

Rule 216. Grounds for Continuance.

[(A)](a) * * *

(1) * * *

(2) * * *

(3) * * *

[(a)](i) * * *

[(b)](ii) * * *

[(c)](iii) * * *

[d](iv) * * *

(4) * * *

(5) The scheduling of counsel to appear at any proceeding under the Pennsylvania Rules of Disciplinary Enforcement, whether:

[(a)](i) as counsel for a respondent-attorney before a hearing committee, **[special master] hearing officer**, the Disciplinary Board or the Supreme Court;

[(b)](ii) as a **[special master] hearing officer** or member of a hearing committee; or

[(c)](iii) as a member of the Disciplinary Board;

(6) * * *

[(a)](i) * * *

[b](ii) * * *

[(B)](b) * * *

[(C)](c) * * *

[(D)](d) No continuance shall be granted due to the absence from court of a witness duly subpoenaed, unless:

- (1) Such witness will be absent because of facts arising subsequent to the service of the subpoena and which would be a proper ground for continuance under the provisions of **[Rule 216(A)] Rule 216(a)**; or
- (2) * * *
- (3) The witness, having attended at court has departed without leave, and an application for attachment is made promptly after the discovery of the absence of such witness; or the court is satisfied that the witness has left court for reasons which would be a proper ground for continuance under **[Rule 216(A)] Rule 216(a)**.

[(E)](e) * * *

[(F)](f) **[Rule 216(B)-(E)] Rule 216(b)-(e)** and Rule 217 shall not be applicable to a continuance granted for any of the reasons set forth in **[Rule 216(A)(5) or (6)] Rule 216(a)(5) or (6)**.

Rule 227.1. Post-Trial Relief.

(a) * * *

[Note: The motion for post-trial relief replaces the following motions and exceptions: motion for new trial, motion for judgment notwithstanding the verdict, motion upon the whole record after disagreement of a jury, motion in arrest of judgment, motion to remove a nonsuit and exceptions following the decision of the judge in a trial without jury.]

The following rules provide for the filing of exceptions, e.g., Equity Rule 1534 (exceptions to a fiduciary's account), Partition Rule 1569 (exceptions to a master's report) and Divorce Rule 1920.55-2 (exceptions to a master's report), Support Rule 1910.12(e) (exceptions to a hearing officer's report) and Execution Rule 3136(d) (exceptions to sheriff's schedule of proposed distribution).]

(b) * * *

[Note: If no objection is made, error which could have been corrected in pre-trial proceedings or during trial by timely objection may not constitute a ground for post-trial relief.]

Pa.R.E. 103(a) provides that the specific ground for an overruled objection, or the substance of excluded evidence, need not be stated at or prior to trial, or without having made an offer of proof, if the ground of the objection, or the substance of the evidence sought to be introduced, was apparent from the context.]

(c) * * *

[Note: A motion for post-trial relief may be filed following a trial by jury or a trial by a judge without a jury pursuant to Rule 1038. A motion for post-trial relief may not be filed to orders disposing of preliminary objections, motions for judgment on the pleadings or for summary judgment, motions relating to discovery or other proceedings which do not constitute a trial. See *U. S. National Bank in Johnstown v. Johnson*, 487 A.2d 809 (Pa. 1985).]

A motion for post-trial relief may not be filed to matters governed exclusively by the rules of petition practice.

The filing of a motion for post-trial relief is prohibited by the following rules: Rule 1557 (order directing partition) and Rule 1930.2 (no post-trial practice in domestic relations matters).]

(d) * * *

(e) * * *

(f) * * *

(g) * * *

[Note: See 2 Pa.C.S. § 101 for the definition of “local agency.”]

See section 933(a)(1) of the Judicial Code, 42 Pa.C.S. § 933(a)(1), which provides for jurisdiction of appeals from determinations of particular Commonwealth agencies to be in the courts of common pleas.]

(h) * * *

[Note: Subdivision (h) eliminates any distinction with respect to the filing of a motion for post-trial relief between jury and non-jury trials following an appeal from the decision of viewers in eminent domain proceedings.]

