THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 11]

Order Amending Rules 1115 and 1116 of the Pennsylvania Rules of Appellate Procedure; No. 298 Appellate Procedural Rules Doc.

Order

Per Curiam

And Now, this 7th day of December, 2021, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published for public comment at 51 Pa.B. 4055 (July 31, 2021):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1115 and 1116 of the Pennsylvania Rules of Appellate Procedure are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective April 1, 2022.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT

PETITION FOR ALLOWANCE OF APPEAL

Rule 1115. Content of the Petition for Allowance of Appeal.

(a) *General rule*.—The petition for allowance of appeal need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

(1) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and if reported. Any such opinions shall be appended as provided in **[item 6 of paragraph (a) of this rule]** **subdivision (a)(7)**.

(2) The text of the order in question, or the portions thereof sought to be reviewed, and the date of its entry in the appellate court below. If the order is voluminous, it may, if more convenient, be appended to the petition.

(3) Where under the applicable law an issue is not reviewable on appeal unless raised or preserved below, the petition shall contain a statement of place of raising or preservation of issues, as required in Pa.R.A.P. 2117(c).

[(3)] **(4)** The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of questions presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition, or fairly comprised therein, will ordinarily be considered by the court in the event an appeal is allowed.

[(4)] **(5)** A concise statement of the case containing the facts material to a consideration of the questions presented.

[(5)] **(6)** A concise statement of the reasons relied upon for allowance of an appeal. *See* Pa.R.A.P. 1114.

[(6)] **(7)** There shall be appended to the petition a copy of any opinions delivered relating to the order sought to be reviewed, as well as all opinions of government units, trial courts, or intermediate appellate courts in the case, and, if reference thereto is necessary to ascertain the grounds of the order, opinions in companion cases. If an application for reargument was filed in the Superior Court or Commonwealth Court, there also shall be appended to the petition a copy of any order granting or denying the application for reargument. If whatever is required by this paragraph to be appended to the petition is voluminous, it may, if more convenient, be separately presented.

[(7)] **(8)** There shall be appended to the petition the verbatim texts of the pertinent provisions of constitutional provisions, statutes, ordinances, regulations, or other similar enactments which the case involves, and the citation to the volume and page where they are published, including the official edition, if any.

[(8)] **(9)** The certificate of compliance required by Pa.R.A.P. 127.

(b) * * *

(c) *No supporting brief*.—All contentions in support of a petition for allowance of appeal shall be set forth in the body of the petition as provided by **[item 5 of paragraph (a)]** **subdivision (a)(6)** of this rule. Neither the briefs below nor any separate brief in support of a petition for allowance of appeal will be received, and the Prothonotary of the Supreme Court will refuse to file any petition for allowance of appeal to which is annexed or appended any brief below or supporting brief.

(d) * * *

(e) * * *

(f) * * *

(g) *Supplementary matter*.—The cover of the petition for allowance of appeal, pages containing the table of contents, table of citations, proof of service, signature block, and anything appended to the petition under **[subparagraphs (a)(6) and (a)(7)]** **subdivisions (a)(7) and (a)(8)** shall not count against the word count limitations of this rule.

* * * * *

Rule 1116. Answer to the Petition for Allowance of Appeal.

(a) *General rule*.—Except as otherwise prescribed by this rule, within 14 days after service of a petition for allowance of appeal an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading, shall set forth any procedural, substantive or other argument or ground why the order involved should not be reviewed by the Supreme Court, and shall comply with Pa.R.A.P. **[1115(a).7]** **1115(a)(8)**. No separate motion to dismiss a petition for allowance of appeal will be received.

A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the petition for allowance of appeal will not be filed. The failure to file an answer will not be construed as concurrence in the request for allowance of appeal.

(b) *Children's fast track appeals*.—In a children's fast track appeal, within 10 days after service of a petition for allowance of appeal, an adverse party may file an answer.

(c) *Length*.—An answer to a petition for allowance of appeal shall not exceed 9,000 words. An answer that does not exceed 20 pages when produced by a word processor or typewriter shall be deemed to meet the 9,000 word limit. In all other cases, the attorney or the unrepresented filing party shall include a certification that the answer complies with the word count limit. The certificate may be based on the word count of the word processing system used to prepare the answer.

(d) *Supplementary matter*.—The cover of the answer, pages containing the table of contents, table of citations, proof of service, signature block, and anything appended to the answer shall not count against the word count limitations of this rule.

(e) *Certificate of compliance with Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.—An answer to a petition for allowance of appeal shall contain the certificate of compliance required by Pa.R.A.P. 127.

***Official Note*:** This rule and Pa.R.A.P. 1115 contemplate that the petition and answer will address themselves to the heart of the issue, such as whether the Supreme Court ought to exercise its discretion to allow an appeal, without the need to comply with the formalistic pattern of numbered averments in the petition and correspondingly numbered admissions and denials in the response. While such a formalistic format is appropriate when factual issues are being framed in a trial court **[( ],** as in the petition for review under Chapter 15**[ )],** such a format interferes with the clear narrative exposition necessary to outline succinctly the case for the Supreme Court in the allocatur context.

Parties are strongly encouraged to raise any waiver-based or procedural objection to a petition for allowance of appeal in an answer to the petition. In addition, parties are reminded that they may raise waiver-based, procedural, and jurisdictional objections after the grant of a petition for allowance of appeal, but before merits briefing, through a dispositive motion filed under Pa.R.A.P. 1972.

[Pa.B. Doc. No. 21-2105. Filed for public inspection December 17, 2021, 9:00 a.m.]

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. IV]

Amendment of Pennsylvania Rule of Evidence 404; No. 893 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 2nd day of December, 2021, upon the recommendation of the Committee on Rules of Evidence; the proposal having been published for public comment at 50 Pa.B. 7275 (December 26, 2020):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Evidence 404 is amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective April 1, 2022.

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE IV. RELEVANCE AND ITS LIMITS

Rule 404. Character Evidence; **Other** Crimes**, Wrongs,** or **[Other]** Acts.

* * * * *

(b) ***Other*** *Crimes, Wrongs***,** *or* **[*Other*]** *Acts*.

(1) *Prohibited Uses*. Evidence of **[a]** **any other** crime, wrong, or **[other]** act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses*. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice.

