

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.C.P. Nos. 226, 227, and 230.1

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. Nos. 226, 227, and Rule 230.1 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 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 **May 7, 2021**. 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

PUBLICATION REPORT

In *Jones v. Ott*, 191 A.3d 782 (Pa. 2018), the Supreme Court held, *inter alia*, that:

[I]n 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.

Jones, 191 A.3d at 791 n.13.

The Committee has examined Rule 226 and observed that it provides the procedure for requesting a jury instruction to be included in the charge given to the jury. Rule 227(b) prescribes that an exception to the jury charge must be made prior to the jury retiring, but may be made outside of the presence of the jury.

In addition, the Committee has also examined Pa.R.Crim.P. 647 and 603 (Exceptions). It observed that Pa.R.Crim.P. 647 sets forth the procedure for both the request for the jury instructions and the procedure for objecting to the jury charge. Pa.R.Crim.P. 647 requires written requests for jury instructions to be submitted to the trial judge within a reasonable time before closing arguments. The trial judge, in turn, is required to inform the parties on the record of the judge's rulings on all written requests as well as the instructions that will be submitted to the jury in writing. Pa.R.Crim.P. 647 specifies that no error may be assigned to any portion of the jury charge or to any omission from the jury charge unless a party makes a specific objection before the jury retires to deliberate; such objections must be made outside the presence of the jury. Pa.R.Crim.P. 603 provides for an automatic exception to any ruling of the judge on an objection or motion during trial; however, objections to the jury charge are specifically exempted from the scope of the rule.

While the Committee believes there is merit to uniformity amongst the procedural rules, it is not proposing a procedure that resembles Pa.R.Crim.P. 647. Rather, the proposal would incorporate the specific requirements in *Jones*, while retaining current practice. In particular, the burden to "obtain a specific court ruling" on the requested instruction remains on the party objecting to the requested instruction. Accordingly, Rules 226, 227, and 230.1 would be amended as follows:

Pa.R.C.P. No. 226

The proposed amendment of Rule 226 would, preliminarily, change the terminology in the rule from “point for charge” to “request for jury instruction.” The rule would retain the requirement for requests for jury instructions to be submitted to the trial judge before closing arguments begin. Alternatively, the trial judge may otherwise direct when requests must be submitted. In addition, the rule would retain the requirements to provide copies of all requests to all other parties, and to frame a request so that it can be answered with a simple affirmative or negative. The requested instruction would become part of the record when it is read into the record or upon filing in the office of the prothonotary. To ensure there is a ruling on all written requests, the rule would specify that any request inadvertently not ruled upon will be deemed denied.

Current subdivision (b) providing for the motion for directed verdict would be deleted and moved to Rule 230.1.

Pa.R.C.P. No. 227

Rule 227(b) would be redrafted to clarify and emphasize that before the jury begins deliberating, the parties shall be given the opportunity to make specific objections to the charge as given to the jury. The rule continues to require such objections to be made outside the presence of the jury.

To address the holding in *Jones*, subdivision (c) would set forth the requirements for preserving any challenge to jury instructions for appellate review. As in current practice, the onus to ensure that a challenge is made part of the record is placed on the objecting party. Pursuant to subdivision (c), that party must (1) either lodge a contemporaneous and specific objection on the record to an instruction given to the jury, or submit a request for a jury instruction and make it part of the record pursuant to Rule 226, (2) obtain a specific court ruling on the record to the objection or the requested instruction, and (3) raise the issue in a motion for post-trial relief pursuant to Rule 227.1.

Pa.R.C.P. No. 230.1

Rule 230.1 governing compulsory nonsuit would be amended to include new subdivision (d) providing that that the trial judge may direct a verdict upon motion of any party. As noted above, this provision is currently set forth in Rule 226(b). The Committee believes the placement in Rule 230.1 authorizing the trial court to direct a verdict is more appropriate because the procedure does not relate to the procedure for requesting jury instructions.

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

Rule 226. [Points for Charge. Motion for Directed Verdict.] Requests for Jury Instructions.

