

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [231 PA. CODE CHS. 200 AND 2220]

Amendment of Rule Governing Motions for Compulsory Nonsuit; No. 352 Civil Procedural Rules; Doc. No. 5

#### Order

*Per Curiam:*

And Now, this 30th day of May, 2001, the Pennsylvania Rules of Civil Procedure are amended as follows:

I. Rule 230.1 is rescinded and new Rule 230.1 is promulgated to read as follows.

II. Subdivisions (f), (g) and (h) of Rule 2231 are rescinded and notes are added to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 2001.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

#### Rule 230.1. Compulsory Nonsuit at Trial.

(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.

**Official 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 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.

**Official Note:** The term "defendants" includes additional defendants.

#### CHAPTER 220. JOINDER OF PARTIES

#### Rule 2231. Effect of joinder; practice in general.

\* \* \* \* \*

(f) [A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded.] Rescinded.

(g) [In an action in which plaintiffs have been joined in the alternative

(1) a compulsory nonsuit shall not be entered against any plaintiff until the close of the case of all the plaintiffs;

(2) unless a compulsory nonsuit is entered against all plaintiffs, the court, upon the conclusion of the trial as to all parties, but not before, may direct a verdict for any defendant against any plaintiff who, upon all the evidence, regardless of the party by whom offered, is not entitled to recover.] Rescinded.

**Official Note:** See Rule 226(b) for the entry of a directed verdict and Rule 230.1(b) for the entry of a compulsory nonsuit.

(h) [In an action in which defendants have been joined in the alternative

(1) a compulsory nonsuit of any plaintiff in favor of any or all of the defendants shall not be entered prior to the close of the case of all plaintiffs against all defendants;

(2) unless a compulsory nonsuit is entered against all plaintiffs as to all defendants, the court upon the conclusion of the trial as to all parties, but not before, may direct a verdict in favor of each defendant as to whom the evidence, regardless of the party by whom offered, does not warrant a finding by the jury that such defendant is liable jointly, severally or separately to any plaintiff.] Rescinded.

**Official Note:** See Rule 226(b) for the entry of a directed verdict and Rule 230.1(c) for the entry of a compulsory nonsuit.

#### Explanatory Comment

The amendments revise the rules of civil procedure governing joinder of parties and compulsory nonsuit.

#### I. Rule 230.1. Compulsory Nonsuit at Trial.

##### 1. New Rule 230.1

It is intended that Rule 230.1 becomes a comprehensive rule governing compulsory nonsuits. The provisions of former Rule 230.1 which govern a compulsory nonsuit in an action involving only one plaintiff and one defendant are now included in subdivision (a) of new Rule 230.1.

The provisions of subdivisions (g) and (h) of Rule 2231 govern a compulsory nonsuit in "an action in which plaintiffs have been joined in the alternative" and "an action in which defendants have been joined in the

alternative.” These provisions are transferred to new Rule 230.1 as subdivisions (b) and (c) but with the deletion of the reference to parties joined in the alternative. Rather, the new provisions apply to “an action involving more than one plaintiff” and “an action involving more than one defendant.” The new rule is of broader general application.

The final two sentences of former Rule 230.1, “If the motion is not granted, the trial shall proceed. If the motion is granted, the plaintiff may file a written motion for the removal of the nonsuit,” are not retained in the new rule. However, this does not represent a change in practice. The first sentence has been not been retained since it is a statement of an obvious principle. The provision contained in the second sentence is already governed by Rule 227.1 and a cross-reference to Rule 227.1 is included in the Note following subdivision (a)(2) of new Rule 230.1.

### 2. Effect of Introduction of Evidence by Defendant

Former Rule 230.1 permits the entry of a compulsory nonsuit “before any evidence on behalf of the defendant has been introduced.” The situation arises in which a defense witness, of necessity, must be taken out of sequence and heard prior to the close of the plaintiff’s case because of the witness’ unavailability to testify during the defendant’s case. If a defense witness is heard during the plaintiff’s case, the rule prohibits the court from entering a compulsory nonsuit.