(3) *Notice in a Criminal Case*. In a criminal case the prosecutor must provide reasonable **written** notice in advance of trial **so that the defendant has a fair opportunity to meet it**, or during trial if the court excuses pretrial notice on good cause shown, of the **[general nature]** **specific nature, permitted use, and reasoning for the use** of any such evidence the prosecutor intends to introduce at trial.

Comment

* * * * *

Pa.R.E. 404(b)(1) is identical to F.R.E. 404(b)(1). It prohibits the use of evidence of other crimes, wrongs**,** or acts to prove a person's character.

Pa.R.E. 404(b)(2), like F.R.E. 404(b)(2), contains a non-exhaustive list of purposes, other than proving character, for which a person's other crimes, wrongs**,** or acts may be admissible. But it differs in **[several aspects. First,]** **that** Pa.R.E. 404(b)(2) requires **[that]** the probative value of the evidence **[must]** **to** outweigh its potential for prejudice. When weighing the potential for prejudice of evidence of other crimes, wrongs, or acts, the trial court may consider whether and how much such potential for prejudice can be reduced by cautionary instructions. *See Commonwealth v. LaCava*, **[542 Pa. 160,]** 666 A.2d 221 (**Pa.** 1995). When evidence is admitted for this purpose, the party against whom it is offered is entitled, upon request, to a limiting instruction. *See Commonwealth v. Hutchinson*, **[571 Pa. 45,]** 811 A.2d 556 (**Pa.** 2002). **[Second, the federal rule requires the defendant in a criminal case to make a request for notice of the prosecutor's intent to offer evidence of other crimes, wrongs or acts. This issue is covered in Pa.R.E. 404(b)(3) which is consistent with prior Pennsylvania practice in that the requirement that the prosecutor give notice is not dependent upon a request by the defendant.]**

Notice pursuant to subdivision (b)(3) must be provided before trial in such time as to allow the defendant a fair opportunity to meet the evidence. *See* Pa.R.E. 609(b)(2) and 902(11). Notice should be sufficiently in advance of trial so the defendant and court have adequate opportunity to assess the evidence, the purpose for which it is offered, and whether the requirements of Pa.R.E. 403 have been satisfied notwithstanding that a final determination as to the admissibility of the evidence must await trial. *See, e.g., Commonwealth v. Hicks*, 91 A.3d 47, 53-54 (Pa. 2014). The court may excuse the pretrial notice requirement upon a showing of good cause. When notice is provided during trial after a finding of good cause, the court may need to consider protective measures to assure that the opponent is not prejudiced.

***Official Note*:** Adopted May 8, 1998, effective October 1, 1998; Comment revised November 2, 2001**[;],** effective January 1, 2002; rescinded and replaced January 17, 2013, effective March 18, 2013**; amended December 2, 2021, effective April 1, 2022**.

Committee Explanatory Reports:

Final Report explaining the November 2, 2001 revision of Subsection (a) of the Comment published with the Court's Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).

Final Report explaining the December 2, 2021 amendment of paragraph (b) published with the Court's Order at 51 Pa.B. 7859 (December 18, 2021).

ADOPTION REPORT

Amendment of Pa.R.E. 404(b)

On December 2, 2021, the Supreme Court amended Pennsylvania Rule of Evidence 404 concerning the prosecutor's notice of intended use of evidence of other crimes, wrongs, or acts in criminal cases. The Committee on Rules of Evidence has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. *See* Pa.R.J.A. 103, Comment. The statements contained herein are those of the Committee, not the Court.

Effective December 1, 2020, Federal Rule of Evidence 404(b) was amended to primarily impose additional notice requirements on the prosecution in criminal cases when evidence of other crimes, wrongs, or acts, *i.e.*, "prior bad acts," is sought to be introduced. The amendment changed the title of the rule, the title to paragraph (b), and the rule text of paragraph (b)(1).

F.R.E. 404 was also amended to create a new paragraph (b)(3) to require the prosecutor to give the defendant pretrial written notice describing the specific act and explaining the relevance of the prior bad act for a non-propensity purpose. This is heightened from the previous requirement that the defendant request notice from the prosecutor and for the notice to be of the general nature of the evidence. New paragraph (b)(3) also provides a good cause exception for the pretrial written notice requirement.

The Committee considered the merits of the amendment of F.R.E. 404(b), as they may now differ from Pa.R.E. 404(b). Currently Pa.R.E. 404(b)(3) requires pretrial notice to the defendant, but is silent on whether the notice must be in writing. *See, e.g., Commonwealth v. Mawhinney*, 915 A.2d 107 (Pa. Super. 2006) (no requirement under Pa.R.E. 404(b) that notice be in writing). Further, the notice must be of the general nature of the prior bad act, which is ostensibly less detail than will be required by amended F.R.E. 404(b)(3).

The Committee believed there was merit in requiring notice from the prosecutor to be in writing, as well as the notice containing additional information, *i.e.*, the nature, purpose, and reason for the evidence. Such a requirement appeared reasonable, fair to the defendant, and would not unduly burden the prosecution. These changes would facilitate pretrial resolution of contested issues rather than deciding them midtrial. Secondarily, the Committee believed there was benefit in having Pa.R.E. 404(b) aligned, to the extent practicable, in its requirements as F.R.E. 404(b).

Paragraph (b)(3)(B) of the federal rule requires the prosecutor to "articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose." The Committee favored the additional content, but believed the requirements could be more succinctly stated within the confines of the existing rule.

Accordingly, the Committee proposed amending the rule's titles and making other non-substantive changes, as well as amending Pa.R.E. 403(b)(3) to require written notice of the specific nature of the other crime, wrong, or act, the permitted use of the evidence under paragraph (b)(2), and the reasoning for its use. This proposal was published for comment at 50 Pa.B. 7275 (December 26, 2020); three comments were received.

One respondent supported the proposed amendments and suggested further revisions to paragraph (b)(2) (Permitted Uses), believing that the "other purpose" exception was not being applied with rigor and, as a result, propensity evidence was being admitted for non-specific purposes. The Committee considered this point and concluded that any changes to paragraph (b)(2) would be outside the scope of the proposed rulemaking. The Committee will continue to monitor the case law regarding application of this exception and propose future rulemaking if warranted.

