

FINAL REPORT¹

Revisions to the Comments to Pa.Rs.Crim.P.202 and 507

ELECTRONIC APPROVAL OF SEARCH WARRANT AFFIDAVITS AND COMPLAINTS BY THE ATTORNEY FOR THE COMMONWEALTH

On February 26, 2010, effective April 1, 2010, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revisions to the *Comments* to Rules of Criminal Procedure 202 (Approval of Search Warrant Applications by Attorney for the Commonwealth -- Local Option) and 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth -- Local Option) clarifying that an attorney for the Commonwealth is not precluded from providing approval of search warrant applications, complaints, and arrest warrant affidavits electronically.

These changes were the result of a question presented to the Committee by the Pennsylvania District Attorney's Association. Specifically, they asked whether, under Rule 507, an attorney for the Commonwealth's approval for the filing of a criminal complaint could be done electronically and, if not, they asked that the rule be changed to permit the practice.

Rule 507 provides that, on a county-by-county basis, a district attorney may require that the police obtain the approval of an attorney for the Commonwealth before filing criminal complaints, arrest warrant affidavits, or both. Rule 507 requires the creation of a local rule to effectuate this procedure.

Although not explicitly required in the rule, the current practice is for that approval to be documented by the attorney for the Commonwealth signing the complaint. The

¹ The Committee's *Final 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 Committee's explanatory *Final Reports*.

current complaint form maintained by the AOPC effectuates this practice by referencing the Rule 507 approval option and providing a space for an approval signature.

The Committee concluded that permitting this approval to be provided electronically is an efficient use of resources and not inconsistent with the intention of the rules. For example, the rules authorize electronic signatures on legal documents generated by the court so it seems reasonable that the attorney for the Commonwealth's signature approving a complaint similarly could be electronically generated.²

The Committee also has learned that some counties currently permit the approval process to be done electronically, with no noted problems. Additionally, the AOPC has been working with the Pennsylvania State Police and several jurisdictions, including Allegheny County, on the creation of a system for the electronic preparation and transmission of criminal complaints. When this system is put in place, attorney for the Commonwealth approval by electronic signature will be a necessary component.

Therefore, the Committee developed a revision to the *Comment* to Rule 507 to provide that nothing under the rule precludes an attorney for the Commonwealth from using advanced communication technology³ or other electronic methods to convey the approval of the complaint to the affiant.

² Rule 103 provides the following definition of "Signature":

SIGNATURE, when used in reference to documents generated by the minor judiciary or court of common pleas, includes a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization, unless otherwise provided in these rules.

³ Rule 103 defines "advanced communications technology" as:

ADVANCE COMMUNICATIONS TECHNOLOGY is any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail.

In developing this proposal, the Committee also determined that the concept underlying the proposed revision to the Rule 507 *Comment* is equally applicable to Rule 202 that provides for local approval procedures for search warrant applications similar to the Rule 507 local approval procedures for complaints. Therefore, a comparable provision has been added to the Rule 202 *Comment*.

Finally, there is also a minor change to the form portion of Rule 507, replacing the abbreviation "PCIC" with the more current "CLEAN" which is the abbreviation preferred by the Pennsylvania State Police to reference to the Commonwealth Law Enforcement Assistance Network utilized to conduct criminal history checks.