The Supreme Court of Pennsylvania in *Harnish v. School District of Philadelphia*, 557 Pa. 160, 732 A.2d 596 (1999) recently observed that the rule might have been written differently, 557 Pa. at 165, 732 A.2d at 599:

If the rule had been intended to permit a court to consider a nonsuit even after the defendant has introduced evidence, presumably the rule could have expressed that although a nonsuit may be granted after defendant has introduced evidence, the court must consider only plaintiff’s evidence as if no evidence had been introduced by the defendant.

The amendment adopts this supposition by the Supreme Court.

Quoting from *Atlantic Richfield Co. v. Razumic*, 480 Pa. 366, 390 A.2d 736 (Pa. 1978), the Supreme Court stated the rationale for the former rule:

“A motion for compulsory nonsuit allows a defendant to test the sufficiency of a plaintiff’s evidence. . . . To assure that the trial court considers the motion only on the basis of evidence favorable to the plaintiff, the Act expressly limits the court’s authority to grant a nonsuit to those instances where a defendant has “offered no evidence.”

However, as the Supreme Court noted in the *Harnish* case, “[t]here are many situations in which reviewing courts simply rely on trial courts to ignore improper evidence and accept the trial court’s statement that such evidence was not considered.” 557 Pa. at 165, 732 A.2d at 599. Consequently, new Rule 230.1(a) provides that if the defendant presents evidence prior to the close of the plaintiff’s case, the court shall consider, in addition to the plaintiff’s evidence, only that defense evidence which is “favorable to the plaintiff.”

The amendments do not change the nature of the motion for compulsory nonsuit. It remains a means of testing the sufficiency of the plaintiff’s evidence at the close of the plaintiff’s case. The new Rule does, however, ameliorate the problem set forth above. Otherwise, once the plaintiff’s case has ended and the defendant’s case has begun, the defendant’s remedy will continue to be a motion for a directed verdict.

### 3. Defendants entitled to nonsuit

Rule 2231(h) provides for the entry of a nonsuit “in favor of any or all of the defendants.” This language was inappropriate since under the former rule, as Goodrich-Amram 2d § 2231(h):1 points out that a nonsuit may be entered only in favor of all defendants and not in favor of fewer than all defendants:

But if the plaintiff makes out a prima facie case against one or more of the defendants, then, as a practical matter, there will be no nonsuit proceedings at all. No motion can be made by the defendants until all their evidence is in. This is, of course not a nonsuit, but a motion for a directed verdict.

New Rule 230.1(c) reflects this situation by continuing to provide that the court can enter a nonsuit in favor of all defendants. However, the rule adds the innovation that the court can enter judgment in favor of fewer than all defendants only “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.”

## II Rule 2231. Effect of Joinder. Practice in General.

The amendments affect Rule 2231 in three respects:

First, subdivision (f) of Rule 2231 provides that “A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded.” The subdivision has been described in Goodrich Amram § 2231(f):1 as “an unnecessary statement of an obvious rule” and is rescinded.

Second, as noted above, the substance of subdivisions (g)(1) and (h)(1) governing compulsory nonsuits has been transferred to new subdivisions (b) and (c) of new Rule 230.1.

Third, subdivisions (g)(2) and (h)(2) of Rule 2231 which govern directed verdicts in cases involving plaintiffs and defendants joined in the alternative are rescinded as well. However, unlike the nonsuit provisions, they are not carried over to Rule 226(b) governing directed verdicts generally. These provisions, which permit the court to direct a verdict “upon conclusion of the trial as to all parties, but not before,” are unnecessary in light of the existing language of Rule 226(b) which provides “At the close of all the evidence, the trial judge may direct a verdict upon the oral or written motion of any party.”

*By the Civil Procedural Rules Committee*

REA BOYLAN THOMAS,  
Chair

[Pa.B. Doc. No. 01-1033. Filed for public inspection June 15, 2001, 9:00 a.m.]

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

#### Distribution of Business Within the Court of Common Pleas: Nonprofit Corporations; No. 2000-03

The Pennsylvania Rules of Judicial Administration provide that the Orphans' Court Division of the Court of Common Pleas shall hear and determine certain matters dealing with nonprofit corporations. See Pa. R.J.A. No. 2156. This Joint General Court Regulation is designed to implement Pa. R.J.A. No. 2156 in the Court of Common Pleas of Philadelphia County and to provide for the efficient and timely transfer of cases between the Trial and Orphans' Court Divisions.

