# CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

## PART A. General Provisions



## PART B. Non-Jury Procedures



## PART C. Jury Procedures



## PART C(1). Impaneling Jury



## PART C(2). Conduct of Jury Trial

## PART A. General Provisions

## Rule 600. [Rescinded].

**Official Note:** Rule 1100 adopted June 8, 1973, effective prospectively as set forth in paragraphs (A)(1) and (A)(2) of this rule; paragraph (E) amended December 9, 1974, effective immediately; paragraph (E) re-amended June 28, 1976, effective July 1, 1976; amended October 22, 1981, effective January 1, 1982. (The amendment to paragraph (C)(3)(b) excluding defense-requested continuances was specifically made effective as to continuances requested on or after January 1, 1982.) Amended December 31, 1987, effective immediately; amended September 30, 1988, effective immediately; amended September 3, 1993, effective January 1, 1994; Comment revised September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 600 and amended March 1, 2000, effective April 1, 2001; Comment revised April 20, 2000, effective July 1, 2000; rescinded October 1, 2012, effective July 1, 2013, and replaced by new Rule 600.

*Committee Explanatory Reports*:

Report explaining the September 3, 1993 amendments published with the Court's Order at 23 Pa.B. 4492 (September 25, 1993).

Final Report explaining the September 13, 1995 Comment revision published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 April 20, 2000 Comment revision concerning *Commonwealth v. Hill* and *Commonwealth v. Cornell* published with the Court's Order at 30 Pa.B. 2219 (May 6, 2000).

Final Report explaining the October 1, 2012 rescission of current Rule 600 published at 42 Pa.B. 6629 (October 20, 2012).

**Source**

The provisions of this Rule 600 amended April 20, 2000, effective July 1, 2000, 30 Pa.B. 2211; rescinded October 1, 2012, effective July 1, 2013, 42 Pa.B. 6622. Immediately preceding text appears at serial pages (312452), (266555) to (266556) and (272471).

## Rule 600. Prompt Trial.

(A) COMMENCEMENT OF TRIAL; TIME FOR TRIAL

(1) For the purpose of this rule, trial shall be deemed to commence on the date the trial judge calls the case to trial, or the defendant tenders a plea of guilty or *nolo contendere*.

(2) Trial shall commence within the following time periods.

(a) Trial in a court case in which a written complaint is filed against the defendant shall commence within 365 days from the date on which the complaint is filed.



 

(b) Trial in a court case that is transferred from the juvenile court to the trial or criminal division shall commence within 365 days from the date on which the transfer order is filed.

(c) When a trial court has ordered that a defendant's participation in the ARD program be terminated pursuant to Rule 318, trial shall commence within 365 days from the date on which the termination order is filed.

(d) When a trial court has granted a new trial and no appeal has been perfected, the new trial shall commence within 365 days from the date on which the trial court's order is filed.

(e) When an appellate court has remanded a case to the trial court, the new trial shall commence within 365 days from the date of the written notice from the appellate court to the parties that the record was remanded.

(B) PRETRIAL INCARCERATION

Except in cases in which the defendant is not entitled to release on bail as provided by law, no defendant shall be held in pretrial incarceration in excess of

(1) 180 days from the date on which the complaint is filed; or

(2) 180 days from the date on which the order is filed transferring a court case from the juvenile court to the trial or criminal division; or

(3) 180 days from the date on which the order is filed terminating a defendant's participation in the ARD program pursuant to Rule 318; or

(4) 120 days from the date on which the order of the trial court is filed granting a new trial when no appeal has been perfected; or

(5) 120 days from the date of the written notice from the appellate court to the parties that the record was remanded.

(C) COMPUTATION OF TIME

(1) For purposes of paragraph (A), periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial must commence. Any other periods of delay shall be excluded from the computation.

(2) For purposes of paragraph (B), only periods of delay caused by the defendant shall be excluded from the computation of the length of time of any pretrial incarceration. Any other periods of delay shall be included in the computation.

(3)(a) When a judge or issuing authority grants or denies a continuance:

(i) the issuing authority shall record the identity of the party requesting the continuance and the reasons for granting or denying the continuance; and

(ii) the judge shall record the identity of the party requesting the continuance and the reasons for granting or denying the continuance. The judge also shall record to which party the period of delay caused by the continuance shall be attributed, and whether the time will be included in or excluded from the computation of the time within which trial must commence in accordance with this rule.

(b) The determination of the judge or issuing authority is subject to review as provided in paragraph (D)(3).

(D) REMEDIES

(1) When a defendant has not been brought to trial within the time periods set forth in paragraph (A), at any time before trial, the defendant's attorney, or the defendant if unrepresented, may file a written motion requesting that the charges be dismissed with prejudice on the ground that this rule has been violated. A copy of the motion shall be served on the attorney for the Commonwealth concurrently with filing. The judge shall conduct a hearing on the motion.

(2) Except in cases in which the defendant is not entitled to release on bail as provided by law, when a defendant is held in pretrial incarceration beyond the time set forth in paragraph (B), at any time before trial, the defendant's attorney, or the defendant if unrepresented, may file a written motion requesting that the defendant be released immediately on nominal bail subject to any nonmonetary conditions of bail imposed by the court as permitted by law. A copy of the motion shall be served on the attorney for the Commonwealth concurrently with filing. The judge shall conduct a hearing on the motion.

(3) Any requests for review of the determination in paragraph (C)(3) shall be raised in a motion or answer filed pursuant to paragraph (D)(1) or paragraph (D)(2).

(E) Nothing in this rule shall be construed to modify any time limit contained in any statute of limitations.

**Comment**

Rule 600 was adopted in 1973 as Rule 1100 pursuant to *Commonwealth v. Hamilton*, 449 Pa. 297, 297 A.2d 127 (1972), and provided, *inter alia*, that trials be held within 180 days of the filing of the complaint. The Court in *Hamilton* and subsequent cases explained that, by fixing the maximum time limit within which to try individuals accused of crime, the rule is intended to protect the right of criminal defendants to a speedy trial, protect society's right to effective prosecution of criminal cases, and help eliminate the backlog in criminal cases in the courts of Pennsylvania. *See, e.g., Commonwealth v. Dixon*, 589 Pa. 28, 907 A.2d 468 (2006); *Commonwealth v. Genovese*, 493 Pa. 65, 425 A.2d 367 (1981).

The time limits of this rule were expanded on December 31, 1987, effective immediately, to provide that trials must be held within 365 days of the filing of the complaint. The 1987 amendments also provided that a defendant who has been held in pretrial incarceration longer than 180 days must be released on nominal bail, and deleted the provisions concerning Commonwealth petitions to extend the time for commencement of trial.

In 2012, former Rule 600 was rescinded and new Rule 600 adopted to reorganize and clarify the provisions of the rule in view of the long line of cases that have construed the rule. The new rule incorporates from former Rule 600 the provisions concerning the commencement of trial and the requirement of bringing a defendant to trial within 365 days of specified events, new paragraph (A), and the 120-day or 180-day time limits on pretrial incarceration, new paragraph (B). New paragraph (C), concerning computation of time and continuances, and new paragraph (D), concerning remedies, have been modified to clarify the procedures and reflect changes in law.

When calculating the number of days set forth herein, see the Statutory Construction Act, 1 Pa.C.S. § 1908.

COMMENCEMENT OF TRIAL; TIME FOR TRIAL

Paragraph (A) addresses both the commencement of trial and the 365-day time for trial. A trial commences when the trial judge determines that the parties are present and directs them to proceed to *voir dire* or to opening argument, or to the hearing of any motions that had been reserved for the time of trial, or to the taking of testimony, or to some other such first step in the trial. *See, e.g., Commonwealth v. Kluska*, 484 Pa. 508, 399 A.2d 681 (1979); *Commonwealth v. Lamonna*, 473 Pa. 248, 373 A.2d 1355 (1977). It is not intended that preliminary calendar calls should constitute commencement of a trial. Concerning the hearing of motions reserved for the time of trial, see *Jones v. Commonwealth*, 495 Pa. 490, 434 A.2d 1197 (1981).

The general rule is that trial must commence within 365 days from the date on which the complaint is filed. Pursuant to this rule, it is intended that ''complaint'' also includes special documents used in lieu of a complaint to initiate criminal proceedings in extraordinary circumstances such as criminal proceedings instituted by a medical examiner or coroner. *See Commonwealth v. Lopinson*, 427 Pa. 284, 234 A.2d 552 (1967), *vacated on other grounds*, 392 U.S. 647 (1968); *Commonwealth v. Smouse*, 406 Pa.Super. 369, 594 A.2d 666 (1991).

In cases in which the Commonwealth files a criminal complaint, withdraws that complaint, and files a second complaint, the Commonwealth will be afforded the benefit of the date of the filing of the second complaint for purposes of calculating the time for trial when the withdrawal and re-filing of charges are necessitated by factors beyond its control, the Commonwealth has exercised due diligence, and the refiling is not an attempt to circumvent the time limitation of Rule 600. *See Commonwealth v. Meadius*, 582 Pa. 174, 870 A.2d 802 (2005).

The withdrawal of, rejection of, or successful challenge to a guilty plea should be considered the granting of a new trial for purposes of paragraph (A)(2)(d) of this rule. Paragraph (A)(2)(d) also applies to the period for commencing a new trial following the declaration of a mistrial.

The date of filing court orders for purposes of paragraphs (A)(2) and B is the date of receipt of the order in the clerk of court's office. *See* the third paragraph of the Comment to Rule 114 (Orders and Court Notices; Filing; Service; and Docket Entries).

When an appellate court has remanded a case to the trial court for a new trial, for purposes of computing the time for trial under paragraph (A)(2)(e) or the length of time of pretrial incarceration for purposes of paragraph (B)(5), the date of the remand is the date of the prothonotary's notice to the parties that the record was remanded. *See* Pa.R.A.P. 2572(e) concerning the requirement that the prothonotary of the appellate court give the parties written notice of the date on which the record was remanded.

COMPUTATION OF TIME

For purposes of determining the time within which trial must be commenced pursuant to paragraph (A), paragraph (C)(1) makes it clear that any delay in the commencement of trial that is not attributable to the Commonwealth when the Commonwealth has exercised due diligence must be excluded from the computation of time. Thus, the inquiry for a judge in determining whether there is a violation of the time periods in paragraph (A) is whether the delay is caused solely by the Commonwealth when the Commonwealth has failed to exercise due diligence. *See, e.g., Commonwealth v. Dixon*, 589 Pa. 28, 907 A.2d 468 (2006); *Commonwealth v. Matis*, 551 Pa. 220, 710 A.2d 12 (1998). If the delay occurred as the result of circumstances beyond the Commonwealth's control and despite its due diligence, the time is excluded. *See, e.g. Commonwealth v. Browne*, 526 Pa. 83, 584 A.2d 902 (1990); *Commonwealth v. Genovese*, 493 Pa. 65, 425 A.2d 367 (1981). In determining whether the Commonwealth has exercised due diligence, the courts have explained that ''[d]ue diligence is fact-specific, to be determined case-by-case; it does not require perfect vigilance and punctilious care, but merely a

showing the Commonwealth has put forth a reasonable effort.'' *See, e.g., Commonwealth v. Selenski*, 606 Pa 51, 61, 994 A.2d 1083, 1089 (Pa. 2010) (citing *Commonwealth v. Hill* and *Commonwealth v. Cornell*, 558 Pa. 238, 256, 736 A.2d 578, 588 (1999)).

Delay in the time for trial that is attributable to the judiciary may be excluded from the computation of time. *See, e.g., Commonwealth v. Crowley*, 502 Pa. 393, 466 A.2d 1009 (1983). However, when the delay attributable to the court is so egregious that a constitutional right has been impaired, the court cannot be excused for postponing the defendant's trial and the delay will not be excluded. *See Commonwealth v. Africa*, 524 Pa. 118, 569 A.2d 920 (1990).

When the defendant or the defense has been instrumental in causing the delay, the period of delay will be excluded from computation of time. *See, e.g., Commonwealth v. Matis, supra; Commonwealth v. Brightwell*, 486 Pa. 401, 406 A.2d 503 (1979) (plurality opinion). For purposes of paragraph (C)(1) and paragraph (C)(2), the following periods of time, that were previously enumerated in the text of former Rule 600(C), are examples of periods of delay caused by the defendant. This time must be excluded from the computations in paragraphs (C)(1) and (C)(2):

(1) the period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence;

(2) any period of time for which the defendant expressly waives Rule 600;

(3) such period of delay at any stage of the proceedings as results from either the unavailability of the defendant or the defendant's attorney or any continuance granted at the request of the defendant or the defendant's attorney.

