Pennsylvania Rules of Appellate Procedure

Rule 1517. Applicable Rules of Pleading; Servicemembers Civil Relief Act.

(a) Rules of Pleading. Unless otherwise prescribed by these rules, the practice and procedure under this chapter relating to pleadings in original jurisdiction petition for review practice shall be in accordance with the appropriate Pennsylvania Rules of Civil Procedure, so far as they may be applied.

(b) Servicemembers Civil Relief Act. In any original jurisdiction petition for review under this chapter in which a respondent does not make an appearance, and before the court enters judgment in favor of the petitioner, the petitioner shall state in a filed affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931:

(1) whether the non-appearing respondent is in military service and showing necessary facts to support the affidavit; or

(2) if the petitioner is unable to determine whether the non-appearing respondent is in military service, that the petitioner is unable to determine whether the non-appearing respondent is in military service.

Comment: "Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If a respondent is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*, may impose additional protections. The Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, also provides protections for Pennsylvania National Guard members in active service of the Commonwealth that, *inter alia*, prohibit the issuance or enforcement of civil process.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public. The form can be modified provided the requirements of subdivision (b)(2) are met.

Rule 1732. Application for Stay or Injunction Pending Appeal. Number of Copies to be Filed.

(a) **Application to [trial court] Trial Court**. Application for a stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any *supersedeas*, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, must ordinarily be made in the first instance to the trial court, except where a prior order under this chapter has been entered in the matter by the appellate court or a judge thereof.

(b) **Contents of [application for stay] Application for Stay**. An application for stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any *supersedeas*, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, may be made to the appellate court or to a judge thereof, but the application shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The application shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed such parts of the record as are relevant. Where practicable, the application should be accompanied by the briefs, if any, used in the trial court. The application shall contain the certificate of compliance required by Pa.R.A.P. 127.

(c) **Number of [copies to be filed] Copies to be Filed**. To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its **[Official Note] Comment**.

[Official Note] Comment: *See generally Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), for the criteria for the issuance of a stay pending appeal.

For the availability of a stay for a party in military service, see the Servicemembers Civil Relief Act, 50 U.S.C. § 3932, and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105.

Rule 1781. Stay Pending Action on Petition for Review or Petition for Specialized Review.

(a) **Application to [government unit] Government Unit.** Application for a stay or supersedeas of an order or other determination of any government unit pending review in an appellate court on petition for review or petition for specialized review shall ordinarily be made in the first instance to the government unit.

(b) **Contents of [application for stay or supersedeas] Application for Stay or Supersedeas.** An application for stay or supersedeas of an order or other determination of a government unit, or for an order granting an injunction pending review, or for relief in the nature of peremptory mandamus, may be made to the appellate court or to a judge thereof, but the application shall show that application to the government unit for the relief sought is not practicable, or that application has been made to the government unit and denied, with the reasons given by it for the denial, or that the action of the government unit did not afford the relief that the applicant had requested. The application shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute, the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed such parts, if any, of the record as are relevant to the relief sought. The application shall contain the certificate of compliance required by Pa.R.A.P. 127.

(c) **Notice and [action by court] Action by Court.** Upon such notice to the government unit as is required by Pa.R.A.P. 123, the appellate court, or a judge thereof, may grant an order of stay or *supersedeas*, including the grant of an injunction pending review or relief in the nature of peremptory mandamus, upon such terms and conditions, including the filing of security, as the court or the judge thereof may prescribe. Where a statute requires that security be filed as a condition to obtaining a *supersedeas*, the court shall require adequate security.

[Official Note] Comment: *See generally Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), for the criteria for the issuance of a stay pending appeal.

For the availability of a stay for a party in military service, see the Servicemembers Civil Relief Act, 50 U.S.C. § 3932, and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105.

Rule 3307. Applications for Leave to File Original Process.

(a) **Scope.** This rule applies only to matters within the original jurisdiction of the Supreme Court under 42 Pa.C.S. § 721**,** which are not in the nature of mandamus or prohibition ancillary to matters within the appellate jurisdiction of the Supreme Court. Applications for relief pursuant to or ancillary to the appellate jurisdiction of the Supreme Court, including relief which may be obtained in the Supreme Court by petition for review or petition for specialized review, are governed by Article I and Article II and may be filed without an application under this rule. *See also* Pa.R.A.P. 3309 (applications for extraordinary relief).

(b) **General [rule] Rule.**

(1) **Application for Leave to File.** The initial pleading in any original action or proceeding shall be prefaced by an application for leave to file such pleading, showing service upon all parties to such action or proceeding. The matter will be docketed when the application for leave to file is filed with the Prothonotary of the Supreme Court.

(2) **Filing Date of Application.** The application shall be deemed filed on the date received by the prothonotary unless it was on an earlier date deposited in the United States mail and sent by first class, express, or priority United States Postal Service mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter, if known, and shall be either enclosed with the application or separately mailed to the prothonotary.

(3) **Entry of Appearance.** Appearances shall be filed as in other original actions.

(4) **Answer.** An adverse party may file an answer no later than 14 days after service of the application. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. An adverse party who does not intend to file an answer to the application shall, within the time fixed by these rules for the filing of an answer, file a letter stating that an answer to the application will not be filed.

(5) **Servicemembers Civil Relief Act. If an adverse party does not enter an appearance pursuant to subdivision (b)(3) or file an answer or letter pursuant to subdivision (b)(4), the applicant shall file an affidavit in accordance with Pa.R.A.P. 1517(b).**

(6) **Distribution.** Upon receipt of the answer to the application, or a letter stating that no answer will be filed, from each party entitled to file such, the application, pleadings, and answer to the application, if any, shall be distributed by the prothonotary to the Supreme Court for its consideration.

(c) **Disposition of [application] Application.** The Supreme Court may thereafter grant or deny the application or set it down for argument. Additional pleadings may be filed, and subsequent proceedings had, as the Supreme Court may direct. If the application is denied, the matter shall be transferred to the appropriate court by the prothonotary in the same manner and with the same effect as matters are transferred under Pa.R.A.P. 751.

Comment: Pa.R.A.P. 1517(b) sets forth the requirement of an affidavit of military service pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931.

Rule 3309. Applications for Extraordinary Relief.

(a) **General [rule] Rule.**

(1) Service of Application. An application for relief under 42 Pa.C.S. § 726 (extraordinary jurisdiction), or under the powers reserved by the first sentence of Section 1 of the Schedule to the Judiciary Article, shall show service upon all persons who may be affected thereby, or their representatives, and upon the clerk of any court in which the subject matter of the application may be pending.

(2) Filing Date of Application. The application shall be deemed filed on the date received by the prothonotary unless it was on an earlier date deposited in the United States mail and sent by first class, express, or priority United States Postal Service mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter if known and shall be either enclosed with the application or separately mailed to the prothonotary.

(3) Entry of Appearance. Appearances shall be governed by Rule 1112 (entry of appearance) unless no appearances have been entered below, in which case appearances shall be filed as in original actions.

[(b)] (4) Answer. An adverse party may file an answer no later than fourteen days after service of the application. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. An adverse party who does not intend to file an answer to the application shall, within the time fixed by these rules for the filing of an answer, file a letter stating that an answer will not be filed.

(5) Servicemembers Civil Relief Act. If an adverse party does not enter an appearance pursuant to subdivision (a)(3) or file an answer or letter pursuant to subdivision (a)(4), the applicant shall file an affidavit in accordance with Pa.R.A.P. 1517(b).

[(c)] **(6)** **Distribution [and disposition]**. Upon receipt of the answer, or a letter stating that no answer will be filed, from each party entitled to file such, the application and answer, if any, shall be distributed by the Prothonotary to the Supreme Court for its consideration.

(b) **Disposition.** The Supreme Court may thereafter grant or deny the application or set it down for argument.

[(d)](c) **Stays and [supersedeas] *Supersedeas*.** Where action is taken under this rule which has the effect of transferring jurisdiction of a matter to the Supreme Court, unless otherwise ordered by the Supreme Court such action shall be deemed the taking of an appeal as of right for the purposes of Chapter 17 (effect of appeals; supersedeas and stays), except that the lower court shall not have the power to grant reconsideration.

[Official Note] Comment: Based on 42 Pa.C.S. § 502 (general powers of Supreme Court), 42 Pa.C.S. § 726 (extraordinary jurisdiction) and the first sentence of Section 1 of the Schedule to the Judiciary Article, which preserves inviolate the December 31, 1968 powers of the Supreme Court (principally the so-called King's Bench powers) in the following language: "The Supreme Court shall exercise all the powers and until otherwise provided by law, jurisdiction now vested in the present Supreme Court ...." Former Supreme Court Rule 68 1/2 (416 Pa. xxv) contained a 30-day time limit for seeking review and the failure of **[Rule] Pa.R.A.P.** 3309 to set forth a specific time limit shall not be construed to enlarge the time permitted by law for the seeking of appellate review.

Pa.R.A.P. 1517(b) sets forth the requirement of an affidavit of military service pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931.

[EXPLANATORY COMMENT--1979

The stay and supersedeas procedure in the Supreme Court is clarified in King's Bench matters and in cases where the Superior Court or the Commonwealth Court (in its appellate capacity) has acted on a stay or supersedeas application.]

Pennsylvania Rules of Civil Procedure

Rule 216. Grounds for Continuance.

(**[A]**__a__) The following are grounds for continuance:

(1) Agreement of all parties or their attorneys, if approved by the **[Court]** __court__;

(2) Illness of counsel of record, a material witness, or a party. If requested a certificate of a physician shall be furnished, stating that such illness will probably be of sufficient duration to prevent the ill person from participating in the trial;

(3) Inability to subpoena or to take testimony by deposition, commission, or letters rogatory, of any material witness, shown by affidavit which shall state:

(**[a]**__i__) The facts to which the witness would testify if present or if deposed;

(**[b]**__ii__) The grounds for believing that the absent witness would so testify;

(**[c]**__iii__) The efforts made to procure the attendance or deposition of such absent witness; and

(**[d]**__iv__) The reasons for believing that the witness will attend the trial at a subsequent date, or that the deposition of the witness can and will be obtained.

(4) Such special ground as may be allowed in the discretion of the court;

(5) The scheduling of counsel to appear at any proceeding under the Pennsylvania Rules of Disciplinary Enforcement, whether:

(**[a]**__i__) as counsel for a respondent-attorney before a hearing committee, special master, the Disciplinary Board or the Supreme Court;

(**[b]**__ii__) as a special master or member of a hearing committee; or

(**[c]**__iii__) as a member of the Disciplinary Board;

(6) The scheduling of counsel to appear at any proceeding involving the discipline of a justice, judge__,__ or magisterial district judge under Section 18 of Article V of the Constitution of Pennsylvania, whether:

(**[a]**__i__) as counsel for a justice, judge, or magisterial district judge before the special tribunal provided for in 42 Pa.C.S. § 727, the Court of Judicial Discipline, the Judicial Conduct Board or any hearing committee__,__ or other arm of the Judicial Conduct Board; or

(**[b]**__ii__) as a member of the Court of Judicial Discipline, the Judicial Conduct Board__,__ or any hearing committee or other arm of the Judicial Conduct Board**[.]**__;__

__(7) In compliance with state or federal law.__

(**[B]**__b__) Except for cause shown in special cases, no reason above enumerated for the continuance of a case shall be of effect beyond one application made in behalf of one party or group of parties having similar interests.

(**[C]**__c__) No application for a continuance shall be granted if based on a cause existing and known at the time of publication or prior call of the trial list unless the same is presented to the court at a time fixed by the court, which shall be at least one week before the first day of the trial period. Applications for continuances shall be made to the court, or filed in writing with the officer in charge of the trial list, after giving notice of such application by mail, or otherwise, to all parties or their attorneys. Each court may, by local rule, designate the time of publication of the trial list for the purposes of this rule.

(**[D]**__d__) No continuance shall be granted due to the absence from court of a witness duly subpoenaed, unless:

(1) Such witness will be absent because of facts arising subsequent to the service of the subpoena and which would be a proper ground for continuance under the provisions of Rule **[216(A)]** __216(a)__; or

(2) On the day when the presence of such witness is required a prompt application is made for the attachment of such absent witness; or

(3) The witness, having attended at court has departed without leave, and an application for attachment is made promptly after the discovery of the absence of such witness; or the court is satisfied that the witness has left court for reasons which would be a proper ground for continuance under Rule **[216(A)]** __216(a)__.

(**[E]**__e__) Each **[Court]** __court__ may adopt local rules providing for the temporary passing of cases or governing applications for continuance because of the absence of a witness, not a party, who has not been served with a subpoena.

(**[F]**__f__) Rule **[216(B)—(E)]** **__216(b)-(e)__** and Rule 217 shall not be applicable to a continuance granted for any of the reasons set forth in Rule **[216(A)(5) or (6)]** **__216(a)(5) - (a)(7)__**.

__Comment: For subdivision (a)(7), see e.g., the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*.__

(This is an entirely new rule.)

Rule 243. Servicemembers Civil Relief Act.

In any civil action in which a defendant does not make an appearance, and before the court enters judgment in favor of the plaintiff, the plaintiff shall state in a filed affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931:

(a) whether the non-appearing defendant is in military service and showing necessary facts to support the affidavit; or

(b) if the plaintiff is unable to determine whether the non-appearing defendant is in military service, that the plaintiff is unable to determine whether the defendant is in military service.

Comment: "Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If a defendant is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., may impose additional protections. The Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, also provides protections for Pennsylvania National Guard members in active service of the Commonwealth that, *inter alia*, prohibit the issuance or enforcement of civil process.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it meets the requirements of this rule.

Rule 237.1. Notice of [Praecipe] *Praecipe* for Entry of Judgment of [Non Pros] *Non Pros* for Failure to File Complaint or by Default for Failure to Plead.

