.3. Filing Pleadings and Other Legal Papers with the Prothonotary. Originals and Copies

(a) A party may file with the prothonotary an original pleading or other legal paper, or a copy including a facsimile copy provided that the copy shows that the original pleading or other legal paper was properly signed and, where applicable, verified. Except as otherwise provided by law, the copy shall be deemed the equivalent of the original document.

NOTE: This rule does not authorize the filing of legal papers with the prothonotary by facsimile transmission, but, rather, authorizes the filing of a non-original facsimile or other copy. See Rule 205.1 governing the manner of filing with the prothonotary.

See Rule 76 for the definition of facsimile copy.

The facsimile copy must be on paper of good quality. See Pa.R.A.P. 124(a)(1).

This rule is not intended to alter the requirement of Rule 2951(c)(2) that a judgment by confession be entered pursuant to complaint if the original cannot be produced for filing.

(b) If a party has filed of record a copy of a pleading or other legal paper, any other party may require the filing of the original document by filing with the prothonotary and serving upon

the party who filed the copy a notice to file the original document with the prothonotary within fourteen days of the filing of the notice.

Rule 440. Service of Legal Papers Other than Original Process

(a)(1) Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action. Service shall be made

(i) by handing or mailing a copy to or leaving a copy for each party at the address of the party's attorney of record endorsed on an appearance or prior pleading of the party, [but if] or at such other address as a party may agree,
or

NOTE: Such other address as a party may agree might include a mailbox in the prothonotary's office or an e-mail address.

(ii) by transmitting a copy by facsimile to the party's attorney of record as provided by subdivision (d).

(2)(i) If there is no attorney of record, [then (1)] service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of the party, [but, if] or by transmitting a copy by facsimile as provided by subdivision (d).

(ii) If such service cannot be made, [then (2)] service shall

be made by leaving a copy at or mailing a copy to the last known address of the party to be served.

NOTE: ...

...

(d)(1) A copy may be served by facsimile transmission if the parties agree thereto or if a telephone number for facsimile transmission is included on an appearance or prior legal paper filed with the court.

(2) The copy served shall begin with a facsimile cover sheet containing (i) the name, firm, address, telephone number, of both the party making service and the party served, (ii) the facsimile telephone number of the party making service and the facsimile telephone number to which the copy was transmitted, (iii) the title of the legal paper served and (iv) the number of pages transmitted.

(3) Service is complete when transmission is confirmed as complete.

Rule 1025. Endorsement

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NOTE: The inclusion of a telephone number for facsimile transmission on an appearance or prior legal paper is an agreement to accept service of pleadings or other legal papers by that means. See Rule 440(d)(1).

Explanatory Comment

The rules of civil procedure have been amended to allow the filing of a copy of a document, including a "faxed" document, and service by "fax" of a document other than original process.

The term "facsimile" is defined by Black's Law Dictionary, (Sixth Edition 1990) as "an exact copy, preserving all the marks of the original." Narrowing this definition, a proposed amendment to Rule 76 limits the term to copies transmitted and received by facsimile equipment, i.e., copies which are faxed.

New Rule 205.3(a) provides that an original document or a copy of the document, including a faxed document, may be filed with the prothonotary. A copy of a document will be treated as an original "provided that the copy shows that the pleading or other legal paper was properly signed and, where applicable, verified."

A note emphasizes that new Rule 205.3 does not provide for the filing of a document by means of facsimile transmission. The new rule addresses the issue of what documents may be filed with the prothonotary, i.e., an original and a copy. The rule is not concerned with the manner of filing the document with the prothonotary; that is the function of Rule 205.1 which speaks of delivery and mail but does not authorize facsimile transmission.

Rule 205.3(a) also expressly states that a copy of a document is deemed to be the equivalent of an original except as otherwise provided by law. An example of that exception is Rule 2951(c)(2) which requires that a judgment by confession be entered pursuant to

complaint if the original cannot be produced for filing. A note to the rule states that the rule is not intended to alter this requirement.

Subdivision (b) of Rule 205.3 also provides that, if a copy of a document is filed of record, another party may require that the original document be filed. However, unless the genuineness of a document or signature is in question, it is not anticipated that this provision would be much used.

The amendment to Rule 440 provides for service of documents upon parties by facsimile transmission. Under new subdivision (d)(1), documents may be served by fax if the parties agree among themselves to such service or if a party simply includes the fax telephone number on an appearance or prior legal paper. A note has been added to Rule 1025 governing endorsement alerting the bench and bar to the consequences of including the "fax" number of a document.

New Rule 440(d)(2) requires a cover sheet when making service by facsimile transmission. Subdivision (d)(3) provides that "[s]ervice is complete when transmission is confirmed as complete."

**By the Civil Procedural
Rules Committee**

**Edwin L. Klett
Chairman**