

IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

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Pennsylvania Jury Trial Innovations

1. Note Taking

In 2003, the Supreme Court of Pennsylvania put in place Rule 223.2 of the Pennsylvania Rules of Civil Procedure allowing note-taking in civil trials expected to last longer than 2 days. Ted Stellwag, *The Verdict on Juries: Juries are Critical to our System of Justice*, 2 Pennsylvania Lawyer 14, 16 (2005). It is a temporary rule promulgated for the purpose of assessing whether juror note-taking in civil cases is beneficial to the system of justice in Pennsylvania. Pa.R.C.P. No. 223.2, Explanatory Comment (West 2005). Although it is a temporary rule, the Supreme Court's Civil Rules Committee has proposed permanently codifying Rule 223.2. See PMC website at <http://www.pmconline.org/indexpcs.htm>. This is significant because initially, the pilot program allowing note-taking was to expire at the end of the year. See PMC website at <http://www.pmconline.org/indexpcs.htm>. Subdivision (a)(1) of Rule 223.2 authorizes jurors to take notes during the proceedings and to use their notes during deliberations in trials expected to last for more than two days. Pa.R.C.P. No. 223.2, Explanatory Comment (West 2005). Furthermore, subdivision (a)(2) does not permit jurors to take notes during the portions of the trial when the judge is instructing the jury as to the law that will govern the case. Pa.R.C.P. No. 223.2, Explanatory Comment (West 2005). In addition, subdivision (d)(1) bars both the court and counsel from making recommendations to jurors at any stage of the case that note-taking would be desirable. Pa.R.C.P. No. 223.2, Explanatory Comment (West 2005). Thus, neither the trial judge nor counsel may advise jurors that certain evidence may be difficult to recollect if it is not included in their notes. Pa.R.C.P. No. 223.2, Explanatory Comment (West 2005). While Rule 223.2 makes the court the custodian of the notes, neither the judge nor any member of the court's staff should read the notes. Pa.R.C.P. No. 223.2, Explanatory Comment (West 2005). The court's role as custodian is limited to safeguarding the notes throughout the proceedings and destroying the notes as soon as the jury is dismissed. Pa.R.C.P. No. 223.2, Explanatory Comment (West 2005).

2. Juror Handbooks/Notebooks

N/A

3. Juror Questions and Questioning of Witnesses

The Pennsylvania Supreme Court found in Boggs v. Jewell Tea Company that in a jury trial the judge has an undoubted right to interrogate witnesses and that even jurors may ask questions. 266 Pa. 428, 434 (1920). Chief Judge Thomas I. Vanaskie of the United States District Court for the Middle District of Pennsylvania permits jurors to put questions to witnesses during the trial under certain conditions. Nicole L. Mott, *The Current Debate on Juror Questions: "To Ask or Not To Ask, That is the Question,"* 78 Chi.-Kent L. Rev. 1099, 1123 (2003). Judge Vanaskie's court will allow a juror to ask

questions if the juror feels that the answer to his questions would be helpful in understanding the issues in the case. Nicole L. Mott, *The Current Debate on Juror Questions: "To Ask or Not To Ask, That is the Question,"* 78 Chi.-Kent L. Rev. 1099, 1123 (2003). First, the juror has to raise his hand after the lawyers have completed their examination, but before the judge has excused the witness. Nicole L. Mott, *The Current Debate on Juror Questions: "To Ask or Not To Ask, That is the Question,"* 78 Chi.-Kent L. Rev. 1099, 1123 (2003). The juror is then provided with pen and paper with which to write out his question to the witness. Nicole L. Mott, *The Current Debate on Juror Questions: "To Ask or Not To Ask, That is the Question,"* 78 Chi.-Kent L. Rev. 1099, 1123 (2003). The judge then confers with the lawyers privately about the question and makes a ruling on whether the question is proper and the judge addresses the question to the witness. Nicole L. Mott, *The Current Debate on Juror Questions: "To Ask or Not To Ask, That is the Question,"* 78 Chi.-Kent L. Rev. 1099, 1123 (2003).

