

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Promulgation of New Rule 223.2 Governing Juror Note Taking; No. 396 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, 30th day of July, 2003, the Pennsylvania Rules of Civil Procedure are amended as follows:

- (1) Rule 223.1 is amended to read as follows, and
- (2) New Rule 223.2 is promulgated to read as follows.

Whereas prior distribution and publication of these rules and amendments would otherwise be required, it has been determined that immediate promulgation is required in the interest of justice and efficient administration.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective on September 1, 2003.

Mr. Justice Nigro dissents.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 223.1. Conduct of the Trial. Trial by Jury.

(a) * * *

Official Note:

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See Rule 223.2 for juror note taking in civil cases.

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Rule 223.2. Conduct of the Jury Trial. Juror Note Taking

(a)(1) Whenever a jury trial is expected to last for more than two days, jurors, except as otherwise provided by subdivision (a)(2), may take notes during the proceedings and use their notes during deliberations.

Official Note: The court in its discretion may permit jurors to take notes when the jury trial is not expected to last for more than two days.

(2) Jurors are not permitted to take notes when the judge is instructing the jury as to the law that will govern the case.

(b) The court shall give an appropriate cautionary instruction to the jury prior to the commencement of the testimony before the jurors. The instruction shall include:

(1) Jurors are not required to take notes and those who take notes are not required to take extensive notes,

(2) Note taking should not divert jurors from paying full attention to the evidence and evaluating witness credibility,

(3) Notes are merely memory aids and are not evidence or the official record,

(4) Jurors who take few or no notes should not permit their independent recollection of the evidence to be influenced by the fact that other jurors have taken notes,

(5) Notes are confidential and will not be reviewed by the court or anyone else,

(6) A juror may not show his or her notes or disclose their contents to other jurors until deliberations begin, but may show the notes or disclose the contents during deliberations,

(7) Jurors shall not take their notes out of the courtroom except to use their notes during deliberations, and

(8) All juror notes will be collected after the trial is over and immediately destroyed.

Official Note: It is recommended that the trial judge instruct the jurors along the following lines:

We will distribute notepads and pens to each of you in the event you wish to take notes during the trial. You are under no obligation to take notes and those who take notes are not required to take extensive notes

Remember that one of your responsibilities as a juror is to observe the demeanor of witnesses to help you assess their credibility. If you do take notes, do not become so involved with note taking that it interferes with your ability to observe a witness or distracts you from hearing other answers being given by the witness.

Your notes may help you refresh your recollection of the testimony and should be treated as a supplement to, rather than a substitute for, your memory. Your notes are only to be used by you as memory aids and are not evidence or the official record.

Those of you who do not take notes should not permit your independent recollection of the evidence to be influenced by the fact that other jurors have taken notes. It is just as easy to write something down incorrectly as it is to remember it incorrectly and your fellow jurors' notes are entitled to no greater weight than each juror's independent memory. Although you may refer to your notes during deliberations, give no more or no less weight to the view of a fellow juror just because that juror did or did not take notes.

Each time that we adjourn, your notes will be collected and secured by court staff. Jurors shall not take their notes out of the courtroom except to use their notes during deliberations.

A juror may not show his or her notes or disclose their contents to other jurors until deliberations begin, but may show the notes or disclose their contents during deliberations. The only notes you may use during the deliberations are the notes you write in the courtroom during the proceedings on the materials distributed by the court staff.

Your notes are completely confidential and will not be reviewed by the court or anyone else. After the trial is over, your notes will be collected by court personnel and immediately destroyed.

- (c) The court shall
 - (1) provide materials suitable for note taking,

Official Note: The materials provided by the court are the only materials that jurors may use for note taking.

- (2) safeguard all juror notes at each recess and at the end of each trial day, and

- (3) collect all juror notes as soon as the jury is dismissed and, without inspection, immediately destroy them.

(d)(1) Neither the court nor counsel may (i) request or suggest that jurors take notes, (ii) comment on their note taking, or (iii) attempt to read any notes.

(2) Juror notes may not be used by any party to the litigation as a basis for a request for a new trial.

Official Note: A court shall immediately deny a litigant's request that juror notes be placed under seal until they are reviewed in connection with a request for a new trial on any ground, including juror misconduct. The notes shall be destroyed without inspection as soon as the jury is dismissed.

- (e) This rule is rescinded as of December 31, 2005.

Explanatory Comment

Rule 223.2 is a new rule providing for note taking by jurors in civil cases. It is a temporary rule promulgated for the purpose of assessing whether juror note taking in civil cases is beneficial to the system of justice in Pennsylvania.

Subdivision (a)(1) authorizes jurors to take notes during the proceedings and to use their notes during deliberations in trials expected to last for more than two days.

Subdivision (a)(2) does not permit jurors to take notes during the portions of the trial when the judge is instructing the jury as to the law that will govern the case. The furnishing of written instructions to jurors is a separate issue beyond the scope of this rule.

