

RULE 113. CRIMINAL CASE FILE AND DOCKET ENTRIES.

(A) The clerk of courts shall maintain the criminal case file for the court of common pleas. The criminal case file shall contain all original records, papers, and orders filed in the case, and copies of all court notices. These records, papers, orders, and copies shall not be taken from the custody of the clerk **[or] of** court without order of the court. Upon request, the clerk shall provide copies at reasonable cost.

(B) The clerk of courts shall maintain a list of docket entries: a chronological list, in electronic or written form, of documents and entries in the criminal case file and of all proceedings in the case.

(C) The docket entries shall include at a minimum the following information:

(1) the defendant's name;

(2) the names and addresses of all attorneys who have appeared or entered an appearance, the date of the entry of appearance, and the date of any withdrawal of appearance;

(3) notations concerning all papers filed with the clerk, including all court notices, appearances, pleas, motions, orders, verdicts, findings and judgments, and sentencings, briefly showing the nature and title, if any, of each paper filed, writ issued, plea entered, and motion made, and the substance of each order or judgment of the court and of the returns showing execution of process;

(4) notations concerning motions made orally or orders issued orally in the courtroom when directed by the court;

(5) a notation of every judicial proceeding, continuance, and disposition;

(6) a notation if the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302;

(7) the location of exhibits made part of the record during the proceedings; and

(8) all other information required by Rules 114 and 576.

COMMENT: This rule sets forth the mandatory contents of the list of docket entries and the criminal case files. This is

not intended to be an exhaustive list of what is required to be recorded in the docket entries. The judicial districts may require additional information be recorded in a case or in all cases.

The list of docket entries is a running record of all information related to any action in a criminal case in the court of common pleas of the clerk's county, such as dates of filings, of orders, and of court proceedings. The clerk of courts is required to make docket entries at the time the information is made known to the clerk, and the practice in some counties of creating the list of docket entries only if an appeal is taken is inconsistent with this rule.

Nothing in this rule is intended to preclude the use of automated or other electronic means for time stamping or making docket entries.

This rule applies to all proceedings in the court of common pleas at any stage of a criminal case.

The requirement in paragraph (C)(2) that all attorneys and their addresses be recorded makes certain there is a record of all attorneys who have appeared for any litigant in the case. The requirement also ensures that attorneys are served as required in Rules 114 and 576. See *also* Rule 576(B)(4) concerning certificates of service.

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.

Paragraph (C)(4) recognizes that occasionally disposition of oral motions presented in open court should be reflected in the docket, such as motions and orders related to omnibus pretrial motions (Rule 578), motions for a mistrial (Rule 605), motions for changes in bail (Rule 529), and oral motions for extraordinary relief (Rule 704(B)).

Unexecuted search warrants are not public records, see Rule 212(B), and therefore are not to be included in the criminal case file nor are they to be docketed.

NOTE: Former 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 June 2, 1994, effective September 1, 1994. New Rule 9024 adopted June 2, 1994, effective September 1, 1994; renumbered Rule 113 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004 and replaced by Rule 114(C), effective July 1, 2004. New Rule 113 adopted March 3, 2004, effective July 1, 2004; amended July 31, 2012, effective November 1, 2012 **[.] ; Comment** **revised October 22, 2013; effective January 1, 2014.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with the Court's Order at 34 Pa.B. 1547 (March 20, 2004).

Final Report explaining the July 31, 2012 amendment adding new paragraph (6) concerning defendants under the age of 18 published with the Court's Order at 42 Pa.B. 5333 (August 18, 2012).

Final Report explaining the October 22, 2013 revisions to the Comment regarding the unexecuted search warrants published with the Court's Order at 43 Pa.B. (, 2013).

RULE 203. REQUIREMENTS FOR ISSUANCE.

(A) In the discretion of the issuing authority, advanced communication technology may be used to submit a search warrant application and affidavit(s) and to issue a search warrant.

(B) No search warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority in person or using advanced communication technology. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

(C) Immediately prior to submitting a search warrant application and affidavit to an issuing authority using advanced communication technology, the affiant must personally communicate with the issuing authority by any device which, at a minimum, allows for simultaneous audio-visual communication. During the communication, the issuing authority shall verify the identity of the affiant, and orally administer an oath to the affiant.

(D) At any hearing on a motion for the return or suppression of evidence, or for suppression of the fruits of evidence, obtained pursuant to a search warrant, no evidence shall be admissible to establish probable cause other than the affidavits provided for in paragraph (B).