Another respondent endorsed the proposal, contending that it imposed a minimal burden on the prosecution because the prosecution would be required to disclose the same information when seeking the introduction of prior bad acts at trial.

The final respondent supported the proposal because it would avoid any ambiguity as to the reason for using this evidence and should decrease trial disruptions through greater use of motions *in limine*. The respondent also suggested that the "good cause" exception for written pretrial notice in paragraph (b)(3) be clarified or removed, contending that the exception could swallow the rule and eliminate any benefit provided by a written notice requirement.

Preliminarily, the Committee noted that the good cause exception currently exists in the rule, but reconsidered recommending its retention in the amended rule. One perspective was that the prosecutor should have possessed sufficient evidence prior to trial to proceed. Evidence of prior bad acts discovered during the course of trial should not be necessary if the prosecutor believed there was sufficient evidence to obtain a conviction prior to trial. Hence, any additional evidence of prior bad acts discovered during trial would likely be cumulative of what the prosecutor already possessed to prove guilt. Therefore, there is no need for a good cause exception.

In contrast, a good cause exception accommodates instances where a witness at trial may unexpectedly mention a prior bad act. Obviously, where the prior bad act is a matter of public record, *e.g.*, criminal conviction, professional license revocation, then little good cause would exist to excuse a lack of due diligence prior to trial. However, there are occasions where the acts are not public and only learned through witness testimony, especially those involving children who reveal information over the course of time, including at trial. Further, the trial judge can determine whether good cause exists based upon the facts of the case. Ultimately, the Committee favored retaining the good cause exception and relying upon the exercise of judicial discretion.

The respondent also expressed concern that the use of prior bad act evidence is so prejudicial to the defense that cautionary instructions are often ineffective. Jurors may use that evidence for propensity purposes notwithstanding instructions from the judge.

The Committee does not disagree with the prejudicial effect of prior bad acts evidence and the risk that it will be used for propensity purposes. Pa.R.E. 404(b)(2) requires the rejection of evidence of prior bad acts in criminal cases when the prejudicial effect outweighs the probative value. This is a lesser standard than applicable to F.R.E. 404(b), which requires rejection when the prejudicial effect *substantially* outweighs the probative value. *See* F.R.E. 403. As indicated in the Comment to Pa.R.E. 404(b)(2), Pennsylvania case law permits the judge to consider giving a cautionary instruction to mitigate the potential for prejudice. *See, e.g., Commonwealth v. LaCava*, 666 A.2d 221 (Pa. 1995) ("Moreover, the possible prejudicial effect of a reference to a defendant's prior criminal conduct may, under certain circumstances, be removed by an immediate cautionary instruction to the jury."). However, nothing in the rule suggests that all potential for prejudice can be eliminated with jury instructions. That determination is left to the discretion of the judge. As such, the rule contemplates there may be instances where instructions are insufficient to overcome the potential for prejudice. Relatedly, Pennsylvania law presumes that juries follow the trial court's instructions. *See, e.g., Commonwealth v. Jones*, 668 A.2d 491, 503-504 (Pa. 1995).

Post-publication, paragraph (b)(3) was revised to include the phrase, "so that the defendant has a fair opportunity to meet it." This phrase is presently contained in F.R.E. 404(b)(3)(A) and would establish a temporal requirement for the written notice of prior bad acts, measured not by a unit of time, but determined by whether the notice provides an adequate amount of time to oppose its admission. The phrase is also found in Pa.R.E. 609(b)(2) and 902(11).

Relatedly, the Comment was revised to expound on what is a sufficient amount of time to oppose the admission of prior bad acts, the proponent's ability to be excused from the pretrial requirement for good cause, and remedial efforts when good cause exists. This language is based upon similar commentary from the federal rule counterpart and conformed to Pennsylvania practice. A citation to *Commonwealth v. Hicks*, 91 A.3d 47, 53-55 (Pa. 2014) was included for the notion that the admissibility of such evidence may not be determined prior to trial.

This amendment becomes effective April 1, 2022.

[Pa.B. Doc. No. 21-2106. Filed for public inspection December 17, 2021, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Order Amending Rule 223.2 of the Pennsylvania Rules of Civil Procedure; No. 724 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 3rd day of December, 2021, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 49 Pa.B. 3885 (July 27, 2019):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 223.2 of the Pennsylvania Rules of Civil Procedure is amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective April 1, 2022.

Annex A

TITLE 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

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.]**

Jurors shall be permitted to take notes during the presentation of evidence, opening statements, and closing arguments and use their notes during deliberations.

(2) Jurors **[are not]** **shall not be** 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]** **opening statements**. 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, **the opening statements, or the closing arguments;**

(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.
>
> **You may also take notes while the attorneys' present their opening statements and when they will make their closing arguments about the evidence at the end of the trial. Again, if you do take notes, do not become so involved with note taking that it distracts from paying attention to the remainder of the opening statement or hearing all of the closing argument.**
>
> Your notes may help you refresh your recollection of the **[testimony and]** **evidence as well as the attorneys' opening statements or their closing arguments. Your notes** 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.

ADOPTION REPORT

Amendment of Pa.R.Civ.P. 223.2

On December 3, 2021, the Supreme Court amended Pennsylvania Rule of Civil Procedure 223.2 to clarify and expand when note taking by jurors is permitted during trial. The Civil Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. *See* Pa.R.J.A. 103, Comment. The statements contained herein are those of the Committee, not the Court.

The Civil Procedural Rules Committee received a request for rulemaking to clarify the parameters set forth in Pa.R.Civ.P. 223.2 as to when jurors may take notes during the course of a trial. The requester pointed out that the rule had been generally interpreted to permit note taking during witness testimony only, but not during opening statements and closing arguments. The rule expressly prohibits note taking during the reading of the jury charge only; there is no similar express prohibition on note taking during opening statements and closing arguments. Thus, whether note taking was permitted during opening statements and closing arguments was open to interpretation.

