

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.C.P. No. 223.2**

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. No. 223.2 governing juror note taking for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **September 27, 2019**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Civil Procedural Rules Committee,

John J. Hare  
Chair

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

(a)(1) When[ever] a jury trial is expected to last for more than two days, jurors[, **except as otherwise provided by subdivision (a)(2) may] shall be permitted to** take notes during the [proceedings] **presentation of evidence and closing arguments** 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] shall** not **be** permitted to take notes **during opening statements or** 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, **or the closing arguments;**

(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.

**You may also take notes while the closing arguments are presented at the end of the trial. Again, if you do take notes, do not become so involved with note taking that it distracts you from paying attention to the remainder of the closing argument.**

Your notes may help you refresh your recollection of the **[testimony] evidence as well as the closing arguments.** **[and] Your notes** 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.

## Explanatory Comment

The Civil Procedural Rules Committee is considering proposing the amendment of Pa.R.C.P. No. 223.2 governing note taking by jurors to clarify and expand when note taking is permitted during a trial that is expected to last more than two days.

Current subdivision (a)(1) provides that jurors “may take notes during the proceedings,” but does not specify or define the term “proceedings.” Pa.R.C.P. No. 223.2 has generally been interpreted to permit juror note taking only when witnesses are testifying during trial and not during opening statements and closing arguments. While subdivision (a)(2) of the rule expressly prohibits note taking during the reading of the jury charge, there is no similar express prohibition on note taking during opening statements and closing arguments.

To provide clarification, the Committee proposes amending Pa.R.C.P. No. 223.2 to permit note taking during the presentation of evidence and closing arguments only. The rule would continue to prohibit note taking during the reading of the jury charge, but be amended to extend that prohibition to opening statements. The Committee believes that note taking during opening statements, during which information that may ultimately not be supported by the evidence or even entered into evidence, could lead to confusion for jurors. Note taking during closing arguments would help jurors with their deliberations.

The Committee is also proposing an amendment to preserve the ability for jurors to take notes for all trials expected to last more than two days. Current subdivision (a)(1) uses the permissive “may” to allow juror note taking, which offers the opportunity for variation in procedure. The Committee believes that, in order to ensure a uniform practice throughout the Commonwealth, all jurors should be permitted to take notes subject to the parameters of the rule. The rule would continue to place no obligation on the part of jurors to take notes, but the authority for jurors to use this tool for deliberations would be expressly permitted.

As proposed, the amendment of Rule 223.2 is intended to clarify the specific “proceedings” during which jurors may take notes. Subdivision (a)(1) would be amended to clarify that jurors shall be permitted to take notes during the presentation of evidence and expand that subdivision to include closing arguments. Subdivision (a)(2) would be amended to expressly prohibit note taking during opening statements and the reading of the jury charge. In addition, subdivision (b) would be amended to include a cautionary juror instruction that note taking should not divert jurors’ attention from, *inter alia*, the closing arguments. Those requirements would also be incorporated into the suggested jury instruction set forth in the note following the rule text.

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this rulemaking proposal.

By the Civil Procedural Rules Committee

John J. Hare  
Chair