

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.A.P. 302

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of the Official Note to Pa.R.A.P. 302 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 **February 18, 2020**. 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 Appellate Court Procedural Rules Committee,

Patricia A. McCullough
Chair

Explanatory Comment

In *Jones v. Ott*, 191 A.3d 782 (Pa. 2018), the Court considered the method of preserving a challenge to a jury instruction. A majority of the Court determined that:

in order to preserve a jury-charge challenge under Pa.R.C.P. 227.1 by filing proposed points for charge with the prothonotary, a party must make requested points for charge part of the record pursuant to Pa.R.C.P. 226(a), obtain an explicit trial court ruling upon the challenged instruction, and raise the issue in a post-trial motion. See Pa.R.A.P. 302(a); Pa.R.C.P. 226(a), 227, 227.1.

Id. at 791 n. 13.

Pa.R.A.P. 302(b) presently requires a specific exception to be taken to the jury charge in order to preserve an issue for appeal. *Jones* sets forth the manner in which the exception is perfected. Therefore, to inform readers of the method of preserving an objection to a jury charge for purposes of appeal, the Appellate Court Procedural Rules Committee proposes amendment of the Official Note to Pa.R.A.P. 302 to include a citation to *Jones* and set forth how to take specific exception. It should be noted that “jury charge” and a “jury instruction” are synonymous.

All comments, concerns, and suggestions concerning this proposal are welcome.

Rule 302. Requisites for Reviewable Issue.

(a) *General rule.*—Issues not raised in the **[lower] trial** court are waived and cannot be raised for the first time on appeal.

(b) *Charge to jury.*—A general exception to the charge to the jury will not preserve an issue for appeal. Specific exception shall be taken to the language or omission complained of.

Official Note: **[This rule sets forth a frequently overlooked requirement. See, e.g. *Commonwealth v. Piper*, 458 Pa. 307, 328 A.2d 845 (1974), as to Subdivision (a). See, e.g. *Dilliplaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974); *Commonwealth v. Light*, 458 Pa. 328, 326 A.2d 288 (1974) as to Subdivision (b). Rule 2117(c) (statement of place of raising or preservation of issues) and Rule 2119(e) (statement of place of raising or preservation of issues) require that the brief expressly set forth in both the statement of the case and in the argument reference to the place in the record where the issue presented for decision on appeal has been raised or preserved below.]**

See Rule 1551 (Scope of Review) as to requisites for reviewable issue on petition for review.]

Paragraph (a)—See *Commonwealth v. Piper*, 328 A.2d 845, 847 (Pa. 1974) (“[I]ssues not raised in the court below are waived and cannot be raised for the first time on appeal....”).

Paragraph (b)—In *Jones v. Ott*, 191 A.3d 782, 791 n.13 (Pa. 2018), the Supreme Court held that “in order to preserve a jury-charge challenge under Pa.R.C.P. 227.1 by filing proposed points for charge with the prothonotary, a party must make requested points for charge part of the record pursuant to Pa.R.C.P. 226(a), obtain an explicit trial court ruling upon the challenged instruction, and raise the issue in a post-trial motion. See Pa.R.A.P. 302(a); Pa.R.C.P. 226(a), 227, 227.1.” See also, e.g., *Commonwealth v. Light*, 326 A.2d 288 (Pa. 1974) (failure to take a specific exception to the language complained of in a jury charge forecloses review by the appellate court); *Dilliplaine v. Lehigh Valley Trust Co.*, 322 A.2d 114 (Pa. 1974) (specific exception to trial court’s jury instruction must be made in order to preserve a point for appellate review). Failure to follow this procedure may result in waiver of this issue.

Cross references—Pa.R.A.P. 2117(c) (statement of place of raising or preservation of issues) and Pa.R.A.P. 2119(e) (statement of place of raising or preservation of issues) require that the brief, in both the statement of the case and in the argument, expressly refer to the place in the record where the issue presented for decision

on appeal has been raised or preserved below. See Pa.R.A.P. 1551 (scope of review) as to requisites for reviewable issues on petition for review.