In addition to any other circumstances precluding the availability of the defendant or the defendant's attorney, the defendant should be deemed unavailable for the period of time during which the defendant contested extradition, or a responding jurisdiction delayed or refused to grant extradition; or during which the defendant was physically incapacitated or mentally incompetent to proceed; or during which the defendant was absent under compulsory process requiring his or her appearance elsewhere in connection with other judicial proceedings.

For periods of delay that result from the filing and litigation of omnibus pretrial motions for relief or other motions, see *Commonwealth v. Hill* and *Commonwealth v. Cornell*, 558 Pa. 238, 736 A.2d 578 (1999) (the mere filing of a pretrial motion does not automatically render defendant unavailable; only unavailable if delay in commencement of trial is caused by filing pretrial motion).

For purposes of determining the length of time a defendant has been held in pretrial incarceration pursuant to paragraph (B), only the periods of delay attributable to the defense are to be excluded from the computation. *See Commonwealth v. Dixon*, 589 Pa. 28, 907 A.2d 468 (2006).

Paragraph (C)(3) and Rules 106 (Continuances in Summary and Court Cases) and 542 (Preliminary Hearing; Continuances) require the judge to indicate on the record whether the time is excludable whenever he or she grants a continuance.

When a judge grants a continuance, trial should be rescheduled for a date certain consistent with the continuance request and the court's business. *See, e.g., Commonwealth v. Crowley, supra*.

REMEDIES

Paragraph (D)(1) requires that any defendant, whether incarcerated or released on bail, not brought to trial within the time periods in paragraph (A) at any time before trial may move to have the charges dismissed on the ground that this rule has been violated. *See Commonwealth v. Solano*, 588 Pa. 716, 906 A.2d 1180 (2006).

When a case is dismissed for violation of this rule, the dismissal is ''with prejudice,'' and the Commonwealth's only recourse is to file either a motion for reconsideration or an appeal.

Paragraph (D)(2) sets forth the remedy should a defendant be held in pretrial incarceration beyond the time periods in paragraph (B). Defendants who would not be released on bail based on Article I, Section 14 of the Pennsylvania Constitution are not eligible for release under paragraph (D)(2) of this rule. *See, e.g., Commonwealth v. Sloan*, 589 Pa. 15, 27, n.10, 907 A.2d 460, 467, n.10 (2006); *Commonwealth v. Jones*, 899 A.2d 353 (Pa. Super. 2006). Article I, Section 14 of the Pennsylvania Constitution provides, *inter alia*, that ''[a]ll prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great.''

Except in cases in which bail is not available pursuant to Article I, Section 14 of the Pennsylvania Constitution, the defendant must be released on nominal bail. Imposition of nominal bail includes in the appropriate case the imposition of nonmonetary conditions of release. *See Commonwealth v. Sloan, supra. See also* Rules 524, 526, and 527 concerning types and conditions of release on bail.

When admitted to nominal bail pursuant to this rule, the defendant must execute a bail bond. *See* Rules 525 and 526.

Paragraph (D)(3) makes it clear that requests for review of the determination concerning continuances must be raised in a motion for dismissal, paragraph (D)(1), or in a motion for release, paragraph (D)(2), or in an answer.

For the procedures concerning motions and answers, and the filing and service of motions and answers, see Rules 575 and 576. For the procedures following the filing of a motion, see Rule 577.

**Official Note:** Rule 1100 adopted June 8, 1973, effective prospectively as set forth in paragraphs (A)(1) and (A)(2) of this rule; paragraph (E) amended December 9, 1974, effective immediately; paragraph (E) re-amended June 28, 1976, effective July 1, 1976; amended October 22, 1981, effective January 1, 1982. (The amendment to paragraph (C)(3)(b) excluding defense-requested continuances was specifically made effective as to continuances requested on or after January 1, 1982.) Amended December 31, 1987, effective immediately; amended September 30, 1988, effective immediately; amended September 3, 1993, effective January 1, 1994; Comment revised September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 600 and amended March 1, 2000, effective April 1, 2001; Comment revised April 20, 2000, effective July 1, 2000; rescinded October 1, 2012, effective July 1, 2013. New Rule 600 adopted October 1, 2012, effective July 1, 2013.

*Committee Explanatory Reports*:

Report explaining the September 3, 1993 amendments published with the Court's Order at 23 Pa.B. 4492 (September 25, 1993).

Final Report explaining the September 13, 1995 Comment revision published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 April 20, 2000 Comment revision concerning Commonwealth v. Hill and Commonwealth v. Cornell published with the Court's Order at 30 Pa.B. 2219 (May 6, 2000).

Final Report explaining the October 1, 2012 rescission of current Rule 600 and the provisions of new Rule 600 published with the Court's Order at 42 Pa.B. 6629 (October 20, 2012).

**Source**

The provisions of this Rule 600 adopted October 1, 2012, effective July 1, 2013, 42 Pa.B. 6622.

## Rule 601. Presence of Judge.

(A) A judge shall be present at all stages of the trial.

(B) Any judge may preside at a pretrial conference, during the hearing and disposition of a pretrial application, or during the selection of a jury.

(C) The judge who is present from the time the trial commences shall be considered the trial judge and shall be present, except in extraordinary circumstances, until a verdict is recorded or the jury is discharged.

**Comment**

Concerning the judge's presence during voir dire and the jury selection process, see Rule 631(A).

The requirement that the same judge be present from the time the trial begins accords with the decision in *Commonwealth v. Thompson*, 195 A. 115 (Pa. 1937). "The substitution of judges during a case should be carefully guarded and never permitted except under most extraordinary circumstances, and then only when no prejudice can result to the parties. Substitution must be a matter of necessity, where the due administration of justice makes it imperative and without prejudice." Id. at 28-29. *See also Commonwealth v. Zeger*, 186 A.2d 922 (Pa. Super. 1962).

The Pennsylvania rule has been that another judge may receive the verdict because it is considered to be a clerical rather than a judicial function. *Commonwealth v. Thompson*, 195 A. 115, 117 (Pa. 1937); *Culver v. Lehigh Transit Co.*, 186 A. 70 (Pa. 1936). However, since the judge having knowledge of the trial proceedings may be required to take such action as molding the verdict, directing reconsideration of a defective or incomplete verdict, or giving additional or correctional instructions, paragraph (C) requires that the same judge preside even at the receipt of the verdict, except in extraordinary cases such as those set forth in *Commonwealth v. Thompson*, 195 A. 115, 117 (Pa. 1937).

**Official Note:** Rule 1105 adopted January 24, 1965, effective August 1, 1968; amended February 27, 1995, effective July 1, 1995; renumbered Rule 601 and amended March 1, 2000, effective April 1, 2001.

*Committee Explanatory Reports*:

Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 948 (March 18, 1995).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

## Rule 602. Presence of the Defendant.

(A) The defendant shall be present at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule. The defendant's absence without cause at the time scheduled for the start of trial or during trial shall not preclude proceeding with the trial, including the return of the verdict and the imposition of sentence.

(B) A corporation may appear by its attorney for all purposes.

**Comment**

This rule was amended in 2013 to clarify that, upon a finding that the absence was without cause, the trial judge may conduct the trial in the defendant's absence when the defendant fails to appear without cause at the time set for trial or during trial. The burden of proving that the defendant's absence is without cause is upon the Commonwealth by a preponderance of the evidence. *See Commonwealth v. Scarborough*, 491 Pa. 300, 421 A.2d 147 (1980) (when a constitutional right is waived, the Commonwealth must show by a preponderance of the evidence that the waiver was voluntary, knowing and intelligent); *Commonwealth v. Tizer*, 454 Pa.Super. 1, 684 A.2d 597 (1996). *See also Commonwealth v. Bond*, 693 A.2d 220, 223 (Pa. Super. 1997) (''[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent 'without cause.'").

This rule applies to all cases, including capital cases.

A defendant's presence may be deemed waived by the defendant intentionally failing to appear at any stage of the trial after proper notice. *See Commonwealth v. Wilson*, 551 Pa. 593, 712 A.2d 735 (1998) (a defendant, who fled courthouse after jury was impaneled and after subsequent plea negotiations failed, was deemed to have knowingly and voluntarily waived the right to be present); *Commonwealth v. Sullens*, 533 Pa. 99, 619 A.2d 1349 (1992) (when a defendant is absent without cause at the time his or her trial is scheduled to begin, the defendant may be tried *in absentia*).

Nothing in this rule is intended to preclude a defendant from affirmatively waiving the right to be present at any stage of the trial, *see e.g.*, *Commonwealth v. Vega*, 553 Pa. 255, 719 A.2d 227 (1998) (plurality) (requirements for a knowing and intelligent waiver of a defendant's presence at trial includes a full, on-the-record colloquy concerning consequences of forfeiture of the defendant's right to be present). Once a defendant appears before the court, he or she cannot waive his or her right to appear in capital case. *See Comonwealth v. Ford*, 539 Pa. 85, 650 A.2d 433 (1994) (right of defendant to be present at trial of capital offense is transformed into obligation due to gravity of potential outcome).

Nothing in this rule is intended to preclude a defendant from waiving the right to be present by his or her actions, *see e.g.*, *Illinois v. Allen*, 397 U.S. 337, 343 (1970) (''[A] defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.'') and *Commonwealth v. Wilson, supra*.

The defendant's right to be present in the courtroom is not absolute. *See Commonwealth v. Boyle*, 498 Pa. 486, 491, n.7, 447 A.2d 250, 253, n.7 (1982) (defendant's presence in chambers and at sidebar is not required where he is represented by counsel.) and *Commonwealth v. Hunsberger*, ___ Pa. ___ , 58 A.3d 32, 39-40 (2012) (''[A]lthough a defendant has the clear right to participate in the jury selection process, that right is not compromised where . . . the defendant, who was in the courtroom, was not present at sidebar where his counsel was questioning several venirepersons outside the range of his hearing.'')

**Official Note:** Rule 1117 adopted January 24, 1968, effective August 1, 1968; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; renumbered Rule 602 and amended March 1, 2000, effective April 1, 2001; amended December 8, 2000, effective January 1, 2001; Comment revised September 21, 2012, effective November 1, 2012; amended May 2, 2013, effective June 1, 2013.

*Committee Explanatory Reports*:

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).

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 December 8, 2000 amendments published with the Court's Order at 30 Pa.B. 6546 (December 23, 2000).

Final Report explaining the September 21, 2012 revision to the second paragraph of the Comment correcting a typographical error published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

Final Report explaining the May 2, 2013 amendments concerning trials conducted in the defendant's absence published with the Court's Order at 43 Pa.B. 2710 (May 18, 2013).

**Source**

The provisions of this Rule 602 amended December 8, 2000, effective January 1, 2001, 30 Pa.B. 6546; amended September 21, 2012, effective November 1, 2012, 42 Pa.B. 6247; amended May 2, 2013, effective June 1, 2013, 43 Pa.B. 2704. Immediately preceding text appears at serial pages (364116) to (364117).

## Rule 603. Exceptions.

(A) Any ruling of the judge on an objection or motion made during the trial of any action or proceeding shall have the effect of a sealed exception in favor of the party adversely affected without the necessity of a formal request or notation made on the record.

(B) This rule shall not be applicable to the charge to the jury.

**Official Note:** Formerly Rule 100, adopted March 7, 1963, effective October 1, 1963, renumbered Rule 1115 September 18, 1973, effective January 1, 1974; renumbered Rule 603 and amended March 1, 2000, effective April 1, 2001.

*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. 1477 (March 18, 2000).

## Rule 604. Opening Statements and Closing Arguments.

(A) After the jury has been sworn, the attorney for the Commonwealth shall make an opening statement to the jury. The defendant or the defendant's attorney may then make an opening statement or reserve it until after the Commonwealth has presented its case.

(B) When the evidence is concluded, each party shall be entitled to present one closing argument to the jury. Regardless of the number of defendants, and whether or not a defendant has presented a defense, the attorney for the Commonwealth shall be entitled to make one argument which shall be made last.

**Comment**

This rule establishes a uniform procedure throughout the Commonwealth for the guilt determining phase of the trial. For the procedures after the presentation of evidence at the sentencing phase of a death penalty case, see Rule 806.

**Official Note:** Rule 1116 adopted January 24, 1968, effective August 1, 1968; Comment revised February 1, 1989, effective July 1, 1989; renumbered Rule 604 and amended March 1, 2000, effective April 1, 2001; Comment revised June 4, 2004, effective November 1, 2004.

*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. 1477 (March 18, 2000).

**Source**

The provisions of this Rule 604 amended June 4, 2004, effective November 1, 2004, 34 Pa.B. 3105. Immediately preceeding text appears at serial page (264309).

