

SUPREME COURT OF PENNSYLVANIA

In Re: Order Amending Rule 576.1 of the Pa Rules of Criminal Procedure

In re Order Amending Rule 576.1 · Decided August 3, 2020

SUMMARY

This document amends Pennsylvania Rule of Criminal Procedure 576.1, governing electronic filing and service of legal papers through the PACFile system. The amendments clarify exclusions from the definition of legal papers, address electronic filing of exhibits, and make related technical and commentary changes.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
JURISDICTION	Pennsylvania
DECIDED	August 3, 2020
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Pennsylvania promulgated amendments to Pennsylvania Rule of Criminal Procedure 576.1 governing electronic filing and service of legal papers in criminal cases.
PRECEDENTIAL VALUE	published rule-amendment order

TOPICS

criminal procedure

PRACTICE AREAS

criminal procedure

court administration

electronic filing and service

QUESTIONS PRESENTED

1. What procedures govern electronic filing and service of legal papers in Pennsylvania criminal proceedings?
2. Which legal papers are excluded from electronic filing?
3. When is an electronically filed legal paper considered filed, and what service obligations apply to electronic and non-electronic participants?

HOLDINGS

1. A president judge may authorize electronic filing of legal papers in the courts of common pleas and the Philadelphia Municipal Court through the statewide PACFile system by local rule adopted under Pennsylvania Rule of Criminal Procedure 105 and Rule of Judicial Administration 103.
2. Electronic filing must initially be permissive in a judicial district, but after two years of authorized electronic filing the district may amend its local rule to make participation mandatory, subject to applicable rulemaking requirements and accommodations for persons unable to participate electronically.
3. An electronic legal paper is considered filed when it is submitted to the PACFile system and accepted by the clerk of courts; if filing requirements are met, the filing date and time are the date and time of submission.
4. Electronic notification generated upon submission satisfies service requirements for participating attorneys and parties with system accounts, while service on persons without accounts or unable to access electronic filing must be made under Pennsylvania Rules of Criminal Procedure 114(B) and 576(B).

KEY QUOTATIONS

“Any judicial district that authorized electronic filing for a period of two years thereafter may amend their local rule, subject to the requirements of Rule 105 and Rule of Judicial Administration 103, to make participation in electronic filing mandatory.” (Rule 576.1(B)(2))

“A legal paper shall be considered filed upon submission of the legal paper to the system and acceptance of the filing by the clerk of courts.” (Rule 576.1(E)(5))

“This notification upon submission shall satisfy the service requirements of Rules 114(B) and 576(B) on any attorney or party who has established a system account.” (Rule 576.1(H)(1))

FACTUAL BACKGROUND

The rule addresses implementation of electronic filing through the statewide PACFile system in courts of common pleas and the Philadelphia Municipal Court. It establishes procedures for local judicial districts to authorize electronic filing, protects access for participants unable or unwilling to use electronic filing, and clarifies which legal papers may or may not be filed electronically.

PROCEDURAL HISTORY

Rule 576.1 was originally adopted on January 25, 2018, effective May 1, 2018. The court amended the rule on August 3, 2020, with the amendments effective October 1, 2020.

DISPOSITION

other

OPINION

PER CURIAM.

RULE 576.1. ELECTRONIC FILING AND SERVICE OF LEGAL PAPERS. (A) The president judge of a judicial district by local rule promulgated pursuant to Rule 105 and Rule of Judicial Administration 103 may authorize electronic filing of legal papers with the clerk of courts in cases in the courts of common pleas and in the Philadelphia Municipal Court through the statewide electronic filing system as provided in this rule.

(B) Local Rule (1) The local rule required under this rule shall include the following provisions: (a) subject to the provisions in paragraph (B)(2), a statement that the electronic filing system is permissive and specify the legal papers subject to the rule, but in no case shall legal papers prohibited from being filed electronically by this rule be permitted to be filed electronically; (b) a provision for the procedures to ensure that any party who declines to participate in the system, or who is unable to electronically file or accept service of legal papers which were filed electronically, or who is otherwise unable to access the system, at a minimum, shall be able to file legal papers in a physical paper format and be served legal papers in a physical format which were electronically filed; (c) any additional provisions as the court may deem necessary to provide a full and complete procedure for the use of the system within the judicial district; and (d) a notation that the Administrative Office of Pennsylvania Courts and the judicial district have agreed upon an implementation plan for PACFile in the judicial district.