(i) * * *

Comment:

Subdivision (a). The motion for post-trial relief replaces the following motions and exceptions: motion for new trial, motion for judgment notwithstanding the verdict, motion upon the whole record after disagreement of a jury, motion in arrest of judgment, motion to remove a nonsuit and exceptions following the decision of the judge in a trial without jury.

The following rules provide for the filing of exceptions, e.g., Rule 1534 (exceptions to a fiduciary’s account), Rule 1569 (exceptions to a hearing officer’s report in partition), Rule 1920.55-2 (exceptions to a hearing officer’s report in an action for divorce), Rule 1910.12(e) (exceptions to a hearing officer’s report in an action for support), and Rule 3136(d) (exceptions to sheriff’s schedule of proposed distribution).

Subdivision (b) states two requirements for the granting of post-trial relief. First, the grounds for the relief requested must have been raised in pre-trial proceedings or at trial and, second, they must be stated in the motion. Under subdivision (b)(1), if no objection is made, error which could have been corrected in pre-trial proceedings, i.e., a ground for a new trial or a judgment notwithstanding

the verdict, or during trial by timely objection, may not constitute a ground for post-trial relief. It must be raised timely in pre-trial proceedings or during the trial, thus affording the court the opportunity to correct the error.

Pa.R.E. 103(a) provides that the specific ground for an overruled objection, or the substance of excluded evidence, need not be stated at or prior to trial, or without having made an offer of proof, if the ground of the objection, or the substance of the evidence sought to be introduced, was apparent from the context.

Under subdivision (b)(2), motions which set forth mere “boilerplate” language are specifically disapproved. Rather, the motion must state “the specific grounds therefor.” A post-trial motion must set forth the theories in support thereof “so that the lower court will know what it is being asked to decide.” *Frank v. Peckich*, 391 A.2d 624, 632-633 (Pa. Super. 1978).

Subdivision (c). A motion for post-trial relief may be filed following a trial by jury or a trial by a judge without a jury pursuant to Rule 1038. A motion for post-trial relief may not be filed to orders disposing of preliminary objections, motions for judgment on the pleadings, motions for summary judgment, or motions relating to discovery or other proceedings, which do not constitute a trial. See *U. S. National Bank in Johnstown v. Johnson*, 487 A.2d 809 (Pa. 1985).

A motion for post-trial relief may not be filed to matters governed exclusively by the rules of petition practice.

The filing of a motion for post-trial relief is prohibited by the following rules: Rule 1557 (order directing partition) and Rule 1930.2 (no post-trial practice in domestic relations matters).

Subdivision (g). See 2 Pa.C.S. § 101 for the definition of “local agency.”

See 42 Pa.C.S. § 933(a)(1) providing for jurisdiction of appeals from determinations of particular Commonwealth agencies to be in the courts of common pleas.

Subdivision (h). Any distinction with respect to the filing of a motion for post-trial relief between jury and non-jury trials following an appeal from the decision of viewers in eminent domain proceedings is eliminated.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

EXPLANATORY COMMENT—1983

Introduction

The Judicial Code and the Judiciary Act Repealer Act (JARA) have repealed Acts of Assembly which formed the basis for the entry of compulsory nonsuits and post-trial practice. The Code and JARA contemplate that the subject matter of the repealed statutes shall be governed by general rules. These amendments to the Rules of Civil Procedure supply the necessary procedure.

The amendments abolish the distinctions which have existed heretofore in post-trial practice. A party who seeks post-trial relief will do so by filing a Motion for Post-Trial Relief irrespective of whether the action is at law or in equity or whether the action is tried with or without a jury. New Rules 227.1 to 227.4 inclusive apply to all such actions.

A detailed analysis of the changes in practice effected by the amendments follows each rule.

Conforming Amendments

In view of the new consolidated post-trial practice under Rule 227.1, a number of conforming amendments are made to rules governing the actions in equity and for partition, the family law actions of support and divorce and actions involving minors and incompetents.