There is no rule of civil procedure or appellate court case law authorizing a judge to permit questions from jurors in a civil case. However, if counsel agree among themselves to allow questions from jurors, the judge may experiment with the concept. The final decision on whether to permit questions from jurors and, if permitted, the procedures adopted to control such questions, should remain to the sound discretion of the trial judge. The committee makes no recommendation on whether jurors should be permitted to question witnesses. (Pennsylvania Suggested Standard Civil Jury Instructions: Pa. SSJI (Civ) 1.40. Questions by Jurors)

The draft permitting questions by jurors is taken from the *Model Civil Jury Instruction for the Eighth Circuit*, No. 1.04 A. and Ninth Circuit No. 1.13. (Pennsylvania Suggested Standard Civil Jury Instructions: Pa. SSJI (Civ) 1.40. Questions by Jurors)

4. Juror Pay/Compensation

Pennsylvania law authorizes courts to compensate jurors with a nominal fee of \$9 per day for the first three days of service, and increasing to \$25 for each additional day after the first three days. *See* Chapter 3: Gender Bias in Jury Selection, Page 118, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. By comparison, federal jurors here and elsewhere are paid \$40 a day. Ted Stellwag, *The Verdict on Juries: Juries are Critical to our System of Justice*, 2 Pennsylvania Lawyer 14, 21 (2005). The statute also provides for jurors to receive a travel allowance of 17 cents per mile, except within Philadelphia County. *See* Chapter 3: Gender Bias in Jury Selection, Page 118, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. Additionally, state law prohibits Pennsylvania employers from penalizing an employee for responding to a jury summons or serving as a juror. *See* Chapter 3: Gender Bias in Jury Selection, Page 118, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. The law, however, does not require an employer to compensate an employee for time lost due to jury service. *See* Chapter 3: Gender Bias in Jury Selection, Page 118, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. Furthermore,

the law exempts from these provisions any retail or service industry employers with fewer than 15 employees and manufacturing employers with fewer than 40 employees. See Chapter 3: Gender Bias in Jury Selection, Page 118, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. Although proposals to raise juror pay have passed the Senate Judiciary Committee, they have stalled in the Appropriations Committee.

Ted Stellwag, *The Verdict on Juries: Juries are Critical to our System of Justice*, 2 Pennsylvania Lawyer 14, 21 (2005).

Some jurisdictions allow jurors to donate their pay to a good cause like for children's waiting rooms, child abuse prevention, or victim compensation funds. See NCSC Website at http://www.ncsonline.org/WC/Publications/KIS_JurInnJurE03-04-05.pdf. For example, Allegheny County encourages jurors to return their pay as a donation and the fund now totals \$150,000, a part of which will be used to build a childcare room.

Ted Stellwag, *The Verdict on Juries: Juries are Critical to our System of Justice*, 2 Pennsylvania Lawyer 14, 21 (2005).

5. Alternate Jurors

N/A

6. Discussions pre-deliberation

A 1987 PA case, United States v. Wexler, approved of the practice of permitting jurors to discuss the case during the pendency of the trial. 657 F. Supp. 966, 969 (3d Cir. 1988); reversed on other grounds. See also Jacqueline A. Connor, Jury Reform: Notes on the Arizona Seminar, 1 J. Legal Advoc. & Prac. 25, 35 (1999). The Wexler court found that such discussions enhanced juror comprehension, attention and focus, and that concerns could be addressed adequately by way of judicial admonitions.

Jacqueline A. Connor, *Jury Reform: Notes on the Arizona Seminar*, 1 J. Legal Advoc. & Prac. 25, 35 (1999).

7. Deliberation

At the end of the trial [the jury must make their] decision based on what [they] recall of the evidence. [They] will not have a written transcript to consult, and it is difficult and time-consuming for the court reporter to [read] [play back] lengthy testimony. [The courts urges the jury] to pay close attention to the testimony as it is given.

Pa. SSJI (Civ) 1.50. Transcript Available to Jury)

8. Length of Service

N/A

9. Length of Time Restrictions on Trials

In many jurisdictions in Pennsylvania, jurors who are called to jury duty serve under the one-day one trial system like Allegheny County, Bucks County, Montgomery County, and Northampton County, etc. *See* the following County Websites:

<http://www.county.allegheny.pa.us/JURY/info1.asp>,

<http://www.buckscounty.org/courts/JuryDuty.html>,

<http://www.montcopa.org/ijuror/main.asp?id=importance>, and

<http://www.nccpa.org/juror/faq.html>.

Under this system a person called to jury duty serves for the duration of one trial if selected to hear a case. *See* <http://www.montcopa.org/ijuror/main.asp?id=importance>. But if the person has not been selected to hear a case by the end of one day, he or she is discharged from jury duty. *See* <http://www.montcopa.org/ijuror/main.asp?id=importance>.