[(a)(1) As used in this rule,

''judgment of non pros'' means a judgment entered by praecipe pursuant to Rules 1037(a) and 1659;

Note: When a defendant appeals from a judgment entered in a magisterial district court, Pa.R.C.P.M.D.J. 1004(b) authorizes the appellant to file a praecipe for a rule as of course upon the appellee to file a complaint or suffer entry of a judgment of non pros. The entry of the judgment of non pros is governed by Pa.R.C.P. No. 1037(a) and is subject to this rule.

''judgment by default'' means a judgment entered by praecipe pursuant to Rules 1037(b), 3031(a) and 3146(a).

(2) No judgment of non pros for failure to file a complaint or by default for failure to plead shall be entered by the prothonotary unless the praecipe for entry includes a certification that a written notice of intention to file the praecipe was mailed or delivered

(i) in the case of a judgment of non pros, after the failure to file a complaint and at least ten days prior to the date of the filing of the praecipe to the party's attorney of record or to the party if unrepresented, or

(ii) in the case of a judgment by default, after the failure to plead to a complaint and at least ten days prior to the date of the filing of the praecipe to the party against whom judgment is to be entered and to the party's attorney of record, if any.

The ten-day notice period in subdivision (a)(2)(i) and (ii) shall be calculated forward from the date of the mailing or delivery, in accordance with Rule 106.

Note: The final sentence of Rule 237.1(a)(2) alters the practice described in the decision of *Williams v. Wade*, 704 A.2d 132 (Pa. Super. 1997).

(3) A copy of the notice shall be attached to the praecipe.

(4) The notice and certification required by this rule may not be waived.

Note: A certification of notice is a prerequisite in all cases to the entry by praecipe of a judgment of non pros for failure to file a complaint or by default for failure to plead to a complaint. Once the ten-day notice has been given, no further notice is required by the rule even if the time to file the complaint or to plead to the complaint has been extended by agreement.

See Rule 237.4 for the form of the notice of intention to enter a judgment of non pros and Rule 237.5 for the form of the notice of intention to enter a judgment by default.

(b) This rule does not apply to a judgment entered

(1) by an order of court,

(2) upon praecipe pursuant to an order of court, or

(3) pursuant to a rule to show cause.

Note: See Rule 3284 which requires that in proceedings to fix fair market value of real property sold, notice must be given pursuant to the requirements of Rule 237.1 *et seq.*]

[EXPLANATORY COMMENT—1994

Rule 237.1 et seq. are intended to (1) avoid snap judgments by requiring notice of the intention to enter certain judgments of non pros and by default, (2) eliminate procedural problems arising from ambiguous agreements to extend time to take required action and (3) ease the procedural burdens upon parties who move promptly to open such judgments.

Rule 237.1--Notice of intention to enter judgment

Rule 237.1 governing judgment of non pros and by default provides that the praecipe for entry of certain judgments include a certification of prior notice of the intent to enter judgment. The rule requires prior notice in those instances in which a party may proceed directly by praecipe to enter a judgment of non pros for failure to file a complaint or a judgment by default for failure to plead to a complaint. Rules 1037(a) and 1659 expressly provide for such a procedure in entering a judgment of non pros while Rules 1037(b), 1511(a), 3031(a) and 3146(a) provide for such a practice in entering a default judgment. New subdivision (a)(1) identifies these rules in specifying the scope of the rule.

The rule provides for the notice to be given once only. A note advises that "[o]nce the ten-day notice has been given, no further notice is required by the rule even if the time to plead to" or file "the complaint has been extended by agreement."

The notice must be in writing. Subdivision (a)(4) clearly provides that the "notice and certification required by this rule may not be waived." Subdivision 237.1(b) contains an exception to the notice requirement with respect to orders of court, discussed below.

The ten-day notice may be mailed or delivered. Registered or certified mail is not required. The ten-day grace period for compliance runs from the date of delivery, if the notice is delivered. If the notice is mailed, the ten-day period runs from the date of mailing and not from the date of receipt. If proof of the date of mailing is important, it may be obtained from the post office by requesting Post Office Form 3817, Certificate of Mailing, which will show the date, the name of the sender, and the addressee.

The rule continues the practice of entering judgment by the filing of a praecipe with the prothonotary. Two additional requirements are imposed. First, the praecipe must contain a certification that notice was given in accordance with the rule. Second, a copy of the notice must be attached to the praecipe.

The foregoing requirements apply irrespective of the type of judgment sought. However, depending upon the judgment to be entered, there are differing provisions with respect to the event triggering the time for giving notice and the persons to whom notice is to be delivered.

Time of notification

Rule 237.1(a) requires that the notice be given after the time for required action has expired and at least ten days prior to the filing of the praecipe for judgment. However, the event which triggers the time for giving notice differs. Rule 237.1(a)(2)(i) governing the judgment of non pros requires notice to be given "after the failure to file a complaint" pursuant to a rule to file a complaint. Rule 237.1(a)(2)(ii) governing the default judgment provides for notice to be given after the failure to plead to a complaint.

The intent of the rule is to afford a minimum of ten days after failure to file a complaint or after failure to plead within which the failure may be cured. To assure this, the notice may not be given until the time for action has elapsed and the failure

occurs. This will prevent a plaintiff at the time of service of the complaint or a defendant at the time of service of a rule to file a complaint from including a notice that judgment will be entered on the twenty-first day after service. The notice cannot be given before that day because, prior to that day, no default or failure exists.

Persons notified

Rule 237.1(a)(2)(ii) requires the notice of intention to enter a judgment by default to be mailed or delivered both to the party against whom judgment is to be entered and, if represented, to the party's attorney of record. Dual service is required for two reasons. First, there may be delays in transmittal of process and pleadings from the client to his attorney. This often occurs where papers are forwarded by a party to his insurer through an intermediary, such as an insurance agency. Often the papers never get to defendant's attorney until after the time for filing a responsive pleading has expired. Notice to the party will alert him that there may have been some failure in transmission and prompt inquiry of his insurer may correct this.

Second, even if an appearance has been entered, notice to the client as well as the attorney may have a salutary effect in speeding up action by a dilatory attorney.

Rule 237.1(a)(2)(i), however, provides that notice of the intention to enter a judgment of non pros is to be mailed or delivered only to the party's attorney of record or, if unrepresented, then to the party. In this instance, dual service is not necessary since the party against whom judgment is to be entered is no stranger to the litigation, having initiated it and continued to actively pursue it.

Form of Notice

Rule 237.4 prescribes the form of notice when a judgment of non pros is to be entered; Rule 237.5 prescribes the form of notice when a judgment by default is sought. Each form of notice is universal, applying to all plaintiffs or defendants as the case may be, whether represented or not and without distinction as to their degree of education or sophistication. As in Rule 1018.1, no attempt is made to apply the notices selectively based on the nature of the action or party involved.

The form of notice to be given when a default judgment is sought is adapted from the notice to defend which Rule 1018.1 requires on every complaint. It informs the defendant of the need for action, the consequences of default and where he can obtain a lawyer. Since the notice will in many cases be sent to an as

yet unrepresented defendant, repetition of the notice to defend, in modified form helps to stimulate action and stem the tide of petitions to open default judgments.

The form of notice to be given to a plaintiff when a judgment of non pros is sought is similar to that given when a default judgment is sought but is adapted to the non pros scenario.

Exception to requirement of notification

The requirement of notice does not apply to a judgment entered by an order of court, upon praecipe pursuant to an order of court or pursuant to a rule to show cause. Additional notice serves no purpose when a judgment is entered by the court itself or is directed by the court. Similarly, a rule to show cause is itself notice of action to be taken.

Actions under Act No. 6 of 1974, the Loan Interest and Protection Law, 41 P.S. § 101 et seq., are not exempted from the requirement of notice. The notices required by the Act and Rule 237.1 are not duplicative. The notice under Act No. 6 relates to matters prior to suit, e.g., the default and the right to cure the default, whereas the ten-day notice of Rule 237.1 is directed to procedural rights after suit has been commenced.]

(This is entirely new text.)

(a) **General Rule.**

(1) As used in this rule,

‘‘judgment of *non pros*’’ means a judgment entered by *praecipe* pursuant to Rules 1037(a) and 1659;

‘‘judgment by default’’ means a judgment entered by *praecipe* pursuant to Rules 1037(b), 3031(a) and 3146(a).

(2) No judgment of *non pros* for failure to file a complaint or by default for failure to plead shall be entered by the prothonotary unless the *praecipe* for entry includes a certification that a written notice of intention to file the *praecipe* was mailed or delivered

(i) in the case of a judgment of *non pros*, after the failure to file a complaint and at least ten days prior to the date of the filing of

the *praceipe* to the party's attorney of record or to the party if unrepresented, or

(ii) in the case of a judgment by default, after the failure to plead to a complaint and at least ten days prior to the date of the filing of the *praecipe* to the party against whom judgment is to be entered and to the party's attorney of record, if any.

The ten-day notice period in subdivision (a)(2)(i) and (ii) shall be calculated forward from the date of the mailing or delivery, in accordance with Rule 106.

(3) A copy of the notice shall be attached to the *praecipe*.

(4) The notice and certification required by this rule may not be waived.

(b) **Exceptions.** This rule does not apply to a judgment entered

(1) by an order of court,

(2) upon *praecipe* pursuant to an order of court, or

(3) pursuant to a rule to show cause.

Comment: Rules 237.1 *et seq*. are intended to (1) avoid snap judgments by requiring notice of the intention to enter certain judgments of *non pros* and by default, (2) eliminate procedural problems arising from ambiguous agreements to extend time to take required action and (3) ease the procedural burdens upon parties who move promptly to open such judgments.

Rule 237.1--Notice of Intention to Enter Judgment

Rule 237.1 governing judgment of *non pros* and by default provides that the *praecipe* for entry of certain judgments include a certification of prior notice of the intent to enter judgment. The rule requires prior notice in those instances in which a party may proceed directly by *praecipe* to enter a judgment of *non pros* for failure to file a complaint or a judgment by default for failure to plead to a complaint. Rules 1037(a) and 1659 expressly provide for such a procedure in entering a judgment of *non pros* while Rules 1037(b), 3031(a) and 3146(a) provide for such a practice in entering a default judgment. Subdivision (a)(1) identifies these rules in specifying the scope of the rule.

When a defendant appeals from a judgment entered in a magisterial district court, Pa.R.C.P.M.D.J. 1004(b) authorizes the appellant to file a *praecipe* for a rule as of course upon the appellee to file a complaint or suffer entry of a judgment of *non pros*. The entry of the judgment of *non pros* is governed by Rule 1037(a) and is subject to this rule.

The rule provides for the notice to be in writing and given once only. A certification of notice is a prerequisite in all cases to the entry by *praecipe* of a judgment of *non pros* for failure to file a complaint or by default for failure to plead to a complaint. Once the 10-day notice has been given, no further notice is required by the rule even if the time to file the complaint or to plead to the complaint has been extended by agreement.

Subdivision 237.1(b) contains an exception to the notice requirement with respect to orders of court, discussed below.

The ten-day notice may be mailed or delivered. Registered or certified mail is not required. The ten-day grace period for compliance runs from the date of delivery, if the notice is delivered. If the notice is mailed, the ten-day period runs from the date of mailing and not from the date of receipt. If proof of the date of mailing is important, it may be obtained from the post office by requesting Post Office Form 3817, Certificate of Mailing, which will show the date, the name of the sender, and the addressee.

The rule continues the practice of entering judgment by the filing of a *praecipe* with the prothonotary. Two additional requirements are imposed. First, the *praecipe* must contain a certification that notice was given in accordance with the rule. Second, a copy of the notice must be attached to the *praecipe*.

The foregoing requirements apply irrespective of the type of judgment sought. However, depending upon the judgment to be entered, there are differing provisions with respect to the event triggering the time for giving notice and the persons to whom notice is to be delivered.

Time of Notification

Rule 237.1(a) requires that the notice be given after the time for required action has expired and at least ten days prior to the filing of the *praecipe* for judgment. However, the event which triggers the time for giving notice differs. Rule 237.1(a)(2)(i) governing the judgment of *non pros* requires notice to be given “after the failure to file a complaint” pursuant to a rule to file a complaint. Rule 237.1(a)(2)(ii) governing the default judgment provides for notice to be given after the failure to plead to a complaint.

The intent of the rule is to afford a minimum of ten days after failure to file a complaint or after failure to plead within which the failure may be cured. To assure this,

the notice may not be given until the time for action has elapsed and the failure occurs. This will prevent a plaintiff at the time of service of the complaint or a defendant at the time of service of a rule to file a complaint from including a notice that judgment will be entered on the twenty-first day after service. The notice cannot be given before that day because, prior to that day, no default or failure exists.

Persons Notified

Rule 237.1(a)(2)(ii) requires the notice of intention to enter a judgment by default to be mailed or delivered both to the party against whom judgment is to be entered and, if represented, to the party's attorney of record. Dual service is required for two reasons. First, there may be delays in transmittal of process and pleadings from the client to the client's attorney. This often occurs where papers are forwarded by a party to the party's insurer through an intermediary, such as an insurance agency. Often the papers never get to the defendant's attorney until after the time for filing a responsive pleading has expired. Notice to the party will alert the party that there may have been some failure in transmission and prompt inquiry of the party's insurer may correct this.

Second, even if an appearance has been entered, notice to the client as well as the attorney may have a salutary effect in speeding up action by a dilatory attorney.

Rule 237.1(a)(2)(i), however, provides that notice of the intention to enter a judgment of *non pros* is to be mailed or delivered only to the party's attorney of record or, if unrepresented, then to the party. In this instance, dual service is not necessary since the party against whom judgment is to be entered is no stranger to the litigation, having initiated it and continued to actively pursue it.