Subdivision (d)(1) bars both the court and counsel from making recommendations to jurors at any stage of the case that note taking would be desirable. For example, neither the trial judge nor counsel may advise jurors that certain evidence may be difficult to recollect if it is not included in their notes.

While Rule 223.2 makes the court the custodian of the notes, neither the judge nor any member of the court's staff shall read the notes. The court's role as custodian is limited to safeguarding the notes throughout the proceedings and destroying the notes as soon as the jury is dismissed.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 03-1586. Filed for public inspection August 15, 2003, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 1910 AND 1920]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations; No. 395 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 30th day of July, 2003, Pennsylvania Rules of Civil Procedure 1910.10, 1910.16-6 and 1920.46 are amended as follows.

Whereas prior distribution and publication of these amendments would otherwise be required, it has been determined that the amendments are of a perfunctory nature and that immediate promulgation of the amendments is required in the interests of justice and efficient administration.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective immediately.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.10. Alternative Hearing Procedures.

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(b) The president judge or the administrative judge of Family Division of each county shall certify that all support proceedings in that county are conducted in accordance with either Rule 1910.11 or Rule 1910.12. The certification shall be filed with the Domestic Relations Procedural Rules Committee, and shall be substantially in the following form:

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Official Note: Pursuant to Rule 1910.10, the following counties have certified to the Domestic Relations Procedural Rules Committee that their support proceedings are conducted in accordance with the rule specified below.

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Lehigh [1910.11] 1910.12

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Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation.

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(b) *Health Insurance Premiums.*

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(2) When the health insurance covers other persons **who are not parties to the support action** or children who are not the [**subject**] **subjects** of the support action, the portion of the premium attributable to them must be excluded from the allocation. In the event this portion is not known or cannot be verified, it shall be calculated as follows. First, determine the cost per person by dividing the total cost of the premium by the number of persons covered under the policy. Second, multiply the cost per person by the number of persons who are not **parties to, or** the subject of, the support action. The resulting amount is excluded from allocation.

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Explanatory Comment—2003

Subdivision (b)(2) has been amended to clarify that in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order.

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.46. [Vital Statistics Information.] Affidavit of Non-Military Service.

[(a) The form of report required by the Commonwealth of Pennsylvania, Department of Health, Vital Statistics Division, shall be filed with the prothonotary upon the filing of the praecipe as prescribed by Rule 1920.42 or the motion for appointment of master under Rule 1920.51.

(b)] * * *

Official Note: The Soldier's and Sailor's Civil Relief Act of 1940, 50 U.S.C.A. App. § 520, requires that in cases of default in appearance by the defendant, the plaintiff must file an affidavit of nonmilitary service before entering judgment. If the defendant is in the military service and an attorney has not entered [his] an appearance on behalf of the defendant, no judgment may be entered until the court appoints an attorney to represent the defendant and protect his or her interest.

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[Explanatory Comment—1994

Section 602 of the Act of June 29, 1953, P. L. 304, 35 P. S. § 450.602, requires a certificate of each divorce and annulment of marriage decreed in the Commonwealth to be transmitted to the Department of Health.]

Explanatory Comment—2003

35 P. S. § 450.602 previously required a certificate of each divorce or annulment decreed in the Commonwealth to be transmitted to the Vital Statistics Division of the Commonwealth of Pennsylvania Department of Health. The statute was amended October 30, 2001, P. L. 826, No. 82 § 1, effective in 60 days, to require that the prothonotary submit a monthly statistical summary of divorces and annulments, rather than individual forms for each decree. Thus, subdivision (a) of Rule 1920.46, requiring the filing of the vital statistics form, is no longer necessary. Former subdivision (b) now com-

prises the entirety of the rule and the title has been amended to reflect that the rule applies only to the affidavit regarding military service.

[Pa.B. Doc. No. 03-1587. Filed for public inspection August 15, 2003, 9:00 a.m.]

Title 255—LOCAL COURT RULES

WESTMORELAND COUNTY

Rule of Judicial Administration WJ1901; No. 3 of 2003

Order

And Now this 25th day of July, 2003 it is *Hereby Ordered* that Westmoreland County Rule of Judicial Administration WJ1901 is rescinded.

By the Court

DANIEL J. ACKERMAN,
President Judge

[Pa.B. Doc. No. 03-1588. Filed for public inspection August 15, 2003, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Gary Friedmann, having been suspended from the practice of law in the State of New Jersey for a period of three years, the Supreme Court of Pennsylvania issued an Order dated July 30, 2003 suspending Gary Friedmann from the practice of law in this Commonwealth for a period of three years, effective August 29, 2003. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
*Executive Director and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 03-1589. Filed for public inspection August 15, 2003, 9:00 a.m.]