(E) No search warrant shall authorize a nighttime search unless the affidavits show reasonable cause for such nighttime search.

(F) A search warrant may be issued in anticipation of a prospective event as long as the warrant is based upon an affidavit showing probable cause that at some future time, but not currently, certain evidence of a crime will be located at a specified place.

(G) When a search warrant is issued, the issuing authority shall provide the original search warrant to the affiant and the issuing authority shall retain a contemporaneously prepared copy.

COMMENT: Paragraph (A) recognizes that an issuing authority either may issue a search warrant using advanced communication technology or order that the law enforcement officer appear in person to apply for a search warrant.

Paragraph (B) does not preclude oral testimony before the issuing authority, but it requires that such testimony be

reduced to an affidavit prior to issuance of a warrant. All affidavits in support of an application for a search warrant must be sworn to before the issuing authority prior to the issuance of the warrant. "Sworn" includes "affirmed." See Rule 103. The language "sworn to before the issuing authority" contemplates, when advanced communication technology is used, that the affiant would not be in the physical presence of the issuing authority. See [P] paragraph (C).

Paragraph (D) changes the procedure discussed in *Commonwealth v. Crawley*, 209 Pa. Super. 70, 223 A.2d 885 (1966), *aff'd per curiam* 432 Pa. 627, 247 A.2d 226 (1968). See *Commonwealth v. Milliken*, 450 Pa. 310, 300 A.2d 78 (1973).

The requirement in paragraph (E) of a showing of reasonable cause for a nighttime search highlights the traditional doctrine that nighttime intrusion into a citizen's privacy requires greater justification than an intrusion during normal business hours.

An affiant seeking the issuance of a search warrant, when permitted by the issuing authority, may use advanced communication technology as defined in Rule 103.

When advanced communication technology is used, the issuing authority is required by this rule to (1) determine that the evidence contained in the affidavit(s) establishes probable cause, and (2) verify the identity of the affiant.

The "visual" requirement in paragraph (C) must allow, at a minimum, the issuing authority to see the affiant at the time the oath is administered and the information received.

Paragraph (F) was added to the rule in 2005 to provide for anticipatory search warrants. The rule incorporates the definition of anticipatory search warrants set forth in *Commonwealth v. Glass*, 562 Pa. 187, 754 A.2d 655 (2000).

Paragraph (G) was added to clarify who must retain possession of the original of the search warrant. When the search warrant is issued using advanced

communication technology, the version delivered to the police officer is considered the original for purposes of this rule.

NOTE: Rule 2003 adopted March 28, 1973, effective for warrants issued 60 days hence; renumbered Rule 203 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended October 19, 2005, effective February 1, 2006 [.] ; **amended October 22, 2013, effective January 1, 2014.**

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COMMITTEE EXPLANATORY REPORTS:

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 May 10, 2002 amendments concerning advanced communications technology published with the Court's Order at 32 Pa.B. 2582 (May 25, 2002).

Final Report explaining the October 19, 2005 amendments regarding anticipatory search warrants published with the Court's Order at 35 Pa.B. 6087 (November 5, 2005).

Final Report explaining the October 22, 2013 amendments regarding the original search warrants published with the Court's Order at 43 Pa.B. (, 2013).

RULE 205. CONTENTS OF SEARCH WARRANT.

Each search warrant shall be signed by the issuing authority and shall:

- (1) specify the date and time of issuance;
- (2) identify specifically the property to be seized;
- (3) name or describe with particularity the person or place to be searched;
- (4) direct that the search be executed either;
 - (a) within a specified period of time, not to exceed 2 days from the time of issuance, or;
 - (b) when the warrant is issued for a prospective event, only after the specified event has occurred;
- (5) direct that the warrant be served in the daytime unless otherwise authorized on the warrant, *provided that*, for purposes of the rules of Chapter 200 [.] 1. Part A, the term "daytime" shall be used to mean the hours of 6 a.m. to 10 p.m.;
- (6) designate by title the judicial officer to whom the warrant shall be returned;
- (7) certify that the issuing authority has found probable cause based upon the facts sworn to or affirmed before the issuing authority by written affidavit(s) attached to the warrant; and
- (8) when applicable, certify on the face of the warrant that for good cause shown the affidavit(s) is sealed pursuant to Rule 211 and state the length of time the affidavit(s) will be sealed.

