

Proposed Amendments to Pa.R.Crim.P. 113

INTRODUCTION

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 113 to clarify that the criminal case records in both the magisterial district courts and the courts of common pleas are generally available to the public with certain specified exceptions. 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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no later than Friday, April 1, 2011.

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BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

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RULE 113. CRIMINAL CASE FILE AND DOCKET ENTRIES. PUBLIC ACCESS TO CRIMINAL CASE FILE.

(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 court without order of the court. Upon request, the clerk shall provide copies at reasonable cost.

(B) The magisterial district judge shall maintain the criminal case file for the magisterial district court for all summary and court case proceedings before the magisterial district judge. The criminal case file shall contain all original records, papers, orders filed in the case, and copies of all court notices.

(C) All criminal case files in court cases or summary cases are open to the public, except that any of the following information contained in the criminal file shall not be available to the public:

(1) information sealed pursuant to a court order;

(2) information to which access is restricted by federal law, state law, or state court rules or policies;

(3) information containing the complete social security numbers or financial information such as financial institution account numbers, credit card account numbers, or debit card numbers;

(4) notes, drafts, e-mails, deliberative materials, and work product of judges, court staff, and judicial agencies contained in the criminal case file, unless otherwise required by law to be accessible to the public; and

(5) the address, telephone numbers, and other contact information of victims, witnesses, and jurors.

[(B)](D) 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)] (E) 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) the location of exhibits made part of the record during the proceedings; and
- (7) all other information required by Rules 114 and 576.

COMMENT: This rule defines the obligation for the preparation and maintenance of the criminal case file in both magisterial district courts and courts of common pleas.

Paragraph (C) codifies the long-standing presumption, based in constitutional and common law, of the openness of criminal case records. Additionally, paragraph (C) restricts public access to certain specified information.

Parties to a criminal case should be aware that any documents filed in a magisterial district court or court of common pleas are considered public documents and accessible by the public from the time of filing, unless sealed by court order or otherwise restricted by statute, rule, or policy.

For limitations on public access to proceedings and records of investigating Grand Juries, see Rules 228, 229, and 230.

For limitations on public access to preserved testimony, see Rule 500.

For limitations on public access to the records of a bail agency, see Rule 530.

For limitations on public access to mental health examinations of the defendant, see Rule 569.

For limitations on public access to records associated with the juries, see Rules 630, Rule 632, and 644.

For limitations on public access to pre-sentencing and related reports, see Rule 703.

For limitations on public access to unexecuted search warrants, see Rule 212.

For limitation on public access to the identify of a child victim of sexual or physical abuse, see 42 Pa.C.S. § 5988

For the procedures for obtaining access by the public to the criminal case records of the magisterial district judges, see also the *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts*, 204 Pa. Code §213.1 *et seq.*

For the procedures for obtaining access by the public to the electronic case records of the Unified Judicial System, including additional restrictions on access to certain forms of electronic records, see also the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania*, 204 Pa.Code §213.71

The Administrative Office of the Pennsylvania Courts has available a Confidential Information form in which confidential information, such as social security numbers or financial information, may be maintained and which is used primarily for purposes of data entry into the various court computer systems. The Confidential Information form is maintained as a separate sheet that is not part of the court case record and is not available to the public. See the *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts*, 204 Pa. Code §§213.1 *et seq.*

[This rule] **Paragraph (E)** sets forth the mandatory contents of the list of docket entries **in proceedings before the court of common pleas** 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.]

For the obligation of the magisterial district judge to prepare and forward to the court of common pleas a transcript of the proceedings before the magisterial district judge, see Rule 135.

The requirement for the magisterial district judge to maintain docket entries was abolished in 1985. However see the *Comment* to Rule 135 for the expectation that a docket will be maintained to assist in the preparation of the transcript.

The requirement in paragraph **[(C)(2)] (E)(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)] (E)(2)** must include the facsimile number or electronic address.

Paragraph **(C)(4) (E)(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)).

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 2, 2004 and replaced by Rule 114(C), effective July 1, 2004. New Rule 113 adopted March 2, 2004, effective July 1, 2004[.] ; **amended _____, 2011, effective _____, 2011.**

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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. (_____, 2004).

Report explaining the proposed amendment regarding public access criminal case records published at 41 Pa.B. (_____, 2011).

REPORT

Proposed Amendments to Pa.R.Crim.P.113

PUBLIC ACCESS TO CRIMINAL CASE RECORDS

The Supreme Court of Pennsylvania approved a policy on public access to paper records in the magisterial district courts on January 23, 2010. This policy was intended to complement the Court's policy on public access to electronic records that was adopted in 2007.¹ On January 27, 2010, the Chief Justice wrote to the Chairs of the Criminal Procedural Rules Committee and Minor Court Rules Committee asking that the Committees review the new policy and recommend any appropriate rule changes. The Chief Justice, in particular, drew the Committees' attention to Section 213.7 of the policy that provides that parties and their attorneys refrain from including certain confidential information in all documents and exhibits filed with the court.

The Committee reviewed the rules implications of the new policy at length. First, we noted that the only Rules of Criminal Procedure that requires any of the information listed in Section 213.7 are Rules 490 and 790 regarding the contents of expungement orders. The Committee concluded that no rule change was needed to address this particular question since expungement orders effectively are confidential and the use of this information in identifying cases for expungement still is needed.