1. *Matters To Be Heard By The Orphans' Court Division.* All matters concerning the following shall be heard by the Orphans' Court Division:

a. The administration and proper application of property committed to charitable purposes, as defined, held or controlled by any domestic or foreign nonprofit corporation;

b. Matters arising under Title 15 of the Pennsylvania Consolidated Statutes (involving corporations and unincorporated associations) which hold or control any property committed to charitable purposes;

c. Any other matter which involves the application, interpretation or enforcement of any law regulating the affairs of nonprofit corporations holding or controlling any property committed to charitable purposes or regulating the affairs of members, security holders, directors, officers, employees or agents of nonprofit corporations holding or controlling any property committed to charitable purposes.

2. *Definition of "Property Committed to Charitable Purposes."* For the purposes of this regulation, "property committed to charitable purposes" means all property committed to the relief of poverty, the advancement of education, the advancement of religion, the promotion of health, governmental or municipal purposes and other purposes, the accomplishment of which is beneficial to the community, except that the term does not include the property of any inter vivos trust jurisdiction of which was acquired by the Court of Common Pleas prior to January 1, 1969 unless the President Judge of the Court orders the matter to be heard and determined in the Orphans' Court Division.

3. *Matters To Be Heard By The Trial Division.* All other matters involving a nonprofit corporation shall be heard in the Trial Division.

4. *Transfers.* All matters filed in, or assigned to, the incorrect division shall be reassigned.

*Comment:* The assignment of matters under this rule will depend on the nature of the underlying action. For example, an action involving one or more nonprofit corporations concerning an ordinary tort or contract claim will be assigned to the Trial Division. An action involving one or more nonprofit corporations concerning the proper application of property committed to charitable purposes, or the rights and obligations of members, directors or officers of such nonprofit corporations, will be assigned to the Orphans' Court. The mere possibility that an ordinary tort or contract claim could result in a judgment for or

against a nonprofit corporation will not cause a matter to be assigned to the Orphans' Court.

*By the Court*

JOHN W. HERRON,  
*Administrative Judge  
Trial Division*

JOSEPH D. O'KEEFE,  
*Administrative Judge  
Orphans' Court Division*

This Joint General Court Regulation is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ.★51 and Pa. R.C.P. 239, and shall become effective immediately. As required by Pa. R.C.P. 239, the original Joint General Court Regulation shall be filed with the Prothonotary in a docket maintained for Joint General Court Regulations and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Joint General Court Regulation shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District. The Joint General Court Regulation is also available on the Court's website at <http://courts.phila.gov>.

[Pa.B. Doc. No. 01-1034. Filed for public inspection June 15, 2001, 9:00 a.m.]

## Title 252—ALLEGHENY COUNTY RULES

### ALLEGHENY COUNTY

#### Appointment of Counsel Policies and Procedures and Revised Fee Bill; Administrative Doc. No. 2 May 2001

##### Order

Now, this 21st day of May, 2001, upon recommendation of the Court's Committee on Appointed Counsel, it is hereby *Ordered* that the policy regulating the appointment of counsel in all Criminal cases before the Judges of the Court of Common Pleas of Allegheny County is adopted for appointments of counsel made on or after July 1, 2001.

It is further *Ordered* that the District Court Administrator of Allegheny County publicize this policy in the *Pennsylvania Bulletin* forthwith.

*By the Court*

GERARD M. BIGLEY,  
*Administrative Judge*

#### Policies and Procedures Governing Court Appointed Counsel

##### I. General Guidelines

A. The appointment of counsel for criminal cases shall be at the discretion of each Common Pleas Judge and shall require a written motion of the Public Defender of Allegheny County setting forth the basis for conflict. The Office of Public Defender, upon reasonable notice of the court, shall make itself available to the Appointment Judge.

B. The Criminal Division shall maintain a list of eligible attorneys available for appointments. Attorneys interested in being considered for appointments shall submit a letter and summary of criminal defense experience to the Administrative Judge of the Criminal Division.