## Rule 605. Mistrial.

(A) Motions to withdraw a juror are abolished.

(B) When an event prejudicial to the defendant occurs during trial only the defendant may move for a mistrial; the motion shall be made when the event is disclosed. Otherwise, the trial judge may declare a mistrial only for reasons of manifest necessity.

**Comment**

This rule replaces the practice of moving for the withdrawal of a juror.

Examples of ''manifest necessity'' can be found in *Commonwealth v. Stewart*, 456 Pa. 447, 317 A.2d 616 (1974); *Commonwealth v. Brown*, 451 Pa. 395, 301 A.2d 876 (1973); *United States ex rel. Russo v. Superior Court of New Jersey, Law Division, Passaic County*, 483 F.2d 7 (3rd Cir. 1973), cert. denied, 414 U. S. 1023 (1973; *United States v. Tinney*, 473 F.2d 1085 (3rd Cir. 1973), cert. denied, 412 U. S. 928 (1973); *United States v. Jorn*, 440 U. S. 470 (1971); and *United States v. Perez*, 9 Wheat. 579 (1824); see also *Illinois v. Somerville*, 410 U. S. 458 (1973).

*See* Rule 587(B) for the procedures when a motion to dismiss on double jeopardy grounds is filed.

**Official Note:** Rule 1118 adopted January 24, 1968, effective August 1, 1968; amended June 28, 1974, effective September 1, 1974; renumbered Rule 605 and amended March 1, 2000, effective April 1, 2001; Comment revised June 4, 2013, effective July 4, 2013.

*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 June 4, 2013 revision of the Comment adding a citation to Rule 587 concerning motions to dismiss on double jeopardy grounds published with the Court's Order at 43 Pa.B. 3331 (June 22, 2013).

**Source**

The provisions of this Rule amended June 4, 2013, effective July 4, 2013, 43 Pa.B. 3330. Immediately preceding text appears at serial page (364118).

## Rule 606. Challenges to Sufficiency of Evidence.

(A) A defendant may challenge the sufficiency of the evidence to sustain a conviction of one or more of the offenses charged in one or more of the following ways:

(1) a motion for judgment of acquittal at the close of the Commonwealth's case-in-chief;

(2) a motion for judgment of acquittal at the close of all the evidence;

(3) a motion for judgment of acquittal filed within 10 days after the jury has been discharged without agreeing upon a verdict;

(4) a motion for judgment of acquittal made orally immediately after verdict;

(5) a motion for judgment of acquittal made orally before sentencing pursuant to Rule 704(B);

(6) a motion for judgment of acquittal made after sentence is imposed pursuant to Rule 720 (B); or

(7) a challenge to the sufficiency of the evidence made on appeal.

(B) A motion for judgment of acquittal shall not constitute an admission of any facts or inferences except for the purpose of deciding the motion. If the motion is made at the close of the Commonwealth's evidence and is not granted, the defendant may present evidence without having reserved the right to do so, and the case shall otherwise proceed as if the motion had not been made.

(C) If a defendant moves for judgment of acquittal at the close of all the evidence, the court may reserve decision until after the jury returns a guilty verdict or after the jury is discharged without agreeing upon a verdict.

**Comment**

Rule 1124 was adopted in 1983 to codify the procedures applicable to challenges to the sufficiency of the evidence to convict in view of JARA, which repealed the statutes concerning such challenges. See JARA § 2(a), 42 P. S. § 20002(a) 194, 1275, 1322.

Paragraph (A), amended in 1993, standardizes the terminology in Pennsylvania for challenges to the sufficiency of the evidence before verdict in view of *Smalis v. Pennsylvania*, 476 U. S. 140 (1986). See also Fed.R.Crim.P. 29. These amendments do not preclude the use of demurrers for other than sufficiency of the evidence challenges, as otherwise provided by law. For similar reasons, the term ''motion for judgment of acquittal'' is used in paragraph (A)(6) instead of ''motion for arrest of judgment'' in order to align this aspect of Pennsylvania legal terminology with that of the majority of other states and with the Federal Rules. See Fed.R.Crim.P. 29. This amendment is not intended to change Pennsylvania law. It follows that the inadvertent use of the word ''demurrer'' when ''motion for judgment of acquittal'' is now appropriate would not affect an otherwise valid sufficiency challenge.

A motion in arrest of judgment would still be the appropriate means for raising a challenge based on the court's jurisdiction, on double jeopardy, or on the statute of limitations.

Paragraph (A)(4) permits an oral motion for judgment of acquittal to be made immediately after verdict, a procedure of long standing in Pennsylvania.

Other amendments in paragraph (A), however, reflect changes in Pennsylvania practice. Under Rule 720, the time for a written post-verdict motion for judgment of acquittal has been moved to post-sentence. Rule 704(B) provides a narrow exception to these new procedures by authorizing an oral motion for extraordinary relief, which is made before sentencing. A defendant may challenge the sufficiency of the evidence in any one or more of the ways listed in paragraph (A) of this rule. If the defendant does not move for a judgment of acquittal before verdict pursuant to paragraph (A)(1) or (A)(2), the defendant may still raise the issue for trial court review after the jury has been discharged without agreeing upon a verdict pursuant to paragraph (A)(3), or after verdict pursuant to paragraphs

(A)(4), (A)(5), or (A)(6). The defendant may also raise the issue for the first time on appeal under paragraph (A)(7). If the defendant does move before verdict and the motion is denied, the defendant may renew the motion before the trial court pursuant to paragraphs (A)(3) through (A)(6).

Appellate review of a weight of the evidence claim is limited to a review of the judge's exercise of discretion. See *Commonwealth v. Widmer*, 689 A.2d 211 (Pa. 1997) and *Commonwealth v. Brown*, 648 A.2d 1177, 1189—1192 (Pa. 1994). Therefore, although a challenge to the sufficiency of the evidence may be raised for the first time on appeal, paragraph (A)(7), a challenge to the weight of the evidence must be raised with the trial judge or it will be waived. See Rule 607.

For procedures governing a motion for judgment of acquittal after the jury has been discharged without agreeing upon a verdict, see Rule 608.

**Official Note:** Previous Rule 1124 adopted January 24, 1968, effective August 1, 1968; amended September 18, 1973, effective January 1, 1974; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; rescinded July 1, 1980, effective August 1, 1980, and not replaced. Present Rule 1124 adopted January 28, 1983, effective July 1, 1983; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; Comment revised October 15, 1997, effective January 1, 1998; renumbered Rule 606 and amended March 1, 2000, effective April 1, 2001.

*Committee Explanatory Reports*:

Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 15, 1997 Comment revision concerning weight of the evidence claims published with the Court's Order at 27 Pa.B. 5599 (November 1, 1997).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

## Rule 607. Challenges to the Weight of the Evidence.

(A) A claim that the verdict was against the weight of the evidence shall be raised with the trial judge in a motion for a new trial:

(1) orally, on the record, at any time before sentencing;

(2) by written motion at any time before sentencing; or

(3) in a post-sentence motion.

(B) (1) If the claim is raised before sentencing, the judge shall decide the motion before imposing sentence, and shall not extend the date for sentencing or otherwise delay the sentencing proceeding in order to dispose of the motion.

(2) An appeal from a disposition pursuant to this paragraph shall be governed by the timing requirements of Rule 720(A)(2) or (3), whichever applies.

**Comment**

The purpose of this rule is to make it clear that a challenge to the weight of the evidence must be raised with the trial judge or it will be waived. Appellate review of a weight of the evidence claim is limited to a review of the judge's exercise of discretion. See *Commonwealth v. Widmer*, 689 A.2d 211 (Pa. 1997), and *Commonwealth v. Brown*, 648 A.2d 1177, 1189—1192 (Pa. 1994).

When a claim is raised before sentencing, the defendant may, but need not, raise the issue again in a post-sentence motion. See Rule 720(B)(1)(a)(iv).

**Official Note:** Rule 1124A adopted October 15, 1997, effective January 1, 1998; renumbered Rule 607 and amended March 1, 2000, effective April 1, 2001.

*Committee Explanatory Reports*:

Final Report explaining the October 15, 1997 adoption of Rule 1124A published with the Court's Order at 27 Pa.B. 5599 (November 1, 1997).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

## Rule 608. Motion for Judgment of Acquittal After Discharge of Jury.

(A) TIME FOR MOTION.

(1) Oral Motion.

An oral motion for judgment of acquittal may be made and decided at the time the jury is discharged without agreeing upon a verdict if the defendant so agrees on the record.

(2) Written Motion.

A written motion for judgment of acquittal shall be filed within 10 days after the jury has been discharged without agreeing upon a verdict.

(B) TIME FOR DECISION ON MOTION.

(1) A motion for judgment of acquittal after the jury has been discharged without agreeing upon a verdict shall be decided within 30 days after the motion is filed. If the judge fails to decide the motion within 30 days, the motion shall be deemed denied.

(2) When a motion for judgment of acquittal is denied by operation of law under this rule, the clerk of courts shall enter an order on behalf of the court, and shall immediately notify the attorney for the Commonwealth, the defendant(s), and defense counsel that the motion is deemed denied.

**Comment**

This rule is intended to correlate the procedures governing a motion for judgment of acquittal after a jury is discharged with the post-sentence procedures adopted in 1993 under Rule 720 (Post-Sentence Procedures; Appeal), thereby promoting the prompt disposition of post-trial matters.

Rule 608 provides specific time limits within which a motion for judgment of acquittal after a jury is discharged must be made and decided. If the judge fails to rule on the motion within 30 days of filing, the motion is denied by operation of law. Paragraph (B)(2) requires the clerk of courts to enter an order denying the motion and to notify the parties.

For the commencement of trial when the trial judge denies the motion or when the motion is denied by operation of law, see Rule 600(A).

**Official Note:** Former Rule 1125 adopted January 24, 1968, effective August 1, 1968; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; rescinded July 1, 1980, effective August 1, 1980, and not replaced. Present Rule 1125 adopted March 22, 1993, effective as to cases in which trial commences on or after January 1, 1994; renumbered Rule 608 and amended March 1, 2000, effective April 1, 2001; Comment revised October 1, 2012, effective July 1, 2013.

*Committee Explanatory Reports*:

Final Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

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 October 1, 2012, Comment revision changing the Rule 600 reference published with the Court's Order at 42 Pa.B. 6629 (October 20, 2012).

**Source**

The provisions of this Rule 608 amended October 1, 2012, effective July 1, 2013, 42 Pa.B. 6622. Immediately preceding text appears at serial pages (264312) and (360283).

## PART B. Non-Jury Procedures

## Rule 620. Waiver of Jury Trial.

In all cases, the defendant and the attorney for the Commonwealth may waive a jury trial with approval by a judge of the court in which the case is pending, and elect to have the judge try the case without a jury. The judge shall ascertain from the defendant whether this is a knowing and intelligent waiver, and such colloquy shall appear on the record. The waiver shall be in writing, made a part of the record, and signed by the defendant, the attorney for the Commonwealth, the judge, and the defendant's attorney as a witness.

**Comment**

The 1973 amendment ended the proscription, which had formerly appeared in this rule, against waiver of jury trials in capital cases. In doing so, the Court has departed from the language expressed, in the absence of specific rules to the contrary, in *Commonwealth v. Petrillo*, 16 A.2d 50, 56 (Pa. 1949) and *Commonwealth v. Kirkland*, 195 A.2d 338, 340 (Pa. 1963).

The 1999 amendment to this rule embodies the 1998 amendment to article I, [00a7] 6 of the Pennsylvania Constitution that provides that ''the Commonwealth shall have the same right to trial by jury as does the accused.''

It is intended that when deciding to permit a non-jury trial, the judge should take into account all relevant considerations. When the judge disapproves waiver of jury trial, the judge should state the reasons for the judge's decision on the record. See *Commonwealth v. Boyd*, 467 A.2d 855 (Pa. Super. 1983) and *Commonwealth v. Giaccio*, 457 A.2d 875 (Pa. Super. 1983).

While this rule continues to require a written waiver of jury trial, the form of the written waiver was deleted in 1985 because it is no longer necessary to control the specific form of written waiver by rule.

When there are co-defendants, waiver of a jury trial with respect to one or more defendants does not preclude a jury trial for other defendants.

**Official Note:** Rule 1101 adopted January 24, 1968, effective August 1, 1968; amended March 29, 1973, effective 30 days hence; amended November 9, 1984, effective January 2, 1985; amended April 16, 1999, effective July 1, 1999; renumbered Rule 620 and Comment revised March 1, 2000, effective April 1, 2001.

