

MEMORANDUM

TO: Butler County Bar Association

FROM: THOMAS J. DOERR, PRESIDENT JUDGE

RE: IN RE: Order Amending Rule of Criminal Procedure
 114

DATE: Effective Date February 15, 2007

Please find attached the Amended Rule of Criminal Procedure 114, adopted July 20, 2006 effective date September 1, 2006. The rule was amended to identify and prohibit local rules that conflict with statewide rules, thereby creating significant impediments to the statewide practice of law within the unified judicial system. Pa. R. Crim. P. 114 requires, *inter alia*, that a copy of any order or court notice shall be promptly served on each party's attorney, or the party if unrepresented. This shall apply to unrepresented juveniles as well. It shall be the attorney's responsibility to keep their client informed in a timely manner as counsel is in the best position to ascertain the correct addresses and whereabouts of the client.

We remind counsel that when representing criminal defendants, Pa. R. Crim. P. 120 must be strictly followed in that counsel for defendant shall file an entry of appearance with the clerk of courts promptly after being retained, and serve a copy of the entry of appearance on the attorney for the Commonwealth. Additionally, should counsel no longer desire to continue with representation of the client, counsel must file a motion to withdraw in all cases, and counsel's obligation to represent the defendant, whether as retained or appointed counsel, remains through the direct appeal until leave to withdraw is granted by the court. Once the appeal period has expired, the Clerk of Courts will no longer send notifications to the attorney of record unless the attorney files for a new appearance.

A copy of the foregoing is posted at <http://www.co.butler.pa.us>
All Clerk of Court records are accessible at uisportal.pacourts.us

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

-2-

(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; 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) 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 [and manner] 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 [and manner] 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

-3-

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.

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). 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.

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

-4-

administrator, and clerk of courts, or for time stamping or making docket entries.

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 -5-

23, 2004, effective August 1, 2005 [.] ; amended July 20, 2006, effective September 1, 2006.

* * * * *

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. (, 2006).