Form of Notice

Rule 237.4 prescribes the form of notice when a judgment of *non pros* is to be entered; Rule 237.5 prescribes the form of notice when a judgment by default is sought. Each form of notice is universal, applying to all plaintiffs or defendants as the case may be, whether represented or not and without distinction as to their degree of education or sophistication. As in Rule 1018.1, no attempt is made to apply the notices selectively based on the nature of the action or party involved.

The form of notice to be given when a default judgment is sought is adapted from the notice to defend which Rule 1018.1 requires on every complaint. It informs the defendant of the need for action, the consequences of default and where the defendant can obtain a lawyer. Since the notice will in many cases be sent to an as yet unrepresented defendant, repetition of the notice to defend, in modified form helps to stimulate action and stem the tide of petitions to open default judgments.

The form of notice to be given to a plaintiff when a judgment of *non pros* is sought is similar to that given when a default judgment is sought but is adapted to the *non pros* scenario.

Exception to Requirement of Notification

The requirement of notice does not apply to a judgment entered by an order of court, upon *praecipe* pursuant to an order of court, or pursuant to a rule to show cause. Additional notice serves no purpose when a judgment is entered by the court itself or is directed by the court. Similarly, a rule to show cause is itself notice of action to be taken.

Actions pursuant to Act 6 of 1974, P.L. 13, the Loan Interest and Protection Law, 41 P.S. § 101-605, are not exempted from the requirement of notice. The notices required by Act 6 and Rule 237.1 are not duplicative. The notice under Act 6 relates to matters prior to suit, *e.g.*, the default and the right to cure the default, whereas the ten-day notice of Rule 237.1 is directed to procedural rights after suit has been commenced.

Cross References

See Pa.R.Civ.P. 3284 which requires that in proceedings to fix fair market value of real property sold, notice must be given pursuant to the requirements of Rule 237.1 *et seq.*

See Rule 243 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a defendant does not make an appearance.

Rule 1037. Judgment Upon Default or Admission. Assessment of Damages.

(a) **Entry of Judgment by Prothonotary for Action Not Commenced by Complaint.** If an action is not commenced by a complaint, the prothonotary, upon **[praecipe]** ***praecipe*** of the defendant, shall enter a rule upon the plaintiff to file a complaint. If a complaint is not filed within **[twenty] 20** days after service of the rule, the prothonotary, upon **[praecipe]** ***praecipe*** of the defendant, shall enter a judgment of **[non pros]** ***non pros***.

[Note: See Rule 237.1(a)(2) which requires the praecipe for judgment of non pros to contain a certification of written notice of intent to file the praecipe.]

(b) **Entry of Judgment by Prothonotary for Action Commenced by Complaint.** The prothonotary, on **[praecipe]** ***praecipe*** of the plaintiff, shall enter judgment against the defendant for failure to file within the required time a pleading to a complaint which contains a notice to defend or, except as provided by subdivision (d), for any relief admitted to be due by the defendant's pleadings.

[Note: See Rule 237.1 which requires the praecipe for default judgment to contain a certification of written notice of intent to file the praecipe.

While the prothonotary may enter a default judgment in an action legal or equitable, only the court may grant equitable relief. See subdivision (d).]

(1) The prothonotary shall assess damages for the amount to which the plaintiff is entitled if it is a sum certain or which can be made certain by computation, but if it is not, the damages shall be assessed at a trial at which the issues shall be limited to the amount of the damages.

(2) In all actions in which the only damages to be assessed are the cost of repairs made to property

(i) the prothonotary on **[praecipe]** ***praecipe*** of the plaintiff, waiving any other damages under the judgment, and the filing of the affidavits provided by **[subparagraphs] subdivisions** (ii) and (iii) shall assess damages for the cost of the repairs;

(ii) the **[praecipe]** ***praecipe*** shall be accompanied by an affidavit of the person making the repairs; the affidavit shall contain an itemized repair bill setting forth the charges for labor and material used in the repair of the property; it shall also state the qualifications of the person who made or supervised the repairs, that the repairs were necessary, and that the prices

for labor and material were fair and reasonable and those customarily charged;

(iii) the plaintiff shall send a copy of the affidavit and repair bill to the defendant by registered mail directed to the defendant's last known address, together with a notice setting forth the date of the intended assessment of damages, which shall be not less than ten days from the mailing of the notice and a statement that damages will be assessed in the amount of the repair bill unless prior to the date of assessment the defendant by written **[praecipe]** ***praecipe*** files with the prothonotary a request for trial on the issue of such damages; an affidavit of mailing of notice shall be filed.

[Note: By Definition Rule 76, registered mail includes certified mail.]

(c) **Entry of Judgment by Court.** In all cases, the court, on motion of a party, may enter an appropriate judgment against a party upon default or admission.

[Note: For the form of notice to defend, see Rule 1018.1.]

(d) **Entry of Judgment by Court for Equitable Relief Cases.** In all cases in which equitable relief is sought, the court shall enter an appropriate order upon the judgment of default or admission and may take testimony to assist in its decision and in framing the order.

Comment:

Subdivision (a). See Pa.R.Civ.P. 237.1(a)(2), which requires the *praecipe* for judgment of *non pros* to contain a certification of written notice of intent to file the *praecipe*.

Subdivision (b). See Pa.R.Civ.P. 237.1 which requires the *praecipe* for a default judgment to contain a certification of written notice of intent to file the *praecipe*. While the prothonotary may enter a default judgment in an action legal or equitable, only the court may grant equitable relief pursuant to subdivision (d).

See Rule 243 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a defendant does not make an appearance.

See Pa.R.Civ.P. 76 (definitions), registered mail includes certified mail.

Subdivision (c). See Pa.R.Civ.P. 1018.1 for the form of the notice to defend.

[EXPLANATORY COMMENT--JUNE 16, 1994

Effective July 1, 1984, the former actions of assumpsit and trespass were consolidated into the present civil action. Prior to the consolidation one of the principal differences in practice between the two actions was in the manner of responding to a complaint. The assumpsit rules required an answer specifically denying each averment of fact in the complaint. The trespass rules, however, gave the attorney the option of either filing a full answer as in assumpsit or filing no answer at all. If the attorney filed an entry of appearance but chose not to file an answer, the effect was to admit specified averments of fact in the complaint and to deny the remainder. However, the new civil action rules eliminated this option and required the assumpsit-type answer in all cases.

At the same time, the proposal that the specific denial of Rule 1029 be deleted in favor of a general denial was not adopted. Thus, there remained the requirement of a specific denial not only in assumpsit or contract cases but also in cases not formerly subject to the rule, i.e., trespass or tort cases. Both attorneys and judges have expressed dissatisfaction with the necessity to file answers specifically denying allegations of fact in a complaint in tort actions. The practice results in pleadings containing unnecessary repetition of language, overwhelming paperwork for both the court and the parties, and complexity of pleading which in many cases does not contribute to the narrowing of the issues or the resolution of the action.

In 1991 the Civil Procedural Rules Committee published Recommendation No. 109 which proposed that a responding party be given in all cases the alternatives of filing an answer or filing merely an entry of appearance which would have the effect of a denial. As the result of the comments received, the Committee republished the recommendation as Recommendation No. 109a which proposed that the civil action rules be amended to include the former practice of giving the attorney the option not to file an answer in a limited class of cases, i.e., the trespass-type case. The ultimate evolution of the proposal is that set forth in the amended rules: an answer is required in all cases but, in actions seeking monetary relief for bodily injury, death or property damage, the answer may consist of a general denial.

The amendments to the rules are described as follows.

Rule 1037. Judgment Upon Default or Admission. Assessment of Damages

Subdivision (b) of Rule 1037 provided for the entry of judgment upon praecipe resulting from a default or admission. The rule spoke of failure to file "an answer". This left unclear the effect of filing preliminary objections. The rule is

changed to refer to "a pleading", a term which under Rule 1017(a) includes both an answer and preliminary objections. The filing of an answer or preliminary objections clearly will prevent the entry of a default judgment.

A new note cross-refers to the requirement of Rule 237.1 that the praecipe to enter a judgment by default contain a certification that notice of the intent to enter the judgment was given as provided by that rule.]

[EXPLANATORY COMMENT--2003

See Explanatory Comment preceding Pa.R.C.P. No. 1501.]

Rule 1303. Hearing. Notice.

(a) **Procedure Set by Local Rule.**

(1) The procedure for fixing the date, time**,** and place of hearing before a board of arbitrators shall be prescribed by local rule, provided that **[not less than thirty days']** notice in writing shall be given to the parties or their attorneys of record **not less than 30 days from the date of the hearing**.

[Note: See Rule 248 as to shortening or extending the time for the giving of notice.]

(2) The local rule may provide that the written notice required by subdivision (a)(1) include the following statement:

> "This matter will be heard by a board of arbitrators at the time, date and place specified but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial **[de novo]** ***de novo*** on appeal from a decision entered by a judge."

[Note: A party is present if the party or an attorney who has entered an appearance on behalf of the party attends the hearing.]

(b) **Party Not Ready to Proceed.** When the board is convened for hearing, if one or more parties is not ready the case shall proceed and the arbitrators shall make an award unless the court

(1) orders a continuance, or

(2) hears the matter if the notice of hearing contains the statement required by subdivision (a)(2) and all parties present consent.

[Note:] Comment:

Subdivision (a). Existing local rules now provide a wide variety of procedures as to notice, place, and time of hearing. In some counties the prothonotaries or the trial list administrators give notice of the hearing. In other counties the chairman of the arbitration board gives notice of both the hearing and the filing of the report and award. In many counties the arbitrators sit in the courthouse. In others, because of the shortage of courtrooms, the arbitrators meet

in the chair's office or that of a member of the board or at the Bar association law library where conference rooms are made available. Nonetheless, every local practice must give written notice not less than 30 days' notice of the date of the hearing. In exigent circumstances the court, under Rule 248, can extend or shorten the time of notice.

A party is present if the party or an attorney who has entered an appearance on behalf of the party attends the hearing.

Subdivision (b). This subdivision addresses the failure of a party to attend a hearing.

It is within the discretion of the court whether it should hear the matter or whether the matter should proceed in arbitration. If the court is to hear the matter, it should be heard on the same date as the scheduled arbitration hearing.

In hearing the matter, the trial court may take action not available to the arbitrators, including the entry of a nonsuit if the plaintiff is not ready or a **[non pros]** ***non pros*** if neither party is ready. If the defendant is not ready, it may hear the matter and enter a decision.

[For relief from a nonsuit, see Rule 227.1 governing post-trial practice. See also Rule] **See Pa.R.Civ.P. 227.1 (post-trial relief) for relief from a nonsuit; *see also* Pa.R.Civ.P.** 3051 governing relief from a judgment of **[non pros]** ***non pros***.

Following an adverse decision, a defendant who has failed to appear may file a motion for post-trial relief which may include a request for a new trial on the ground of a satisfactory excuse for the defendant's failure to appear.

See Rule 243 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a defendant does not make an appearance.

[EXPLANATORY COMMENT--1981

Subdivision (a). Existing local rules now provide a wide variety of procedures as to notice, place, and time of hearing. In some counties the prothonotaries or the trial list administrators give notice of the hearing. In other counties the chairman of the arbitration board gives notice of both the hearing and the filing of the report and award. In many counties the arbitrators sit in the courthouse. In others, because of the shortage of courtrooms, the arbitrators meet in the chairman's office or that of a member of the board or at the Bar association law library where conference rooms are made available.

Local practice will continue under Rule 1303(a), except for the requirement that not less than thirty days' notice in writing be given of the date of hearing. In exigent circumstances the court, under Rule 248, can extend or shorten the time of notice.

Subdivision (b). A problem frequently encountered in present practice is the failure of a party to appear at the hearing. Present practice does not permit a nonsuit of a non-appearing plaintiff. Indeed a nonsuit would be impractical, since there is no machinery by which a nonsuit could be removed by the arbitrators. Rule 1303(b) provides that if a plaintiff does not appear, the arbitrators shall, unless the court has ordered a continuance, proceed to enter an award. Similarly, if a defendant does not appear, and the court has not ordered a continuance, the arbitrators proceed to hear the matter and enter an award. The remedy for dissatisfaction with the award is to appeal.

As a matter of professional courtesy, one party appearing when the other party does not might not wish to proceed without a further opportunity for opposing counsel to explain his absence. This poses a delicate question. The arbitrators are given no power to grant continuances. Only the court may do so, under Rule 1303(b). Although under Rule 1304(b) the arbitrators may "adjourn an uncompleted hearing from day to day," adjournment of a hearing that has never begun is in effect a continuance. Nor is a request of counsel for a continuance as a courtesy to his opponent sufficient to permit the arbitrators to continue the matter. Perhaps one solution would be for counsel to ask the arbitrators to pass the case temporarily to give him time to move the court for a continuance.

Local rules may regulate this problem, but must do so with great care so as to provide that it is the court, and not the arbitrators that controls the progress of the case.]

[EXPLANATORY COMMENT--1998

If at a hearing before a board of arbitrators one party was ready and the other was not, Rule of Civil Procedure 1303 previously provided for the arbitration to proceed and an award to be made unless the court ordered a continuance. Under this rule, some courts experienced the problem of a party failing to appear for the arbitration hearing and then appealing for a trial *de novo* before the court.

Rule 1303 has been amended to provide an additional alternative in such a circumstance and allow a court of common pleas by local rule to provide that the court may hear the case if the notice of hearing so advised the parties and all parties present agree. If the court hears the matter, then the parties will have had their trial in the court of common pleas. Relief from the decision of the court will

be by motion for post-trial relief following the entry of a nonsuit or a decision of the court or by petition to open a judgment of non pros. Relief from the action of the trial court will be by appeal to an appellate court. As the new notice advises, there will be "no right to a de novo trial on appeal from a decision entered by a judge."