(2) Any judicial district that authorized electronic filing for a period of two years thereafter may amend their local rule, subject to the requirements of Rule 105 and Rule of Judicial Administration 103, to make participation in electronic filing mandatory. (C) As used in this rule, the following words shall have the following meanings: “electronic filing,” the electronic submission of legal papers by means other than facsimile transmission and the acceptance of the document by the clerk of courts; “filing party,” an attorney, defendant, or other person who files a legal paper by means of electronic filing; “legal paper,” a pleading or other submission to the court, including motions, answers, notices, or other documents, of which filing is required or permitted, including orders, copies of exhibits, and attachments, but excluding (1) applications for search warrants, (2) applications for arrest warrants, (3) any grand jury materials, except the indicting grand jury indictment or the investigating grand jury presentment, (4) submissions filed ex parte as authorized by law, [and] (5) submissions filed or authorized to be filed under seal [;], and (6) exhibits offered into evidence, whether or not admitted, in a court proceeding; “original document,” a legal paper filed electronically shall be deemed the original document, but copies of exhibits electronically filed do not constitute the original of the exhibit for evidentiary purposes; and “the system,” the PACFile electronic filing system, developed and administered by the Administrative Office of Pennsylvania Courts, is the exclusive system for electronic filing.

(D) Participation (1) The system shall permit attorneys and defendants proceeding without counsel to file electronically. (a) In order to participate in the system, an attorney shall establish an account in the system by procedures established by the Administrative Office of Pennsylvania Courts. (b) A defendant who is proceeding without counsel shall be permitted to utilize the system through an authorization process established by the Administrative Office of Pennsylvania Courts.

2 2) Establishment of an account by an attorney or authorization [by] of a defendant proceeding without counsel in the system, to the extent so authorized by the Administrative Office of Pennsylvania Courts pursuant to paragraph (D)(1), shall constitute consent to participate in electronic filing, including acceptance of service electronically of any document filed on the system in any judicial district that permits electronic filing.

(3) An attorney or defendant participating in the system is permitted to file a legal paper either in an electronic format or in a physical paper format. Service upon an attorney or defendant participating in the system shall be done electronically. (E) Filing (1) When a legal paper is to be electronically filed, it shall be submitted to the system at the Unified Judicial System web portal at <http://ujportal.pacourts.us>, in accordance with this rule, any local rule adopted pursuant to this rule, and any filing instructions as may be otherwise provided at the web portal site.

(2) Electronic filings may be submitted at any time, except during times of periodic maintenance. The electronic submission must be completed by 11:59:59 p.m. EST/EDT to be considered filed that day. (3) The time and date on which a legal paper is submitted to the system shall be recorded by the system.

The system shall provide an acknowledgement to the filing party that the legal paper has been submitted. (4) The time and date on which the legal paper is accepted by the clerk of courts office also shall be recorded by the system.

The system shall provide an acknowledgement to the filing party that the legal paper has been accepted. (5) A legal paper shall be considered filed upon submission of the legal paper to the system and acceptance of the filing by the clerk of courts. If the clerk of courts determines that the requirements for filing have been met, the time and date of filing shall be the time and date that the legal paper was submitted to the system.

If the clerk of courts finds that the requirements for filing are not met, the clerk may reject the filing. (6) A filing party shall be responsible for any delay, disruption, and interruption of the electronic signals and legibility of the document electronically filed, except when caused by the failure of the system's website.

(7) The system shall attribute the filing of an electronic legal paper to the party whose account is used to log onto the system and file the legal paper. 3 (8) Legal papers shall be presented for filing in portable document format (“.pdf”).

(9) All legal papers electronically filed shall be maintained and retained by the clerk of courts in an electronic format. Neither the clerk of courts nor the court is required to maintain in a physical paper format any legal paper filed electronically as provided in this rule.

(10) Any legal paper submitted for filing to the clerk of courts in a physical paper format shall be accepted by the clerk of courts in that format and shall be retained by the clerk of courts as may be required by applicable rules of court and record retention policies.

The clerk of courts shall convert such legal paper in a physical paper format to.pdf and add it to the system. However, those submissions that are excluded from the definition of “legal paper” under paragraph (C) shall not be converted and added to the system.

(11) No legal paper that complies with the Pennsylvania Rules of Criminal Procedure shall be refused for filing by the clerk of courts or the electronic filing system based upon a requirement of a local rule or local administrative procedure or practice pertaining to the electronic filing of legal papers. (F) Signature (1) Except as provided in paragraph (F)(3), an electronic signature of the filer as provided for in the system is permitted on electronic filings in the following form: /S/ John L. Doe.

(2) The electronic filing of a motion or answer that includes an electronic signature constitutes a certification pursuant to Pa.R.Crim.P. 575 that the filing party or attorney has read the legal paper, that to the best of the filing party’s or attorney’s knowledge, information and belief there is good ground to support the motion or answer, and that it is not interposed for delay.

(3) Any motion that, pursuant to Rule 575(A)(2)(g), avers facts not of record and requiring a sworn affidavit must be created in a physical paper form, have a physical signature placed on it, and then be converted into a.pdf before it may be electronically filed.

