

THE COURTS

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. VIII]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

Proposed Adoption of Pa.R.Crim.P. 574 and Proposed Amendment of Comment to Pa.R.E. 802

The Criminal Procedural Rules Committee is considering a recommendation to the Supreme Court of Pennsylvania to adopt Rule of Criminal Procedure 574 (Forensic Laboratory Report; Certification in Lieu of Expert Report) to provide procedures for the admissibility of forensic laboratory reports in lieu of expert testimony. The Committee on Rules of Evidence is considering a recommendation to the Supreme Court to amend the Comment to Rule of Evidence 802 to identify and describe Rule of Criminal Procedure 574. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committees' considerations in formulating this proposal. Please note that the Committees' Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt a 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; 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,

Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
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no later than Monday, February 18, 2013.

HONORABLE NANCY L. BUTTS,
Vice Chair
Criminal Procedural Rules Committee
CHRISTOPHER H. CONNORS,
Chair
Committee on Rules of Evidence

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE VIII. HEARSAY

(*Editor's Note:* The proposed amendments to Rule 802 are based on the proposed restyled Rules of Evidence published at 41 Pa.B. 2795, 2813, 2814 (May 28, 2011).)

Rule 802. The Rule Against Hearsay.

Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute.

Comment

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On occasion, hearsay may be admitted pursuant to another rule promulgated by the Pennsylvania Supreme Court. For example, in civil cases, all or part of a deposition may be admitted pursuant to Pa.R.C.P. No. 4020, or a video deposition of an expert witness may be admitted pursuant to Pa.R.C.P. No. 4017.1(g). In preliminary hearings in criminal cases, the court may consider hearsay evidence pursuant to Pa.R.Crim.P. 542(E) and 1003(E). **In criminal trials, Pa.R.Crim.P. 574 provides a procedure for the admission of forensic laboratory reports supported by a certification.**

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Hearsay Exceptions and the Right of Confrontation of a Defendant in a Criminal Case

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In short, when hearsay is offered against a defendant in a criminal case, the defendant may interpose three separate objections: (1) admission of the evidence would violate the hearsay rule, (2) admission of the evidence would violate defendant's right to confront the witnesses against him under the Sixth Amendment of the United States Constitution, and (3) admission of the evidence would violate defendant's right "to be confronted with the witnesses against him" under Article I, § 9 of the Pennsylvania Constitution.

Pennsylvania Rule of Criminal Procedure 574 provides a mechanism for the admission of a forensic laboratory report supported by a certification. This Rule provides a defendant an opportunity to exercise the right of confrontation and to object to the report on hearsay grounds. Following pre-trial notice by the prosecution, and in the absence of a demand by defendant for declarant's live testimony, the Rule permits the admission of a properly certified forensic laboratory report at trial. See Pa.R.Crim.P. 574.

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Committee Explanatory Reports:

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Final Report explaining the, 2013 revision of the Comment published with the Court's Order at 43 Pa.B. (, 2013).

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART G(1). Motion Procedures

(*Editor's Note:* The following rule is new and printed in regular type to enhance readability.)

Rule 574. Forensic Laboratory Report; Certification in Lieu of Expert Testimony.

(A) In any trial, the attorney for the Commonwealth may seek to offer into evidence a forensic laboratory report supported by a certification, as provided in para-

graph (D), in lieu of testimony by the person who performed the analysis or examination that is the subject of the report.

(B) *Notice*

(1) If the attorney for the Commonwealth intends to offer the report as provided in paragraph (A) as evidence at trial, the attorney for the Commonwealth shall serve upon the defendant's attorney, or if unrepresented, the defendant a written notice of that fact at the time of the disclosure of the report but no later than 20 days prior to the start of trial.

(2) A copy of the report shall be provided to the defendant prior to or contemporaneously with the notice.

(3) Except as provided in paragraph (C), the report and certification are admissible in evidence to the same effect as if the person who performed the analysis or examination had personally testified.