Rule 218 governs the instance when a party is not ready when a case is called for trial. The note to subdivision (c) prior to its amendment referred to the right of a plaintiff to seek relief from the entry of a nonsuit or a judgment of non pros but omitted any reference to a defendant seeking relief from the decision of the court following a trial. A new paragraph has been added to the note calling attention to the defendant's right to file a motion for post-trial relief "on the ground of a satisfactory excuse for the defendant's failure to appear."]

Rule 2955. Confession of Judgment.

(a) **Complaint.** The plaintiff shall file with the complaint a confession of judgment substantially in the form provided by Rule 2962.

(b) **Signature.** The attorney for the plaintiff may sign the confession as attorney for the defendant unless an Act of Assembly or the instrument provides otherwise.

[Note: There are local rules in some counties requiring the filing of an affidavit of non-military service. See also the Servicemembers Civil Relief Act, 50 U.S.C.A. Appendix § 521.]

Comment: See Rule 243 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a defendant does not make an appearance.

Rule 1901.6. Responsive Pleading Not Required.

A defendant is not required to file an answer or other responsive pleading to the petition or the certified order, and all averments not admitted shall be deemed denied.

[*Note:*] Comment: For procedures as to the time and manner of hearings and issuance of orders, *see* 23 Pa.C.S. § 6107. For provisions as to the scope of relief available, *see* 23 Pa.C.S. § 6108. For provisions as to contempt for violation of an order, *see* 23 Pa.C.S. § 6114.

See **[Pa.R.C.P. No.] Rule** 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

***See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.**

Rule 1910.11. Office Conference. [Subsequent Proceedings.] Interim Order. Demand for *De Novo* Hearing.

(a) **Office Conference.**

(1) A conference officer shall conduct the office conference.

(2) A lawyer serving as a conference officer employed by, or under contract with, a judicial district or appointed by the court shall not practice family law before a conference officer, hearing officer, or judge of the same judicial district.

[*Note*: Conference officers preside at office conferences under Pa.R.C.P. No. 1910.11. Hearing officers preside at hearings under Pa.R.C.P. No. 1910.12. The appointment of a hearing officer to hear actions in divorce or for annulment of marriage is authorized by Pa.R.C.P. No. 1920.51.]

(b) **Failure to Appear.** If a party fails to appear at a conference as directed by the court, the conference may proceed.

(c) **Documentation.**

(1) At the conference, the parties shall provide to the conference officer the following documents:

(i) the most recently filed individual federal income tax returns, including all schedules, W-2s, and 1099s;

(ii) the partnership or business tax returns with all schedules, including K-1, if the party is self-employed or a principal in a partnership or business entity;

(iii) pay stubs for the preceding six months;

(iv) verification of child care expenses;

(v) child support, spousal support, alimony *pendente lite*, or alimony orders or agreements for other children or former spouses;

(vi) proof of available medical coverage; and

(vii) an Income Statement and, if necessary, an Expense Statement on the forms provided in **[Pa.R.C.P. No.]** **Rule**

1910.27(c) and completed as set forth in subdivisions (c)(**[1]**__2__) and (__3__**[2]**).

[*Note: See* Pa.R.C.P. No. 1930.1(b). To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions (e.g., divorce, custody), the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* shall apply.]

(**[1]**__2__) The parties shall provide the conference officer with a completed:

(i) Income Statement as set forth in **[Pa.R.C.P. No.]** __Rule__ 1910.27(c)(1) in all support cases, including high-income cases under **[Pa.R.C.P. No.]** __Rule__ 1910.16-3.1; and

(ii) Expense Statement as set forth in **[Pa.R.C.P. No.]** __Rule__ 1910.27(c)(2)(A), if a party:

(A) claims that unusual needs and unusual fixed expenses may warrant a deviation from the guideline support amount pursuant to **[Pa.R.C.P. No.]** __Rule__ 1910.16-5; or

(B) seeks expense apportionment pursuant to **[Pa.R.C.P. No.]** __Rule__ 1910.16-6.

(**[2]**__3__) For high-income support cases, as set forth in **[Pa.R.C.P. No.]** __Rule__ 1910.16-3.1, the parties shall provide to the conference officer the Expense Statement in **[Pa.R.C.P. No.]** __Rule__ 1910.27(c)(2)(B).

(d) **Conference Officer Recommendation.**

(1) The conference officer shall calculate and recommend a guideline support amount to the parties.

(2) If the parties agree on a support amount at the conference, the conference officer shall:

(i) prepare a written order consistent with the parties' agreement and substantially in the form set forth in **[Pa.R.C.P. No.]** __Rule__ 1910.27(e), which the parties shall sign; and

(ii) submit to the court the written order along with the conference officer's recommendation for approval or disapproval.

(iii) The court may enter the order in accordance with the agreement without hearing from the parties.

(3) In all cases in which one or both parties are unrepresented, the parties must provide income information to the domestic relations section so that a guidelines calculation can be performed.

(4) In cases in which both parties are represented by counsel, the parties shall not be obligated to provide income information and the domestic relations section shall not be required to perform a guidelines calculation if the parties have reached an agreement about the amount of support and the amount of contribution to additional expenses.

(e) **Conference Summary.** At the conclusion of the conference or not later than 10 days after the conference, the conference officer shall prepare a conference summary and furnish copies to the court and to both parties. The conference summary shall state:

(1) the facts upon which the parties agree;

(2) the contentions of the parties with respect to facts upon which they disagree; and

(3) the conference officer's recommendation; if any, of

(i) the amount of support and by and for whom the support shall be paid; and

(ii) the effective date of any order.

(f) **Interim Order.** If an agreement for support is not reached at the conference, the court, without hearing the parties, shall enter an interim order calculated in accordance with the guidelines and substantially in the form set forth in Rule 1910.27(e). Each party shall be provided, either in person at the time of the conference or by mail, with a copy of the interim order and written notice that any party may, within 20 days after the date of receipt or the date of the mailing of the interim order, whichever occurs first, file a written demand with the domestic relations section for a hearing before the court.

(g) **No stay.** A demand for a hearing before the court shall not stay the interim order entered under subdivision (f) unless the court so directs.

(h) **Final Order.** If no party demands a hearing before the court within the 20 day period, the interim order shall constitute a final order.

(i) **Hearing *De Novo*.** If a demand is filed, there shall be a hearing *de novo* before the court. The domestic relations section shall schedule the hearing and give notice to the parties. The court shall hear the case and enter a final order substantially in the form set forth in Rule 1910.27(e) within **[sixty] 60** days from the date of the written demand for hearing.

(j) **Separate Listing.**

(1) Promptly after receipt of the notice of the scheduled hearing, a party may move the court for a separate listing **[where] if**:

(i) there are complex questions of law, fact**,** or both; **[or]**

(ii) the hearing will be protracted; or

(iii) the orderly administration of justice requires that the hearing be listed separately.

(2) If the motion for separate listing is granted, discovery shall be available in accordance with Rule 4001 *et seq*.

[*Note:* The rule relating to discovery in domestic relations matters generally is Rule 1930.5.]

(k) **Post-Trial Relief.** No motion for post-trial relief may be filed to the final order of support.

[EXPLANATORY COMMENT--1994

The domestic relations office conference provided by Rule 1910.11 constitutes the heart of the support procedure. There are two primary advantages to the inclusion of a conference. First, in many cases the parties will agree upon an amount of support and a final order will be prepared, to be entered by the court, thus dispensing with a judicial hearing. Second, those cases which do go to hearing can proceed more quickly because the necessary factual information has already been gathered by the conference officer.

Subdivision (a)(2) prohibits certain officers of the court from practicing family law before fellow officers of the same court. These officers are the conference officer who is an attorney (Rule 1910.11), the hearing officer (Rule 1910.12), and the standing or permanent master who is employed by the court (Rule 1920.51). The amendments are not intended to apply to the attorney who is appointed occasionally to act as a master in a divorce action.

Subdivision (e)(3) makes clear that even if the parties agree on an amount of support, the conference officer is still empowered to recommend to the court that the agreement be disapproved. This provision is intended to protect the destitute spouse who might out of desperation agree to an amount of support that is unreasonably low or which would in effect bargain away the rights of the children.

The officer's disapproval of the agreement serves to prevent an inadequate order being entered unwittingly by the court.

The provision for an interim order in subdivision (f) serves two purposes. First, it ensures that the obligee will receive needed support for the period during which the judicial determination is sought. Second, it eliminates the motive of delay in seeking a judicial determination.

Because the guidelines are income driven, the trier of fact has little need for the expense information required in the Income and Expense Statement. Therefore in guideline cases, the rule no longer requires that expense information be provided. If a party feels that there are expenses so extraordinary that they merit consideration by the trier of fact, that party is free to provide the information. In cases decided according to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), living expenses are properly considered, and therefore must be presented on the Income and Expense Statement.

EXPLANATORY COMMENT--1995

Rule 1910.11(e) is amended to eliminate the need for a party to request a copy of the conference summary.

Because the court is required to enter a guideline order on the basis of the conference officer's recommendation, there is no need for (g)(2), which provided for a hearing before the court where an order was not entered within five days of the conference. It is eliminated accordingly.

Pursuant to subdivision (g), support payments are due and owing under the interim order which continues in effect until the court enters a final order after the hearing

de novo. The provision for an interim order serves two purposes. First, it ensures that the obligee will receive needed support for the period during which the judicial determination is sought. Second, it eliminates the motive of delay in seeking a judicial determination. Therefore, the plaintiff and the dependent children are not prejudiced by allowing the court sixty days, rather than the original forty-five, in which to enter its final order.

EXPLANATORY COMMENT--2006

The time for filing a written demand for a hearing before the court has been expanded from ten to 20 days. The purpose of this amendment is to provide ample opportunity for litigants and counsel to receive notice of the entry of the order, to assure Commonwealth-wide consistency in calculation of time for filing and to conform to applicable general civil procedural rules.

The amendments reflect the separated Income Statement and Expense Statements in Rule 1910.27(c).

EXPLANATORY COMMENT--2010

When the parties' combined net income exceeds $30,000 per month, calculation of child support, spousal support and alimony pendente lite shall be pursuant to Rule 1910.16-3.1. Rule 1910.16-2(e) has been amended to eliminate the application of *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), in high income child support cases.

EXPLANATORY COMMENT--2011

The rule has been amended to require that income information be provided in all cases, unless both parties are represented in reaching an agreement, so that a guidelines calculation can be performed. The guidelines create a rebuttable presumption that the amount calculated pursuant to them is the correct amount, so there should be a calculation in every case. If parties agree to receive or to pay an order other than the guideline amount, they should know what that amount is so that they can enter an agreement knowingly. If both parties are represented by counsel, it is assumed that their entry into the agreement for an amount other than a guidelines amount is knowing as it is counsels' responsibility to advise the parties. In addition, part of the mandatory quadrennial review of the support guidelines mandates a study of the number of cases in which the support amount ordered varies from the amount that would result from a guidelines calculation. Federal regulations presume that if a large percentage of cases vary from the guideline amount, then the guidelines are not uniform statewide.]

Comment: Conference officers preside over office conferences conducted pursuant to this rule. Hearing officers preside over hearings conducted pursuant to Rule 1910.12. The appointment of hearing officer to hear actions in divorce or for annulment of marriage is authorized by Rule 1920.51.

The rule relating to discovery in domestic relations matters generally is Rule 1930.5.

To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions, *e.g.,* divorce, custody, the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* shall apply. *See* Rule 1930.1(b).

Subdivision (a)(2) prohibits certain officers of the court from practicing family law before other officers of the same court. These officers are the conference officer who is an attorney, the hearing officer, Rule 1910.12, and the standing or permanent hearing officer who is employed by the court, Rule 1920.51. This subdivision is not intended to apply to an attorney occasionally appointed as a hearing officer in a divorce action.

Subdivision (d)(2)(i)(B) clarifies that, even if the parties agree on an amount of support, the conference officer is still empowered to recommend to the court that the agreement be disapproved. This provision is intended to protect the destitute spouse who might, out of desperation, agree to an amount of support that is unreasonably low or which would in effect bargain away the rights of the children. The officer's disapproval of the agreement serves to prevent an inadequate order being entered unwittingly by the court.

Pursuant to subdivision (f), support payments are due and owing under the interim order and continue in effect until the court enters a final order after the hearing *de novo*. The provision for an interim order serves two purposes. First, it ensures that the obligee will receive needed support for the period during which the judicial determination is sought. Second, it eliminates the motive of delay in seeking a judicial determination. Therefore, the plaintiff and any dependent children are not prejudiced by allowing the court 60 days to enter its final order.

The domestic relations office conference provided by this rule constitutes the heart of the support procedure. There are two primary advantages to the inclusion of a conference. First, in many cases the parties will agree upon an amount of support and a final order will be prepared, to be entered by the court, thus dispensing with a judicial hearing. Second, those cases which do proceed to

hearing can proceed more quickly because the necessary factual information has already been gathered by the conference officer.

Because the guidelines are income driven, the trier of fact has little need for the expense information required in the Expense Statement. Therefore, in guideline cases, the rule no longer requires that expense information be provided. If a party feels that there are expenses so extraordinary that they merit consideration by the trier of fact, the party is free to provide the information. In cases decided according to *Melzer v. Witsberger*, 480 A.2d 991 (Pa. 1984), living expenses are properly considered, and therefore must be presented in the Expense Statement.

***See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.**

Rule 1910.12. Alternative Hearing Procedures. Office Conference. Record Hearing. [Record.] Report. Exceptions. [Order]

(a) **Office Conference.** There shall be an office conference as provided by **[Pa.R.C.P. No.] Rule** 1910.11(a) through (d). The provisions of **[Pa.R.C.P. No.] Rule** 1910.11(d)(3) and (d)(4) regarding income information apply in cases proceeding pursuant to **[Pa.R.C.P. No.] Rule** 1910.12.