Pa.R.Civ.P. 223.2 was adopted in 2003, initially on a temporary basis, and made permanent in 2005. Subdivision (a)(1) of the rule permitted jurors to take notes during "the proceedings" if a trial was anticipated to last more than two days but did not specify or define the term "proceedings." As noted above, the term had been generally interpreted to permit juror note taking only when witnesses are testifying during trial and not during opening statements and closing arguments. For trials anticipated to last two days or less, the rule permitted jurors to take notes subject to the trial judge's discretion. Subdivision (a)(2) expressly prohibited note taking during the reading of the jury charge.

The Committee initially proposed the amendment of Pa.R.Civ.P. 223.2 in three respects. First, in subdivision (a)(1), the term "proceedings" was replaced with "the

presentation of evidence" to closely hew to the current understood practice of permitting note taking during the testimony of witnesses. In addition, the parameters of the rule were expanded to permit note taking during closing arguments. The proposal did not extend note taking to opening statements because the nature of opening statements can include information that may ultimately not be supported by the evidence presented or even entered into evidence. The proposal continued the prohibition of note taking during the reading of the jury charge.

Second, subdivision (a)(1) was modified to replace the permissive "may" with "shall be permitted." The use of the permissive "may" in the rule offered the opportunity for variation in procedure. To ensure a uniform practice throughout the Commonwealth, all jurors should be permitted to take notes subject to the parameters of the rule. The rule would continue to place no obligation on the part of jurors to take notes, but the authority for jurors to use this tool for deliberations would be expressly permitted.

Third, subdivision (b) was also modified to include a cautionary juror instruction that note taking should not divert jurors' attention from, *inter alia*, the closing arguments. Those requirements were also incorporated into the suggested jury instruction set forth in the comment following the rule text.

The Committee published the proposal, *see* 49 Pa.B. 3885 (July 27, 2019), and received four comments, both in support of and opposed to the proposal. Those supporting the proposal either supported it as drafted or suggested opening note taking to all portions of the trial, including opening statements. Those opposing the proposal either objected to expanding note taking to closing arguments because closing arguments are not evidence and are not always factually accurate, or believed that note taking should be limited to the presentation of evidence only.

To those commenters opposed to expanding note taking, the Committee believed that the benefit of expanding note taking to engage jurors more fully in the trial and hold attorneys accountable for accurate advocacy far outweighed any potential for inaccuracies. Moreover, the concern that note taking is not always accurate, while certainly true in some instances, was considered speculative when considered as a whole.

The Criminal Procedural Rules Committee, which was also examining whether Pa.R.Crim.P. 644 governing note taking in criminal trials should be similarly clarified, suggested forming a joint subcommittee to resolve any potential differences in the approach to juror note taking. The Civil Procedural Rules Committee agreed.

The joint subcommittee made two recommendations: (1) juror note taking should be permitted in all trials regardless of its anticipated length of time; and (2) juror note taking should be permitted during opening statements and closing arguments.

Two-Day Trial Time Limitation

After receiving the joint subcommittee's recommendations, the Committee discussed the extent of the trial judge's discretion in allowing juror note taking. Prior to the present amendment, Pa.R.Civ.P. 223.2 required a presiding judge to permit note taking in trials lasting more than two days, but granted the judge discretion in trials lasting less than two days. The Committee questioned why this time limit was chosen and whether it was an arbitrary limitation. In reviewing the history of Pa.R.Civ.P. 223.2, it was noted that when first adopted, there was some skepticism whether note taking by jurors was necessary or beneficial. As a compromise, the two-day limitation was imposed because it was reasoned that trials lasting less than two days would be more simple and not necessitate note taking; longer trials were deemed more complicated and thus jurors could benefit from the ability to take notes if they so desired.

The Committee noted that courts have become more accustomed to juror note taking, recognizing the benefits while observing that few of the problems originally feared with the practice have occurred. Thus, the Committee agreed with the joint subcommittee that, regardless of the length of the trial or its complexity, jurors should be allowed to take notes and that the two-day limitation should be eliminated.

Note Taking During Opening Statements and Closing Arguments

In examining the joint subcommittee's recommendation, several Committee members noted the observations shared by the joint subcommittee members on juror note taking. First, taking notes during opening statements aided the jurors in familiarizing themselves with the theories that were going to be presented during the trial. Those notes also helped them organize their thoughts in anticipation of hearing the evidence. Second, jurors found that taking notes during closing arguments aided in recalling those arguments. Additionally, it appeared that jurors had no trouble distinguishing between evidence and argument.

The Committee also noted that the joint subcommittee observed that note taking throughout the trial, rather than only during the presentation of evidence, offered several benefits. First, liberal allowance of note taking demonstrates respect for and trust in the jurors and their ability to perform their duties. Second, note taking keeps attorneys accountable; if jurors take notes, attorneys need to take greater care to avoid discrepancies between the opening statement and the evidence presented. To the concern that opening statements may include references to evidence that is ultimately precluded, curative instructions are an available remedy. It was also noted there are instances during the presentation of evidence when testimony can be stricken. Finally, it was observed that the federal courts permit jurors to take notes during all parts of a trial.[1]

As a result of these discussions, the Committee concluded that note taking should be permitted during both opening statements and closing arguments in addition to during the presentation of evidence. Note taking, however, should be precluded during the judge's charge to the jury.

This amendment has been adopted in tandem with the amendment to Pa.R.Crim.P. 644 to clarify and expand juror note taking during opening statements, the presentation of evidence, and closing arguments in criminal proceedings. In doing so, the parameters of juror note taking have been made uniform for all jury trials. The amendment becomes effective April 1, 2022.

[Pa.B. Doc. No. 21-2107. Filed for public inspection December 17, 2021, 9:00 a.m.]

[1]Note taking by jurors in federal court is permitted at the discretion of each judge. The directive appears to be set forth in pattern jury instructions and not pursuant to rule. *See, e.g.*, Section 1.9 of the Model Jury Instructions for the United States Court of Appeals for the Third Circuit, https://www.ca3.uscourts.gov/sites/ca3/files/1_Chaps_1_2_3_2017_Oct.pdf.

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 6]

Order Amending Rule 644 of the Pennsylvania Rules of Criminal Procedure; No. 534 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 3rd day of December, 2021, upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been published before adoption at 50 Pa.B. 3576 (July 18, 2020):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 644 of the Pennsylvania Rules of Criminal Procedure is amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective on April 1, 2022.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART C(2). Conduct of Jury Trial

Rule 644. Note Taking By Jurors.