[(a) Points upon which the trial judge is requested to charge the jury shall be so framed that each may be completely answered by a simple affirmation or negation. Attorneys shall hand copies of requested points for charge to the trial judge and to the opposing attorneys before the closing addresses to the jury are begun. A requested point for charge that was presented to the trial judge becomes part of the record when the requested point is read into the record, or the point is filed in the office of the prothonotary prior to filing a motion for post-trial relief regarding the requested point for charge.

Note: An appellate court will not review an objection to a ruling of a trial court regarding a point for charge unless the point for charge was (1) presented to the court and (2) made a part of the record by either reading the point into the record or filing it in the office of the prothonotary prior to filing a motion for post-trial relief.

(b) At the close of all the evidence, the trial judge may direct a verdict upon the oral or written motion of any party.]

Any party may submit to the trial judge written requests for jury instructions within a reasonable time before the closing arguments begin, or within such time as directed by the trial judge and shall provide copies to all other parties. Such requests shall be framed so that each requested instruction may be answered with a simple affirmative or negative by the trial judge. A requested instruction submitted to the trial judge becomes part of the record when it is read into the record or it is filed in the office of the prothonotary prior to filing a motion for post-trial relief. If a written request that is made part of the record is not ruled upon, that request shall be deemed denied.

Rule 227. Exceptions. Objections to Jury Charge. Preserving Challenge to Jury Instructions for Appellate Review.

(a) **General Rule. Except as provided in subdivision (b), [I]it shall not be necessary on the trial of any action or proceeding to take exception to any ruling of the trial judge. An exception in favor of the party against whom the adverse ruling was made shall be deemed to have been taken with the same force and effect as if it had been requested, noted by the official stenographer and thereafter written out, signed and sealed by the trial judge.**

[(b) Unless specially allowed by the court, all exceptions to the charge to the jury shall be taken before the jury retires. On request of any party all such exceptions and arguments thereon shall be made out of hearing of the jury.]

(b) Objections to the Jury Charge.

(1) Before the charge is given to the jury, the parties shall be given the opportunity to make specific objections to the proposed instructions or any requests for instructions that were denied.

(2) After the charge is given to the jury, the parties may object to any matter charged that could not have been raised prior to charging the jury, including matters that were not ruled upon pursuant to Rule 226.

(3) All objections and argument with respect to the jury charge shall be made outside the presence of the jury.

(c) Preserving Challenges to Jury Instructions for Appellate Review. To preserve a challenge to a jury instruction for appellate review, a party shall:

(1) lodge a contemporaneous and specific objection on the record to an instruction or submit a requested instruction and make it part of the record pursuant to Rule 226;

(2) obtain an explicit court ruling on the record to the objection or the requested instruction; and

(3) raise the issue in a motion for post-trial relief pursuant to Rule 227.1.

Rule 230.1. Compulsory Nonsuit at Trial. Motion for Directed Verdict.

(a)(1) In an action involving only one plaintiff and one defendant, the court, on oral motion of the defendant, may enter a nonsuit on any and all causes of action if, at the close of the plaintiff's case on liability, the plaintiff has failed to establish a right to relief.

(2) The court in deciding the motion shall consider only evidence which was introduced by the plaintiff and any evidence favorable to the plaintiff introduced by the defendant prior to the close of the plaintiff's case.

Note: Subdivision (a) changes the prior practice whereby the entry of a compulsory nonsuit was precluded when any evidence had been presented by the defendant.

If a motion for compulsory nonsuit is granted, the plaintiff may file a written motion to remove the nonsuit. **[See] See** Rule 227.1.

(b) In an action involving more than one plaintiff, the court may not enter a compulsory nonsuit as to any plaintiff until the close of the case of all the plaintiffs.

(c) In an action involving more than one defendant, the court may not enter a nonsuit of any plaintiff prior to the close of the case of all plaintiffs against all defendants. The nonsuit may be entered in favor of

(1) all of the defendants, or

(2) any of the defendants who have moved for nonsuit if all of the defendants stipulate on the record that no evidence will be presented that would establish liability of the defendant who has moved for the nonsuit.

Note: The term "defendants" includes additional defendants.

(d) At the close of all the evidence, the trial judge may direct a verdict upon the oral or written motion of any party.