(b) **Conference Conclusion.**

(1) At the conclusion of a conference attended by both parties, if an agreement for support has not been reached, and the conference and hearing are not scheduled on the same day, the court, without hearing the parties, shall enter an interim order calculated in accordance with the guidelines and substantially in the form set forth in **[Pa.R.C.P. No.] Rule** 1910.27(e), and the parties shall be given notice of the date, time and place of a hearing. A record hearing shall be conducted by a hearing officer who must be a lawyer.

(2) If either party, having been properly served, fails to attend the conference, the court may enter an interim order calculated in accordance with the guidelines and substantially in the form set forth in Pa.R.C**iv**.P. **[No.] Rule** 1910.27(e). Within 20 days after the date of receipt or the date of mailing of the interim order, whichever occurs first, either party may demand a hearing before a hearing officer. If no hearing is requested, the order shall become final.

(3) Any lawyer serving as a hearing officer employed by, or under contract with, a judicial district or appointed by the court shall not practice family law before a conference officer, hearing officer, or judge of the same judicial district.

[*Note*: Conference officers preside at office conferences under Pa.R.C.P. No. 1910.11. Hearing officers preside at hearings under Pa.R.C.P. No. 1910.12. The appointment of a hearing officer to hear actions in divorce or for annulment of marriage is authorized by Pa.R.C.P. No. 1920.51.]

(c) **Separate Listing.**

(1) Except as provided in subdivision (c)(2), promptly after the conference's conclusion, a party may move the court for a separate listing of the hearing if:

(i) there are complex questions of law, fact or both;

(ii) the hearing will be protracted; or

(iii) the orderly administration of justice requires that the hearing be listed separately.

(2) When the conference and hearing are scheduled on the same day, all requests for separate listing shall be presented to the court at least seven days prior to the scheduled court date.

(3) If the motion for separate listing is granted, discovery shall be available in accordance with **[Pa.R.C.P. No.] Rule** 4001 *et seq*.

[*Note*: The rule relating to discovery in domestic relations matters generally is Pa.R.C.P. No. 1930.5.]

(d) **Report.** The hearing officer shall receive evidence, hear argument and, not later than 20 days after the close of the record, file with the court a report containing a recommendation with respect to the entry of an order of support. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order substantially in the form set forth in Rule 1910.27(e) stating:

(1) the amount of support calculated in accordance with the guidelines;

(2) by and for whom it shall be paid; and

(3) the effective date of the order.

(e) **Interim Order.** The court, without hearing the parties, shall enter an interim order consistent with the proposed order of the hearing officer. Each party shall be provided, either in person at the time of the hearing or by mail, with a copy of the interim order and written notice that any party may, within 20 days after the date of receipt or the date of mailing of the order, whichever occurs first, file with the domestic relations section written exceptions to the report of the hearing officer and interim order.

[*Note:* Objections to the entry of an interim order consistent with the proposed order may be addressed pursuant to Rule 1910.26.]

(f) **Exceptions.** Within 20 days after the date of receipt or the date of mailing of the report by the hearing officer, whichever occurs first, any party may file exceptions to the report or any part thereof, to rulings on objections to evidence, to statements or findings of facts, to conclusions of law, or to any other matters occurring during the hearing. Each exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived unless, prior to entry of the final order, leave is granted to file exceptions raising those matters. If exceptions are filed, any other party may file exceptions within 20 days of the date of service of the original exceptions.

(g) **Final Order.** If no exceptions are filed within the 20-day period, the interim order shall constitute a final order.

(h) **Argument.** If exceptions are filed, the interim order shall continue in effect. The court shall hear argument on the exceptions and enter an appropriate final order substantially in the form set forth in Rule 1910.27(e) within 60 days from the date of the filing of exceptions to the interim order. No motion for post-trial relief may be filed to the final order.

[EXPLANATORY COMMENT--1995

Language is added to subdivision (b) to acknowledge that the conference and hearing can be held the same day, and to provide for the immediate entry of an interim order in judicial districts where the hearing occurs at a later date. New subdivision (b)(2) permits entry of a guideline order after a conference which the defendant, though properly served, fails to attend. New subdivision (c)(2) is intended to prevent delays in the hearing of complex cases by requiring that requests for separate listing be made at least seven days in advance where the conference and hearing are scheduled on the same day.
In addition, the phrase "record hearing" in subdivision (a) replaces the reference to a "stenographic record" in recognition of the variety of means available to create a reliable record of support proceedings.

Amended subdivision (e) allows an interim order to be entered and served on the parties at the conclusion of the hearing, rather than after the expiration of the exceptions period as was true under the old rule. In addition, the amended subdivision requires that the interim order include language advising the parties of their right to file exceptions within ten days of the date of the order.

Support payments are due and owing under the interim order which continues in effect until the court enters a final order after considering the parties' exceptions.

Therefore, extension of the deadline for entering the final order by fifteen days does not prejudice the persons dependent upon payment of the support.

EXPLANATORY COMMENT—2006

The time for filing exceptions has been expanded from ten to 20 days. The purpose of this amendment is to provide ample opportunity for litigants and counsel to receive notice of the entry of the order, to assure Commonwealth-wide consistency in calculation of time for filing and to conform to applicable general civil procedural rules.]

Comment: Conference officers preside over office conferences completed pursuant to Rule 1910.11. Hearing officers preside over hearings conducted pursuant to Rule 1910.12. The appointment of hearing officers to hear actions in divorce or for annulment of marriage is authorized by Rule 1920.51.

The rule relating to discovery in domestic relations matters generally is Rule 1930.5.

Objections to the entry of an interim order consistent with the proposed order may be addressed pursuant to Rule 1910.26.

***See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.**

Rule 1915.4-2. Partial Custody. Office Conference. Hearing. Record. Exceptions. Order.

(a) **Office Conference.**

(1) The office conference shall be conducted by a conference officer.

(2) If the respondent fails to appear at the conference before the conference officer as directed by the court, the conference may proceed without the respondent.

(3) The conference officer may make a recommendation to the parties relating to partial custody or supervised physical custody of the child or children. If an agreement for partial custody or supervised physical custody is reached at the conference, the conference officer shall prepare a written order in conformity with the agreement for signature by the parties and submission to the court together with the officer's recommendation for approval or disapproval. The court may enter an order in accordance with the agreement without hearing the parties.

(4) At the conclusion of the conference, if an agreement relating to partial custody or supervised physical custody has not been reached, the parties shall be given notice of the date, time, and place of a hearing before a hearing officer, which may be the same day, but in no event shall be more than 45 days from the date of the conference.

(b) **Hearing.**

(1) The hearing shall be conducted by a hearing officer who **[must]** **shall** be a lawyer, and a record shall be made of the testimony. A hearing officer who is a lawyer employed by, or under contract with, a judicial district or appointed by the court shall not practice family law before a conference officer, hearing officer, or judge of the same judicial district.

(2) The hearing officer shall receive evidence and hear argument. The hearing officer may recommend to the court that the parties or the subject child or children submit to examination and evaluation by experts pursuant to Rule 1915.8.

(3) Within ten days of the conclusion of the hearing, the hearing officer shall file with the court and serve upon all parties a report containing

a recommendation with respect to the entry of an order of partial custody or supervised physical custody. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order, including a specific schedule for partial custody or supervised physical custody.

(4) Within 20 days after the date the hearing officer's report is mailed or received by the parties, whichever occurs first, any party may file exceptions to the report or any part thereof, to rulings on objections to evidence, to statements or findings of fact, to conclusions of law, or to any other matters occurring during the hearing. Each exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived unless, prior to entry of the final order, leave is granted to file exceptions raising those matters. If exceptions are filed, any other party may file exceptions within 20 days of the date of service of the original exceptions.

(5) If no exceptions are filed within the 20-day period, the court shall review the report and, if approved, enter a final order.

(6) If exceptions are filed, the court shall hear argument on the exceptions within 45 days of the date the last party files exceptions, and enter an appropriate final order within **[fifteen]** **15** days of argument. No motion for **[P]p**ost-**[T]t**rial [**R]r**elief may be filed to the final order.

[EXPLANATORY COMMENT--2006

The time for filing exceptions has been expanded from ten to 20 days. The purpose of this amendment is to provide ample opportunity for litigants and counsel to receive notice of the entry of the order, to assure Commonwealth-wide consistency in calculation of time for filing and to conform to applicable general civil procedural rules.]

Comment: *See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance. *See also* 50 U.S.C. § 3938 and 51 Pa.C.S. §§ 4109, 4110 related to child custody proceedings during a servicemember's deployment.

Rule 1915.4-3. [Non-Record Proceedings. Trials] Court Procedures.

(a) **Non-Record Proceedings.** In judicial districts utilizing an initial non-record proceeding, *i.e.,* office conference, if an agreement is not finalized by the

conclusion of the proceeding, the conference officer shall promptly notify the court that the matter should be listed for trial. A lawyer employed by, or under contract with, a judicial district or appointed by the court to serve as a conference officer to preside over a non-record proceeding shall not practice family law before a conference officer, hearing officer, or judge of the same judicial district.

(b) **Trial.** The trial before the court shall be *de novo*. The court shall hear the case and render a decision within the time periods set forth in **[Pa.R.C.P. No.]** **Rule** 1915.4.

[EXPLANATORY COMMENT--2018

The amendment to this rule, in conjunction with the amendment to Pa.R.C.P. No. 1915.1, standardizes terminology used in the custody process and identifies court personnel by title and in some cases qualifications. Of note, the term "mediator," which had been included in the rule, has been omitted and is specifically defined in Pa.R.C.P. No. 1915.1.

As in the support rules, custody conference officers preside over conferences and hearing officers preside over hearings. Regardless of the individual's title, presiding over a conference or a hearing triggers the family law attorney practice preclusion in this rule and in Pa.R.C.P. No. 1915.4-2(b) in the case of a hearing officer. Mediators, as defined in Pa.R.C.P. No. 1915.1 and as qualified in Pa.R.C.P. No. 1940.4, do not preside over custody conferences or hearings; rather, mediators engage custody litigants in alternative dispute resolution methods pursuant to Chapter 1940 of the Rules of Civil Procedure and, as such, the preclusion from practicing family law in the same judicial district in which an attorney/mediator is appointed is inapplicable.]

Comment: *See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance. *See also* 50 U.S.C. § 3938 and 51 Pa.C.S. §§ 4109, 4110 related to child custody proceedings during a servicemember's deployment.

Rule 1915.17. Relocation. [Notice and Counter-Affidavit]

(a) **Notice.** A party proposing to change the residence of a child which significantly impairs the ability of a non-relocating party to exercise custodial rights **[must] shall** notify every other person who has custodial rights to the child and provide a counter-affidavit by which a person may agree or object. The form of the notice and counter-affidavit are set forth in subdivisions (i) and (j) below. The notice shall be sent by certified mail, return receipt requested, addressee only or pursuant to **[Pa.R.C.P No.] Rule** 1930.4, no later than the [sixtieth] **60th** day before the date of the proposed change of residence or other time frame set forth in 23 Pa.C.S. § 5337(c)(2).

(b) **Objection.** If the other party objects to the proposed change in the child's residence, that party must serve the counter-affidavit on the party proposing the change by certified mail, return receipt requested, addressee only, or pursuant to **[Pa.R.C.P. No.] Rule** 1930.4 within 30 days of receipt of the notice required in subdivision (a) above. If there is an existing child custody case, the objecting party also shall file the counter-affidavit with the court.

(c) **No Objection.** If no objection to a proposed change of a child's residence is timely served after notice, the proposing party may change the residence of the child and such shall not be considered a “relocation” under statute or rule.

(d) **Expedited Process.** The procedure in any relocation case shall be expedited. There shall be no requirement for parenting education or mediation prior to an expedited hearing before a judge.

(e) **Order Confirming Relocation.** If the party proposing the relocation seeks an order of court, has served a notice of proposed relocation as required by 23 Pa.C.S. § 5337, has not received notice of objection to the move, and seeks confirmation of relocation, the party proposing the relocation shall file:

(1) a complaint for custody and petition to confirm relocation, when no custody case exists, or

(2) a petition to confirm relocation when there is an existing custody case and

(3) a proposed order including the information set forth at 23 Pa.C.S. § 5337(c)(3).

(f) **Process for Relocating Party After Objection.** If the party proposing the relocation has received notice of objection to the proposed move after serving a notice of proposed relocation as required by 23 Pa.C.S. §§ 5337 *et seq*., the party proposing relocation shall file:

(1) a complaint for custody or petition for modification, as applicable;

(2) a copy of the notice of proposed relocation served on the non-relocating party;

(3) a copy of the counter-affidavit indicating objection to relocation; and

(4) a request for a hearing.

(g) **Process for Opposing Party After Service of Notice.** If the non-relocating party has been served with a notice of proposed relocation and the party proposing relocation has not complied with subdivision (f) **[above]**, the non-relocating party may file:

(1) a complaint for custody or petition for modification, as applicable;

(2) a counter-affidavit as set forth in 23 Pa.C.S. § 5337(d)(1), and

(3) a request for a hearing.

(h) **Order Preventing Relocation.** If a non-relocating party has not been served with a notice of proposed relocation and seeks an order of court preventing relocation, the non-relocating party shall file:

(1) a complaint for custody or petition for modification, as applicable;

(2) a statement of objection to relocation; and

(3) a request for a hearing.

(i) **Form of Notice.** The notice of proposed relocation shall be substantially in the following form:

(Caption)

NOTICE OF PROPOSED RELOCATION

You, _____, are hereby notified that _____ (party proposing

relocation) _____ proposes to relocate with the following minor child(ren): _____.