The amendment to Rule 1557 governing partition reverses the current practice of filing exceptions to an order directing partition. The amended rule specifically provides that exceptions to such an order shall not be filed. Rather, relief may be sought through an appeal in accordance with Rule of Appellate Procedure 311(a)(6), as indicated in the note to Rule 1557.

The term “exceptions” is used in the rules in contexts other than post-trial practice. No amendment is made to rules using the term in such other contexts. Thus under Rule 227, a party need not take “exception” to any ruling of the trial judge. A party must still file “exceptions” to an auditor’s report under Rule 1530, a master’s report under Partition Rule 1569, a hearing officer’s report under Support Rule 1910.12, a master’s report under Divorce Rule 1920.55 and a schedule of distribution under Execution Rule 3136.

Rule 227.1

Rule 227.1 is entirely new. It includes several subjects not previously covered by the Rules of Civil Procedure.

Subdivision (a) authorizes the court to grant post-trial relief upon motion. This provision is necessary because JARA has repealed the statutes which formerly provided that authorization. The rule specifies the relief which may be granted and does not alter the prior practice.

Subdivision (a) prescribes the filing of a “written Motion for Post-Trial Relief”. Motions for New Trial, for Judgment Notwithstanding the Verdict, and for Judgment Upon the Whole Record will no longer be filed following a trial by jury. Exceptions will no longer be filed following a trial by a judge without a jury or an equity trial. The relief heretofore available through these motions and exceptions remains available through the new Motion for Post-Trial Relief.

Subdivision (b) states two requirements for the granting of post-trial relief. First, the grounds for the relief requested must have been raised in pre-trial proceedings or at trial and, second, they must be stated in the motion.

Subdivision (b)(1) incorporates into the rule the principle of *Dilliaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974), that basic and fundamental error is not a ground for a new trial in the absence of a timely objection at the trial. The rule extends the principle to all post-trial relief. A ground for a new trial or a judgment notwithstanding the verdict may not be raised for the first time in the Motion for Post-Trial Relief. It must be raised timely in pre-trial proceedings or during the trial, thus affording the court the opportunity to correct the error.

In *Yudacufski v. Commonwealth, Department of Transportation*, 499 Pa. 605, 454 A.2d 923 (1982), the Supreme Court noted that the Rules of Civil Procedure governing post-trial practice “do not specifically include a requirement that pre-trial rulings must be raised in post-trial motions in order to be preserved.” Subdivision (b) now contains such a provision.

Subdivision (b)(2) specifies the requisites of the motion for post-trial relief. It must state the specific grounds for the relief sought and “how the grounds were asserted in pre-trial proceedings or at trial.”

In requiring the motion to state the specific grounds therefor, motions which set forth mere “boilerplate” language are specifically disapproved. A post-trial motion must set forth the theories in support thereof “so that the lower court will know what it is being asked to decide.” *Frank v. Peckich*, 257 Pa.Super. 561, 391 A.2d 624, 632-633 (1978).

The requirement that the motion state how the grounds were raised at trial indicates compliance with the requirements of *Dilliplaine, supra*, and subdivision (b)(1) that there be a timely objection in pre-trial proceedings or at the trial.

Under subdivision (c), the time for filing the post-trial motion remains unchanged at ten days. However, the rule also provides an instance in which the time for filing a post-trial motion may be extended beyond the initial ten day period. There are occasions when a party is displeased with the result of a trial but refrains from filing a post-trial motion unless a post-trial motion is filed by an opposing party. This strategy necessitates a close watch over the dockets, since the party will be foreclosed from filing a motion if the opposing party files its motion on the tenth day. To facilitate practice in this area, subdivision (c) provides that where a post-trial motion has been timely filed by one party, any other party has ten days following the filing of the first post-trial motion in which to file its own motion. As with the other provisions of Rule 227.1, this concept applies to jury, nonjury and equity trials.

Subdivision (d) continues the practice of permitting a party to request post-trial relief in the alternative. When a party elects to so proceed, separate reasons should be set forth in support of each type of relief requested. Again, the document should make the trial judge aware of each request for relief and the grounds in support thereof.

