

**IN THE
SUPREME COURT OF PENNSYLVANIA**

**IN RE: Temporary Rule : No. 315
Governing Electronic Filing of : Civil Procedural Rules
Legal Papers : Docket No. 5**

ORDER

PER CURIAM:

AND NOW, this 14th day of June, 1999, the Pennsylvania Rules of Civil Procedure are amended as follows:

- (1) New Rule 205.4 is promulgated to read as attached hereto.
- (2) The Note to Rule 440(a)(1)(i) is amended to read as attached hereto.

Rule 205.4 promulgated by this Order shall be rescinded on December 31, 2001.

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

Rule 205.4. Temporary Provisions for Electronic Filing and Service of Legal Papers

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

“electronic filing,” the electronic transmission of legal papers by means other than facsimile transmission,

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

“legal paper,” a pleading or other paper filed in an action, but not including

(1) a writ of summons or a complaint that is original process naming an original defendant or an additional defendant, unless the court by local rule provides otherwise, or

(2) a notice of appeal from an award of a board of arbitrators or a notice of appeal or other legal paper, the filing of which is prescribed by the Rules of Civil Procedure Governing Actions and Proceedings before District Justices.

(b) A party may file a legal paper with the prothonotary by means of electronic filing if electronic filing is permitted by general rule, rule of court or special order of court. The filing shall be in the format of Adobe PDF, WordPerfect for Windows or Microsoft Word for Windows. Except as otherwise provided by law, a legal paper filed electronically shall be deemed the equivalent of the original document.

(1) The electronic filing of a legal paper constitutes

(i) a certification by the filing party that the original hard copy was properly signed and, where applicable, verified, and

(ii) a certification as provided by the signature to a legal paper under Rule 1023(b), the violation of which shall be subject to the sanction provision of Rule 1023(c).

(2)(i) The filing party shall maintain the original hard copy of the document filed.

(ii) Any other party at any time may require the filing party to file the original hard copy by filing with the prothonotary and serving upon the filing party a notice to file the original hard copy with the prothonotary within fourteen days of the filing of the notice.

(c)(1) The prothonotary when authorized to accept filings by electronic transmission shall provide electronic access at all times. The time and date of filing and receipt shall be that registered by the prothonotary's computer system.

(2) The prothonotary may designate a website for the electronic filing of legal papers. Access to the website shall be available by the attorney identification number issued by the Court Administrator of Pennsylvania or an identification number issued by the website administrator.

(d) A filing party shall pay the cost of the electronic filing of a legal paper by depositing with the prothonotary, in advance, sufficient funds or by authorizing payment by credit or debit card.

(e)(1) A filing party shall be responsible for

(i) any delay, disruption, interruption of the electronic signals and readability of the document electronically filed, and

(ii) the maintenance of sufficient funds deposited with the prothonotary or of a credit or debit account to cover the cost of electronic filing.

(2) The filing party accepts the risk that a document filed by means of electronic filing may not be properly or timely filed with the prothonotary.

(f) When electronic filing is permitted as set forth in subdivision (b), the court by local rule shall provide for

(1) a filing status message to the filing party,

(2) the maintenance by the prothonotary of an electronic file only, or of such electronic and such hard copy files as set forth in the rule,

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

(3) additional procedures, if necessary, to ensure the security of the web site and the electronic files,

(4) procedures for the payment of prothonotary's fees and costs, and

(5) such other procedures and matters necessary to the operation of a system of electronic filing.

(g) Copies of all legal papers other than original process filed in an action or served upon any party to an action may be served

- (1) as provided by Rule 440 or
- (2) by electronic transmission, other than facsimile transmission, if the parties agree thereto or an electronic mail address is included on an appearance or prior legal paper filed with the court in the action. Service is complete when the legal paper is sent. A paper served electronically is subject to the certifications set forth in subdivision (b)(1).

NOTE: An electronic mail address set forth on letterhead is not a sufficient basis under this rule to permit electronic service of legal papers.

- (h) This rule shall be rescinded on December 31, 2001.

Rule 440. Service of Legal Papers Other Than Original Process.