To object to the proposed relocation, you must complete the attached counter-affidavit and serve it on the other party by certified mail, return receipt requested, addressee only, or pursuant to **[Pa.R.C.P. No.]** **Rule** 1930.4 within 30 days of receipt of this notice. If there is an existing child custody case, you also must file the counter-affidavit with the court. If you do not object to the proposed relocation within 30 days, the party proposing relocation has the right to relocate and may petition the court to approve the proposed relocation and to modify any effective custody orders or agreements. FAILURE TO OBJECT WITHIN 30 DAYS WILL PREVENT YOU FROM OBJECTING TO THE RELOCATION ABSENT EXIGENT CIRCUMSTANCES.

Address of the proposed new residence:

_____

☐ *Check here if the address is confidential pursuant to 23 Pa.C.S. § 5336(b).*

Mailing address of intended new residence (if not the same as above)

_____

☐ *Check here if the address is confidential pursuant to 23 Pa.C.S. § 5336(b).*

Names and ages of the individuals who intend to reside at the new residence:

Name	Age

☐ *Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).*

Home telephone number of the new residence:

☐ *Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).*

Name of the new school district and school the child(ren) will attend after relocation:

_____

☐ *Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).*

Date of the proposed relocation:

☐ *Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).*

Reasons for the proposed relocation:

_____

_____

_____

☐ *Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).*

Proposed modification of custody schedule following relocation:

_____

_____

_____

_____

Other information:

_____

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

_____

_____

_____

_____

[*Note: See* Pa.R.C.P. No. 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.]

(j) The counter-affidavit that **[must]** **shall** be served with the relocation notice shall be substantially in the following form as set forth in 23 Pa.C.S.§ 5337(d):

COUNTER-AFFIDAVIT REGARDING RELOCATION

This proposal of relocation involves the following child/children:

Child's Name	Age	Currently residing at:
_____	_____	_____
Child's Name	Age	Currently residing at:
_____	_____	_____
Child's Name	Age	Currently residing at:
_____	_____	_____

I have received a notice of proposed relocation and (*check all that apply*):

1. □ I do not object to the relocation

2. □ I do not object to the modification of the custody order consistent with the proposal for modification set forth in the notice.

3. □ I do not object to the relocation, but I do object to modification of the custody order.

4. □ I plan to request that a hearing be scheduled by filing a request for hearing with the court:

   a. □ Prior to allowing (name of child/children) to relocate.

   b. □ After the child/children relocate.

5. □ I do object to the relocation

6. □ I do object to the modification of the custody order.

I understand that in addition to objecting to the relocation or modification of the custody order above, I must also serve this counter-affidavit on the other party by certified mail, return receipt requested, addressee only, or pursuant to **[Pa.R.C.P. No.]** **Rule** 1930.4, and, if there is an existing custody case, I must file this counter-affidavit with the court. If I fail to do so within 30 days of my receipt of the proposed relocation notice, I understand that I will not be able to object to the relocation at a later time.

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

_____ _____

(Date) (Signature)

[*Note: See* Pa.R.C.P. No. 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.]

Comment: *See* Rule 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

***See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance. *See also* 50 U.S.C. § 3938 and 51 Pa.C.S. §§ 4109, 4110 related to child custody proceedings during a servicemember's deployment.**

Rule 1920.42. Obtaining Divorce Decrees Under [Section] 23 Pa.C.S. § 3301(c) or [Section] § 3301(d) [of the Divorce Code]. Affidavits and Counter-affidavits. Requirements of the Affidavit of Consent. Ancillary Claims. Orders Approving Grounds for Divorce. Notice of Intention to File the *Praecipe* to Transmit Record. *Praecipe* to Transmit Record.

(a) **23 Pa.C.S. § 3301(c)(1).** Obtaining a divorce decree under **[Section] 23 Pa.C.S. §** 3301(c)(1) **[of the Divorce Code]**.

(1) If a party has filed a complaint requesting a divorce on the ground of irretrievable breakdown, the court shall enter a decree in divorce after:

(i) proof of service of the complaint has been filed;

(ii) the parties have signed Affidavits of Consent 90 days or more after service of the complaint and have filed the affidavits within 30 days of signing, which may only be withdrawn by an order of court;

(iii) the ancillary claims under **[Pa.R.C.P. No.] Rule** 1920.31 and 1920.33 have been withdrawn by the party raising the claims, have been resolved by agreement of the parties or order of court, have not been raised in the pleadings, or in the case of a bifurcated divorce, the court has retained jurisdiction of the ancillary claims;

(iv) the parties have signed and filed Waivers of Notice of Intention to File the *Praecipe* to Transmit Record or, alternatively, the party requesting the divorce decree has served on the other party a Notice of Intention to File the *Praecipe* to Transmit Record, which included a blank Counter-Affidavit under **[Section] 23 Pa.C.S. §** 3301(c)(1) and a copy of the proposed *Praecipe* to Transmit Record that indicated the date and manner of service of the Notice of Intention to File the *Praecipe* to Transmit Record; and

(v) the party requesting the divorce decree has completed and filed a *Praecipe* to Transmit Record. If the parties have not waived the Notice of Intention to File the *Praecipe* to Transmit Record, the moving party shall wait a minimum of 20 days

after service of the Notice of Intention to File the *Praecipe* to Transmit Record before filing the *Praecipe* to Transmit Record.

[*Note: See* Pa.R.C.P. No. 1920.72(b) for the Affidavit of Consent.

***See* Pa.R.C.P. No. 1920.73(a) for the Notice of Intention to File the *Praecipe* to Transmit Record.**

***See* Pa.R.C.P. No. 1920.72(e)(1) for the Counter-Affidavit under Section 3301(c)(1) of the Divorce Code.**

***See* Pa.R.C.P. No. 1920.73(b) for the Waiver of Notice of Intention to File the *Praecipe* to Transmit Record.**

***See* Pa.R.C.P. No. 1920.73(c) for the *Praecipe* to Transmit Record.]**

(2) To the extent that grounds for divorce have been established under **[Section] 23 Pa.C.S. §** 3301(c)(1) **[of the Divorce Code]** as outlined in subdivision (a)(1)(ii) and the parties have been unable to resolve the ancillary claims, the court shall enter an order approving grounds for divorce after:

(i) the parties have signed and filed Waivers of Notice of Intention to File the *Praecipe* to Transmit Record or, alternatively, the party requesting the order approving grounds has served on the other party a Notice of Intention to File the *Praecipe* to Transmit Record, which included a blank Counter-Affidavit **[under Section 3301(c)(1)]** and a copy of the proposed *Praecipe* to Transmit Record that indicated the date and manner of service of the Notice of Intention to File the *Praecipe* to Transmit Record; and

(ii) the party requesting the order approving grounds has completed and filed a *Praecipe* to Transmit Record requesting the court enter an order approving grounds for divorce. If the parties have not waived the Notice of Intention to File the *Praecipe* to Transmit Record, the moving party shall wait a minimum of 20 days after service of the Notice of Intention to File the *Praecipe* to Transmit Record before filing the *Praecipe* to Transmit Record. If the court enters an order approving grounds for divorce, entry of the divorce decree shall be deferred until the ancillary claims have been resolved.

[*Note: See* Pa.R.C.P. No. 1920.73(a) for the Notice of Intention to File the *Praecipe* to Transmit Record.

***See* Pa.R.C.P. No. 1920.73(b) for the Waiver of Notice of Intention to File the *Praecipe* to Transmit Record.**

***See* Pa.R.C.P. No. 1920.73(c) for the *Praecipe* to Transmit Record.]**

(3) After the court enters an order approving grounds for divorce, a party may request, consistent with the judicial district's local rules and procedures, that the court either hears the ancillary claims or appoints a hearing officer to hear the ancillary claims as outlined in **[Pa.R.C.P. No.]** **Rule** 1920.51.

[*Note: See* Pa.R.C.P. No. 1920.74 for the Motion for Appointment of Hearing Officer.]

(4) If the parties resolve the ancillary claims by agreement after the court approves the grounds for the divorce but before the court enters an order disposing of the ancillary claims, the parties shall file a *Praecipe* to Transmit Record requesting the court enter the appropriate divorce decree. To the extent the agreement does not address all of the parties' claims raised in the pleadings, the party raising the outstanding claims shall withdraw the claims before the court enters a divorce decree.

(b) **23 Pa.C.S. § 3301(c)(2).** Obtaining a divorce decree under **[Section]** **23 Pa.C.S. §** 3301(c)(2) **[of the Divorce Code]**.

(1) If a party has filed a complaint requesting a divorce on the ground of irretrievable breakdown and a party has been convicted of a personal injury crime against his or her spouse, the court shall enter a decree in divorce after:

(i) proof of service of the complaint has been filed;

(ii) the party who is the victim of the personal injury crime:

(A) has signed and filed an Affidavit of Consent consistent with subdivision (a)(1)(ii); and

(B) has signed and filed an Affidavit to Establish Presumption of Consent under **[Section]** **23 Pa.C.S. §** 3301(c)(2) **[of the Divorce Code]** alleging **[his or her]** **the party's** status as a victim of a personal injury crime and that **[his or her]** **the party's** spouse has been convicted of that crime;

(iii) the filed affidavits and a blank Counter-Affidavit under **[Section]** **23 Pa.C.S. §** 3301(c)(2) **[of the Divorce Code]** have been served on the other party consistent with **[Pa.R.C.P. No.]** **Rule** 1930.4, and the other party has admitted or failed to deny the averments in the Affidavit to Establish Presumption of Consent under **[Section]** **23 Pa.C.S. §** 3301(c)(2) **[of the Divorce Code]**;

(A) If a party files a Counter-Affidavit **[under Section 3301(c)(2) of the Divorce Code]** denying an averment in the Affidavit to Establish Presumption of Consent **[under Section 3301(c)(2) of the Divorce Code]**, either party may present a motion requesting the court resolve the issue.

(B) After presentation of the motion in subdivision (A), the court may hear the testimony or, consistent with **[Pa.R.C.P. No.]** **Rule** 1920.51(a)(1)(ii)(D), appoint a hearing officer to hear the testimony and to issue a report and recommendation.

[*Note:* This subdivision requires service of the counter-affidavit on the non-moving party consistent with original process since the averments in the moving party's Affidavit to Establish Presumption of Consent under Section 3301(c)(2) of the Divorce Code are deemed admitted unless denied. *See* Pa.R.C.P. No. 1930.4 for service of original process and Pa.R.C.P. No. 1920.14(b) regarding failure to deny averments in the affidavit.]

(iv) the ancillary claims under **[Pa.R.C.P. Nos.]** **Rules** 1920.31 and 1920.33 have been withdrawn by the party raising the claims, have been resolved by agreement of the parties or order of court, have not been raised in the pleadings, or in the case of a bifurcated divorce, the court has retained jurisdiction of the ancillary claims;

(v) a minimum of 20 days from the date of service of the affidavits and blank Counter-Affidavit **[under Section 3301(c)(2)]** as set forth in **subdivision** (b)(1)(iii), the party requesting the divorce decree has served on the other party a Notice of Intention to File the *Praecipe* to Transmit Record, which included a copy of the proposed *Praecipe* to Transmit Record that indicated the date and manner of service of the Notice of Intention to File the *Praecipe* to Transmit Record, except that service of such Notice of Intention is not required if:

(A) the parties have signed and filed Waivers of Notice of Intention to File the *Praecipe* to Transmit Record; or

(B) the court finds that an attorney has not entered an appearance on the defendant's behalf and that the defendant cannot be located after a diligent search; and

(vi) the party requesting the divorce decree has completed and filed a *Praecipe* to Transmit Record. If the parties have not waived the Notice of Intention to File the *Praecipe* to Transmit Record, the moving party shall wait a minimum of 20 days after service of the Notice of Intention to File the *Praecipe* to Transmit Record before filing the *Praecipe* to Transmit Record.

[*Note: See* Pa.R.C.P. No. 1920.72(b) for the Affidavit of Consent.

***See* Pa.R.C.P. No. 1920.72(c) for the Affidavit to Establish Presumption of Consent under Section 3301(c)(2) of the Divorce Code.**

***See* Pa.R.C.P. No. 1920.72(e)(2) for the Counter-Affidavit under Section 3301(c)(2) of the Divorce Code.**

***See* Pa.R.C.P. No. 1920.73(a) for the Notice of Intention to File the *Praecipe* to Transmit Record.**

***See* Pa.R.C.P. No. 1920.73(b) for the Waiver of Notice of Intention to File the *Praecipe* to Transmit Record.**

***See* Pa.R.C.P. No. 1920.73(c) for the *Praecipe* to Transmit Record.]**

(2) To the extent that grounds for divorce have been established **[under Section 3301(c)(2) of the Divorce Code]** as outlined in subdivision (b)(1)(ii)-(iii) and the parties have been unable to resolve the ancillary claims, the court shall enter an order approving grounds for divorce after:

(i) a minimum of 20 days from the date of service of the affidavits and blank Counter-Affidavit **[under Section 3301(c)(2) of the Divorce Code]** as set forth in **subdivision** (b)(1)(iii), the party requesting the order approving grounds has served on the other party a Notice of Intention to File the *Praecipe* to Transmit Record, which included a copy of the proposed *Praecipe* to Transmit Record that indicated the date and manner of service of the Notice of Intention to File the *Praecipe* to Transmit Record, except that service of such Notice of Intention is not required if:

(A) the parties have signed and filed Waivers of Notice of Intention to File the *Praecipe* to Transmit Record; or

(B) the court finds that an attorney has not entered an appearance on the defendant's behalf and that the defendant cannot be located after a diligent search; and

(ii) the party requesting the order approving grounds has completed and filed a *Praecipe* to Transmit Record requesting the court enter an order approving grounds for divorce. If the parties have not waived the Notice of Intention to File the *Praecipe* to Transmit Record, the moving party shall wait a minimum of 20 days after service of the Notice of Intention to File the *Praecipe* to Transmit Record before filing the *Praecipe* to Transmit Record. If the court enters an order approving grounds for divorce, entry of the divorce decree shall be deferred until the ancillary claims have been resolved.