COMMENT: Paragraphs (2) and (3) are intended to proscribe general or exploratory searches by requiring that searches be directed only towards the specific items, persons, or places set forth in the warrant. Such warrants should, however, be read in a common sense fashion and should not be invalidated by hypertechnical interpretations. This may mean, for instance, that when an exact description of a particular item is not possible, a generic description may suffice. See *Commonwealth v.*

Matthews, 446 Pa. 65, 69-74, 285 A.2d 510, 513-14 (1971).

Paragraph (4) is included pursuant to the Court's supervisory powers over judicial procedure to supplement *Commonwealth v. McCants*, 450 Pa. 245, 299 A.2d 283 (1973), holding that an unreasonable delay between the issuance and service of a search warrant jeopardizes its validity. Paragraph (4) sets an outer limit on reasonableness. A warrant could, in a particular case, grow stale in less than two days. If the issuing authority believes that only a particular period which is less than two days is reasonable, he or she must specify such period in the warrant.

Paragraph (4)(b) provides for anticipatory search warrants. These types of warrants are defined in *Commonwealth v. Glass*, 562 Pa. 187, 754 A.2d 655 (2000), as “a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place.”

Paragraph (5) supplements the requirement of Rule 203(C) that special reasonable cause must be shown to justify a nighttime search. A warrant allowing a nighttime search may also be served in the daytime.

[Paragraph (6) is intended to prevent delays that might otherwise occur if the particular issuing authority who issued the warrant is not on duty at the time a return thereon is ready. Thus, the warrant may be returned to the issuing authority who succeeded the first on duty.]

Paragraph (6) anticipates that the warrant will list the correct judicial officer to whom the warrant should be returned. There may be some instances in which the judicial officer who issues the warrant may not be the one to whom the warrant will be returned. For example, it is a common practice in many judicial districts to have an “on-call” magisterial district judge. This “on-call” judge would have the authority to issue search warrants anywhere in the judicial

district but may not be assigned to the area in which the search warrant would be executed. There may be cases when the warrant is incorrectly returned to the judge who originally issued the warrant. In such cases, the issuing judge should forward the returned search warrant to the correct judicial officer. Thereafter, that judicial officer should administer the search warrant and supporting documents as provided for in these rules, including the Rule 210 requirement to file the search warrant and supporting documents with the clerk of courts.

Paragraph (8) implements the notice requirement in Rule 211(C). When the affidavit(s) is sealed pursuant to Rule 211, the justice or judge issuing the warrant must certify on the face of the warrant that there is good cause shown for sealing the affidavit(s) and must also state how long the affidavit will be sealed.

NOTE: Rule 2005 adopted October 17, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 205 and amended March 1, 2000, effective April 1, 2001; amended ed October 19, 2005, effective February 1, 2006 [.] ; **Comment revised October 22, 2013, effective January 1, 2014.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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 October 19, 2005 amendments to paragraph (4) and the Comment published with the Court's Order at 35 Pa.B. 6088 (November 5, 2005).

Final Report explaining the October 22, 2013 revisions to the Comment regarding the return of the search warrant published at 43 Pa.B. (, 2013).

RULE 209. RETURN WITH INVENTORY.

(A) The law enforcement officer executing the search warrant shall return the search warrant promptly after the search is completed, along with any inventory required under paragraph (C), to the issuing authority.

(B) Unexecuted warrants shall be returned promptly to the issuing authority once the period of time authorized for execution of the warrant has expired. The affiant shall retain a copy of the returned unexecuted search.

[(A)] (C) An inventory of items seized shall be made by the law enforcement officer serving a search warrant. The inventory shall be made in the presence of the person from whose possession or premises the property was taken, when feasible, or otherwise in the presence of at least one witness. The officer shall sign a statement on the inventory that it is a true and correct listing of all items seized, and that the signer is subject to the penalties and provisions of 18 Pa.C.S. § 4904(b) -- Unsworn Falsification To Authorities. The inventory shall be returned to and filed with the issuing authority.

[(B)] (D) The judicial officer to whom the return was made shall, upon request, cause a copy of the inventory to be delivered to the applicant for the warrant and to the person from whom, or from whose premises, the property was taken.

[(C)] (E) When the search warrant affidavit(s) is sealed pursuant to Rule 211, the return shall be made to the justice or judge who issued the warrant.

