

**IN THE
SUPREME COURT OF PENNSYLVANIA**

IN RE: Amendment of Rule of Civil	:	NO. 325
	:	
Procedure 223 and Promulgation of	:	CIVIL PROCEDURAL RULES
	:	
New Rule 223.1	:	DOCKET NO. 5

ORDER

PER CURIAM:

AND NOW, this 3rd day of November, 1999, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rule 223 is amended to read as attached hereto.
2. New Rule 223.1 is promulgated to read as attached hereto.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 2000.

NOTE: Underscored material is added.
Bracketed material is deleted.
New rules are not underscored.

Rule 223. Conduct of the [Jury] Trial. Generally

[(a)] Subject to the requirements of due process of law and of the constitutional rights of the parties, the court may make and enforce rules and orders covering any of the following matters, inter alia:

- (1) Limiting the number of witnesses whose testimony is similar or cumulative;
- (2) Limiting the number of attorneys representing the same party or the same group of parties, who may actively participate in the trial of the case or may examine or cross-examine a witness or witnesses;
- (3) Regulating the number and length of addresses to the jury or to the court;
- (4) Regulating or excluding the public or persons not interested in the proceedings whenever the court deems such regulation or exclusion to be in the interest of the public good, order or morals.

NOTE: [Berks Rules 308 and 314 limit the number of witnesses. The rules of several counties limit the number of trial counsel who may address the jury. Time limits are placed upon addresses to the jury in the rules of about ten counties.]

Trial courts in Pennsylvania customarily exercise discretion as to the exclusion of persons from the courtroom in the interest of good order and morals.

The [subject matter of former Rule 223(b) regulating the] exclusion of the taking of photographs or radio or television broadcasting is [now] governed by Canon 3A(7) of the Code of Judicial Conduct[, adopted November 21, 1973 and effective January 1, 1974].

[(b) Rescinded.]

Rule 223.1 Conduct of the Trial. Trial by Jury

(a) In conducting a trial by jury, the court may use one or more of the procedures provided in subdivisions (b) and (c) as may be appropriate in the particular case:

NOTE: This rule catalogs certain procedures which may be utilized in the conduct of a jury trial. Since the court has broad power and discretion in the manner in which it conducts a jury trial, it is not intended that this rule be construed as enlarging, restricting or in any way affecting that power and discretion.

(b) The court may permit jurors to view a premises or a thing in or on a premises.

NOTE: See Rule 219 governing view of premises.

(c) The court may

(1) permit specified testimony to be read back to the jury upon the jury's request,

(2) charge the jury at any time during the trial, and

NOTE: The court is not limited to charging the jury after the closing argument by the attorneys,

(3) make exhibits available to the jury during its deliberations.

EXPLANATORY COMMENT

The jury trial has been the subject of recent national attention with the adoption of standards and rules and the publication of proposals and studies. Review of procedures governing the jury trial in Pennsylvania has resulted in the recommendation and promulgation of new Rule of Civil Procedure 223.1 and the amendment of Rule 223.

New Rule 223.1 governs the conduct of a jury trial and is designed to be a catalog of the specified options which the court may utilize to facilitate the jurors' understanding of the case. The note to subdivision (a) states that the new rule is not meant to be construed "as enlarging, restricting or in any way affecting" the power and discretion of the court in conducting a jury trial.

The use of the procedures set forth in the new rule is subject to the discretion of the court. Subdivision (a) provides: "The court may use one or more of the procedures provided in subdivisions (b) and (c) as may be appropriate in the particular case."

New Rule 223.1 lists two categories of procedures. Subdivision (b) contains a procedure through which the court may allow the jurors to actively participate in the trial by viewing a premises or a thing in or on a premises. Subdivision (c) contains procedures which the court may employ for the benefit of the jurors: permitting specified testimony to be read back to the jury upon the jury's request, charging the jury at any time during the trial, and making exhibits available to the jury during its deliberations.

Rule 223 has been amended in three respects, none of which affect practice or procedure. First, since the rule is equally applicable to both jury and non-jury trials, the caption of Rule 223 has been amended to read: "Conduct of the Trial. Generally". Second, obsolete references in the note to Rule 223 have been deleted. Finally, since the rule contains but one subdivision, the designation of the subdivision as "(a)" has been deleted.

By the Civil Procedural
Rules Committee

Rea Boylan Thomas
Chair