

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

ADOPTION REPORT

Amendment of Pa.R.Civ.P. 220.3

On January 7, 2025, the Supreme Court of Pennsylvania amended Pennsylvania Rule of Civil Procedure 220.3 to require the *voir dire* of jurors to be conducted in the presence of a judge unless waived by the parties with the consent of the court and to require the recording of *voir dire* unless waived by all parties. The Civil Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

In *Trigg v. Children’s Hospital of Pittsburgh of UPMC*, 229 A.3d 260 (Pa. 2020), the Supreme Court examined *voir dire* procedures set forth in Allegheny County Local Rule 220.1. Pursuant to this local rule, Allegheny County did not require the trial judge to preside over jury selection. Rather, potential jurors met with a court clerk assigned by the Calendar Control Judge and the parties’ attorneys. The potential jurors were asked standard questions by the clerk; the attorneys were then permitted to ask five additional questions. Follow-up questions were permitted to clarify a juror’s answer. When challenging a juror for cause, the attorneys and the juror returned to the Calendar Control Judge, who read a transcript of the *voir dire* of the juror and then ruled on the challenge for cause.¹

The trial court in *Trigg* denied the plaintiffs’ request to strike prospective jurors for cause. Instead, the plaintiffs were required to use peremptory challenges. On appeal to the Superior Court, the plaintiffs argued that the trial court erred by failing to observe the demeanor and tenor of prospective jurors during the initial questioning by the court clerk.

In its opinion, the Superior Court acknowledged that deference is given to the trial court in jury selection unless there is a palpable error. See *McHugh v. Proctor & Gamble*, 776 A.2d 266 (Pa. Super. 2001). The court concluded that this standard could not be extended to trial judges who fail to observe *voir dire* in person. It emphasized the importance for the trial judge to view the demeanor of prospective jurors. Without doing so, the trial judge does not acquire “the wisdom or insight that he could have from noting a jurors’ [sic] furtive glance, a tremor of voice, a delayed reply, a change in posture, or myriads of other body language.” *Trigg v. Children’s Hospital of Pittsburgh of UPMC*, 187 A.3d 1013, 1017 (Pa. Super. 2018). The court stated that “re-questioning prospective

¹ Allegheny County has subsequently amended Local Rule 212.2 governing pre-trial statements to permit, *inter alia*, a party to request that a judge preside over *voir dire*.

jurors could never reproduce the authentic reactions that they displayed when the questions were originally asked,” and concluded that “[a] judge personally witnessing the original *voir dire* is essential, because it justifies our - and a losing party’s - faith in the trial court’s rulings on challenges for cause.” *Id.* at 1017-18.

On appeal to the Supreme Court, the majority vacated and remanded the Superior Court judgment on the basis that the issue had been waived for appellate review because no objection to the trial judge not being present during *voir dire* was placed on the record. Notwithstanding finding waiver, the majority urged the adoption of a Rule of Civil Procedure similar to Pa.R.Crim.P. 631 requiring the judge to preside at *voir dire*.

Both Justice Donohue and Justice Wecht wrote concurring opinions. They each wrote separately to assert the importance of the trial judge presiding over *voir dire* as fundamental to ensuring a fair and impartial jury. Notably, both pointed out the disparity in *voir dire* requirements in the procedural rules. Pa.R.Crim.P. 631 sets forth the mechanics for *voir dire* in criminal jury trials and requires, *inter alia*, *voir dire* to be conducted in the presence of a judge unless the parties and the judge agree to waive that requirement. In contrast, there is a lack of similar specific requirements in the Rules of Civil Procedure; such requirements have been left to the individual courts of common pleas. Both Justices concluded by asserting that this disparity should be referred to the Committee for examination.

Consistent with the Supreme Court’s urging, the Committee undertook review of current practices of *voir dire* in civil cases and the provisions of Pa.R.Crim.P. 631 requiring the judge to preside over *voir dire*. It was reported to the Committee that the practice in counties with a high volume of cases is for the trial judge to perform other duties while jurors are being selected. For example, a judge may be concluding a trial while a jury is being selected for the next trial. Or, a judge may be presiding over a non-jury arbitration appeal while the jurors are selected for the next trial on that judge’s docket. The Committee acknowledged that these practices enhance the efficiency and efficacy of judicial resources to timely try cases. Moreover, the Committee was cognizant that changing these practices may impact judicial operations and create logistical burdens to overcome.

Two aspects of Pa.R.Crim.P. 631 were incorporated into the proposed amendment of Pa.R.Civ.P. 220.3. The first aspect was new subdivision (a). This subdivision would require a judge to preside over *voir dire* unless the judge’s presence is waived by the parties and with the consent of the court. This provision was intended to comply with the Supreme Court’s directive in *Trigg*. It should be noted that the waiver permitted in subdivision (a) is a waiver only of the judge’s physical presence during *voir dire*. It is not a waiver of a party’s opportunity to create a record or to have the judge make decisions based upon that record. To afford some flexibility to address logistical concerns, this new subdivision is intended to permit another judge, or a senior judge, in the judicial district to

preside over *voir dire*, as circumstances warrant. Commentary has been added to advise of these nuances to the amended rule.

The second aspect was new subdivision (f). This subdivision would require *voir dire* to be recorded in full, including all rulings by the trial judge. The recording would only be transcribed upon the written request of a party or by order of court. Adding this provision was intended to make Pa.R.Civ.P. 220.3 more consistent with the procedures in Pa.R.Crim.P. 631.

The Committee published the proposal for comment, see 53 Pa.B. 5882 (September 23, 2023). Post-publication, the Committee considered a concern raised regarding logistical and funding concerns to court operations with the requirement to record *voir dire*. However, no changes were made to the proposal because these concerns could not be addressed through procedural rulemaking.

A second concern was raised that the language in subdivision (a) allowing waiver of the judge's presence during *voir dire* if all parties agree and the court consents to that waiver would allow a judge to exert influence on the parties to agree to a waiver. No changes were made to the proposal because the Committee concluded that the option to waive the judge's presence offered the parties the ability to expedite trying cases and outweighed any potential influence by a judge to waive the judge's presence.

A third concern raised was that the proposed subdivision (f) should allow the parties to waive the recording of *voir dire*. The requirement for a verbatim recording of *voir dire* was intended to aid the parties and the trial judge in preserving any issues that may be raised on appeal. Nonetheless, it was recognized that the rule should provide flexibility for the parties to waive the recording. Accordingly, subdivision (f) was modified to require the recording of *voir dire* unless waived by all parties.

The rule and its commentary were also restyled.

The amendment becomes effective April 1, 2025.