*Committee Explanatory Reports*:

Final Report explaining the April 16, 1999 amendments concerning the 1998 Constitutional amendment published with the Court's Order at 29 Pa.B. 2290 (May 1, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

## Rule 621. Procedure When Jury Trial is Waived.

(A) When a jury trial is waived, the trial judge shall determine all questions of law and fact and render a verdict which shall have the same force and effect as a verdict of a jury.

(B) At any time before the commencement of trial, a waiver of a jury trial or the judge's approval thereof may be withdrawn.

**Comment**

The 1999 amendment conforms this rule to the 1998 amendment to article I, § 6 of the Pennsylvania Constitution providing that ''the Commonwealth shall have the same right to trial by jury as does the accused.''

Paragraph (B) was amended in 1999 to make it clear that the defendant, the attorney for the Commonwealth, or the judge may unilaterally withdraw the jury trial waiver or the approval at any time before the commencement of trial. Concerning the time when trial commences, see *Commonwealth v. Dowling*, 598 Pa. 611, 619-620, 959 A.2d 910, 915 (2008) (holding that ''trial commences for purposes of Pa.R.Crim.P. 621(B), when a court has begun to hear motions which have been reserved for the time of trial; when oral arguments have commenced; or when some other such substantive first step in the trial has begun''). After commencement of trial, Rule 605 governs.

Paragraph (c) was deleted in 1999 to permit the defendant and the attorney for the Commonwealth to waive a jury trial with the court's approval, under Rule 620, even after the withdrawal of a previous jury trial waiver.

When there are co-defendants, withdrawal of a waiver, or withdrawal of the judge's approval, with respect to one or more defendants does not preclude a waiver and non-jury trial for other defendants.

**Official Note:** Rule 1102 adopted January 24, 1968, effective August 1, 1968; amended April 16, 1999, effective July 1, 1999; renumbered Rule 621 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised January 9, 2012, effective February 1, 2012.

*Committee Explanatory Reports*:

Final Report explaining the April 16, 1999 amendments concerning the 1998 Constitutional amendment published with the Court's Order at 29 Pa.B. 2290 (May 1, 1999).

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 January 9, 2012 Comment revision adding a citation to Commonwealth v. Dowling published with the Court's Order at 42 Pa.B. 546 (January 28, 2012).

**Source**

The provisions of this Rule 621 amended January 9, 2012, effective February 1, 2012, 42 Pa.B. 545. Immediately preceding text appears at serial pages (264314) and (318663).

## Rule 622. Time for Court Action Following Non-Jury Trial.

(A) A verdict shall be rendered in all non-jury cases within 7 days after trial.

(B) In any case in which a summary offense is joined with the misdemeanor, felony, or murder charges that were tried before the trial judge, the trial judge shall render a verdict on the summary offense, and impose sentence if the judge finds the defendant guilty of the summary offense, even in cases in which the judge has dismissed or found the defendant not guilty on the misdemeanor, felony, or murder charges.

**Comment**

The 1993 amendment to this rule was prompted by the general revision of post-trial procedures reflected in large part by Rule 720 (Post-Sentence Procedures; Appeal). Before this amendment, Rule 622 was a hybrid. It contained time limits for decisions on several types of motions, and also contained a time limit for verdict in non-jury trials. As a result of the adoption of Rule 720, post-verdict motions for a new trial, for judgment of acquittal, and motions in arrest of judgment were moved to post-sentence under Rule 720. The procedures for a motion for judgment of acquittal after the jury is discharged without agreeing on a verdict were amended in 1993 and moved to Rule 608. Rule 622, as amended, only provides the time limit for verdict in a non-jury case.

Pursuant to Rule 543 (Disposition of Case at Preliminary Hearing), in cases in which there are summary offenses that are joined with the misdemeanor, felony, or murder charges, the issuing authority is prohibited from adjudicating or disposing of the summary offenses, and must forward the summary offenses to the court of common pleas for disposition with the charges held for court. Therefore, when a judge is the trier of fact as to the misdemeanors, felonies, or murder pursuant to this rule, the judge may not remand the summary offense to the issuing authority, but must dispose of the summary offense together with the misdemeanor, felony, and murder.

**Official Note:** Formerly Rule 302 adopted June 30, 1964, effective January 1, 1965; renumbered Rule 1122 and moved to Chapter 1100, June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended January 28, 1983, effective July 1, 1983; amended March 22, 1993, effective as to cases in which trial commences on or after January 1, 1994; renumbered Rule 622 and Comment revised March 1, 2000, effective April 1, 2001; amended March 9, 2006, effective September 1, 2006.

*Committee Explanatory Reports*:

Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

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 March 3, 2006 amendments concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

**Source**

The provisions of this Rule 622 amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1385. Immediately preceding text appears at serial page (265685).

## PART C. Jury Procedures

### Rule 625. Juror Qualification Form, Lists of Trial Jurors, and Challenge to the Array.

(A) JUROR QUALIFICATION FORM AND LISTS OF TRIAL JURORS.

(1) The officials designated by law to select persons for jury service shall:

(a) devise, distribute, and maintain juror qualification forms as provided by law;

(b) prepare, publish, and post lists of the names of persons to serve as jurors as provided by law; and

(c) upon the request of the attorney for the Commonwealth or the defendant's attorney, furnish the list containing the names of prospective jurors prepared pursuant to paragraph (A)(1)(b); and

(d) make available for review and copying copies of the juror qualification forms returned by the prospective jurors.

(2) The information provided on the juror qualification form shall be confidential and limited to questions of the jurors' qualifications.

(3) The original and any copies of the juror qualification form shall not constitute a public record.

(B) CHALLENGE TO THE ARRAY.

(1) Unless opportunity did not exist prior thereto, a challenge to the array shall be made not later than 5 days before the first day of the week the case is listed for trial of criminal cases for which the jurors have been summoned and not thereafter, and shall be in writing, specifying the facts constituting the ground for the challenge.

(2) A challenge to the array may be made only on the ground that the jurors were not selected, drawn, or summoned substantially in accordance with law.

**Comment**

The qualification, selection, and summoning of prospective jurors, as well as related matters, are generally dealt with in Chapter 45, Subchapters A—C, of the Judicial Code, 42 Pa.C.S. §§ 4501—4503, 4521—4526, 4531—4532. "Law" as used in paragraph (B)(2) of this rule is intended to include these Judicial Code provisions. However, paragraphs (B)(1) and (2) of this rule are intended to supersede the procedures set forth in Section 4526(a) of the Judicial Code and that provision is suspended as being inconsistent with this rule. *See* PA. CONST. art. V, § 10; 42 Pa.C.S. § 4526(c). Sections 4526(b) and (d)—(f) of the Judicial Code are not affected by this rule.

Paragraph (A) was amended in 1998 to require that the counties use the juror qualification forms provided for in Section 4521 of the Judicial Code, 42 Pa.C.S. § 4521. It is intended that the attorneys in a case may inspect and copy or photograph the jury lists and the qualification forms for the prospective jurors summoned for their case. The information on the qualification forms is not to be disclosed except as provided by this rule or by statute. This rule is different from Rule 632, which requires that jurors complete the standard, confidential information questionnaire for use during *voir dire*.

**Official Note:** Adopted January 24, 1968, effective August 1, 1968; Comment revised January 28, 1983, effective July 1, 1983; amended September 15, 1993, effective January 1, 1994; September 15, 1993 amendments suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order amending Rule 1104 is superseded by the September 18, 1998 Order, and Rule 1104 is amended September 18, 1998, effective July 1, 1999; amended May 14, 1999, effective July 1, 1999; renumbered Rule 630 March 1, 2000, effective April 1, 2001; amended March 28, 2000, effective July 1, 2000; renumbered Rule 625 July 7, 2015, effective October 1, 2015.

*Committee Explanatory Reports*:

Report explaining the September 15, 1993 amendments published at 21 Pa.B. 150 (January 12, 1991). Order suspending, until further Order of the Court, the September 15, 1993 amendments concerning juror information questionnaires published at 24 Pa.B. 333 (January 15, 1994).

Final Report explaining the September 18, 1998 amendments concerning juror information questionnaires published with the Court's Order at 28 Pa.B. 4887 (October 3, 1998).

Final Report explaining the May 14, 1999 amendments placing titles in paragraphs (A) and (B) published with the Court's Order at 29 Pa.B. 2778 (May 29, 1999).

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 March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1956 (April 15, 2000).

Final Report explaining the July 7, 2015 renumbering of Rule 630 to Rule 625 published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

**Source**

The provisions of this Rule 630 amended March 28, 2000, effective July 1, 2000, 30 Pa.B. 1955; renumbered as Rule 625 and amended July 7, 2015, effective October 1, 2015, 45 Pa.B. 3980. Immediately preceding text appears at serial pages (360286), (318665) and (265687).

## Rule 626. Preliminary Instructions to Prospective and Selected Jurors.

(A) For purposes of this rule,

(1) the term ''prospective jurors'' means those persons who have been chosen to be part of the panel from which the trial jurors and alternate jurors will be selected;

(2) the term ''selected jurors'' means those members of the panel who have been selected to serve as trial jurors or alternate jurors; and

(3) the term ''jury service'' means service as (1) members of the jury array, (2) prospective jurors, and (3) selected jurors.

(B) Persons reporting for jury service, upon their arrival for this service, shall be instructed in their duties while serving as prospective jurors and selected jurors.

(C) At a minimum, the persons reporting for jury service shall be instructed that until their service as prospective or selected jurors is concluded, they shall not:

(1) discuss any case in which they have been chosen as prospective jurors or selected jurors with others, including other jurors, except as instructed by the court;

(2) read or listen to any news reports about any such case;

(3) use a computer, cellular phone, or other electronic device with communication capabilities while in attendance at trial or during deliberation. These devices may be used during breaks or recesses but never may be used to obtain or disclose information prohibited in paragraph (C)(4);

(4) use a computer, cellular phone, or other electronic device with communication capabilities, or any other method, to obtain or disclose any information about any case in which they have been chosen as prospective or selected jurors. Information about the case includes, but is not limited to, the following:

(i) information about a party, witness, attorney, judge, or court officer;

(ii) news reports of the case;

(iii) information collected through juror research using such devices about the facts of the case;

(iv) information collected through juror research using such devices on any topics raised or testimony offered by any witness;

(v) information collected through juror research using such devices on any other topic the juror might think would be helpful in deciding the case.

(D) These instructions shall be repeated:

(1) to the prospective jurors at the beginning of *voir dire*;

(2) to the selected jurors at the commencement of the trial;

(3) to the selected jurors prior to deliberations; and

(4) to the selected jurors during trial as the trial judge deems appropriate.

(E) Jurors shall be instructed that they are required to inform the court immediately of any violation of this rule.

**Comment**

This rule was adopted in 2015 in recognition of the fact that the proliferation of personal communications devices has provided individuals with an unprecedented level of access to information. This access has the potential for abuse by prospective jurors who might be tempted to perform research about a case for which they may be selected. Therefore, the rule requires that prospective jurors be instructed at the earliest possible stage as to their duty to rely solely on information presented in a case and to refrain from discussion about the case, either in person or electronically.

It is recommended that the juror summons also contain the language.

It also is recommended, as an additional means of ensuring adherence, that the judge explain to the prospective jurors the reason for these restrictions. This explanation should include a statement that, in order for the jury system to work as intended, absolute impartiality on the part of the jurors is necessary. Such impartiality is achieved by restricting the information upon which the jurors will base their decision to that which is presented in court.

**Official Note:** Adopted July 7, 2015, effective October 1, 2015.



(377918) No. 491 Oct. 15 

*Committee Explanatory Reports*:

Final Report explaining the July 7, 2015 adoption of new Rule 626 regarding instructions to prospective jurors published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

**Source**

The provisions of this Rule 626 adopted July 7, 2015, effective October 1, 2015, 45 Pa.B. 3980.

## Rule 627. Sanctions for Use of Prohibited Electronic Devices.

Any individual who violates the provisions of Rule 112(A) prohibiting recording or broadcasting during a judicial proceeding or who violates the Court's instructions required by Rule 626 regarding the use of electronic devices by jurors or who violates any limitation imposed by a local rule or by the trial judge regarding the prohibited use of electronic devices during court proceedings:

(1) may be found in contempt of court and sanctioned in accordance with 42 Pa.C.S. § 4132 *et seq.*; and

(2) may be subject to sanctions deemed appropriate by the trial judge, including, but not limited to, the confiscation of the electronic device that is used in violation of these rules.

**Comment**

This rule was adopted in 2015 to make clear that in addition to the penalties for contempt that may be imposed upon an individual who violates these rules or a court-imposed restriction on the use of electronic devices during court proceedings, such devices may be temporarily or permanently confiscated by the court.