(A) **[When a jury trial is expected to last for more than two days, jurors]** **Jurors** shall be permitted to take notes during **[the trial]** **opening statements, the presentation of evidence, and closing arguments** for their use during deliberations. **[When the trial is expected to last two days or less, the judge may permit the jurors to take notes.]**

(1) The jurors shall not take notes during the judge's charge at the conclusion of the trial.

(2) The court shall provide materials to the jurors that are suitable for note taking. These are the only materials that may be used by the jurors for note taking.

(3) The court, the attorney for the Commonwealth, and the defendant's attorney, or the defendant if unrepresented, shall not request or suggest that jurors take notes, comment on the jurors' note taking, or attempt to read any notes.

(4) The notes of the jurors shall remain in the custody of the court at all times.

(5) The jurors may have access to their notes and use their notes only during the trial and deliberations. The notes shall be collected or maintained by the court at each break and recess, and at the end of each day of the trial.

(6) The notes of the jurors shall be confidential and limited to use for the jurors' deliberations.

(7) Before announcing the verdict, the jury shall return their notes to the court. The notes shall be destroyed by court personnel without inspection upon the discharge of the jury.

(8) The notes shall not be used as a basis for a request for a new trial, and the judge shall deny any request that the jurors' notes be retained and sealed pending a request for a new trial.

(B) The judge shall instruct the jurors about taking notes during the trial. At a minimum, the judge shall instruct the jurors that:

(1) the jurors are not required to take notes, and those jurors who take notes are not required to take extensive notes;

(2) note taking should not divert jurors from **evaluating witness credibility or from** paying full attention to the evidence **[and evaluating witness credibility], opening statements, and closing arguments**;

(3) the notes merely are memory aids, not evidence or the official record;

(4) the 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) the jurors may not show their notes or disclose the contents of the notes to other jurors until deliberations begin, but may show the notes or disclose the contents during deliberations;

(6) the jurors may not take their notes out of the courtroom except to use their notes during deliberations; and

(7) the jurors' notes are confidential, will not be reviewed by the court or anyone else, will be collected before the verdict is announced, and will be destroyed immediately upon discharge of the jury.

Comment:

[This rule was adopted in 2005 to permit the jurors to take notes during the course of any trial that is expected to last more than two days. Pursuant to this rule, except for trials expected to last two days or less, the jury may take notes as a matter of right without the permission of the court. *See, e.g.*, ABA Standards For Criminal Justice, Second Edition, Standard 15-3.2 (Note taking by jurors) (1980). This rule was originally adopted as a temporary rule for the purpose of assessing whether juror note taking in criminal cases is beneficial to the system of justice in Pennsylvania. As the rule has found favor with the bench, bar, and public, the sunset provision of paragraph (C) has been rescinded and the rule has been made permanent.]

The judge must instruct the jurors concerning the note taking. Paragraph (B) sets forth the minimum information the judge must explain to the jurors. The judge also must emphasize the confidentiality of the notes.

It is strongly recommended the judge instruct the jurors along the lines of the following:

> 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 it is entirely up to you whether you wish to take notes to help you remember what witnesses said and to use during your deliberations.
>
> If you do take notes, remember that one of your responsibilities as a juror is to observe the demeanor of witnesses to help you assess their credibility. Do not become so involved with note taking that it interferes with your ability to observe a witness or distracts you from hearing the questions being asked the witness and the answers being given by the witness.

You may also take notes during the opening statements and closing arguments of the attorneys. Again, if you do take notes, do not become so involved with note taking that it prevents you from paying attention to the remainder of the opening statement or closing argument.

Your notes may help you refresh your recollection of the **[testimony and]** **evidence as well as the attorneys' opening statements and closing arguments. Your notes** 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 should not take precedence over your independent recollection of the facts.

Those of you who do not take notes should not be overly influenced by the notes of other jurors. 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. Although you are permitted to use your notes for your deliberations, the only notes you may use are the notes you write in the courtroom during the proceedings on the materials distributed by the court staff.

Each time that we adjourn, your notes will be collected and secured by court staff. Your notes are completely confidential and neither I nor any member of the court's staff will read your notes, now or at any time in the future. After you have reached a verdict in this case, your notes will be destroyed immediately by court personnel. Pennsylvania Bar Association Civil Litigation Update, *Juror Note-taking in Civil Trials: An Idea Whose Time Has Come*, Volume 5, No. 2 (Spring 2002), at 12.

Pursuant to paragraph (B)(6), the jurors are not permitted to remove the notes from the courtroom during the trial.

Pursuant to paragraph (A)(7), the judge must ensure the notes are collected and destroyed immediately after the jury renders its verdict. The court may designate a court official to collect and destroy the notes.

***Official Note*:** Rule 1113 adopted January 24, 1968, effective August 1, 1968; renumbered Rule 644 and *Comment* revised March 1, 2000, effective April 1, 2001. Rule 644 rescinded June 30, 2005, effective August 1, 2005. New Rule 644 adopted June 30, 2005, effective August 1, 2005; amended August 7, 2008, effective immediately **amended December 3, 2021, effective April 1, 2022**.

Committee Explanatory Reports:

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 provisions of new Rule 644 allowing note taking by jurors published with the Court's Order at 35 Pa.B. 3917 (July 16, 2005).

Final Report explaining the August 7, 2008 amendments making permanent the provisions of Rule 644 allowing note taking by jurors published with the Court's Order at 38 Pa.B. **[4506]** **4606** (August 23, 2008).

Adoption Report explaining amendments permitting note taking by jurors during the presentation of evidence, opening statements, and closing arguments published with the Court's Order at 51 Pa.B. 7864 (December 18, 2021).

ADOPTION REPORT

Amendment of Pa.R.Crim.P. 644

Note Taking By Jurors

On December 3, 2021, effective April 1, 2022, upon recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 644 to clarify (1) that jurors are permitted to take notes during trial regardless of the duration of the trial and (2) that "trial" includes opening statements and closing arguments for purposes of note taking. The Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. *See* Pa.R.J.A. 103, Comment. The statements contained herein are those of the Committee, not the Court.