[*Note:* See Pa.R.C.P. No. 1920.73(a) for the Notice of Intention to File the *Praecipe* to Transmit Record.

***See* Pa.R.C.P. No. 1920.73(b) for the Waiver of Notice of Intention to File the *Praecipe* to Transmit Record.**

***See* Pa.R.C.P. No. 1920.73(c) for the *Praecipe* to Transmit Record.]**

(3) After the court enters an order approving grounds for divorce, a party may request, consistent with the judicial district's local rules and procedures, that the court either hears the ancillary claims or appoints a hearing officer to hear the ancillary claims as outlined in **[Pa.R.C.P. No.]** **Rule** 1920.51.

[*Note: See* Pa.R.C.P. No. 1920.74 for the Motion for Appointment of Hearing Officer.]

(4) If the parties resolve the ancillary claims by agreement after the court approves the grounds for the divorce but before the court enters an order disposing of the ancillary claims, the parties shall file a *Praecipe* to Transmit Record requesting the court enter the appropriate divorce decree. To the extent the agreement does not address all of the parties' claims raised in the pleadings, the party raising the outstanding claims shall withdraw the claims before the court enters a divorce decree.

(c) **23 Pa.C.S. § 3301(d).** Obtaining a divorce decree under **[Section]** **23 Pa.C.S. §** 3301(d) **[of the Divorce Code]**.

(1) If a party has filed a complaint requesting a divorce on the ground of irretrievable breakdown and the requisite separation period has elapsed, the court shall enter a decree in divorce after:

(i) proof of service of the complaint has been filed;

(ii) a party has signed and filed an Affidavit under **[Section]** **23 Pa.C.S. §** 3301(d) **[of the Divorce Code]** averring that the marriage is irretrievably broken and that the parties have been separate and apart for the required separation period;

(iii) the filed **[a]A**ffidavit and a blank Counter-Affidavit under **[Section]** **23 Pa.C.S. §** 3301(d) **[of the Divorce Code]** have been served on the other party consistent with **[Pa.R.C.P. No.]** **Rule** 1930.4, and the other party has admitted or failed to deny the averments in the Affidavit **[under Section 3301(d) of the Divorce Code]**;

(A) If a party files a Counter-Affidavit **[under Section 3301(d) of the Divorce Code]** denying an averment in the Affidavit **[under Section 3301(d) of the Divorce**

Code], including the date of separation, either party may present a motion requesting the court resolve the issue.

(B) After presentation of the motion in subdivision (A), the court may hear the testimony or, consistent with **[Pa.R.C.P. No.]** **Rule** 1920.51(a)(1)(ii)(D), appoint a hearing officer to hear the testimony and to issue a report and recommendation.

[*Note:* This subdivision requires service of the counter-affidavit on the nonmoving party consistent with original process since the averments in the moving party's Affidavit under § 3301(d) of the Divorce Code are deemed admitted unless denied. *See* Pa.R.C.P. No. 1930.4 for service of original process and Pa.R.C.P. No. 1920.14(b) regarding failure to deny averments in the affidavit.]

(iv) the ancillary claims under **[Pa.R.C.P. Nos.]** **Rules** 1920.31 and 1920.33 have been withdrawn by the party raising the claims, have been resolved by agreement of the parties or order of court, have not been raised in the pleadings, or in the case of a bifurcated divorce, the court has retained jurisdiction of the ancillary claims;

(v) a minimum of 20 days from the date of service of the [**a]A**ffidavit and blank Counter-Affidavit **[under Section 3301(d) of the Divorce Code]** as set forth in **subdivision** (c)(1)(iii), the party requesting the divorce decree has served on the other party a Notice of Intention to File the *Praecipe* to Transmit Record, which included a copy of the proposed *Praecipe* to Transmit Record that indicated the date and manner of service of the Notice of Intention to File the *Praecipe* to Transmit Record, except that service of such Notice of Intention is not required if:

(A) the parties have signed and filed Waivers of Notice of Intention to File the *Praecipe* to Transmit Record; or

(B) the court finds that an attorney has not entered an appearance on the defendant's behalf and that the defendant cannot be located after a diligent search; and

(vi) the party requesting the divorce decree has completed and filed a *Praecipe* to Transmit Record. If the parties have not waived the Notice of Intention to File the *Praecipe* to Transmit Record, the moving party shall wait a minimum of 20 days after service of the Notice of Intention to File the *Praecipe* to Transmit Record before filing the *Praecipe* to Transmit Record.

[*Note: See* Pa.R.C.P. No. 1920.72(d) for the Affidavit under Section 3301(d) of the Divorce Code.

***See* Pa.R.C.P. No. 1920.72(e)(3) for the Counter-Affidavit under Section 3301(d) of the Divorce Code.**

***See* Pa.R.C.P. No. 1920.73(a) for the Notice of Intention to File the *Praecipe* to Transmit Record.**

***See* Pa.R.C.P. No. 1920.73(b) for the Waiver of Notice of Intention to File the *Praecipe* to Transmit Record.**

***See* Pa.R.C.P. No. 1920.73(c) for the *Praecipe* to Transmit Record.]**

(2) To the extent that grounds for divorce have been established **[under Section 3301(d) of the Divorce Code]** as outlined in subdivision (c)(1)(ii)-(c)(1)(iii) and the parties have been unable to resolve the ancillary claims, the court shall enter an order approving grounds for divorce after:

(i) a minimum of 20 days from the date of service of the **[a]**<u>**A**</u>ffidavit and blank Counter-Affidavit **[under Section 3301(d) of the Divorce Code]** as set forth in <u>**subdivision**</u> (c)(1)(iii), the party requesting the order approving grounds has served on the other party a Notice of Intention to File the *Praecipe* to Transmit Record, which included a copy of the proposed *Praecipe* to Transmit Record that indicated the date and manner of service of the Notice of Intention to File the *Praecipe* to Transmit Record, except that service of such Notice of Intention is not required if:

(A) the parties have signed and filed Waivers of Notice of Intention to File the *Praecipe* to Transmit Record; or

(B) the court finds that an attorney has not entered an appearance on the defendant's behalf and that the defendant cannot be located after a diligent search; and

(ii) the party requesting the order approving grounds has completed and filed a *Praecipe* to Transmit Record requesting the court enter an order approving grounds for divorce. If the parties have not waived the Notice of Intention to File the *Praecipe* to Transmit Record, the moving party shall wait a minimum of 20 days after service of the Notice of Intention to File the *Praecipe* to Transmit Record before filing the *Praecipe* to Transmit Record. If the court enters an order approving grounds for divorce, entry of the divorce decree shall be deferred until the ancillary claims have been resolved.

***[Note: See* Pa.R.C.P. No. 1920.73(a) for the Notice of Intention to File the *Praecipe* to Transmit Record.**

***See* Pa.R.C.P. No. 1920.73(b) for the Waiver of Notice of Intention to File the *Praecipe* to Transmit Record.**

***See* Pa.R.C.P. No. 1920.73(c) for the *Praecipe* to Transmit Record.]**

(3) After the court enters an order approving grounds for divorce, a party may request, consistent with the judicial district's local rules and procedures, that the court either hears the ancillary claims or appoints a hearing officer to hear the ancillary claims as outlined in **[Pa.R.C.P. No.]** **Rule** 1920.51.

[*Note: See* Pa.R.C.P. No. 1920.74 for the Motion for Appointment of Hearing Officer.]

(4) If the parties resolve the ancillary claims by agreement after the court approves the grounds for the divorce but before the court enters an order disposing of the ancillary claims, the parties shall file a *Praecipe* to Transmit Record requesting the court enter the appropriate divorce decree. To the extent the agreement does not address all of the parties' claims raised in the pleadings, the party raising the outstanding claims shall withdraw the claims before the court enters a divorce decree.

[EXPLANATORY COMMENT--2019

On April 21, 2016, Act 24 of 2016 (Act of Apr. 21, 2016, P.L. 166, No. 24) amended the Divorce Code by adding 23 Pa.C.S. § 3301(c)(2). Section 3301(c)(2) creates a presumption of consent to a divorce if a party is the victim of a personal injury crime committed by his or her spouse, as outlined in 23 Pa.C.S. § 3103. The Act amended other correlative statutes in the Divorce Code, as well. To effectively incorporate procedures for the newly enacted Section 3301(c)(2) into the Rules of Civil Procedure, Pa.R.C.P. No. 1920.42 was rescinded and replaced.

In implementing Section 3301(c)(2), the rule utilizes an affidavit/counter-affidavit procedure similar to a Section 3301(d) divorce, which served as a template for the new procedure. The process for establishing the presumption of consent in Section 3301(c)(2) requires the party to aver in an affidavit that he or she had been the victim of a personal injury crime and that his or her spouse had been convicted of that personal injury crime. In response, the allegedly convicted spouse may oppose the establishment of the presumption by completing and filing a counter-affidavit. If the allegedly convicted spouse opposes the establishment of the presumption, the court may either schedule a hearing on the establishment of the presumption or appoint a master to do so. As part of the revised divorce procedures, amended Pa.R.C.P. No. 1920.51(a)(1) permits the appointment of a master for a determination of the presumption under Section 3301(c)(2). To effectuate the new procedures for Section 3301(c)(2) divorces, several additional forms, including an Affidavit to Establish Presumption of Consent and a Counter-Affidavit under Section 3301(c)(2), have been added to the rules. *See* Pa.R.C.P. No. 1920.72(c) and (e)(2).

In addition to the changes to the rule related to 23 Pa.C.S. § 3301(c)(2), the rule has been further revised to provide a uniform practice across the Commonwealth for establishing a definitive point when the parties can move the court for resolution of any ancillary claims. As the court cannot resolve the ancillary claims until grounds for divorce have been established, Pa.R.C.P. No. 1920.42 includes procedures for obtaining approval of grounds for divorce in cases in which the parties have unresolved ancillary claims. This process requires that the parties obtain a court order approving grounds for divorce before seeking the appointment of a divorce master or requesting the court hear the ancillary claims raised in the pleadings. Forms have been correlatively amended or retitled to reflect this new procedure. The Waiver of Notice of Intention has been moved from Pa.R.C.P. No. 1920.72 to Pa.R.C.P. No. 1920.73.

As a result of these changes, Pa.R.C.P. No. 1920.42 specifically outlines the process for obtaining a decree for Section 3301(c)(1), Section 3301(c)(2), and Section 3301(d) divorces. Although the rule's length has expanded extensively, the detailed procedure alleviates confusion on when and how to obtain

a divorce decree and further assists unrepresented parties to maneuver through a complicated procedure.]

Comment: *See* Rule 1920.72(b) for the Affidavit of Consent.

See Rule 1920.72(c) for the Affidavit to Establish Presumption of Consent under 23 Pa.C.S. § 3301(c)(2).

See Rule 1920.72(d) for the Affidavit under 23 Pa.C.S. § 3301(d).

See Rule 1920.72(e)(1) for the Counter-Affidavit under 23 Pa.C.S. § 3301(c)(1).

See Rule 1920.72(e)(2) for the Counter-Affidavit under 23 Pa.C.S. § 3301(c)(2).

See Rule 1920.72(e)(3) for the Counter-Affidavit under 23 Pa.C.S. § 3301(d).

See Rule 1920.73(a) for the Notice(s) of Intention to File the *Praecipe* to Transmit Record.

See Rule 1920.73(b) for the Waiver of Notice of Intention to File the *Praecipe* to Transmit Record.

See Rule 1920.73(c) for the *Praecipe* to Transmit Record.

See Rules 1920.51(a)(3) and 1920.74(a) for the Motion for Appointment of Hearing Officer.

Subdivision (e) requires service of the counter-affidavit on the non-moving party consistent with original process since the averments in the moving party's Affidavit to Establish Presumption of Consent under 23 Pa.C.S. § 3301(c)(2) are deemed admitted unless denied. See Rule 1930.4 for service of original process and Rule 1920.14(b) regarding failure to deny averments in the affidavit.

Subdivision (i) requires service of the counter-affidavit on the nonmoving party consistent with original process since the averments in the moving party's Affidavit under 23 Pa.C.S. § 3301(d) are deemed admitted unless denied. See Rule 1930.4 for service of original process and Rule 1920.14(b) regarding failure to deny averments in the affidavit.

***See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.**

Rule 1920.46. [Affidavit of Non-Military Service] Rescinded.

[If the defendant fails to appear in the action, the plaintiff shall file an affidavit regarding military service with the motion for appointment of a master, prior to a trial by the court, or with the plaintiff's affidavit required by Pa.R.C.P. No. 1920.42(b)(1)(ii) and (c)(1)(ii).

Note: **The Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901-4043, requires that in cases in which the defendant does not make an appearance, the plaintiff must file an affidavit of nonmilitary service before the court may enter judgment. If the defendant is in the military service and an attorney has not entered an appearance on behalf of the defendant, a judgment shall not be entered until the court appoints an attorney to represent the defendant and protect his or her interest.**

Actions for divorce under Section 3301(c)(2) and (d)(1)(i) of the Divorce Code are governed by Pa.R.C.P. No. 1920.42(b) and (c), respectively.]