(C) *Demand*

(1) No later than 10 days following receipt of the notice provided in paragraph (B), the defendant's attorney, or if unrepresented, the defendant may serve upon the attorney of the Commonwealth, a written demand for the person who performed the analysis or examination that is the subject of the report to testify at trial.

(2) If a written demand is filed, the report and certificate are not admissible under paragraph (B)(3) unless the analyst testifies.

(3) If no demand for live testimony is made to the use of the laboratory report and certificate within the time allowed by this section, the report and certificate are admissible in evidence.

(D) *Certification*

(1) The analyst who performed the analysis or examination that is the subject of the report shall complete a certificate in which the analyst shall state:

(a) that he or she is qualified by education, training, and experience to perform the analysis;

(b) a description of his or her regular duties;

(c) the name and location of the laboratory where the analysis was performed; and

(d) that the tests were performed under industry-approved procedures or standards and the report accurately reflects the analyst's findings and opinions regarding the results of those tests or analysis.

(2) An analyst employed by a laboratory that is accredited by a state, national, or international accreditation entity may, in lieu of the required certificate under paragraph (D)(1), submit a copy of the laboratory's accreditation certificate.

Comment

This rule was adopted in 2013 to address the issues raised by the U.S. Supreme Court's decision in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), that held that the 6th amendment confrontation right precluded presentation of laboratory reports without a live witness testifying in the trial. In *Melendez-Diaz*, the U.S. Supreme Court noted with approval the use of "notice and demand" procedures as a means of permitting routine laboratory reports to be admitted without the expense of supporting the admission by live expert testimony while protecting a defendant's confrontation rights.

This rule provides a "notice and demand" procedure for Pennsylvania. Under the rule, the attorney for the Commonwealth may seek to admit a forensic laboratory report as evidence without the testimony of the analyst who performed the testing that was the subject of the report if notice requirements are met and no demand for the presence of the analyst is made. If the defendant makes such a demand, the analyst would be required to testify before the report could be admitted into evidence.

Nothing in this rule is intended to preclude a stipulation agreed to by the parties for the admission of the laboratory report without the analyst's presence.

For cause shown, the judge may extend the time period of filing a demand for live testimony or grant a continuance of the trial.

For purposes of paragraph (D)(2) of this rule, a laboratory is "accredited" when its management, personnel, quality system, operational and technical procedures, equipment and physical facilities meet standards established by a recognized state, national, or international accrediting organization such as the American Society of Crime Laboratory Directors/Laboratory Accrediting Board (ASCLD/LAB) or Forensic Quality Services—International (FQS-I).

Official Note: New Rule 574 adopted _____, 2012, effective _____, 2012.

Committee Explanatory Reports:

Report explaining new Rule 574 providing for notice and demand procedures regarding forensic laboratory reports published for comment at 43 Pa.B. 211 (January 12, 2013).

JOINT REPORT

Proposed New Pa.R.Crim.P. 574 and Proposed Revision of the Comment to Pa.R.E. 802

Forensic Laboratory Report; Certification in Lieu of Expert Testimony

Background

The Criminal Procedural Rules Committee and the Committee on Rules of Evidence were requested by the Pennsylvania District Attorneys Association to consider a "notice and demand" rule of criminal procedure or evidence.

This request arose from the 2009 United States Supreme Court case of *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009) in which the Court held that the evidentiary use of a report of a forensic test on an alleged controlled substance violated the defendant's right to confront the witness against him because the preparer of the report did not testify at the defendant's trial. The Court rejected the prosecution's argument that the report was admissible as a business record or official record, and the argument that compelling the appearance of the person who performed the test was time consuming and wasteful since, in the overwhelming majority of cases, the defendant would not contest the accuracy of the test.

The Court in *Melendez-Diaz* noted with approval "simple" notice-and-demand procedures that require the prosecution to give notice to the defense of its intent to introduce evidence without calling the necessary witnesses under the Confrontation Clause. The defense then must give notice to the prosecution that it is demanding that the witness testify and be subject to cross-examination.