10. Judge's Responses to Jury Questions

N/A

11. Jury Size

Rule 641 which was amended March 1, 2000, effective April 1, 2001 provides:

“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.”

See 234 Pa. Code Rule 641 at

<http://www.pacode.com/secure/data/234/chapter6/s641.html>.

12. Number of Jurors Needed to Return a Verdict

N/A

13. Juror Admonition

N/A

14. Jury Nullification

N/A

15. The Use of Plain English

N/A

16. Absence of the Jury

N/A

17. Jury Instructions

Request for Instruction, Charge to the Jury, and Preliminary Instructions

- (A) 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. The trial judge shall charge the jury after the arguments are completed.
- (B) No portions of the charge nor omissions therefrom 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.
- (C) 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.
- (D) **The trial judge may give 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.**

Paragraph (A), 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.

Paragraph (D), 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 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 234 Pa. Code Rule 647 at

<http://www.pacode.com/secure/data/234/chapter6/s647.html>.

18. Child-Care for Jurors

The Pennsylvania Legislature enacted legislation in 2000 that provided for the start-up and daily operating costs of childcare facilities in jurisdictions throughout

Pennsylvania. *See* Chapter 3: Gender Bias in Jury Selection, Page 116, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. Title 42 Pa. Cons. Stat. Ann. § 3721 enables a county judicial center or courthouse to provide “a childcare facility for use by children whose parents or guardians are present at the county judicial center or courthouse, for a court appearance or other matter related to any civil or criminal action where the person’s presence has been requested or is necessary.” *See* Chapter 3: Gender Bias in Jury Selection, Page 116, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. The facility must either be located within the county judicial center or courthouse or must be readily accessible to it, and the facility must be licensed and operated pursuant to the regulations of the Pennsylvania Department of Public Welfare. *See* Chapter 3: Gender Bias in Jury Selection, Page 116, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. The statute also authorizes funding for start-up and operational costs of court-sponsored childcare facilities through the collection of a \$5 filing fee for civil or criminal proceedings. *See* Chapter 3: Gender Bias in Jury Selection, Page 116, available at PMC website at <http://www.pmconline.org/indexpcs.htm>.

Montgomery County has the only court system in Pennsylvania that provides childcare in any meaningful way, although other counties have indicated an interest in establishing a similar program. *See* Chapter 3: Gender Bias in Jury Selection, Page 116, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. Montgomery County created its Court Care Center in 1995 as the Commonwealth’s first drop-in courthouse childcare center to operate with a full-time professional childcare staff fully licensed by the Pennsylvania Department of Public Welfare. *See* Chapter 3: Gender Bias in Jury Selection, Page 116, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. It is funded through the county by means of a fee collected by the prothonotary or court clerks. *See* Chapter 3: Gender Bias in Jury Selection, Page 111, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. The program serves about ten children per day. *See* Chapter 3: Gender Bias in Jury Selection, Page 111, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. There is no charge for the service and it is available to all families who have court business. *See* Chapter 3: Gender Bias in Jury Selection, Page 111, available at PMC website at <http://www.pmconline.org/indexpcs.htm>. Prospective jurors receive information about the childcare when they receive the jury summons, in a telephone message one day prior to jury service, and in postings on the jury board in the marshaling room area. *See* Chapter 3: Gender Bias in Jury Selection, Page 111, available at PMC website at <http://www.pmconline.org/indexpcs.htm>.

19. Jury Room

N/A

20. Accommodation

N/A

21. Juror's Bill of Rights

N/A

22. Materials Permitted in Possession of the Jury

MATERIALS PERMITTED IN POSSESSION OF THE JURY

Rule 646 which was amended in 1999 and became effective January 1, 2000 states:

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

(B) 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;
- (4) written jury instructions.

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*, 301 A.2d 646, 650 n. 1 (Pa. 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 1999 amendment to paragraph (B) makes it clear that the trial court is prohibited from sending written jury instructions with a jury for use during deliberations. See *Commonwealth v. Karaffa*, 709 A.2d 887 (Pa. 1998), in which the Court held it was reversible error to submit written jury instructions to the jury.

See 234 Pa. Code Rule 646 at

<http://www.pacode.com/secure/data/234/chapter6/s646.html>.

23. Various Rules

N/A

24. Various Recommendations

N/A