Subdivision (e) provides a rule of judicial economy when both a new trial and judgment are sought in an action. Subdivision (e) provides that the court shall dispose of both requests. Thereafter, if the action is appealed, the appellate court may make a final disposition of the matter. This provision avoids the procedural situation where a trial court grants judgment but fails to rule on the request for a new trial. The action is thereafter appealed and the appellate court must then remand for disposition of the request for new trial. Under subdivision (e), the appellate court would be able to remand the matter directly for a new trial or affirm the ruling of the lower court.

New subdivision (f) provides for the prompt service of copies of the post-trial motion upon every other party to the action and the delivery of a copy to the trial judge.

EXPLANATORY COMMENT—1985

The amendment of Rule 227.1(c)(2) to provide for the filing of a motion for post-trial relief within ten days after nonsuit in a non-jury or an equity trial clarifies, but does not change, existing practice. Although subdivision (c)(2) did not refer to the filing of a motion for post-trial relief after a nonsuit in those instances, subdivision (a)(3) clearly provides for the court upon a written motion to remove a nonsuit without reference to the nature of the trial. The addition of the reference to a nonsuit in subdivision (c)(2) removes

any ambiguity that might arise with respect to the time in which a motion for post-trial relief must be filed following a nonsuit in a non-jury or equity trial.

EXPLANATORY COMMENT—1989

The Supreme Court of Pennsylvania has promulgated an amendment to Rule of Civil Procedure 227.1 governing post-trial relief clarifying practice under the rule in two respects. First, notes have been added to subdivisions (a) and (c) explaining the scope of the motion for post-trial relief and the range of actions and proceedings to which the motion applies. The text of these subdivisions is not changed so that practice and procedure under them remain unaffected.

Second, new subdivision (g) is added to the rule specifying the procedure in appeals from final determinations of certain government agencies. The Commonwealth Court has stated that there are no post-trial proceedings in “statutory appeal” proceedings unless mandated by local rule. This practice has caused confusion in several respects. In many cases, post-trial motions have been filed unnecessarily and have resulted in the loss of the right to appeal. In other cases, attorneys have filed motions for post-trial relief and appeals simultaneously because they were unable to discern the proper procedure.

New subdivision (g) prohibits post-trial proceedings in a statutory appeal. The decision of the court in all such cases will be a final, appealable order.

EXPLANATORY COMMENT—1995

Amendments to the Rules of Civil Procedure relating to post-trial practice have been promulgated, allowing parties to minimize post-trial delay and clarifying the procedure with regard to proceedings in eminent domain and the actions of mandamus and partition of real property.

I. Entry of Judgment upon Praecipe

a. Post-Trial Delay

Prior to the present amendment, parties to an action had no recourse when a motion for post-trial relief remained pending and undecided. The amendment to Rule 227.4 permits any party to an action to file a praecipe for judgment when a timely motion has been filed and remains undecided for more than one hundred twenty days after filing.

The rule is optional with the parties. If settlement negotiations are continuing, they may have little interest in a prompt appeal. If time is not of the essence, they may await the decision of the trial court. However, the rule provides the parties with the ability to “move the case along.”

If a motion remains undecided and a praecipe for judgment is entered at the earliest permissible time, the maximum post-trial delay is one hundred thirty days, i.e., ten days in which to file the motion and one hundred twenty days in which to decide it. The potential delay inherent in Rule of Appellate Procedure 1701(b)(3) providing for reconsideration of an order is avoided by prohibiting reconsideration of the judgment. The judgment entered is effective as to all parties and all issues so that the case in its entirety is ready for the appellate process.

The rule does not provide an automatic limit upon the time in which the court may make its ruling. However, it does provide a time standard by which the parties and the court may proceed.