Pa.R.Crim.P. 644 (Note Taking by Jurors) was adopted in 2005 and largely based on Pa.R.Civ.P. 223.2 (Conduct of the Jury Trial. Juror Note Taking), which was adopted in 2003. However, there were several differences between Pa.R.Civ.P. 223.2 and Pa.R.Crim.P. 644. First, Pa.R.Civ.P. 223.2 permitted jurors to take notes during "the proceedings" for use in deliberations, while Pa.R.Crim.P. 644 permitted note taking "during trial." Second, Pa.R.Civ.P. 223.2 allowed a judge the discretion to permit note taking in trials lasting more than two days, while Pa.R.Crim.P. 644 required the judge to allow jurors to take notes in trials lasting more than two days but left to the judge's discretion whether to permit note taking in trials of shorter duration. Both Pa.R.Civ.P. 223.2 and Pa.R.Crim.P. 644 contained prohibitions against note taking during the judge's charge but were silent as to opening statements and closing arguments.

The Criminal Procedural Rules Committee and the Civil Procedural Rules Committee formed a joint subcommittee to discuss the merits of reducing these differences and bringing greater consistency to the rules. The joint subcommittee made two recommendations: (1) the two-day threshold for juror note taking should be removed; and (2) the rules should clarify that note taking is permitted during opening statements and closing arguments.

Two-Day Trial Time Limitation

After receiving the joint subcommittee's recommendations, the Committee discussed the extent of the trial judge's discretion in allowing juror note taking. Prior to the present amendment, Pa.R.Crim.P. 644 required a presiding judge to permit note taking in trials lasting more than two days but granted the judge discretion in trials lasting less than two days. The Committee questioned why this time limit was chosen and whether it was an arbitrary limitation. In reviewing the history of Pa.R.Crim.P. 644, it was noted that when first adopted, there was some skepticism that note taking by jurors was either necessary or beneficial. As a compromise, note taking was not permitted during trials lasting less than two days, reasoning that short trials are generally less complex, while note taking was permitted during longer trials, which are presumably more complicated.

The Committee noted that courts have become more accustomed to juror note taking, recognizing the benefits

while observing that few of the problems originally feared with the practice have occurred. Thus the Committee agreed with the joint subcommittee that, regardless of the length of the trial or its complexity, jurors should be allowed to take notes and that the two-day limitation should be eliminated.

Note Taking During Opening Statements and Closing Arguments

In examining the joint subcommittee's recommendation, several Committee members shared juror observations. First, taking notes during opening statements aided the jurors in familiarizing themselves with the theories that were going to be presented during the trial. Those notes also helped them organize their thoughts in anticipation of hearing the evidence. Second, jurors found that taking notes during closing arguments aided in recalling those arguments. Additionally, it appeared that jurors had no trouble distinguishing between evidence and argument.

The Committee also observed that note taking throughout the trial, rather than only during the presentation of evidence, offers several benefits. First, liberal allowance of note taking demonstrates respect for and trust in the jurors and their ability to perform their duties. Second, note taking keeps attorneys accountable; if jurors take notes, attorneys need to take greater care to avoid discrepancies between the opening statement and what evidence is presented. To the concern that opening statements may include references to evidence that is ultimately precluded, curative instructions are an available remedy—it was also noted that there are instances during the presentation of evidence when testimony can be stricken. Finally, it was observed that the federal courts permit jurors to take notes during all parts of a trial.[1]

As a result of these discussions, the Committee concluded that note taking should be permitted during both openings and closings in addition to during the presentation of evidence. Note taking, however, will still be precluded during the judge's charge.

The Committee published this proposal for comment. See 50 Pa.B. 3576 (July 18, 2020). One comment was received objecting to note taking during openings and closings. No post-publications responsive revisions were made to the proposal for the reasons contained herein. This amendment becomes effective April 1, 2022.

[Pa.B. Doc. No. 21-2108. Filed for public inspection December 17, 2021, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Amendment of Philadelphia Court of Common Pleas Criminal Rules *122-1 and *122-8; President Judge General Court Regulation No. 43 of 2021

Order

And Now, this 30th day of November 2021, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on November 18, 2021, to amend Philadelphia Court of Common Pleas Criminal Rules *122-1 and *122-8 as follows to this Order and, as required by Pa.R.J.A. 103, the Supreme Court Criminal Procedural Rules Committee has reviewed the following local rules, has determined that Rules *122-1 and *122-8 are not inconsistent with applicable statewide rules, and has authorized its promulgation,

Now, therefore, it is hereby *Ordered* and *Decreed* that Philadelphia Court of Common Pleas Criminal Rules *122-1 and *122-8 are amended, as follows, effective thirty days after publication in the *Pennsylvania Bulletin*.

As required by Pa.R.J.A. 103(d), the local rules which follow this Order were submitted to the Supreme Court of Pennsylvania Criminal Procedural Rules Committee for review, and written notification has been received from the Rules Committee certifying that the local rules are not inconsistent with any general rules of the Supreme Court. This Order and the following local rules shall be filed with the Office of Judicial Records (formerly the Prothonotary, Clerk of Courts and Clerk of Quarter Sessions) in a docket maintained for Administrative Orders issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified copies of this Administrative Order and the following local rules, as well as one copy of the Administrative Order and local rules, shall be distributed to the Legislative Reference Bureau on a computer diskette for publication in the *Pennsylvania Bulletin*. As required by Pa.R.J.A. 103(d)(6) one certified copy of this Administrative Order and local rules shall be filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at www.courts.phila.gov, and shall be incorporated in the compiled set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the Administrative Order and local rules shall also be published in *The Legal Intelligencer* and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

By the Court

HONORABLE IDEE C. FOX,
President Judge
Court of Common Pleas

Proposed Amendments to Philadelphia Rules of Criminal Procedures Court of Common Pleas, Trial Division, Criminal.

Note: New text is bold and underscored; deleted text is bolded and bracketed.

Rule *122-1. Standards for Appointment of Counsel.