**Official Note:** Adopted July 7, 2015, effective October 1, 2015.

*Committee Explanatory Reports*:

Final Report explaining the July 7, 2015 adoption of new Rule 627 regarding sanctions for use of prohibited communications devices published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

**Source**

The provisions of this Rule 627 adopted July 7, 2015, effective October 1, 2015, 45 Pa.B. 3980.

## PART C(1). Impaneling Jury

## Rule 631. Examination and Challenges of Trial Jurors.

(A) *Voir dire* of prospective trial jurors and prospective alternate jurors shall be conducted, and the jurors shall be selected, in the presence of a judge, unless the judge's presence is waived by the attorney for the Commonwealth, the defense attorney, and the defendant, with the judge's consent.

(B) This oath shall be administered individually or collectively to the prospective jurors:

> ''You do solemnly swear by Almighty God (or do declare and affirm) that you will answer truthfully all questions that may be put to you concerning your qualifications for service as a juror.''

(C) Upon completion of the oath, the judge shall instruct the prospective jurors upon their duties and restrictions while serving as jurors, and of any sanctions for violation of those duties and restrictions, including those provided in Rule 626(C) and Rule 627.

(D) *Voir dire*, including the judge's ruling on all proposed questions, shall be recorded in full unless the recording is waived. The record will be transcribed only upon written request of either party or order of the judge.

(E) Prior to *voir dire*, each prospective juror shall complete the standard, confidential juror information questionnaire as provided in Rule 632. The judge may require the parties to submit in writing a list of proposed questions to be asked of the jurors regarding their qualifications. The judge may permit the defense and the prosecution to conduct the examination of prospective jurors or the judge may conduct the examination. In the latter event, the judge shall permit the defense and the prosecution to supplement the examination by such further inquiry as the judge deems proper.

(F) In capital cases, the individual *voir dire* method must be used, unless the defendant waives that alternative. In non-capital cases, the trial judge shall select one of the following alternative methods of *voir dire*, which shall apply to the selection of both jurors and alternates:

(1) INDIVIDUAL *VOIR DIRE* AND CHALLENGE SYSTEM.

(a) *Voir dire* of prospective jurors shall be conducted individually and may be conducted beyond the hearing and presence of other jurors.

(b) Challenges, both peremptory and for cause, shall be exercised alternately, beginning with the attorney for the Commonwealth, until all jurors are chosen. Challenges shall be exercised immediately after the prospective juror is examined. Once accepted by all parties, a prospective juror shall not be removed by peremptory challenge. Without declaring a mistrial, a judge may allow a challenge for cause at any time before the jury begins to deliberate, provided sufficient alternates have been selected, or the defendant consents to be tried by a jury of fewer than 12, pursuant to Rule 641.

(2) LIST SYSTEM OF CHALLENGES.

(a) A list of prospective jurors shall be prepared. The list shall contain a sufficient number of prospective jurors to total at least 12, plus the number of alternates to be selected, plus the total number of peremptory challenges (including alternates).

(b) Prospective jurors may be examined collectively or individually regarding their qualifications. If the jurors are examined individually, the examination may be conducted beyond the hearing and presence of other jurors.

(c) Challenges for cause shall be exercised orally as soon as the cause is determined.

(d) When a challenge for cause has been sustained, which brings the total number on the list below the number of 12 plus alternates, plus peremptory challenges (including alternates), additional prospective jurors shall be added to the list.

(e) Each prospective juror subsequently added to the list may be examined as set forth in paragraph (F)(2)(b).

(f) When the examination has been completed and all challenges for cause have been exercised, peremptory challenges shall then be exercised by passing the list between prosecution and defense, with the prosecution first striking the name of a prospective juror, followed by the defense, and alternating thereafter until all peremptory challenges have been exhausted. If either party fails to exhaust all peremptory challenges, the jurors last listed shall be stricken. The remaining jurors and alternates shall be seated. No one shall disclose which party peremptorily struck any juror.

**Comment**

This rule applies to all cases, regardless of potential sentence. Formerly there were separate rules for capital and non-capital cases.

If Alternative (F)(1) is used, examination continues until all peremptory challenges are exhausted or until 12 jurors and 2 alternates are accepted. Challenges must be exercised immediately after the prospective juror is questioned. In capital cases, only Alternative (F)(1) may be used unless affirmatively waived by all defendants and the Commonwealth, with the approval of the trial judge.

If Alternative (F)(2) is used, sufficient jurors are assembled to total 12, plus the number of alternates, plus at least the permitted number of peremptory challenges (including alternates). It may be advisable to assemble additional jurors to encompass challenges for cause. Prospective jurors may be questioned individually, out of the presence of other prospective jurors, as in Alternative (F)(1); or prospective jurors may be questioned in the presence of each other. Jurors may be challenged only for cause, as the cause arises. If the challenges for cause reduce the number of prospective jurors below 12, plus alternates, plus peremptory challenges (including alternates), new prospective jurors are called and they are similarly examined. When the examination is completed, the list is reduced, leaving only 12 jurors to be selected, plus the number of peremptories to be exercised; and sufficient additional names to total the number of alternates, plus the peremptories to be exercised in selecting alternates. The parties then exercise the peremptory challenges by passing the list back and forth and by striking names from the list alternately, beginning with counsel for the prosecution. Under this system, all peremptory challenges must be utilized. Alternates are selected from the remaining names in the same manner. Jurors are not advised by whom each peremptory challenge was exercised. Also, under Alternative (F)(2), prospective jurors will not know whether they have been chosen until the challenging process is complete and the roll is called.

This rule requires that prospective jurors be sworn before questioning under either Alternative.

The words in parentheses in the oath shall be inserted when any of the prospective jurors chooses to affirm rather than swear to the oath.

Unless the judge's presence during *voir dire* and the jury selection process is waived pursuant to paragraph (A), the judge must be present in the jury selection room during *voir dire* and the jury selection process.

Pursuant to paragraph (E), which was amended in 1998, and Rule 632, prospective jurors are required to complete the standard, confidential juror information questionnaire prior to *voir dire*. This questionnaire, which facilitates and expedites *voir dire*, provides the judge and attorneys with basic background information about the jurors, and is intended to be used as an aid in the oral examination of the jurors.

The point in time prior to *voir dire* that the questionnaires are to be completed is left to the discretion of the local officials. Nothing in this rule is intended to require that the information questionnaires be mailed to jurors before they appear in court pursuant to a jury summons.

*See* Rule 103 for definitions of "capital case" and "*voir dire*."

**Official Note:** Adopted January 24, 1968, effective August 1, 1968; amended May 1, 1970, effective May 4, 1970; amended June 30, 1975, effective September 28, 1975. The 1975 amendment combined former Rules 1106 and 1107. Comment revised January 28, 1983, effective July 1, 1983; amended September 15, 1993, effective January 1, 1994. The September 15, 1993 amendments suspended December 17, 1993 until further Order of the Court; amended February 27, 1995, effective July 1, 1995; the September 15, 1993 Order amending Rule 1106 is superseded by the September 18, 1998 Order, and Rule 1106 is amended September 18, 1998, effective July 1, 1999; renumbered Rule 631 and amended March 1, 2000, effective April 1, 2001; amended July 7, 2015, effective October 1, 2015.

*Committee Explanatory Reports*:

Report explaining the September 15, 1993 amendments published at 21 Pa.B. 150 (January 12, 1991). Order suspending, until further Order of the Court, the September 15, 1993 amendments concerning juror information questionnaires published at 24 Pa.B. 333 (January 15, 1994).

Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 948 (March 18, 1995).

Final Report explaining the September 18, 1998 amendments concerning juror information questionnaires published with the Court's Order at 28 Pa.B. 4887 (October 3, 1998).

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 July 7, 2015 amendment regarding instructions to the prospective jurors published with the Court's Order at 45 Pa.B. 3985 (Juy 25, 2015).

**Source**

The provisions of this Rule 631 amended July 7, 2015, effective October 1, 2015, 45 Pa.B. 3980. Immediately preceding text appears at serial pages (265687) to (265689) and (264319).

## Rule 632. Juror Information Questionnaire.

(A) Prior to *voir dire*:

(1) Each prospective juror shall complete and verify the standard, confidential juror information questionnaire required by paragraph (H) of this rule, and any supplemental questionnaire provided by the court.

(2) The president judge shall designate the method for distributing and maintaining the juror information questionnaires.

(3) The trial judge and the attorneys shall receive copies of the completed questionnaires for use during *voir dire*, and the attorneys shall be given a reasonable opportunity to examine the questionnaires.



 

(B) The information provided by the jurors on the questionnaires shall be confidential and limited to use for the purpose of jury selection only. Except for disclosures made during *voir dire*, or unless the trial judge otherwise orders pursuant to paragraph (F), this information shall only be made available to the trial judge, the defendant(s) and the attorney(s) for the defendant(s), and the attorney for the Commonwealth.

(C) The original and any copies of the juror information questionnaires shall not constitute a public record.

(D) Juror information questionnaires shall be used in conjunction with the examination of the prospective jurors conducted by the judge or counsel pursuant to Rule 631(E).

(E) If the court adjourns before *voir dire* is completed, the trial judge may order that the attorneys be permitted to retain their copies of the questionnaires during the adjournment. When copies of the questionnaires are permitted to be taken from the courtroom, the copies:

(1) shall continue to be subject to the confidentiality requirements of this rule, and to the disclosure requirements of paragraph (B); and

(2) shall not be duplicated, distributed, or published.

The trial judge may make such other order to protect the copies as is appropriate.

(F) The original questionnaires of all impaneled jurors shall be retained in a sealed file and shall be destroyed upon completion of the jurors' service, unless otherwise ordered by the trial judge. Upon completion of *voir dire*, all copies of the questionnaires shall be returned to the trial judge and destroyed, unless otherwise ordered by the trial judge at the request of the defendant(s), the attorney(s) for the defendant(s), or the attorney for the Commonwealth.

(G) The original and any copies of questionnaires of all prospective jurors not impaneled or not selected for any trial shall be destroyed upon completion of the jurors' service.

(H) The form of the juror information questionnaire shall be as follows:

**JUROR INFORMATION QUESTIONNAIRE**
**CONFIDENTIAL; NOT PUBLIC RECORD**

<table>
<tr><td colspan="2">NAME: LAST</td><td colspan="2">FIRST</td><td>MIDDLE INITIAL</td></tr>
<tr><td colspan="2">CITY/TOWNSHIP</td><td colspan="3">COMMUNITIES IN WHICH YOU RESIDED OVER THE PAST 10 YEARS:</td></tr>
<tr><td>MARITAL STATUS: MARRIED ☐</td><td>SINGLE ☐</td><td>SEPARATED ☐</td><td>DIVORCED ☐</td><td>WIDOWED ☐</td></tr>
<tr><td colspan="2">OCCUPATION</td><td colspan="3">OCCUPATION(S) PAST 10 YEARS</td></tr>
<tr><td colspan="2">OCCUPATION OF SPOUSE/ OTHER</td><td colspan="3">PAST 10 YEARS OCCUPATION OF SPOUSE/OTHER</td></tr>
<tr><td colspan="2">NUMBER OF CHILDREN</td><td colspan="3">RACE:<br>☐ WHITE ☐ BLACK ☐ HISPANIC<br>☐ OTHER</td></tr>
<tr><td colspan="2">LEVEL OF EDUCATION YOURS</td><td colspan="2">SPOUSE/OTHER</td><td>CHILDREN</td></tr>
</table>

| | | YES | NO |
|---|---|---|---|
| 1. | Have you ever served as a juror before? If so, were you ever on a hung jury? | ☐ | ☐ |
| 2. | Do you have any religious, moral, or ethical beliefs that would prevent you from sitting in judgment in a criminal case and rendering a fair verdict? | ☐ | ☐ |
| 3. | Do you have any physical or psychological disability that might interfere with or prevent you from serving as a juror? | ☐ | ☐ |
| 4. | Have you or anyone close to you ever been the victim of a crime? | ☐ | ☐ |
| 5. | Have you or anyone close to you ever been charged with or arrested for a crime, other than a traffic violation? | ☐ | ☐ |
| 6. | Have you or anyone close to you ever been an eyewitness to a crime, whether or not it ever came to court? | ☐ | ☐ |
| 7. | Have you or anyone close to you ever worked in law enforcement or the justice system? This includes police, prosecutors, attorneys, detectives, security or prison guards, and court related agencies. | ☐ | ☐ |
| 8. | Would you be more likely to believe the testimony of a police officer or any other law enforcement officer because of his or her job? | ☐ | ☐ |
| 9. | Would you be less likely to believe the testimony of a police officer or other law enforcement officer because of his or her job? | ☐ | ☐ |



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| | | YES | NO |
|---|---|---|---|
| 10. | Would you have any problem following the court's instruction that the defendant in a criminal case is presumed to be innocent unless and until proven guilty beyond a reasonable doubt? | ☐ | ☐ |
| 11. | Would you have any problem following the court's instruction that the defendant in a criminal case does not have to take the stand or present evidence, and it cannot be held against the defendant if he or she elects to remain silent or present no evidence? | ☐ | ☐ |
| 12. | Would you have any problem following the court's instruction in a criminal case that just because someone is arrested, it does not mean that the person is guilty of anything? | ☐ | ☐ |
| 13. | In general, would you have any problem following and applying the judge's instruction on the law? | ☐ | ☐ |
| 14. | Would you have any problem during jury deliberations in a criminal case discussing the case fully but still making up your own mind? | ☐ | ☐ |
| 15. | Are you presently taking any medication that might interfere with or prevent you from serving as a juror? | ☐ | ☐ |
| 16. | Is there any other reason you could not be a fair juror in a criminal case? | ☐ | ☐ |

I hereby certify that the answers on this form are true and correct. I understand that false answers provided herein subject me to penalties under 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

SIGNATURE _____ DATE _____

**Comment**

This rule requires that, prior to *voir dire* in any criminal case, the prospective jurors, including prospective alternate jurors, must complete the standard, confidential juror information questionnaire required in paragraph (H), and that the trial judge and attorneys must automatically be given copies of the completed questionnaires in time to examine them before *voir dire* begins. *Compare* Rule 625, which provides that attorneys must request copies of juror qualification forms for the jurors summoned in their case.