The Committee also debated whether the general policy was sufficient and ultimately concluded that the bench and bar would benefit if the Criminal Rules specifically described the general parameters of public access to criminal case records. The Committee's belief in the necessity of such a rule is based on a recognition that there are a greater number of constitutionally-based issues that arise in criminal cases thus necessitating greater clarity in public accessibility. The Committee observed that criminal case records also have a greater potential for harm coming from disclosure, such as potential violence against witnesses or the invasion of the privacy of accused. Additionally, while the Administrative Office of the Pennsylvania Courts has gone to great efforts to publicize the Court's public access policies, the Criminal Procedural

¹ There is currently no policy statement regarding the paper records of the court of common pleas.

Rules are more familiar and accessible to members of the bench and bar and others working within the criminal justice system.

The first question was the placement of such a general rule. The Committee intends that the rule have a broader application than the Court's public access policies and be applicable to criminal records in both magisterial district courts and the common pleas courts and that it should be applicable to records regardless of whether they are in electronic form or traditional paper form. The Committee concluded that Rule 113 (Criminal Case File and Docket Entries) was the most logical placement for this amendment. Incorporating the new provisions into Rule 113 requires considerable modification because currently Rule 113 addresses only the record-keeping responsibilities of the clerk of courts and does not address that function in the magisterial district court.

The proposed amendments would add a new paragraph (B) to Rule 113 that would provide a statement of the duties of the magisterial district court judges to maintain the criminal case records in their courts along with cross-references in the *Comment* to the transcript rules. The language mirrors that contained in paragraph (A) regarding the duties of the clerks of courts. These amendments are not intended to impose any new duty upon the magisterial district judges.

Proposed new paragraph (C) would address the issue of public access. The approach the Committee decided upon was to have a broad statement of the general public accessibility of criminal case records but include what portions of the record would be excluded from this general provision. The Committee believes that the rule language itself should be relatively general and the exclusions not exhaustively listed where other provisions, in either rule or statute, provide for confidentiality.

The Committee had a lengthy discussion of what to include in the rule itself regarding exclusions. The Committee noted that the underlying concept of the Criminal Procedures Rules has been that the rules were designed to apply to the traditional view of the case record as the paper record. The Committee also noted that the exclusions from public access in the Court's MDJ Paper Records Policy are more limited than those contained in the Electronic Records Policy. Furthermore, the Committee did not intend for the rule to conflict with either of the Court's Public Access Policies but rather should compliment the policies while providing "criminal case-specific" guidance.

Accordingly, the exclusions from public access contained in proposed paragraph (C) are based on, and compatible with, the exclusions contained in the Court's MDJ Paper Records Policy and are applicable to the courts of common pleas records as well. Although the focus of the language in the text of the rule is on the exclusions in the Paper Records Policy, a cross-reference to both public access policies would be added to the *Comment*. The cross-reference to the Electronic Records Policy would be included to alert the public that additional administrative restrictions are placed on access to court records when they are sought in an electronic format.

The exclusions listed in paragraph (C)(1) through (C)(4) are based on the exclusions set forth in Section 213.7 of the MDJ Paper Records Policy. These include any information sealed pursuant to a court order and any work product of judges or court staff contained in the criminal case file, unless otherwise required by law to be accessible to the public. Also is the provision that excludes social security numbers and financial information, such as financial institution account numbers, credit card account numbers, or debit card numbers, from any documents or exhibits filed with the issuing authority.

Paragraph (C) would also contain the exclusion from public access of any information to which access is restricted by federal law, state law, or state court rules or policies. This would permit the provisions existing currently within the Criminal Rules that limit public access to certain records to remain in force without the need to be listed exhaustively in Rule 113(C). For example, paragraph (C) of Rule 530 (Duties and Powers of A Bail Agency) provides that information obtained from or concerning the defendant by a bail agency shall not be disclosed except to the parties to the criminal case and may be used only for purposes relating to the defendant's bail or a presentence report about the defendant, or in a prosecution based on the falsity of the information, or for impeachment purposes to the extent permitted by law. Similarly, paragraphs (A)(5) and (B)(5) of Rule 500 (Preservation of Testimony After Institution of Criminal Proceedings) state that preserved testimony shall not be filed of record until it is offered into evidence at trial or other proceeding. Rule 703 (Disclosure of Pre-Sentence Reports) provides for the confidentiality of all pre-sentencing and related reports. Rule 212 provides limitations on access to pre-execution search warrants, and the Committee continues to work on the question of public access to arrest warrants.

Cross-references to these exclusions as well as to other exclusions set forth in the Criminal Rules would be added to the *Comment*.

Proposed paragraph (C)(5) is based on the Electronic Records Policy and precludes personal contact information for victims, witnesses, and jurors from public access. This exclusion is not contained in the Paper Records Policy. The Committee believes the potential danger of harassment, intimidation, or worse, justifies the additional restriction on public access to the paper records in criminal cases.

The Committee also discussed the prospect that information contained in motions the results of which would be confidential might be considered publicly accessible. For example, a request for a mental health examination might contain information that should not be public. Although the proposal does not include a provision in the rule extending confidentiality to such filings, the *Comment* includes cautionary language reiterating that anything contained in a filed document would be accessible to the public and the filing party should seek a sealing order to maintain the confidentiality of the motion. Additionally, language would be added to the *Comment* referencing the practice of using the AOPC's Confidential Information Form that would be prepared when information necessary for case entry in the courts' computer systems should not be released to the public. If there is a requirement for this information to be provided to the courts, such as a defendant's complete social security number, then it must be contained in a separate form that is not to be disclosed to the public.