(a)(1) ***

(i) ***

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

For electronic service by means other than facsimile transmission, see Rule 205.4(g).

(ii) ***

Explanatory Comment

Rule 205.4 governing electronic filing and service of legal papers is a temporary rule and is intended as a further step in the process of introducing the concept of electronic documents into a system accustomed solely to paper documents. It is anticipated that changes in the procedural rules will be needed as technology progresses and the actual experiences of those counties which utilize this rule demonstrate the need for modifications. For that reason, a termination date of December 31, 2001 has been set for this rule.

The purpose of the rule is not to provide a comprehensive manual but, rather, a framework upon which a local court can proceed with the electronic filing and service of legal documents while allowing the flexibility to adapt the process on the basis of actual experience.

The rule addresses several aspects of electronic filing. It provides definitions of key terms, contains a description of the form, content and handling of documents, and an enumeration of the responsibilities of the prothonotary and the parties. The rule concludes with the procedure for electronic service of legal papers.

Subdivision (a)(2) is the definitional provision. The subject of the rule, "electronic filing", is defined as the electronic transmission of legal papers but the term excludes facsimile transmission which is governed by Rule 205.3.

Most importantly, the term "legal paper" is defined as excluding original process unless the court by local rule provides otherwise. For the purposes of this temporary rule, the local court is in a better position to make the determination of whether to include original process based upon a knowledge of the court's technological capabilities.

Subdivision (b) is concerned with the form and content of the legal papers themselves. Three computer formats are explicitly designated for legal papers which are filed electronically. Adobe PDF was chosen because it is becoming a nationally recognized standard format and has a great deal of flexibility in terms of its ability to include other media beside the printed word. WordPerfect for Windows and Microsoft Word for Windows are included as they are the two most commonly used word-processor software packages.

Regarding legal papers themselves, Rule 205.4(b)(1) provides that the electronic filing of a legal paper constitutes the same certification as a signature on a traditionally filed legal paper under Rule 1023.

Paragraph (2) completes subdivision (b) by requiring that the filing party maintain the original hard copy of the legal paper and also by providing a procedure by which any other party to the action may require the filing of the original hard copy. This is a means of ensuring the integrity of the filing system and the genuineness of the legal papers filed by the parties.

The burden of establishing the physical elements of the system is placed upon the prothonotary. Subdivision (c) requires the prothonotary to provide electronic access at all times and a means for recording the time and date of the filing. The subdivision also permits the prothonotary to designate a website for the electronic filing of legal papers. Under Rule 205.4(f), the prothonotary is required to make available to the filing party a filing status message which would confirm that the legal paper was filed successfully. The same subdivision also permits the prothonotary to maintain either an electronic file only or both electronic and hard copy files.

In order to take advantage of the convenience which the rule will provide, a filing party will also bear important responsibilities. Subdivision (d) requires that the filing party pay the costs of electronic filing by the advance deposit of sufficient funds with the prothonotary or by the use of a credit or debit card.

Most importantly, subdivision (e) expressly provides that a “filing party accepts the risk that a document filed by means of electronic filing may not be properly or timely filed with the prothonotary.” This latter provision is based upon the concern that the immediacy of the electronic transfer of legal papers may foster increased dependency upon last-minute preparation and filing, leaving insufficient time in which to remedy either a deficiency in the legal paper being filed or the inability to effectuate the filing.

Subdivision (g) of the rule provides for electronic service of legal papers. Paragraph (2) provides that service of such papers shall be deemed complete when sent. This provision is designed to be the electronic equivalent of the rule for service by mail as set forth in Rule 440(b) which provides that service is complete upon mailing.

Service of legal papers electronically requires the consent of the person to be served either by written agreement or an electronic mail address on a prior legal paper filed with the court. A note to the proposed rule is explicit in stating that such an electronic mail address on an attorney’s letterhead is an insufficient basis for electronic service.

Additionally, Rule 440 governing service of legal papers other than original process has been amended by adding a paragraph to the note following

subdivision (a)(1)(i) cross-referring to the service provisions contained in new Rule 205.4(g).

By the Civil Procedural
Rules Committee

Edwin L. Klett
Chair