Under paragraph (A)(2), it is intended that the president judge of each judicial district may designate procedures for submitting the questionnaire to the jurors and maintaining them upon completion. For example, some districts may choose to mail them along with their jury qualification form, while others may desire to have the questionnaire completed by the panel of prospective jurors when they report for jury service. This rule, however, mandates that the questionnaires be completed by each prospective juror to a criminal case.

Each judicial district must provide the jurors with instructions for completing the form, and inform them of the procedures for maintaining confidentiality of the questionnaires. It is expected that each judicial district will inform the jurors that the questionnaires will only be used for jury selection.

Pursuant to paragraph (C), the juror information questionnaire is not a public record and therefore may not be combined in one form with the qualification questionnaire required by Rule 625. However, nothing in this rule would prohibit the distribution of both questionnaires in the same mailing.

Under paragraph (B), the information provided by the jurors is confidential and may be used only for the purpose of jury selection. Except for disclosures made during *voir dire*, the information in the completed questionnaires may not be disclosed to anyone except the trial judge, the attorneys and any persons assisting the attorneys in jury selection, such as a member of the trial team or a consultant hired to assist in jury selection, the defendant, and any court personnel designated by the judge. Even once disclosed to such persons, however, the information in the questionnaires remains confidential.

Although the defendant may participate in *voir dire* and have access to information from the questionnaire, nothing in this rule is intended to allow a defendant to have a copy of the questionnaire.

Paragraph (D) makes it clear that juror information questionnaires are to be used in conjunction with the oral examination of the prospective jurors, and are not to be used as a substitute for the oral examination. Juror information questionnaires facilitate and expedite the *voir dire* examination by providing the trial judge and attorneys with basic background information about the jurors, thereby eliminating the need for many commonly asked questions. Although nothing in this rule is intended to preclude oral questioning during *voir dire*, the scope of *voir dire* is within the discretion of the trial judge. *See, e.g.*, *Commonwealth v. McGrew*, 100 A.2d 467 (Pa. 1953) and Rule 631(E).

Paragraph (E) provides, upon order of the trial judge, that only attorneys in the case, subject to strict limitations imposed by the court, may retain their copies of the juror information questionnaires during adjournment.

Paragraph (F) provides the procedures for the collection and disposition of the original completed questionnaires and copies for impaneled jurors. Once *voir dire* is concluded, all copies of the completed questionnaires are returned to the official designated by the president judge pursuant to paragraph (A)(2), and destroyed promptly. The original completed questionnaires of the impaneled jury must be retained in a sealed file in the manner prescribed pursuant to paragraph (A)(2), and destroyed upon the conclusion of the juror's service, unless the trial judge orders otherwise. Because the information in the questionnaires is confidential, the trial judge should only order retention of the original questionnaires under unusual circumstances. Such a circumstance would arise, for example, if the questionnaires were placed at issue for post-verdict review. In that event, the judge would order the preservation of the questionnaires in order to make them part of the appellate record.

Under paragraph (G), the original and any copies of the questionnaires of those jurors not impaneled and not selected for any jury must be destroyed without exception upon completion of their service.

There may be situations in which the attorneys and judge would want to prepare an individualized questionnaire for a particular case. In this situation, a supplemental questionnaire would be used together with the standard juror information questionnaire, and the disclosure and retention provisions in paragraphs (B) and (F) would apply. *See* paragraph (A)(1).

**Official Note:** Former Rule 1107 rescinded September 28, 1975. Present Rule 1107 adopted September 15, 1993, effective January 1, 1994; suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order is superseded by the September 18, 1998 Order, and present Rule 1107 adopted September 18, 1998, effective July 1, 1999; renumbered Rule 632 and amended March 1, 2000, effective April 1, 2001; amended May 2, 2005, effective August 1, 2005; amended July 7, 2015, effective October 1, 2015.

*Committee Explanatory Reports*:

Final Report explaining the September 18, 1998 adoption of new Rule 1107 concerning juror information questionnaires published with the Court's Order at 29 Pa.B. 4887 (October 3, 1999).

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 May 2, 2005 amendments to the mandatory juror information questionnaire form published at 35 Pa.B. 2870 (May 14, 2005).

Final Report explaining the July 7, 2015 amendments correcting cross-references to Rules 625 and 631 published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

**Source**

The provisions of this Rule 632 amended May 2, 2005, effective August 1, 2005, 35 Pa.B. 2868; amended July 7, 2015, effective October 1, 2015, 45 Pa.B. 3980. Immediately preceding text appears at serial pages (264319) to (264320) and (311407) to (311410).

## Rule 633. Examination and Challenges of Alternate Trial Jurors.

(A) The trial judge may direct that a reasonable even number of jurors in addition to the principal jurors be called and impaneled to sit as alternate jurors.

(B) When alternate jurors are selected in trials involving only one defendant, the defendant and the Commonwealth shall each be entitled to one peremptory challenge for each 2 alternate jurors to be selected. When alternate jurors are selected in trials involving joint defendants, each defendant shall be entitled to one peremptory challenge for each two 2 alternate jurors to be selected and the Commonwealth shall be entitled to peremptory challenges equal in number to the total number of peremptory challenges given to all of the defendants. All peremptory challenges remaining unexercised after the selection of the principal 12 jurors shall be considered exhausted, and in no case may the challenges reserved for the selection of alternates be added to the number allowed during the selection of the principal 12.

(C) Alternate jurors shall be examined, challenged, and selected in the same manner as the principal jurors.

**Comment**

The last two sentences of paragraph (A) were moved to new Rule 645 as part of the reorganization of the rules in 2000.

Paragraph (B) of this rule sets forth the number of peremptory challenges for the selection of alternate trial jurors and is intended to replace the Act of May 1, 1935, P. L. 127, No. 50, 51, insofar as it applied to criminal trials. That Act was repealed by the Judiciary Act Repealer Act, 42 P. S. § 20002(a) [1156] [(1979)].

The number of peremptory challenges for the selection of principal trial jurors is governed by Rule 634. Paragraph (B) reflects the different treatment, under Rule 634, of trials involving only one defendant and trials involving joint defendants.

**Official Note:** Rule 1108 adopted January 24, 1968, effective August 1, 1968; amended June 30, 1975, effective September 28, 1975; amended July 1, 1980, effective August 1, 1980; renumbered Rule 633 and amended March 1, 2000, effective April 1, 2001.

*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).

## Rule 634. Number of Peremptory Challenges.

(A) Trials Involving Only One Defendant:

(1) In trials involving misdemeanors only and when there is only one defendant, the Commonwealth and the defendant shall each be entitled to 5 peremptory challenges.

(2) In trials involving a non-capital felony and when there is only one defendant, the Commonwealth and the defendant shall each be entitled to 7 peremptory challenges.

(3) In trials involving a capital felony and when there is only one defendant, the Commonwealth and the defendant shall each be entitled to 20 peremptory challenges.

(B) Trials Involving Joint Defendants:

(1) In trials involving joint defendants, the defendants shall divide equally among them that number of peremptory challenges that the defendant charged with the highest grade of offense would have received if tried separately; provided, however, that each defendant shall be entitled to at least 2 peremptory challenges. When such division of peremptory challenges among joint defendants results in a fraction of a peremptory challenge, each defendant shall be entitled to the next highest number of such challenges.

(2) In trials involving joint defendants, it shall be within the discretion of the trial judge to increase the number of peremptory challenges to which each defendant is entitled up to the number of peremptory challenges that each defendant would have received if tried alone.

(3) In trials involving joint defendants, the Commonwealth shall be entitled to peremptory challenges equal in number to the total number of peremptory challenges given to all of the defendants.

**Comment**

This rule governs the number of peremptory challenges for the selection of principal trial jurors. The number of peremptory challenges for the selection of alternate trial jurors is set forth in Rule 633.

Previous Rule 1126 was adopted after the abolition of the Courts of Oyer and Terminer and General Jail Delivery, and served to preserve the number of peremptory challenges established with reference to such courts by the Act of March 6, 1901, P. L. 16, § 1, as amended by Act of July 9, 1901, P. L. 629, § 1. That rule was rescinded in 1977 in view of the Act of October 7, 1976, P. L. 1089, No. 217, §§ 1—2, which repealed the 1901 peremptory challenge statute and established the number of peremptory challenges without reference to the abolished courts.

Present Rule 634 (then-Rule 1126) was adopted in 1980 after the Act of October 7, 1976, P. L. 1089, No. 217, § 1, and other statutory provisions relating to peremptory challenges (see Act of March 31, 1860, P. L. 427, § 40, as amended by Act of October 7, 1976, P. L. 1055, No. 213, § 1) were repealed by the Judiciary Act Repealer Act, 42 P. S. § 20002(a) [377], [1479] (1979). Although this rule is intended to replace the repealed statutes as to peremptory challenges, the rule retains the number of peremptories that was established by such statutes.

When offenses of different grades are charged in a case, the number of peremptory challenges is intended to be determined by the highest grade of offense charged; cumulation is not intended.

**Official Note:** Previous Rule 1126 adopted December 24, 1968, effective January 1, 1969; rescinded May 26, 1977, effective July 1, 1977; present Rule 1126 adopted July 1, 1980, effective August 1, 1980; renumbered Rule 634 and amended March 1, 2000, effective April 1, 2001; Comment revised September 21, 2012, effective November 1, 2012.

*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 September 21, 2012 revision to the first and third paragraphs of the Comment correcting typographical errors published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

**Source**

The provisions of this Rule 634 amended September 21, 2012, effective November 21, 2012, 42 Pa.B. 6247. Immediately preceding text appears at serial pages (311410) and (264325) to (264326).

## Rule 635. Exhaustion of the Jury Panel.

When a sufficient number of qualified jurors are not present to permit selection of a jury, the court shall:

(1) Require the officials designated by law to summon prospective jurors to summon and return immediately from the county at large as many qualified and competent persons as shall be necessary; or

(2) Order in writing that the officials designated by law to summon prospective jurors produce the jury wheel or master list in open court in the presence of the judge, and draw therefrom five names for each juror required. A venire shall then be issued requiring that those persons so drawn be brought into court at a time certain.

**Comment**

While this rule continues to require a written order, the form of the order was deleted in 1985 because it is no longer necessary to control the specific form of order by rule.

See also Sections 4524, 4525, 4531, and 4532 of the Judicial Code, 42 Pa.C.S. §§ 4524, 4525, 4531, 4532, with regard to juror selection and summoning.

Section 4584 of the Judicial Code, 42 Pa.C.S. § 4584, prescribes the penalty when a person summoned refuses to serve.

**Official Note:** Rule 1109 adopted January 24, 1968, effective August 1, 1968; Comment revised January 28, 1983, effective July 1, 1983; amended November 9, 1984, effective January 2, 1985; renumbered Rule 635 and amended March 1, 2000, effective April 1, 2001.

*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. 1477 (March 18, 2000).

### PART C(2). Conduct of Jury Trial

## Rule 640. Swearing the Trial Jury to Hear the Cause.

(A) After all jurors have been selected, the jury, including any alternates, shall be sworn as a body to hear the cause.