After discussing the Association's letter at their respective meetings, the Committees formed a joint subcommittee to investigate whether and how to proceed. The subcommittee found merit in a "notice and demand" procedure that would provide a mechanism for defendants to exercise their rights under the Confrontation Clause and to provide for the admissibility of forensic laboratory reports in lieu of expert testimony. The claimed benefit of a notice and demand procedure would be a lesser burden on the Commonwealth in scheduling these witnesses, fewer expenses associated with attendance of these witnesses at trial, and increased availability of these analysts and technicians to perform lab/field work rather than appearing in court. Additionally, the procedure would provide a timely and structured mechanism for defendants to raise a Confrontation Clause demand. See *Melendez-Diaz*, 557 U.S. at 327.

Based upon the recommendations of the joint subcommittee, the Committees approved for publication proposed new Rule of Criminal Procedure 574 and correlative amendment of the Comment to Rule of Evidence 802.

Proposed Rule of Criminal Procedure 574

In developing proposed new Rule of Criminal Procedure 574,¹ a number of other jurisdictions' "notice and demand" statutes and rules were considered, including recently adopted Michigan Court Rule 6.202. Proposed new Rule 574 is modeled on portions of the Michigan rule and provides for the prosecution's admission of forensic laboratory reports at a criminal trial in lieu of the live testimony of the person who performed the laboratory analysis or examination. This admission would be predicated on compliance with three elements: 1) notice; 2) demand; and 3) certification.

Unlike the Michigan rule that requires notice to be given in every case, use of this procedure would be optional with the prosecution. The Committees have concluded that mandatory use of the notice procedure would not be efficient in many cases, especially in larger counties where stipulations of admissibility are common and producing an expert to testify is relatively easy in those cases in which a stipulation cannot be reached. In other words, a live witness would be necessary in order to have forensic reports admitted but the Commonwealth could rely on either traditional stipulations or the new notice procedures to be able to introduce the report without a witness. The new rule is not intended to preclude or discourage the use of stipulations.

In order to utilize the proposed notice procedure, the attorney for the Commonwealth would be required to serve defense counsel, or defendant if unrepresented, written notice of the intention to invoke Rule 574 to admit the report without accompanying live testimony. This notice, together with the forensic laboratory report if not already provided, must be given at least 20 days before the start of defendant's trial. The Committees anticipate that the practice in many judicial districts will be to provide the notice and report during the discovery process, which generally occurs prior to the 20-day notice deadline.

No later than 10 days after receiving the prosecution's notice, the defendant's attorney, or the defendant if unrepresented, would have the option of serving a written demand on the prosecution that the witness appear and

testify at trial. Such a demand would preclude the admission of the forensic laboratory report or certificate absent an analyst's testimony. This is unlike the Michigan rule that speaks in terms of a defense "objection" rather than "demand," with the implication that the trial judge could overrule the objection.

If no demand is made, then the report and certificate are admissible without witness testimony. However, as noted in the Comment to Rule 574, for cause shown, the judge would have the discretion to extend the time period of filing a demand for live testimony or grant a continuance of the trial.

The new rule also would require that the analyst who performed the analysis or examination to complete a certificate detailing his or her qualifications, job description, laboratory information, and the procedures and standards in which the analysis or examination were conducted. However, if the laboratory is properly accredited, a copy of the accreditation certificate may be submitted in lieu of the analyst's certification. The Comment would contain a definition of "accreditation."

Proposed Revision of the Comment to Rule of Evidence 802

As explained in the Comments, the Rules of Evidence do not attempt to codify requirements under the Confrontation Clause. See Pa.R.E. 802, Comment. Moreover, the Rules of Evidence acknowledge that evidentiary rules may exist in other bodies of rules. *Id.* Proposed Criminal Rule of Procedure 574 would operate both as a "notice and demand" mechanism to satisfy the requirements of the Confrontation Clause and as a new rule of evidence that would permit the admission of laboratory reports in criminal trials.

Accordingly, the Comment to Rule of Evidence 802 is proposed to be amended to recognize this new Rule and describe its operation.