(4) The original of a sworn or verified legal paper that is an electronic filing or is contained within an electronic filing shall be maintained by the electronic filer in either electronic or paper format and made available upon direction of the court or reasonable request of the signatory or opposing party. 4 (G) The court by local rule shall provide for the maintenance by the clerk of courts of an electronic file only, or of such electronic and physical paper format files as set forth in the local rule.

Those legal papers that are not permitted to be electronically filed pursuant to paragraph (C) shall be maintained in a physical paper format only. (H) Service (1) Upon the submission of a legal paper for electronic filing, the system shall provide an electronic notification to other parties and attorneys to the case who are participating in electronic filing that the legal paper has been submitted.

This notification upon submission shall satisfy the service requirements of Rules 114(B) and 576(B) on any attorney or party who has established a system account. (2) Upon the acceptance by the clerk of courts office of a legal paper for electronic filing, the system shall provide an electronic notification to other parties and attorneys to the case who are participating in electronic filing that the legal paper has been accepted.

(3) Service of electronic filings on any attorney or party who has not established a UJS web portal account or who is unable to file or receive legal papers electronically or otherwise unable to access the system shall be made by the procedures provided under Rules 114(B) and 576(B). COMMENT: This rule, adopted in 2018, permits as a local practice the electronic filing of legal papers.

This rule does not require the implementation of electronic filing by a local court. To provide a uniform system for electronic filing, the Administrative Office of Pennsylvania Courts has developed the PACFile electronic filing system. This is the only authorized system for electronic filing of legal documents in criminal court cases in the courts of common pleas and Philadelphia Municipal Court.

Paragraph (B) requires that a judicial district that desires to participate in the electronic filing system must adopt a local rule to that effect. As part of the initial “opting into” electronic filing, this local rule must provide that participation is voluntary. Once a judicial district has allowed electronic filing for two years, participation may be made mandatory.

Paragraph (B)(1)(b) requires that all judicial districts in which 5 electronic filing is allowed must make accommodations for those parties who are unable to participate. In no event shall access to the court filing be precluded solely on the basis of participation in the electronic filing system. This rule is applicable to cases in courts of record. See Rule 103 for the definition of a “court.” The UJS Portal contains other automated services beside PACFile.

There may be circumstances when an attorney, who has registered as a user on another service of the UJS Portal, may have an established account that would be usable for PACFile. Any questions about the requirements of registration or accessibility to PACFile should be referred to the Administrative Office of Pennsylvania Courts.

The system permits a user to designate other users as proxies on individual cases. These proxies all receive notice of any filing in the case. It is anticipated that offices such as those of a district attorney or public defender would be able to establish general user accounts with particular attorneys assigned and their supervisors or back-ups listed as proxies in individual cases.

An attorney is responsible for the actions of other individuals whom the attorney authorizes to use the attorney’s account. The local rule required by this rule must conform to the requirements of

Rule 105 (Local Rules) and Rule of Judicial Administration 103 (Procedures for Adoption, Filing, and Publishing Rules). A file in physical paper format is not required by this rule.

If the local rule requires a file in physical paper format, the requirement may extend to all cases or only to certain specified cases. For example, the court may require files in physical paper format for cases listed for trial or scheduled for argument while maintaining only electronic files for all other cases. Upon submission of the electronic filing of a legal paper, the electronic filing system shall automatically send notice of the filing to all parties who have agreed to service by electronic transmission, see paragraph (D) [or whose e-mail address is included on an appearance or prior legal paper filed in connection with the case].

If the electronic filing system sends notice of such filing, the party filing the legal paper only need serve those parties who are not served by the electronic filing system. An electronic mail address set forth on letterhead is not a sufficient basis under this rule to permit electronic service of legal papers. Nothing in this rule is intended to prohibit the use of advanced communication technology to submit an application for search warrant as provided in Rule 203(A) or to submit an application for an arrest warrant using advanced communications technology as provided in Rule 513(B)(1).

In addition to the filing fees now applicable, an online payment convenience fee for use of the PACFile system may be imposed. See 204 Pa. Code § 207.3. See Rule 114(B) providing for the clerk of courts to serve orders and court notices by facsimile transmission or other means. Legal papers filed electronically should be consistent with the formatting requirements of Rule 575(C).

See Rule 576 (B) governing service of motions and any written answers, and any notices or documents for which filing is required by facsimile transmission or other means. See Rule 1002, for the applicability of this rule to summary cases filed in the Philadelphia Municipal Court. NOTE: New Rule 576.1 adopted January 25, 2018, effective May 1, 2018[.]; amended August 3, 2020, effective October 1, 2020.

7 * * * * * COMMITTEE EXPLANATORY REPORTS: Final Report explaining new Rule 576.1 providing for electronic filing published with the Court's Order at 48 Pa.B. 861 (February 10, 2018). Final Report regarding the August 3, 2020 amendments clarifying the definition of "legal papers" and correcting a Comment reference to the initiation of electronic service published with the Court's Order at 50 Pa.B. (, 2020).