(B) The following oath shall be administered:

> ''You do solemnly swear by Almighty God and those of you who affirm do declare and affirm that you will well and truly try the issue joined between the Commonwealth and the defendant(s), and a true verdict render according to the evidence.''



 

**Comment**

The bracketed words in the oath shall be inserted when any of the prospective jurors choose to affirm rather than to swear to the oath. Those persons who may administer oaths are provided for in Section 327 of the Judicial Code, 42 Pa.C.S. § 327.

**Official Note:** Rule 1110 adopted January 24, 1968, effective August 1, 1968; Comment revised January 28, 1983, effective July 1, 1983; renumbered Rule 640 and amended March 1, 2000, effective April 1, 2001.

*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. 1477 (March 18, 2000).

## Rule 641. Agreement to be Tried by Fewer Than Twelve Jurors.

In all cases, at any time after a jury of 12 is initially sworn and before verdict, the defendant and the attorney for the Commonwealth, with approval of the judge, may agree to a jury of fewer than 12 but not fewer than 6. Such agreement shall be made a part of the record. The verdict in such a case shall have the same force and effect as a verdict by a jury of 12.

**Comment**

The 1999 amendment conforms this rule to the 1998 amendment to article I, § 6 of the Pennsylvania Constitution providing that "the Commonwealth shall have the same right to trial by jury as does the accused."

**Official Note:** Rule 1103 adopted January 24, 1968, effective August 1, 1968; amended September 22, 1976, effective November 1, 1976; amended April 16, 1999, effective July 1, 1999; renumbered Rule 641 and amended March 1, 2000, effective April 1, 2001.

*Committee Explanatory Reports*:

Final Report explaining the April 16, 1999 amendments concerning the 1998 Constitutional amendment published with the Court's Order at 29 Pa.B. 2290 (May 1, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

## Rule 642. Sequestration of Trial Jurors.

(A) The trial judge may, in the judge's discretion, order sequestration of trial jurors in the interests of justice.

(B) When sequestration is ordered, each juror, including any alternate, shall be sequestered from the time of acceptance as a juror until discharged.

(C) Nothing is paragraph (B) shall prevent a trial judge from ordering sequestration, or vacating the order of sequestration, at any time during a trial when the interests of justice require.

**Comment**

Under this rule sequestration is available in all cases, capital and non-capital, at the discretion of the trial judge. The prior rule required sequestration of each juror in a capital case from the time of acceptance as a juror until discharge of the jury.

**Official Note:** Prior Rule 1111 adopted January 24, 1968, effective August 1, 1968; rescinded April 26, 1973, effective 15 days hence. New Rule 1111 adopted April 26, 1973, effective 15 days hence; Comment revised January 28, 1983, effective July 1, 1983; renumbered Rule 642 and amended March 1, 2000, effective April 1, 2001.

*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. 1477 (March 18, 2000).

## Rule 643. View by Jury.

(A) The trial judge may in the judge's discretion order a view by the jury.

(B) The trial judge, the attorney for the Commonwealth, the defendant and defendant's attorney shall be present at the view, except as provided in Rule 602.

**Comment**

This rule changes the present law in Pennsylvania requiring the presence of the defendant at a view by the jury. See *Commonwealth v. Darcy*, 66 A.2d 663 (Pa. 1949), *Commonwealth v. Sallade*, 97 A.2d 528 (Pa. 1953).

**Official Note:** Rule 1112 adopted January 24, 1968, effective August 1, 1968; renumbered Rule 643 and amended March 1, 2000, effective April 1, 2001.

*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. 1477 (March 18, 2000).

## Rule 644. [Rescinded].

**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, and replaced by new Rule 644.

*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 rescission of present Rule 644 published with the Court's Order at 35 Pa.B. 3919 (July 16, 2005).

**Source**

The provisions of this Rule 644 reserved June 30, 2005, effective August 1, 2005, 35 Pa.B. 3917. Immediately preceding text appears at serial page (264328).

## Rule 644. Note Taking by Jurors.

(A) When a jury trial is expected to last for more than two days, jurors shall be permitted to take notes during the trial 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 paying full attention to the evidence and evaluating witness credibility;

(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.

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.
>
> 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 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.

*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. 4606 (August 23, 2008).

(*Editor's Note*: On July 31, 2008, the Supreme Court issued an order stating that the effective date of the sunset provision of Pa.R.Crim.P. 644(c) was suspended until further order of Court; see 38 Pa.B. 4506 (August 16, 2008).)

**Source**

The provisions of this Rule 644 adopted June 30, 2005, effective August 1, 2005, 35 Pa.B. 3917; amended August 7, 2008, effective immediately, 38 Pa.B. 4606. Immediately preceding text appears at serial pages (312455) to (312456) and (335959).

## Rule 645. Seating and Retention of Alternate Jurors.

(A) Alternate jurors, in the order in which they are called, shall replace principal jurors who become unable or disqualified to perform their duties.

(B) Alternate jurors shall be retained after the jury retires to consider its verdict. The trial judge shall instruct the retained alternate jurors to continue to observe the admonitions to jurors until they are informed that a verdict has been returned or the jury has been discharged. A retained alternate juror shall not be permitted to be present in the jury room during deliberations unless he or she replaces a principal juror as provided in paragraph (C).

(C) After the jury has retired to consider its verdict, a principal juror who becomes unable to perform his or her duties or is disqualified may be replaced with a retained alternate juror only if the trial judge is satisfied that the proper jury function is not harmed by the replacement. To ensure this, the trial judge shall:

(1) colloquy the alternate juror on the record that the alternate juror has not been exposed to any improper influences; and

(2) once the jury is reconstituted following the replacement of the principal juror by the alternate juror, colloquy and instruct the reconstituted jury on the record that:

(a) the jurors understand that the reason the discharged juror was being replaced has nothing to do with the discharged juror's views on the case; and

(b) the reconstituted jury understands that they must set aside and disregard all past deliberations and begin deliberations anew so as to eliminate the influence of the excused juror and so that the reconstituted jury will consider the evidence in the context of full and complete deliberations with the new juror.

**Comment**

This rule is derived from the last two sentences of former Rule 1108(a). *See* Rule 633 for the procedures for the examination and challenges of alternate trial jurors.

This rule was amended in 2013 to require that alternate jurors be retained after the jury retires to consider its verdict and to permit the trial judge to seat an alternate juror when a principal juror is unable to perform his or her duties or is disqualified, and requires replacement. The amendment recognizes that, in cases in which a principal juror becomes unable to serve after deliberations have begun, substitution of a retained alternate juror will be an appropriate alternative to the remedy of a mistrial so long as appropriate steps are taken to ensure that the jury function is not compromised. Paragraph (C) provides the required colloquies and instructions that must be placed on the record when a principal juror is replaced by an alternate juror after the jury has retired to consider its verdict. *See also Commonwealth v. Saunders*, 686 A.2d 25 (Pa. Super. 1996) (replacement of a principal by an alternate juror is proper if steps have been taken to ensure that the jury function remains protected).

The rule does not require that all retained alternate jurors be sequestered. Rather, it is within the discretion of the trial judge to determine what restrictions are placed upon the retained alternate jurors to ensure that the alternate jurors are available and eligible for substitution should that be necessary. Whatever level of sequestration is applied to the principal jurors should also be applied to the alternate jurors.

Retained alternate jurors remain in jury service, subject to all conditions thereof, until all jurors have been discharged. *See, e.g.*, 42 Pa.C.S. § 4561.

When an alternate is seated pursuant to paragraph (C), the trial judge has the discretion in re-instructing the reconstituted jury with the original charge in whole or in part.

Nothing in the rule was intended to preclude an agreement among the parties to be tried by less than 12 jurors as provided in Rule 641.

**Official Note:** New Rule 645 adopted March 1, 2000, effective April 1, 2001; amended November 19, 2013, effective January 1, 2014.

*Committee Explanatory Reports*:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 645 published at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the November 19, 2013 amendment requiring the retention and permitting the substitution of alternate jurors after deliberations have begun published with the Court's Order at 43 Pa.B. 7077 (December 7, 2013).

**Source**

The provisions of this Rule 645 amended November 19, 2013, effective January 1, 2014, 43 Pa.B. 7076. Immediately preceding text appears at serial page (361897).

## Rule 646. Material Permitted in Possession of the Jury.

(A) Upon retiring, the jury may take with it such exhibits as the trial judge deems proper, except as provided in paragraph (C).

(B) The trial judge may permit the members of the jury to have for use during deliberations written copies of the portion of the judge's charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been instructed.

(1) If the judge permits the jury to have written copies of the portion of the judge's charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been instructed, the judge shall provide that portion of the charge in its entirety.

(2) The judge shall instruct the jury about the use of the written charge. At a minimum, the judge shall instruct the jurors that



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(a) the entire charge, written and oral, shall be given equal weight; and

(b) the jury may submit questions regarding any portion of the charge.

(C) During deliberations, the jury shall not be permitted to have:

(1) a transcript of any trial testimony;

(2) a copy of any written or otherwise recorded confession by the defendant;

(3) a copy of the information or indictment; and

(4) except as provided in paragraph (B), written jury instructions.

(D) The jurors shall be permitted to have their notes for use during deliberations.

**Comment**

This rule prohibits the jury from receiving a copy of the indictment or information during its deliberations. The rule also prohibits the jury from taking into the jury room any written or otherwise recorded confession of the defendant. In *Commonwealth v. Pitts*, 450 Pa. 359, 301 A.2d 646, 650 n. 1 (1973), the Court noted that "it would be a better procedure not to allow exhibits into the jury room which would require expert interpretation."

The 2009 amendment to paragraph (B) changes the procedures in Pennsylvania concerning the jury's access during deliberations to written copies of the judge's charge by permitting the judge to provide each member of the jury with written copies of the portion of the judge's charge on the elements of offenses, the lesser included offenses, and the elements of any potential defenses upon which the jury was charged for the jurors to use during their deliberations. This amendment supersedes the line of cases from *Commonwealth v. Baker*, 466 Pa. 382, 353 A.2d 406 (1976) (plurality opinion) and *Commonwealth v. Oleynik*, 524 Pa. 41, 568 A.2d 1238 (1990), through *Commonwealth v. Karaffa*, 551 Pa. 173, 709 A.2d 887 (1998), in which the Court held it was reversible error to submit written jury instructions to the jury to the extent these cases would preclude that portion of the charge containing the elements of the offense charged, lesser included offenses, and defenses raised at trial from going to the jury.

It is within the discretion of the trial judge to permit the use of the written copies of the portions of the charge on the elements by the jury during deliberations. However, once the judge permits the use of the written elements, the elements of all of the offenses, lesser included offenses, and defenses upon which the jury was charged must be provided to the jury in writing.

The method of preparing the written instructions to be provided to the jury is within the discretion of the trial judge. For example, the instructions do not have to be contemporaneously transcribed but can be a copy of previously prepared instructions that the judge has read as part of the charge that are then provided to the jury for use during deliberations.

The judge must instruct the jurors concerning the use of written instructions during deliberations. Paragraph (B)(2) sets forth the minimum information the judge must explain to the jurors.

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

> Members of the jury, I will now instruct you on the law that applies to this case including the elements of each offense as well as the elements of the lesser included offenses and defenses upon which evidence has been provided during this trial. To assist you in your deliberations I will give you a written list of the elements of these offenses, lesser included offenses, and defenses to use in the jury room.
>
> If any matter is repeated or stated in different ways in my instructions, no emphasis is intended. Do not draw any inference because of a repetition. Do not single out any individual rule or instruction and ignore the others. Do not place greater emphasis on the elements of the offenses, lesser included offenses and defenses simply because I have provided them to you in writing and other instructions are not provided in writing. Consider all the instructions as a whole and each in the light of the others.

> If, during your deliberations, you have a question or feel that you need further assistance or instructions from me, write your question on a sheet of paper and give it to the court officer who will be standing at the jury room door, and who, in turn, will give it to me. You may ask questions about any of the instructions that I have given to you whether they were given to you orally or in writing.

*See* Rule 647(B) (Request for Instructions, Charge to the Jury, and Preliminary Instructions) concerning the content of the charge and written requests for instructions to the jury.

The 1996 amendment adding ''or otherwise recorded'' in paragraph (C)(2) is not intended to enlarge or modify what constitutes a confession under this rule. Rather, the amendment is only intended to recognize that a confession can be recorded in a variety of ways. *See Commonwealth v. Foster*, 425 Pa.Super. 61, 624 A.2d 144 (1993).

Nothing in this rule is intended to preclude jurors from taking notes during testimony related to a defendant's confession and such notes may be in the jurors' possession during deliberations.