[Pa.B. Doc. No. 13-45. Filed for public inspection January 11, 2013, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BUCKS COUNTY

Fees of Clerk of Orphans' Court Division; Administrative Order No. 66

Order

And Now, To Wit, this 18th day of December 2012, in accordance with the provisions of Act 18 of April 21, 1994, upon the determination of the Clerk of the Orphans' Court that these fees are fair and reasonable, the following Bill of Costs is established to become effective on February 4, 2013, to be chargeable to the parties and to the Estates before this Court for settlement for all services of the Clerk of the Orphans' Court Division of the Court of Common Pleas of Bucks County, in the transaction of the business of this Court.

By the Court

SUSAN DEVLIN SCOTT,
President Judge

¹Currently, Rule 574 is not an active rule number, the previous version of that rule having been rescinded in 2004. As part of this proposal, new Rule 574 would be placed in the more general, introductory portion of Part F (Pretrial Procedures) rather than in its current location in Part F(1) (Motions Procedures) since the proposed notice and demand procedures would not be considered motions.

**BUCKS COUNTY
ORPHANS' COURT FEE BILL**

Formal Accountings

Personal Representative, Trustee and Guardian Accounts

Includes Advertising and Adjudication

<u>Over</u>	<u>But not more than</u>	<u>Accounts (advertising included)</u>
\$ -	\$ 250.00	\$ 25.00
\$ 250.00	\$ 1,000.00	\$ 35.00
\$ 1,000.00	\$ 5,000.00	\$ 50.00
\$ 5,000.00	\$ 10,000.00	\$ 75.00
\$ 10,000.00	\$ 25,000.00	\$ 100.00
\$ 25,000.00	\$ 50,000.00	\$ 150.00
\$ 50,000.00	\$ 100,000.00	\$ 200.00
\$ 100,000.00	\$ 200,000.00	\$ 250.00
\$ 200,000.00	\$ 300,000.00	\$ 350.00

Add \$150 for each additional \$100,000 or fraction thereof

Re-advertising Accounts \$100 Insolvent Estates \$25
Exceptions or Objections to Accounts \$40

Estates

AFFIDAVIT/CERTIFICATE OF SERVICE	NC
ANNUAL REPORT/INVENTORY	\$30.00
ANSWER	NC
ACP FEE, state mandated (all first filings)	\$10.00
APPEALS:	
Petition to Appeal from Register of Wills Decision	\$80.00
Notice of Appeal to Superior Court	\$80.00
Filing Fee to Superior Court (payable to Superior Court)	\$73.50
BOND, filing	\$15.00
CEMETERY TRUST RECORDING	\$100.00
CERTIFICATION OF RECORD (including Apostille):	\$20.00
Birth Records (1893—1906)	
Death Records (1893—1906)	
(plus copies/per page over 10 pgs.)	1.00
CITATION	\$40.00
CLAIM (incl. SATISFACTION and/or WITHDRAWAL)	\$40.00
DEED EXECUTION BY CLERK	\$20.00
DISCLAIMER	\$30.00
DOCKET ENTRIES (per page)	\$1.00
ELECTION AGAINST A WILL	\$20.00
ELECTRONIC TRANSFER SERVICE FEE	\$10.00
(plus images/per page over 10 pgs./max. fee \$50.00)	\$1.00
EXEMPLIFICATION OF RECORD (issued)	\$60.00
(plus images/per page over 10 pgs.)	1.00

FAMILY SETTLEMENT AGREEMENT	\$60.00
IMAGING (paper and electronic)—per page/staff	\$1.00
—per page/public	\$0.25

Research

Service Fees:

Minimum Fee (up to 1 hour)	\$25.00
Hourly Fee (over 1 hour/billed in 1/4 hour increments)	\$40.00
Imaging Fee (per page over 10 pgs.)	\$1.00