* * * *

(B) *Selection of Attorneys*

(1) Each attorney who desires appointment in each of the above categories of cases must fill out the appropriate Application for Court Appointment Certification which shall be updated from time to time by the **[President Judge and the]** Administrative Judge of the Trial Division, shall reference the necessary qualifications, and shall be posted on the websites of the First Judicial District and the Philadelphia Bar Association. The Application will be submitted to a Screening Committee of the Philadelphia Bar Association. The Screening Committee shall consist of members appointed by the **[Board of Judges of Philadelphia County]** **Administrative Judge of the Trial Division**. Neither the Chief Defender, nor any attorney from the Defender Association of Philadelphia, nor any attorney from the District Attor-

[1]Note taking by jurors in federal court is permitted at the discretion of each judge. The directive appears to be set forth in pattern jury instructions and not pursuant to rule.

ney's Office shall be eligible for appointment to the Screening Committee. **[In making such appointments, the Board of Judges shall consider the recommendation of the Criminal Justice Section of the Philadelphia Bar Association, which shall submit to the Board of Judges a list of not less than fifteen names. Each member of the Screening Committee must be familiar with the practice of criminal law in Philadelphia]** **The Administrative Judge of the Trial Division shall appoint no fewer than three members as the Screening Committee**.

(2) The Screening Committee will periodically review all Applications submitted, and will designate attorneys who are qualified for handling each category of case; the Screening Committee will maintain such lists of attorneys. It will be the duty of the Screening Committee to review these lists regularly, to add new applicants who meet the qualifications. No member of the Screening Committee will be permitted to accept an appointment during the member's term on the Screening Committee.

(3) **[The Criminal Justice Section of the Philadelphia Bar Association is authorized to adopt rules of procedure governing: the recommendation of the members for the Screening Committee, the frequency of meetings, and the methods for establishing and maintaining lists of qualified attorneys.**

(4)] From time-to-time, the lists of approved attorneys will be made available to the judges authorized to make appointments.

Note: Amended September 20, 2019, effective December 2, 2019. **Amended on , 2021; effective on , 2022.**

Rule *122-8. Performance Standards; Processing Complaints.

(A) *General*: The Screening Committee may refuse to approve applicants as provided in Rule *122-7 **[(B), or may impose remedial measures, if the applicant fails to meet the performance standards set forth in this Rule]**.

(B) *Processing Complaints*.

Any complaint about the performance of any court-appointed counsel shall be submitted**[, as applicable, to the President Judge, the Trial Division Administrative Judge,]** **to** the Supervising Judge of the **Criminal** Trial Division**[, or their designees, for their]** **for** review and appropriate disposition **[Copies may, at the discretion of the President Judge, Administrative Judge, Supervising Judge or their designees, be sent to the Screening Committee, or its designee, for its review, recommendation or other disposition as may be requested by the applicable Judge. All information provided to the Screening Committee shall remain confidential], which may include the removal of the attorney from the applicable court-appointment list in the Court of Common Pleas, Criminal Trial Division**.

Note: Amended September 20, 2019, effective December 2, 2019. **Amended on , 2021; effective on , 2022.**

[Pa.B. Doc. No. 21-2109. Filed for public inspection December 17, 2021, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

Order

And Now, this 8th day of December, 2021, Dauphin County Local Rules of Civil Procedure 205.2(a), 208.2(d), and 215.1 are amended as follows:

Rule 205.2(a). Physical Characteristics of Pleadings and Other Legal Papers.

(1) All documents filed in the Office of Prothonotary shall be on 8 1/2 inch by 11 inch paper and shall comply with the following requirements:

(a) The document shall be prepared on white paper of good quality and the use of recycled paper is encouraged.

(b) The first sheet shall contain a 3-inch space from the top of the paper for all court stampings, filing notices, etc.

(c) The text must be double spaced, but quotations more than two lines long may be indented and single spaced. Except as provided in subsection b, margins must be at least one inch on all four sides.

(d) The lettering shall be clear, legible and no smaller than Arial 12 point.

(e) The lettering shall be on only one side of a page.

(f) All exhibit tabs shall appear at the bottom of the pleading.

(g) No backers shall be used on the original or any copies of pleadings or other legal papers filed with the Prothonotary. The original of pleadings or other legal papers should be stapled in the top left corner. If the document is over one-half inch thick, it should be secured with a binder clip. Backers may be used for copies provided to the court, opposing parties or clients.

(h) Exhibits or attachments smaller than 8 1/2 inches by 11 inches shall be attached to a regular size paper by using adhesive tape.

(i) Pages shall be consecutively numbered beginning with page 2 and said number shall appear on the bottom center of the pleading.

(j) The name of the attorney or party, the address at which service can be made, a telephone number and email address of the attorney or party shall appear on the top left-hand corner of the first page of all papers filed in the Office of the Prothonotary.

(k) With the initiating filing and all subsequent filings, in cases where medical malpractice is or will be alleged, the notation "Civil Action—Medical Professional Liability Action" shall appear on all captions directly underneath the docket number.

(l) Any courtesy copies of filings that are provided to a judge and served on opposing parties must be firmly bound and any metal fasteners or staples must be securely covered with no sharp or protruding edges of any kind.

(m) Filings of record may be referenced in any subsequent filing but shall not be attached thereto.

(n) Attorneys and self-represented parties shall comply with the **[Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts]** **Case Records Public Access Policy of the Unified Judicial System of**

Pennsylvania and Local Rules of Judicial Administration 101 and 102 **[found at http://www.dauphincounty.org/government/Court-Departments/Local-Rules-of-Court/Pages/default.aspx] which may be found on the Dauphin County website under Local Rules of Court**.

(2) The Prothonotary shall endorse upon each paper filed, the date and time of its filing, and enter it upon the proper docket.

(3)(a) All civil motions, petitions, administrative applications, and answers or responses thereto shall be accompanied by a proposed order (or alternative orders). Except for Petitions in Forfeiture filed pursuant to 42 Pa.C.S.A. § 5805, Petitions shall also include a proposed Rule to Show Cause.

(b) The proposed order(s) and any Rule to Show Cause shall contain a distribution legend which shall include the name(s) and mailing address(es), telephone number(s), facsimile number(s) and e-mail address(es), if any, of all attorneys and self-represented parties to be served. The distribution legend shall identify which party each person represents.

(c) Counsel and self-represented litigants are strongly encouraged to include stamped envelopes addressed to the attorneys and/or self-represented parties listed in the distribution legend along with all proposed orders and/or Rules to Show Cause.