There is a rule which may operate to prevent the entry of judgment upon the expiration of the one hundred twenty day period. Rule 238(c)(3)(i) provides that if “a motion for post-trial relief has been filed under Rule 227.1 and a motion for delay damages is opposed, a judgment may not be entered until all motions filed under Rule 227.1 and this rule [Rule 238] have been decided.” A note has been added to call attention to the rule.

b. Waiver of Post-Trial Practice

A second amendment to Rule 227.4 has deleted the provision for entry of judgment upon filing a “waiver in writing of the right to file post-trial motions signed by all parties”. Present Pennsylvania policy is to require the parties to give the trial court the opportunity to correct error through post-trial practice. It follows that post-trial practice should not be subject to waiver.

II. Eminent Domain

Case law had developed an inconsistent practice with respect to the filing of a post-trial motion following trial upon an appeal from the decision of viewers in eminent domain proceedings. Post-trial practice was required following a trial by jury but not after a trial by a judge without a jury. New subdivision (h) has been added to Rule 227.1 eliminating this distinction and requiring post-trial practice whether the trial be by jury or by judge.]

EXPLANATORY COMMENT—1996

The note to Rule 227.1(c) has been amended by deleting the second paragraph referring to a case stated. This amendment was required by the abolition of the case stated by Rule 1038.2.

The amendment is technical in nature and does not affect practice or procedure.

EXPLANATORY COMMENT—2004

Prior to the present amendment, Rule of Civil Procedure 227.1(b) was inconsistent with Pennsylvania Rule of Evidence 103(a). Civil Rule 227.1(b) required without exception that grounds for post-trial relief be raised in pre-trial proceedings or at trial. Evidence Rule 103(a), however, did not require that the specific ground for an erroneous evidentiary ruling be raised prior to or at trial if the ground was apparent from the context. The present amendment to Civil Rule 227.1 carves out an exception for matters within the scope of Evidence Rule 103(a), thereby eliminating the inconsistency between the two rules.

EXPLANATORY COMMENT—2015

In *Newman Development Group of Pottstown, LLC v. Genuardi's Family Markets, Inc. and Safeway, Inc.*, 52 A.3d 1233 (Pa. 2012), the Supreme Court of Pennsylvania examined the provisions of Rule 227.1 to determine whether a party must file a motion for post-trial relief following the resolution by the trial court of matters remanded by an appellate court. While it concluded in that case that a motion for post-trial relief was not required because the remand proceeding, which relied on an existing record, was not a trial, even though the trial court drew a different conclusion from that record to comport with the appellate court's directive, the Court held that Rule 227.1 is silent as to any procedure for post-trial relief when a matter has been remanded for further consideration by the trial court. *Id.* at 1251.

To close this gap, the Supreme Court has amended Rule 227.1 by adding new subdivision (i). Specifically addressing the remand context, the amendment would not require the filing of a motion for post-trial relief following the resolution of matters remanded by an appellate court except under the following circumstances: (1) the appellate court has specified that the remand is for a complete or partial new trial, or (2) the trial court states in its order resolving the issue remanded that a motion for post-trial relief is required in order to preserve those issues for appellate review.

The amendment is intended to give the practitioner certainty as to when a motion for post-trial relief is required in the remand context, and thus, to prevent waiver of those issues upon further appellate review. It is also intended to facilitate the underlying purpose of the rule, which is to allow the trial court to reconsider its determination and to make any corrections before it is appealed without inundating it with unnecessary motions.

Rule 234.6. Form of Subpoena.

A subpoena issued pursuant to Rule 234.1 shall be substantially in the following form:

Commonwealth of Pennsylvania
County of _____

(Caption)

SUBPOENA TO ATTEND AND TESTIFY

* * *

Note: This form of subpoena shall be used whenever a subpoena is issuable under Rule 234.1, including hearings in connection with depositions and before arbitrators, **[masters]** **hearing officers**, commissioners, etc.

To require the production of documents or things in addition to testimony, complete paragraph 2.

* * *

Rule 1558. Preliminary Conference. Appointment of [Master] Hearing Officer.