Note: \$80.00 deposit required on any research request over two hours \$10.00

Marriage Licenses

Marriage License Application	\$50.00
Includes ACP FEE	10.00
Includes one certified Certificate of Marriage	<u>20.00</u> \$80.00
Affidavit of Name Verification	\$10.00
Certification of Marriage	\$20.00
Consent of Parent or Guardian	\$10.00
Duplicate/Reissue Marriage License	\$10.00
Non-resident Affidavit	\$20.00
Outside Office Appearance	\$125.00
Waiver—under age 16	\$35.00
Waiver of three-day day waiting period	
Emergency	\$75.00
Active Military	NC
INFORMAL ACCOUNTS	\$60.00
JCP FEE, state mandated	\$23.50
(inter vivos trusts, incapacitated & minors estates)	
MOTION	\$85.00
(1) Continuance	NC
(2) Re-List	NC
(3) Rule Absolute	NC
NOTARY FEE: \$5.00 (each instrument)	\$5.00
PRELIMINARY OBJECTIONS	\$85.00
ON-LINE SEARCH FEE	
Imaging fee/per page	\$0.10
OUTSIDE OFFICE APPEARANCE	\$125.00
PETITIONS (all, including Guardianships)	\$85.00
PLEADINGS & PAPERS (instruments not specifically listed)	\$35.00
PRAECIPE	\$35.00
Entry /Withdrawal of Appearance	NC
Discontinue/Withdrawal Petition	\$35.00
Enter Judgment	\$35.00
Satisfaction of Award	\$15.00
Settle, Discontinue and End	\$15.00

POUNDAGE (for monies determined by the Court)	
Percentage of each dollar of the first \$1,000	5.00%
Percentage of each dollar of each additional \$1000 or fraction thereof	1.00%
POWER OF ATTORNEY	\$40.00
RECEIPT & RELEASE	\$35.00
RETURNED CHECK FEE	\$45.00
SCHEDULE OF DISTRIBUTION	\$35.00
STATEMENT OF FIDUCIARY	\$50.00
STIPULATION	\$15.00
SUBPOENA	\$20.00
TRUST INSTRUMENTS	\$50.00

Adoptions

ACP FEE, state mandated (all first filings)	\$10.00
Adoption Inquiries (search inquiries)	\$30.00
Amended Birth Certificate Application (Form H105.102)	\$10.00
(check payable to Vital Records)	
Counseling Fee (filed with Report of Intention to Adopt)	\$75.00
JCP FEE, state mandated (first filings for petitions for adoptions)	\$23.50
Petition for Adoption (includes Certificate of Adoption)	\$115.00
Petition (other)	
Confirmation of Consent	\$85.00
Putative Father	\$85.00
Register a Foreign Adoption	\$85.00
Termination of Parental Rights	\$85.00
Voluntary/Involuntary Relinquishment	\$85.00
Pre-placement fee payable to B.C. Children and Youth	\$650.00
Report of Intention to Adopt	\$30.00
Report of Intermediary	\$30.00

Note: Instruments not specifically listed will be charged at a rate comparable to this schedule for a similar instrument

Rev. 12/18/12

[Pa.B. Doc. No. 13-46. Filed for public inspection January 11, 2013, 9:00 a.m.]

BUCKS COUNTY**Fees of Register of Wills; Administrative Order No. 67****Order**

And Now, To Wit, this 18th day of December 2012, in accordance with the provisions of Act 18 of April 21, 1994, upon the determination of the Register of Wills that these fees are fair and reasonable, the following Bill of Costs is

established to become effective on February 4, 2013, to be chargeable to the parties and to the Estates before this Court for settlement for all services of the Register of Wills of Bucks County, in the transaction of the business of this Court.