C. Immediately upon appointment, counsel shall prepare the Appointment Order (form 24A) for judicial signature and shall file this Order with an Entry of Appearance in the Clerk of Courts Office. Copies of the Appointment Order shall be provided to the Appointing Judge and District Court Administrator.

D. The Administrative Judge shall make all appointments of counsel to eligible cases in which there has been no assignment of a Common Pleas Judge. This shall include but is not limited to Preliminary Hearings.

E. Attorneys receiving appointments agree to accept and adhere to the policies and procedures as set forth in this document including the Pro Bono section.

II. Fee Schedule

A. Necessary Preparation	\$50.00 per hour
B. Court Appearance	
1. Full Court Day	\$500.00
2. Half Court Day	\$250.00
C. Expert Fees	
1. Preparation	\$50.00 per hour
2. Full Court Day	\$500.00
3. Half Court Day	\$250.00
D. Investigator Fees	\$30.00 per hour
E. Post Conviction Relief Act Petitions	\$50.00 per hour

III. Fee Guidelines

Court-appointed invoices in excess of the following amounts shall require the approval and signature of both the appointment Judge and the Administrative Judge of the Criminal Division.

A. Homicide Cases	\$5,000.00
B. Jury Trials (non-homicide)	\$3,000.00
C. Non-Jury Trial	\$1,000.00
D. Pleas	\$ 750.00
E. Preliminary Hearings	\$ 250.00
F. Expert Fees	\$1,500.00
G. Investigator Fees	\$ 500.00
Post Conviction Relief Act	
H. Petitions	\$1,500.00

IV. Pro Bono Program

- A. Attorneys accepting appointments under this program shall participate in pro bono work.
- B. Participating attorneys shall submit one pro bono invoice for every four appointments (25%). Attorneys submitting invoices must designate the pro bono case upon submission of the invoice to the appointing judge.

C. The Criminal Division shall maintain a record of all appointments and enforce this policy. Failure to comply with the Pro Bono requirements may result in designation by the court of pro bono work upon invoices received.

D. The District Court Administrator shall report quarterly to the Judges of the Criminal Division concerning the Pro Bono work of all participating attorneys.

V. Billing Guidelines

A. All invoices shall be submitted by appointed counsel to the Appointment Judge and must be submitted on Firm letterhead to include address and telephone number, be dated, and take the following form:

1. A chronological listing of appointment work with dates, amount of time devoted to the legal work, and associated expense
2. Clearly identify miscellaneous expenses (copying, postage, etc.) and include actual receipts
3. Include statements of services rendered by experts and investigators
4. Attach a copy of the Order of Appointment and Entry of Appearance.
5. Include a completed Payment Order (Form 24B) for execution by the Appointing Judge and Administrative Judge, if necessary.

B. Counsel must submit requests for payment within 60 days of case completion. For the purpose of this policy, case completion shall be defined as:

1. Not Guilty Verdict
2. Sentencing (if no post-sentence motions)
3. Disposition of post-sentence motions
4. Dismissal/Withdrawal of Charges (Includes Preliminary Hearing)
5. Disposition of Post Conviction Hearing Act Petition
6. Acceptance into the Accelerated Rehabilitation Disposition/Probation Without Verdict Programs
7. Disposition of Appeal

C. The following limitations are established by the policy:

1. The Court will not reimburse for preparation on the same day as the trial/plea/ARD
2. The Court will not reimburse for more than two 1/2 days nor one full day per attorney per day
3. The Court will not reimburse for a full day in Criminal Court if counsel has submitted an invoice for work performed in another Division of the Court on the same day.

VI. Billing Procedures

A. Upon approval of counsel's request for payment, the Criminal Division shall forward the required documents to the Office of Court Administrator, Fiscal Affairs Department.

