

Rule 223.1. Conduct of the Trial. Trial by Jury

(a) ***

NOTE: ***

See Rule 223.2 for juror note taking
in civil cases.

(b) ***

(c) ***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

you from hearing other answers being given by the witness.

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

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

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

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

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

(c) The court shall

(1) provide materials suitable for note taking,

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

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

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

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

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

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

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

Explanatory Comment

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

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

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

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

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

By the Civil Procedural
Rules Committee

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Chair