By the Court

SUSAN DEVLIN SCOTT,
President Judge

**BUCKS COUNTY REGISTER OF WILLS—FEE BILL
(Effective 2/04/13)**

ACCOUNTING (Informal)	\$60.00
BOND (filing fee—probate)	\$15.00
CAVEAT	
Formal (including Bond)	\$115.00
Informal	\$50.00
Answer	NC
Withdrawal	\$15.00
CERTIFICATION (including Apostille)	
Filed or issued	\$20.00
(plus Images/per page over 10 pgs.)	\$1.00
CITATION	
First person cited	\$90.00
Each additional person cited	\$10.00
Answer	NC
Withdrawal	NC
Certified copy of Citation/each	\$20.00
CODICIL (filing/each)	\$20.00
COMMISSION	\$50.00
DEATH CERTIFICATE (filed, non-probate)	\$10.00
DISCLAIMER	\$30.00
DOCKET ENTRIES (per page)	\$1.00
ELECTRONIC TRANSFER SERVICE FEE	\$10.00
(plus image fee/per page over 10 pgs.)	\$1.00
ENTRY/WITHDRAWAL OF APPEARANCE	NC
EXEMPLIFICATION (issued, each)	\$60.00
(plus copy fee/per page over 10 pgs.)	\$1.00
FAMILY SETTLEMENT AGREEMENT	\$60.00
HEARING—before the Register of Wills*	\$250.00
* <i>Note:</i> Deposit for court reporter, fee to be assessed at Hearing	\$200.00
IMAGING, per page/staff	\$1.00
per page/public	\$0.25
INHERITANCE TAX	
REV-1500—Inheritance Tax Return	\$25.00
Supplemental Return	\$20.00
706—Federal Estate Tax Return	\$20.00
INVENTORY	
Original Filing	\$25.00
Supplemental Filing/each	\$20.00
LETTERS* calculated based on probate assets varies	

LETTERS (reissue, revocation or to successor personal rep.)	\$75.00	
MANDATORY FEES		
ACP—Automated Computer Project (all first filings)	\$10.00	
JCP—Judicial Computer Project (all petitions for grant of letters)	\$23.50	
Letters of Administration and Testamentary*		
Graduated according to <u>gross</u> value of probate assets		
Over	But not more than	Amount Due
0 to	250	= \$10.00
250 to	1,000	= \$15.00
1,000 to	5,000	= \$50.00
5,000 to	10,000	= \$75.00
10,000 to	25,000	= \$100.00
25,000 to	50,000	= \$125.00
50,000 to	100,000	= \$150.00
100,000 to	200,000	= \$250.00
200,000 to	300,000	= \$350.00
Add \$150 for each additional \$100,000 or fraction thereof		
NON-PROBATE LETTER	NC	
(Under 20 Pa.C.S.A. § 3101)		
NOTARY FEE (per document)	\$5.00	
NOTICE OF APPEAL FROM PROBATE	\$50.00	
OUTSIDE OFFICE APPEARANCE	\$125.00	
PLEADINGS and PAPERS—filings (affidavits, certifications, exemplifications, motions, orders and miscellaneous instruments not specifically listed)	\$30.00	

POUNDAGE (for monies determined by the court)	
Percentage of each dollar of the first \$1,000	5.00%
Percentage of each dollar of each additional \$1000 or fraction thereof	1.00%
PROCESSING FEE	\$25.00
RESEARCH SERVICE FEES:	
Minimum Fee (up to 1 hour)	\$25.00
Hourly Fee (over 1 hour/billed in 1/4 hour increments)	\$40.00
Imaging Fee (per page over 10 pgs.)	\$1.00
<i>Note: \$80.00 deposit required on any research request over two hours</i>	
RENUNCIATION, incl. REJECTION, RESIGNATION and/or DESIGNATION	\$15.00
RETURNED CHECK FEE	\$45.00
SHORT CERTIFICATE	\$10.00
Update fee	\$4.00
SUBPOENA	\$20.00
WITNESS AFFIDAVIT	\$15.00
<i>*Additional Probate Fee: At the time of filing the Petition for Grant of Letters an estimate of the gross probate value of the estate is made. The initial fee for Letters is based on that estimated value. When the Inheritance Tax Return and Inventory are filed, the actual gross probate value of the estate is then calculated. If the actual gross probate value is greater than the estimated gross probate value, an additional probate fee is charged.</i>	
<i>Note: Instruments not specifically listed will be charged at a rate comparable to this schedule for a similar instrument \$23.50</i>	
(Rev. 09/18/12)	

[Pa.B. Doc. No. 13-47. Filed for public inspection January 11, 2013, 9:00 a.m.]