(4) The judge(s) chambers shall:

(a) file the original order with the Prothonotary;

(b) prepare copies of the order for mailing;

(c) have the Prothonotary's Office certify the copies for mailing;

(d) mail copies of the certified order to all parties listed in the distribution legend;

(e) note the date of mailing and the initials of the person who accomplished the mailing on the filed original order.

Comment

Paragraph (3) of this rule is intended to formalize a practice of long standing in Dauphin County as well as the majority of other counties. The proposed order should identify the relief sought, e.g. continuance, rule to show cause, request status or discovery conference, amend a complaint, etc.

An accurate distribution legend naming all attorneys and self-represented parties and their addresses, telephone numbers, facsimile numbers and e-mail addresses, if any, is essential since the court is now assuming the responsibility for service of its orders. Inclusion of facsimile numbers and e-mail addresses is not intended to authorize service by these methods.

Paragraph (4) of this rule is intended to formalize what is now a hybrid process which has left some doubt as to the responsibility for service of orders.

Rule 208.2(d). **[Uncontested]** Motions—**Concurrence** Certification.

All motions shall contain a certification indicating that the moving party has disclosed the full text of the motion and the proposed order to all parties by facsimile or electronic communication **prior to the filing of the motion**, and that concurrence to both the motion and proposed order has been given or denied by each party. If facsimile or electronic communication is not possible, a copy of the motion and proposed order shall be sent by mail. If the other party fails to respond to the inquiry regarding concurrence within a reasonable time, this fact must be contained in the motion **and the motion will be deemed contested pursuant to Dauphin County Local Rule 208.3(b)**.

Rule 215.1. Jury Trials.

(1) *LISTING*

(a) An original and one copy of a Certificate of Readiness shall be filed with the Prothonotary listing a case for a jury trial in accordance with the timelines published in the Annual Court Calendar. No case subject to compulsory arbitration shall be listed for trial, unless on appeal from a report and award of arbitrators. **The Certificate of Readiness form is available in the Prothonotary's Office, the Court Administrator's Office, and online at the Dauphin County website (www.dauphincounty.org). Parties filing a Certificate of Readiness form must ensure that the most current form is used. Failure to use the most current form shall result in the rejection of the Certificate of Readiness.**

(b) The party filing the Certificate of Readiness shall communicate with all counsel and/or **[pro se] self-represented** parties and confirm the availability of all counsel or the **[pro se] self-represented** party, **[as the case may be]** together with the availability of all witnesses and all parties for the particular trial term before the Certificate of Readiness is filed. The listing party shall attest that all discovery has been completed, serious settlement negotiations have been conducted, and that the case is READY IN ALL RESPECTS for trial. Absent extraordinary and compelling circumstances, the failure to complete videotaped testimony for use at trial shall not be a proper basis for a request for a continuance.

(c) A copy of the Certificate of Readiness shall be promptly served on all counsel and/or **[pro se] self-represented** parties. If a party is not represented by counsel of record, such notice shall include the date of the first day of the applicable trial session. The Prothonotary shall forward the original Certificate of Readiness to the Court Administrator's Office and shall retain the copy in the file.

[The Certificate of Readiness form is available in the Prothonotary's Office, in the Court Administrator's Office and online at the Dauphin County website (www.dauphincounty.org). Parties filing the Certificate of Readiness form must ensure that the most current form is utilized. Failure to utilize the most current form shall result in the rejection of the Certificate of Readiness.]

(d) If a party is unable to satisfy the requirements regarding the filing of a Certificate of Readiness due to the unavailability of counsel, parties or witnesses, such party shall immediately file an Administrative Application for Status Conference in accordance with Dauphin County Local Rule 215.3.

(2) *ATTACHMENT*—Listing a case for trial shall have the effect of attaching all counsel of record for the trial term specified. The attachment shall be effective as of the date of the filing of the certificate of readiness unless a prior scheduling order has been issued.

The Dauphin County Court will defer to a scheduling/attachment order from another court of equal or higher jurisdiction so long as:

(a) The foreign order is earlier in time; and

(b) The party with the scheduling conflict timely moves for a continuance and attaches a copy of the foreign order.

(3) *OBJECTIONS TO THE CERTIFICATE OF READINESS FOR JURY TRIAL*

(a) All Objections to the Certificate of Readiness shall be set forth in a pleading, in paragraph form, and filed promptly in accordance with the timelines found in the Annual Court Calendar. The Objection shall contain a procedural history of the case and a detailed statement as to why the objection is being made. The original and one copy of the Objection shall be filed with the Prothonotary. The Prothonotary shall forward the original to the Court Administrator's Office and retain the copy in the file. The Objection shall be promptly served on all other counsel and/or **[pro se]** **self-represented** parties. Objections filed after the timelines established in the Annual Court Calendar will not be entertained, except in extraordinary circumstances for extremely good cause shown.

(b) **[All objections shall be heard by the Civil Calendar Judge on the date specified in the Annual Court Calendar.]** **The judge assigned to the case shall rule on any objections filed to that case, however if a judge has not yet been assigned, the Civil Calendar Judge shall rule on the objections to the unassigned case.**

(4) *COMPILATION OF TRIAL LIST*

(a) After the objections have been disposed of by the Court, the Court Administrator's Office shall compile the **final** trial list for that session. Copies of the trial list shall be available in the Court Administrator's Office at least one (1) week prior to the first day of the session of jury trials.

(b) All cases for trial shall be placed on the trial list in the order of their term and docket number, unless preference is required or appropriate.

(5) *CALENDAR JUDGE*—The Calendar Judge will have supervision of the cases on the Civil Jury Trial List, including the following:

(a) Imposition of sanctions for the improper filing of a certificate of readiness.

(b) **[Hearing of]** **Ruling on** objections to the listing of cases **in trials not yet assigned to a judge**.

(c) **[Disposition of applications for preference in listing.**

(d)] Assignment of cases.

The previously listed amendments shall be published in the *Pennsylvania Bulletin* and will become effective thirty days from the date of publication.

By the Court

JOHN F. CHERRY,
President Judge

[Pa.B. Doc. No. 21-2110. Filed for public inspection December 17, 2021, 9:00 a.m.]