COMMENT: The inventory is required to ensure that all items seized are accounted for in the return to the issuing authority. It thus differs from the receipt required by Rule 208, which is for the personal records of those from whose possession or from whose premises property was taken. In some cases, however, the list in the receipt may be sufficiently detailed so as to also be sufficient for use in the inventory. The inventory need not be sworn to before the issuing authority; however, the officer is subject to statutory penalties for unsworn falsification.

The rule was amended in 2013 specifically to require that the executed warrant be returned to the issuing authority. This amendment reflects a procedure with a long-standing practice but one that had not been codified in the rules.

See Rule 205(6) regarding the circumstances under which the issuing authority to whom the warrant is returned may differ from the one that issued the warrant.

As provided in Rule 205(4), search warrants generally authorize execution within a period not to exceed two days. Paragraph (B) requires that an unexecuted warrant be returned to the issuing authority upon expiration of this period.

Unexecuted search warrants are not public records, see Rule 212(B), and therefore are not to be included in the criminal case file nor are they to be docketed.

For the obligation of the Commonwealth to disclose exculpatory evidence, see Rule 573 and its *Comment*.

NOTE: Rule 2009 adopted October 17, 1973, effective 60 days hence; amended April 26, 1979, effective July 1, 1979; amended September 3, 1993, effective January 1, 1994; renumbered Rule 209 and amended March 1, 2000, effective April 1, 2001[.]; amended October 22, 2013, effective January 1, 2014.

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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 October 22, 2013 amendments related to the return of the search warrant published with the Court's Order at 43 Pa.B. (, 2013).

RULE 210. RETURN OF PAPERS TO CLERK.

The judicial officer to whom the warrant was returned shall file the search warrant, all supporting affidavits, and the inventory with the clerk of the court of common pleas of the judicial district in which the property was seized.

COMMENT: See Rule 211 for the procedures when the search warrant affidavit(s) has been sealed.

Unexecuted search warrants are not public records, see Rule 212(B), and therefore are not to be included in the criminal case file nor are they to be docketed.

NOTE: Rule 2010 adopted October 17, 1973, effective 60 days hence; amended September 3, 1993, effective January 1, 1994; renumbered Rule 210 and *Comment* revised March 1, 2000, effective April 1, 2001[.] ; **amended October 22, 2013, effective January 1, 2014.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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 October 22, 2013 revisions to the Comment regarding unexecuted search warrants published with the Court's Order at 43 Pa.B. (, 2013).

RULE 212. DISSEMINATION OF SEARCH WARRANT INFORMATION.

(A) The issuing authority shall not make any search warrants and any affidavit(s) of probable cause available for public inspection or dissemination until the warrant has been executed [, **but in no case shall the delay be longer than 48 hours after the warrant has been issued**].

(B) Unexecuted warrants and the associated affidavits of probable cause are not public records and upon return to the issuing authority the unexecuted warrants and affidavit(s) shall be destroyed by the issuing authority.

COMMENT: Execution of search warrants carries the potential risk of hazard and premature dissemination of the intention to execute a warrant may greatly increase that risk. For this reason, this rule was adopted in 2008 to delay the dissemination of search warrant information to the general public until after execution **[or no longer than 48 hours after issuance, whichever is sooner]**. This rule does not deny disclosure of **any** search warrant information **[to the public] to which the public is entitled**, but rather, temporarily delays the dissemination of that information in order to protect public safety.

Once the warrant is executed, the information may be disseminated unless sealed pursuant to Rule 211.

The rule was amended in 2013 to clarify that unexecuted search warrants are not public records. This change recognizes that often search warrants may be issued that are never executed. This non-execution may arise from many factors, including a discovery that the information that formed the basis of the original issuance of the search warrant was inaccurate. Given the potential harm to the subject of a search warrant as well as potential disruption to public safety and investigations, information related to such expired warrants must remain confidential. See *PG Publishing Co. v. Commonwealth*, 532 Pa. 1, 614 A.2d 1106 (1992) (“The *ex parte* application for the issuance of a search warrant and the issuing authority’s consideration of the application are not subject to public scrutiny. The need

for secrecy will ordinarily expire once the search warrant has been executed.”).

NOTE: Rule 212 adopted June 23, 2008, effective August 1, 2008[.] ; **amended October 22, 2013, effective January 1, 2013.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining new Rule 212 providing for the limitations in dissemination of search warrant information published with the Court’s Order at 38 Pa.B. 3652 (July 5, 2008).

Final Report explaining the October 22, 2013 amendment providing that expired unexecuted warrants are not public records published with the Court’s Order at 43 Pa.B. (, 2013).