Paragraph (D) was added in 2005 to make it clear that the notes the jurors take pursuant to Rule 644 may be used during deliberations.

> **Official Note:** Rule 1114 adopted January 24, 1968, effective August 1, 1968; amended June 28, 1974, effective September 1, 1974; Comment revised August 12, 1993, effective September 1, 1993; amended January 16, 1996, effective July 1, 1996; amended November 18, 1999, effective January 1, 2000; renumbered Rule 646 March 1, 2000, effective April 1, 2001; amended June 30, 2005, effective August 1, 2005; amended August 7, 2008, effective immediately; amended October 16, 2009, effective February 1, 2010; amended June 21, 2012, effective in 180 days; Comment revised July 7, 2015, effective October 1, 2015.

*Committee Explanatory Reports*:

Report explaining the August 12, 1993 Comment revision published at 22 Pa.B. 3826 (July 25, 1992).

Final Report explaining the January 16, 1996 amendments published with the Court's Order at 26 Pa.B. 439 (February 3, 1996).

Final Report explaining the changes to paragraph (B) and the Comment prohibiting written jury instructions going to the jury published with the Court's Order at 29 Pa.B. 6102 (December 4, 1999).

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 June 30, 2005 amendment concerning jurors' notes published with the Court's Order at 35 Pa.B. 3917 (July 16, 2005).

Final Report explaining the August 7, 2008 revision to the Comment concerning jurors' notes related to a defendant's confession published with the Court's Order at 38 Pa.B. 4606 (August 23, 2008).

Final Report explaining the October 16, 2009 amendments concerning providing jurors with the elements of the changed offenses in writing published with the Court's Order at 39 Pa.B. 6333 (October 31, 2009).

Final Report explaining the June 21, 2012 amendment to paragraph (C)(3) and the revision of the Comment concerning the former abolition of the indicting grand jury published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining the July 7, 2015 Comment revision correcting a cross-reference to Rule 647 published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

**Source**

The provisions of this Rule 646 amended June 30, 2005, effective August 1, 2005, 35 Pa.B. 3917; amended August 7, 2008, effective immediately, 38 Pa.B. 4606; amended October 16, 2009, effective February 1, 2010, 39 Pa.B. 6331; amended June 21, 2012, effective in 180 days, 42 Pa.B. 4140; amended July 7, 2015, effective October 1, 2015, 45 Pa.B. 3980. Immediately preceding text appears at serial pages (369650) to (369652) and (361899).

## Rule 647. Request for Instructions, Charge to the Jury, and Preliminary Instructions.

(A) Before the taking of evidence, the trial judge shall give instructions to the jurors as provided in Rule 626.

(B) Any party may submit to the trial judge written requests for instructions to the jury. Such requests shall be submitted within a reasonable time before the closing arguments, and at the same time copies thereof shall be furnished to the other parties. Before closing arguments, the trial judge shall inform the parties on the record of the judge's rulings on all written requests and which instructions shall be submitted to the jury in writing. The trial judge shall charge the jury after the arguments are completed.

(C) No portions of the charge nor omissions from the charge may be assigned as error, unless specific objections are made thereto before the jury retires to deliberate. All such objections shall be made beyond the hearing of the jury.

(D) After the jury has retired to consider its verdict, additional or correctional instructions may be given by the trial judge in the presence of all parties, except that the defendant's absence without cause shall not preclude proceeding, as provided in Rule 602.

(E) The trial judge may give any other instructions to the jury before the taking of evidence or at anytime during the trial as the judge deems necessary and appropriate for the jury's guidance in hearing the case.

**Comment**

Paragraph (B), amended in 1985, parallels the procedures in many other jurisdictions which require that the trial judge rule on the parties' written requests for instructions before closing arguments, that the rulings are on the record, and that the judge charge the jury after the closing arguments. *See, e.g.*, Fed.R.Crim.P. 30; ABA Standards on Trial by Jury, Standard 15-3.6; Uniform Rule of Criminal Procedure 523(b).

Pursuant to Rule 646 (Material Permitted in Possession of the Jury), the judge must determine whether to provide the members of the jury with written copies of the portion of the judge's charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been instructed for use during deliberations.

Paragraph (A) was added in 2015 to require trial judges to instruct jurors that they are prohibited from using computers or cell phones at trial or during deliberation, and are prohibited from using a computer or other electronic device or any other method to obtain or disclose information about the case when they are not in the courtroom. The amendment prohibits jurors from reading about or listening to news reports about the case and prohibits discussion among jurors until deliberation.

Paragraph (E), added in 1985, recognizes the value of jury instructions to juror comprehension of the trial process. It is intended that the trial judge determine on a case by case basis whether instructions before the taking of evidence or at anytime during trial are appropriate or necessary to assist the jury in hearing the case. The judge should determine what instructions to give based on the particular case, but at a minimum the preliminary instructions should orient the jurors to the trial procedures and to their duties and function as jurors. In addition, it is suggested that the instructions may include such points as note taking, the elements of the crime charged, presumption of innocence, burden of proof, and credibility. Furthermore, if a specific defense is raised by evidence presented during trial, the judge may want to instruct on the elements of the defense immediately after it is presented to enable the jury to properly evaluate the specific defense. *See also* Pennsylvania Suggested Standard Criminal Jury Instructions, Chapter II.

**Official Note:** Rule 1119 adopted January 24, 1968, effective August 1, 1968; amended April 23, 1985, effective July 1, 1985; renumbered Rule 647 and amended March 1, 2000,

effective April 1, 2001; Comment revised June 30, 2005, effective August 1, 2005; amended October 16, 2009, effective February 1, 2010; amended July 7, 2015, effective October 1, 2015.

*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 June 30, 2005 Comment revision concerning the note taking instruction published with the Court's Order at 35 Pa.B. 3919 (July 16, 2005).

Final Report explaining the October 16, 2009 changes adding to the Comment a cross-reference to Rule 646 published with the Court's Order at 39 Pa.B. 6331, 6333 (October 31, 2009).

Final Report explaining the July 7, 2015 amendment regarding the use of personal communications devices and computers by the jurors published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).

**Source**

The provisions of this Rule 647 amended June 30, 2005, effective August 1, 2005, 35 Pa.B. 3917; amended October 16, 2009, effective February 1, 2010, 39 Pa.B. 6331; amended July 7, 2015, effective October 1, 2015, 45 Pa.B. 3980. Immediately preceding text appears at serial pages (361899) to (361900).

## Rule 648. Verdicts.

(A) Upon retiring to deliberate, the jury shall select one of its members as foreman.

(B) The verdict shall be unanimous, and shall be announced by the foreman in open court in the presence of a judge, the attorney for the Commonwealth, the defendant and defendant's attorney, except as provided in Rule 602.

(C) If there are two or more defendants, the jury may report a verdict or verdicts with respect to those defendants, upon which it has agreed, and the judge shall receive all such verdicts. If the jury cannot agree upon a verdict with respect to all of the defendants, the verdicts which have been received shall be recorded.

(D) If there are two or more counts in the information or indictment, the jury may report a verdict or verdicts with respect to those counts upon which it has agreed, and the judge shall receive and record all such verdicts. If the jury cannot agree with respect to all the counts in the information or indictment if those counts to which it has agreed operate as an acquittal of lesser or greater included offenses to which they cannot agree, these latter counts shall be dismissed. When the counts in the information or indictment upon which the jury cannot agree are not included offenses of the counts in the information or indictment upon which it has agreed, the defendant or defendants may be retried on those counts in the information or indictment.

(E) If there are two or more informations or indictments, the jury may report a verdict or verdicts with respect to those informations or indictments upon which it has agreed, and the judge shall receive and record all such verdicts. If the jury cannot agree with respect to all the informations or indictments, if those informations or indictments to which it has agreed operate as an acquittal of lesser or greater included offenses to which they cannot agree, these latter informations or indictments shall be dismissed. When the informations or indictments upon which the jury cannot agree are not included in the offenses of the information or indictment upon which it has agreed, the defendant or defendants may be retried on those informations or indictments.

(F) If there is a summary offense joined with the misdemeanor, felony, or murder charge that was tried before the jury, the trial judge shall not remand the summary offense to the issuing authority. The summary offense shall be disposed of in the court of common pleas, and the verdict with respect to the summary offense shall be recorded in the same manner as the verdict with respect to the other charges.

(G) Before a verdict, whether oral or sealed, is recorded, the jury shall be polled at the request of any party. Except where the verdict is sealed, if upon such poll there is no concurrence, the jury shall be directed to retire for further deliberations.

**Comment**

Paragraph (A) of the rule replaces the practice of automatically appointing the first juror chosen as foreman of the jury. Paragraphs (C), (D), and (E) serve only to codify the procedure where conviction or acquittal of one offense operates as a bar to a later trial on a necessarily included offense. Similarly, the rule applies to situations of merger and autrefois convict or acquit. No attempt is made to change the substantive law that would operate to determine when merger or any of the other situations arise. *See, e.g., Commonwealth v. Comber*, 374 Pa. 570, 97 A.2d 343 (1953).

Paragraph (F) provides for the disposition in the court of common pleas of any summary offense that is joined with the misdemeanor, felony, or murder charges that were tried before the jury. Under

no circumstances may the trial judge remand the summary offense to the issuing authority, even in cases in which the defendant is found not guilty by the jury. *See* also Rule 543 (Disposition of Case at Preliminary Hearing).

Paragraph (G) provides for the polling of the jury and requires the judge to send the jury back for deliberations in accordance with *Commonwealth v. Martin*, 379 Pa. 587, 109 A.2d 325 (1954). With respect to the procedure upon non-concurrence with a sealed verdict, see Rule 649(C).

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 because the indicting grand jury was abolished in all counties, see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b), the reference was retained in paragraphs (D) and (E) of this rule because there may be some cases still pending that were instituted under the former indicting grand jury rules prior to the abolition of the indicting grand jury in 1993. These references to ''indictment'' do not apply in the context of an indicting grand jury convened pursuant to the new indicting grand jury procedures adopted in 2012 in which an information would be filed after a grand jury indicts a defendant. *See* Rules 103 and 556.11.

**Official Note:** Rule 1120 adopted January 24, 1968, effective August 1, 1968; amended February 13, 1974, effective immediately; paragraph (E) amended to correct printing error June 28, 1976, effective immediately; paragraph (F) amended April 26, 1979, effective July 1, 1979; amended August 12, 1993, effective September 1, 1993; renumbered Rule 648 and amended March 1, 2000, effective April 1, 2001; amended March 9, 2006, effective September 1, 2006; Comment revised June 21, 2012, effective in 180 days.

*Committee Explanatory Reports*:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

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 March 9, 2006 amendments concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the June 21, 2012 revisions of the Comment concerning the former abolition of the indicting grand jury published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

**Source**

The provisions of this Rule 648 amended June 21, 2012, effective in 180 days, 42 Pa.B. 4140. Immediately preceding text appears at serial pages (359421) to (359422).

## Rule 649. Sealed Verdict.

(A) Upon the consent of all parties the judge may permit the jury to seal its verdict.

(B) The sealed verdict shall remain in the custody of the foreman of the jury who shall bring it to the next session of court stated by the trial judge. Once a verdict is sealed, the jurors may separate, but all jurors must return to open court to render the jury's verdict, with all parties present.

(C) If upon the poll of a jury there is no concurrence with a sealed verdict, the judge shall not accept the verdict, but shall declare a mistrial and discharge the jury.

**Comment**

The 1972 amendment deleted the exception of those cases in which a capital crime is charged in view of *Furman v. Georgia*, 408 U.S. 238 (1972) and its companion cases, and in view of *Commonwealth v. Bradley*, 449 Pa. 19, 295 A.2d 842 (1972).

This rule codifies the existing law with respect to sealed verdicts. *See* Rule 103, Rule 601 and Rule 648(F).

Paragraph (C) follows the Pennsylvania cases, *Commonwealth v. Watson*, 211 Pa. Superior Ct. 394, 236 A.2d 567 (1967); *Commonwealth v. Lemley*, 158 Pa. Superior Ct. 125, 44 A.2d 317 (1945).

**Official Note:** Rule 1121 adopted January 24, 1968, effective August 1, 1968; amended November 29, 1972, effective 10 days hence; renumbered Rule 649 and amended March 1, 2000, effective April 1, 2001; Comment revised September 21, 2012, effective November 1, 2012.

*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 September 21, 2012 revision of the Comment correcting a rule reference in the second paragraph and the case citations published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

**Source**

The provisions of this Rule 649 amended September 21, 2012, effective November 21, 2012, 42 Pa.B. 6247. Immediately preceding text appears at serial pages (361902) and (359423).

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