- (a) The court, after the entry of the order directing partition, shall direct the parties or their attorneys to appear for a preliminary conference to consider
 - (1) whether the parties can agree upon a plan of partition or sale;
 - (2) the simplification of the issues;
 - (3) whether any issues or matters relating to the carrying out of the order of partition shall be referred to a **[master] hearing officer**; and
 - (4) such other matters as may aid in the disposition of the action.
- (b) The court, at any time after the preliminary conference, may appoint a **[master] hearing officer** to hear the entire matter or to conduct any sale, or to act upon only specified issues or matters relating to the carrying out of the order of partition.

Rule 1559. [Master] Hearing Officer. Hearing.

A **[master] hearing officer** who is appointed by the court shall make such examinations and hold such hearings as may be necessary, giving reasonable notice thereof. The **[master] hearing officer** may employ appraisers and, with the authorization of the court, such other experts as are necessary to enable the **[master] hearing officer** to perform **[his or her] the** duties **of the appointment**.

Rule 1565. Retention of Undivided Interests. Election. Parties not Appearing.

- (a) The court shall permit the shares of any two or more co-tenants to remain undivided between them if they so elect by writing filed within such time as the court or **[master] hearing officer** shall direct.
- (b) The court may permit the shares of any two or more co-tenants who do not appear in the action to remain undivided between them.

Rule 1569. [Master's] Hearing Officer's Report. Exceptions.

- (a) A **[master] hearing officer** who is appointed by the court shall file a report with respect to the matters submitted. The report shall follow the form of decision in Rule 1570, insofar as the scope of the reference to the **[master] hearing officer** permits.
- (b) The **[master] hearing officer** shall give all persons in interest written notice of the date on which **[he or she] the hearing officer** intends to file the report and proposed order and shall specify an address within the county where they may be examined. The **[master] hearing officer** may change the report and proposed order as **[he or she] the hearing officer** deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.
- (c) Within ten days after notice of the filing of the report, exceptions may be filed by any party to rulings on evidence, to findings of fact, to conclusions of law, and to the proposed order. The court may, with or without taking testimony, remand the report, or enter a decision in accordance with Rule 1570 which may incorporate by reference the findings and conclusions of the **[master] hearing officer** in whole or in part.

Rule 1571. Trustees to Satisfy Liens and Charges.

(a) The court, upon motion of any party or person in interest, or upon recommendation of the **[master] hearing officer**, may appoint a trustee to receive payment of:

(1) * * *

(2) * * *

(3) * * *

(b) * * *

Rule 1572. Sale not Confined to Parties.

(a) * * *

(b) * * *

(c) * * *

(d) If the court directs a **[master] hearing officer** to conduct the sale, the **[master] hearing officer**, before accepting payment for the property, shall file a bond in double the amount of the payment or in such lesser amount as shall be fixed by the court.

Rule 1573. Return of Sale and Schedule of Distribution.

- (a) Where the sale has been conducted by a **[master] hearing officer**, the **[master] hearing officer** shall promptly file with the prothonotary a return of sale together with a proposed order which shall
- (1) confirm the sale;
 - (2) authorize the **[master] hearing officer** to execute and deliver to the purchaser all necessary deeds and other instruments of title;
 - (3) contain appropriate provisions for the protection of life tenants, unborn and unascertained remaindermen, persons whose whereabouts are unknown, or other persons in interest, and for the release or discharge of such interests;
 - (4) direct distribution of the proceeds to the persons or parties entitled; and
 - (5) provide for the payment of costs.
- (b) The **[master] hearing officer** shall give all persons in interest written notice of the date on which **[he or she] the hearing officer** intends to file the return of sale and proposed order, and shall specify an address within the county where they may be examined. The **[master] hearing officer** may change the return of sale and proposed order as **[he or she] the hearing officer** deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.
- (c) * * *

Rule 1574. Costs and Counsel Fees.

Costs shall be paid by the parties in proportion to their interests in the property. The compensation of appraisers, the **[master's] hearing officer's** fee, and compensation of experts authorized by the court shall be taxed as part of the costs. Reasonable counsel fees may be charged against the property or fund resulting therefrom, and apportioned among the parties and their counsel in such amount and manner as the court shall deem equitable.