- B. The Fiscal Affairs Department shall promptly review the documents and post the transaction to the Court's respective account, prepare a payment voucher, and forward to the Office of County Controller.
- C. The Court will make every effort to assure payment within 14 days of receipt of the invoice.
- D. The following issues may cause delay in prompt payment and or rejection of any expense or invoice:
1. Failure to submit within the established time restraints
  2. Failure to submit required receipts
  3. Failure to notify the Fiscal Affairs Department of a change of address
  4. Failure to correctly complete a W-9 form
  5. Failure to comply with any provision of this policy
  6. Inquiry of the Court's Fiscal Affairs Department
  7. Controller Office inquiry
- E. The Fiscal Affairs Department shall make every effort to resolve any issue with counsel. In the event resolution is not made, the matter shall be referred to the District Court Administrator or his designee. Counsel shall be paid for any portions of the invoice not under review. The District Court Administrator, in consultation with the appointing Judge and Administrative Judge of the Criminal Division, shall attempt to resolve the issue promptly.
- F. The Fiscal Affairs Department shall not have discretion to resolve any invoices submitted beyond established time restraints. Counsel shall be notified of the matter and may petition the appointing Judge for relief.

[Pa.B. Doc. No. 01-1035. Filed for public inspection June 15, 2001, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### CAMBRIA COUNTY

**Local Rule of Court Pursuant to Rule 1018.1 of the  
Pennsylvania Rules of Civil Procedure; Misc. No.  
2001-1895**

#### Administrative Order of Court

*And Now*, this 2nd day of March, 2001, it is hereby *Ordered* and *Decreed*, effective thirty (30) days after publication in the *Pennsylvania Bulletin*, that the Cambria County Court of Common Pleas hereby *Amends* Local Rule of Civil Procedure 1018.1CC governing Notice in Pleadings as follows:

(a) 1018.1CC:

In compliance with Rule of Civil Procedure 1018.1, the agency to be named in the notice from whom legal help can be obtained shall be

Laurel Legal Services, Inc.  
225-227 Franklin Street—Suite 400

Franklin Center  
Johnstown, PA 15901  
Telephone: (814) 536-8917  
Fax: (814) 535-3377

(b) This Rule shall become effective thirty (30) days after its publication in the *Pennsylvania Bulletin* and shall be promulgated in the manner provided by Pa.R.C.P. 239(c). Until this Rule becomes effective, service in Cambria County shall only be made in a manner consistent with this Order.

It is further *Ordered* that the Court Administrator of Cambria County shall file seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts; file two (2) certified copies of this Administrative Order with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; file one (1) certified copy with the Pennsylvania Civil Procedural Rules Committee; forward one (1) copy for publication in the *Cambria County Legal Journal*; forward one (1) copy to the Cambria County Law Library; and keep continuously available for public inspection a copy of this Order and Rule in the Prothonotary's Office.

*By the Court*

GERALD LONG,  
*President Judge*

[Pa.B. Doc. No. 01-1036. Filed for public inspection June 15, 2001, 9:00 a.m.]

### LANCASTER COUNTY

**Road Matter Documents; Prothonotary Administrative  
Doc. No. 1**

#### Administrative Order

*And Now*, May 16, 2001, I direct, pursuant to 42 Pa.C.S.A. § 2756(b)(2) and in consideration of the Waiver of the Clerk of Courts, that, effective July 1, 2001, the filing of all applications for relief or other documents relating to road matters must be in the Office of the Prothonotary and that all existing records, which relate to such matters and which are filed in the Office of the Clerk of Courts, must be transferred to the Office of the Prothonotary.

*By the Court*

MICHAEL A. GEORGELIS,  
*President Judge*

#### Waiver

I, David S. Hickernell, Clerk of the Court of Lancaster County, do hereby waive the requirement that all documents regarding Road Matters be filed and maintained in the Office of the Clerk of the Courts. Effective July 1, 2001, all records relating to Road Matters will be transferred to the Office of the Lancaster County Prothonotary. Notice is hereby given that all future such filings will be handled in the Office of the Prothonotary.

DAVID S. HICKERNELL,  
*Clerk of the Courts*

[Pa.B. Doc. No. 01-1037. Filed for public inspection June 15, 2001, 9:00 a.m.]

# DISCIPLINARY BOARD OF THE SUPREME COURT

## Notice of Disbarment

Notice is hereby given that Peter S. Navon, having been disbarred from the practice of law in the State of New Jersey, the Supreme Court of Pennsylvania issued an Order dated May 31, 2001, that Peter S. Navon is Disbarred by Consent from the Bar of this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since

this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Executive Director & Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 01-1038. Filed for public inspection June 15, 2001, 9:00 a.m.]

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