EXPLANATORY COMMENT—2003

35 P.S. § 450.602 previously required a certificate of each divorce or annulment decreed in the Commonwealth to be transmitted to the Vital Statistics Division of the Commonwealth of Pennsylvania Department of Health. The statute was amended October 30, 2001, P.L. 826, No. 82, § 1, effective in 60 days, to require that the prothonotary submit a monthly statistical summary of divorces and annulments, rather than individual forms for each decree. Thus, subdivision (a) of Rule 1920.46, requiring the filing of the vital statistics form, is no longer necessary. Former subdivision (b) now comprises the entirety of the rule and the title has been amended to reflect that the rule applies only to the affidavit regarding military service.]

Rule 1920.51. Hearing by the Court. Appointment of Hearing Officer. Notice of Hearing.

(a) **Hearing.** In an action of divorce or annulment:

(1) the court may:

(i) hear the testimony; or

(ii) upon motion of a party or of the court, appoint a hearing officer:

(A) before entry of the divorce decree to hear the testimony for the ancillary claims of alimony, equitable division of marital property, partial physical custody, supervised physical custody, counsel fees, and costs and expenses, which are raised in the pleadings, and to issue a report and recommendation, provided that grounds for divorce under **[Sections] 23 Pa.C.S. §§** 3301(c) or 3301(d) **[of the Divorce Code]** have been established and approved by the court as outlined in **[Pa.R.C.P. No.] Rule** 1920.42;

(B) before approving grounds for divorce under **[Sections] 23 Pa.C.S. §§** 3301(c) or 3301(d) **[of the Divorce Code]** for the limited purpose of assisting the parties and the court on issues of discovery or settlement;

(C) to hear the testimony for establishing grounds for divorce under **[Sections] 23 Pa.C.S. §§** 3301(a) or 3301(b) **[of the Divorce Code]** or annulment and the ancillary claims, which are raised in the pleadings, and to issue a report and recommendation; or

(D) after a party files a counter-affidavit denying the averments in the affidavit in an action under **[Section] 23 Pa.C.S. §§** 3301(c)(2) or 3301(d) **[of the Divorce Code]**, including the date of separation, to hear the testimony and to issue a report and recommendation.

(2) the court shall not appoint a hearing officer:

(i) to approve grounds for divorce under **[Sections]** **23 Pa.C.S. §§** 3301(c) or 3301(d) **[of the Divorce Code]**; or

***[Note: See* Pa.R.C.P. No. 1920.42 for approving grounds for divorce under Sections 3301(c) and 3301(d) of the Divorce Code.]**

(ii) for the claims of legal custody, sole physical custody, primary physical custody, shared physical custody, or paternity.

[*Note*: Section 3321 of the Divorce Code prohibits the appointment of a hearing officer as to the claims of custody and paternity. However, as set forth in Pa.R.C.P. No. 1920.91(3), the Supreme Court of Pennsylvania suspended Section 3321 insofar as that section prohibits the appointment of a hearing officer in partial physical custody cases.]

(3) The Motion for the Appointment of a Hearing Officer and the order shall be substantially in the form prescribed by **[Pa.R.C.P. No.]** **Rule** 1920.74. The order appointing the hearing officer shall specify the issues or ancillary claims that are referred to the hearing officer.

(4) A permanent or standing hearing officer employed by or under contract with a judicial district or appointed by the court shall not practice family law before a conference officer, hearing officer, permanent or standing hearing officer, or judge of the same judicial district.

[*Note*: Conference officers preside at office conferences under Pa.R.C.P. No. 1910.11. Hearing officers preside at hearings under Pa.R.C.P. No. 1910.12. The appointment of hearing officer to hear actions in divorce or annulment is authorized by Section 3321 of the Divorce Code.]

(b) **Hearing Notice.** Written notice of the hearing shall be given to each attorney of record by the hearing officer. If a hearing officer has not been appointed, the prothonotary, clerk, or other officer designated by the court shall give the notice.

(c) **Service of Notice.** If no attorney has appeared of record for a party, notice of the hearing shall be given to the party by the hearing officer, or if a hearing officer has not been appointed, by the prothonotary, clerk, or other officer designated by the court, as follows:

(1) to the plaintiff, by ordinary mail to the address on the complaint;

(2) to the defendant,

(i) if service of the complaint was made other than pursuant to special order of court, by ordinary mail to the defendant's last known address; or

(ii) if service of the complaint was made pursuant to special order of court, **[(a)]** **either** by sending a copy of the notice by ordinary mail to the persons, if any, named in the investigation affidavit, likely to know the present whereabouts of the defendant; **[and (b)]** **or** by sending a copy by registered mail to the defendant's last known address.

[*Note:* Under Rule 76, registered mail includes certified mail.]

(d) **Advertising.** Advertising of notice of the hearing shall not be required.

(e) **Proof of Notice.** Proof of notice shall be filed of record.

[*Note:* Consistent with Section 3301(e) of the Divorce Code as amended, these rules contemplate that if a divorce decree may be entered under the no fault provisions of §§ 3301(c) or (d), a divorce decree will be entered on these grounds and no hearing shall be required on any other grounds.]

[EXPLANATORY COMMENT--1994

While subdivision (a)(2)(ii) clearly prohibits appointment of a master to determine a divorce claim brought under §§ 3301(c) or 3301(d), the provision does permit a master to hear claims which are joined with the divorce action.

The rule is amended to conform with proposed new Rules 1915.4-1 and 1915.4-2, and to remove the implied prohibition against the use of hearing officers in partial custody or visitation cases.

EXPLANATORY COMMENT--2010

The rule is amended to clarify the role of the master in a divorce case when either party has asserted grounds for divorce pursuant to § 3301(c) or § 3301(d) of the Divorce Code. The rule had been interpreted in some jurisdictions as requiring the entry of a bifurcated decree before a master could be appointed to hear economic claims.

EXPLANATORY COMMENT--2019

Subdivision (a)(1)(ii)(A) provides for the appointment of a master to hear, *inter alia*, partial physical custody cases. The authority for a master to hear partial physical custody cases is 23 Pa.C.S. § 3321, which the Supreme Court of Pennsylvania suspended in part to allow masters to hear partial physical custody cases. However, this rule should not be construed to require a court to appoint masters in partial physical custody or supervised physical custody cases. Nor should the rule be construed as inconsistent with Pa.R.C.P. Nos. 1915.4-1, 1915.4-2, or 1915.4-3 that provide for conference officers and hearing officers in custody cases.]

Comment: *See* Rule 1920.42 for approving grounds for divorce under 23 Pa.C.S. §§ 3301(c) and 3301(d).

23 Pa.C.S. § 3321 prohibits the appointment of a hearing officer as to the claims of custody and paternity. However, as set forth in Rule 1920.91 the Supreme Court of Pennsylvania suspended 23 Pa.C.S. § 3321 insofar as that section prohibits the appointment of a hearing officer in partial physical custody cases.

***See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.**

Conference officers preside at office conferences under Rule 1910.1. Hearing officers preside at hearings under Rule 1910.12. The appointment a hearing officer to hear actions in divorce or annulment is authorized by 23 Pa.C.S. § 3321.

Under Rule 76, registered mail includes certified mail.

Consistent with 23 Pa.C.S. § 3301(e), these rules contemplate that if a divorce decree may be entered under the no fault provisions of §§ 3301(c) or (d), a divorce decree will be entered on these grounds and no hearing shall be required on any other grounds.

Subdivision (a)(1)(ii)(A) provides for the appointment of a hearing officer to hear, *inter alia*, partial physical custody cases. The authority for a master to hear partial physical custody cases is 23 Pa.C.S. § 3321, which the Supreme Court of Pennsylvania suspended in part to allow hearing officers to hear partial physical custody cases. However, this rule should not be construed to require a court to appoint hearing officers in partial physical custody or supervised physical custody cases. Nor should the rule be construed as inconsistent with Pa.R.Civ.P. 1915.4-1, 1915.4-2, or 1915.4-3 that provide for conference officers and hearing officers in custody cases.

Rule 1930.6. Paternity. [Actions. Scope. Venue. Commencement of Action]

(a) This rule shall govern the procedure by which a putative father may initiate a civil action to establish paternity and seek genetic testing. Such an action shall not be permitted if an order already has been entered as to the paternity, custody, or support of the child, or if a support or custody action to which the putative father is a party is pending.

(b) An action may be brought only in the county in which the defendant or the child**[(ren)]** reside**s**.

(c) An action shall be commenced by filing a verified complaint to establish paternity and for genetic testing substantially in the form set forth in subdivision (c)(1). The complaint shall have as its first page the Notice of Hearing and Order set forth in subdivision (c)(2).

[*Note: See* Pa.R.C.P. No. 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.]

(1) The complaint filed in a civil action to establish paternity shall be substantially in the following form:

(Caption)

COMPLAINT TO ESTABLISH PATERNITY AND FOR GENETIC TESTING

Plaintiff, _____, requests genetic testing to establish paternity pursuant to 23 Pa.C.S. § 4343 and in support of that request states that:

1. Plaintiff is an adult individual who resides at

2. Defendant is an adult individual who resides at

3. Defendant is the natural mother and Plaintiff believes that he may be the natural father of the following child(ren):

Child's Name Date of Birth

4. The above-named children reside at the following address with the following individuals:

Address	Person(s) Living with Child

5. Defendant was/was not married at the time the child(ren) was/were conceived or born.

6. Defendant is/is not now married.

   If married, spouse's name:

7. There is/is not a custody, support or other action involving the paternity of the above-named child(ren) now pending in any jurisdiction.

   Identify any such actions by caption and docket number

8. There has/has not been a determination by any court as to the paternity of the child(ren) in any prior support, custody, divorce, or any other action.

   If so, identify the action by caption and docket number

9. Plaintiff agrees to pay all costs associated with genetic testing directly to the testing facility in accordance with the procedures established by that facility.

Wherefore, Plaintiff requests that the court order Defendant to submit to genetic testing and to make the child(ren) available for genetic testing.

I verify that the statements made in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Petitioner

(2) The Notice of Hearing and Order required by this rule shall be substantially in the following form:

(Caption)

NOTICE OF HEARING AND ORDER

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following papers, you must appear at the hearing scheduled below. If you fail to do so, the case may proceed against you and a final order may be entered against you granting the relief requested by the plaintiff.

Plaintiff and Defendant are directed to appear on the _____ day of _____, 20__ at __.m. in courtroom _____ for a hearing on Plaintiff's request for genetic testing. If you fail to appear as ordered, the court may enter an order in your absence requiring you and your child(ren) to submit to genetic tests.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(name)_____

(address)_____

(telephone number)_____

Americans with Disabilities Act of 1990

The Court of Common Pleas of _____ County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference or hearing.

(d) **Service.** Service of original process and proof of service in a civil action to establish paternity shall be in accordance with Rule 1930.4.

(e) **Hearing and Order.** At the hearing, the judge will determine whether or not the plaintiff is legally entitled to genetic testing and, if so, will issue an order directing the defendant and the child(ren) to submit to genetic testing, the cost of which shall be borne by the plaintiff.

[EXPLANATORY COMMENT--2001
Where the paternity of a child born out-of-wedlock is disputed, 23 Pa.C.S. § 4343 provides that the court shall make the determination of paternity in a civil action without a jury. That statutory provision also states, "A putative father may not be prohibited from initiating a civil action to establish paternity." Rule 1930.6 governs the procedures by which a putative father may initiate a civil action to establish paternity outside the context of a support or custody proceeding.]

Comment: *See* Rule 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

Where the paternity of a child born out-of-wedlock is disputed, 23 Pa.C.S. § 4343 provides that the court shall make the determination of paternity in a civil action without a jury. That statutory provision also states, "A putative father may not be prohibited from initiating a civil action to establish paternity." This rule governs the procedures by which a putative father may initiate a civil action to establish paternity outside the context of a support or custody proceeding.

***See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.**

-The following text is entirely new-

Rule 1930.10. Servicemembers Civil Relief Act.

(a) **Affidavit.** If a defendant/respondent does not make an appearance in a proceeding, and before the court enters an order in favor of the plaintiff/petitioner, the plaintiff/petitioner shall file an affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931:

(1) stating whether the non-appearing defendant/respondent is in military service and showing necessary facts to support the affidavit; or

(2) if the plaintiff/petitioner is unable to determine whether the non-appearing defendant/respondent is in military service, that the plaintiff/petitioner is unable to determine whether the non-appearing defendant/respondent is in military service.

(b) **Proceeding.** For purposes of this rule, the term "proceeding" shall have the following meanings in the indicated actions.

(1) **Support.** When a party does not attend an office conference as set forth in Pa.R.Civ.P. 1910.11 or 1910.12.

(2) **Divorce or Annulment.**

(1) **Sections 3301(a) or (b), or Section 3303.** When a party does not attend a judicial or divorce hearing officer's conference or conciliation; or

(2) **Sections 3301(c)(2) or (d).** When a party does not file a counter-affidavit within the specified time after service of the affidavit required by Pa.R.Civ.P. 1920.42(b)(1)(ii) or (c)(1)(ii).

(3) **Protection from Abuse and Protection of Victims of Sexual Violence or Intimidation Matters.** When a party does not attend a temporary or final hearing pursuant to Pa.R.Civ.P. 1901, *et seq*. or Pa.R.Civ.P. 1951, *et seq*.

(4) **Custody.**

(i) **Initial Proceeding or Modification.** When a party does not attend an office conference as set forth in Pa.R.Civ.P. 1915.4-

2 or a non-record proceeding as set forth in Pa.R.Civ.P. 1915.4-3; or

(ii) **Relocation.** When a party proposes a relocation as set forth in Pa.R.Civ.P. 1915.17 and after service of the Notice of Proposed Relocation, the non-relocating party does not return or file the counter-affidavit within the specified time.

(5) **Paternity.**

(i) **Civil Action.** When a putative father initiates a civil action to establish paternity and requests genetic testing pursuant to Pa.R.Civ.P. 1930.6, the mother does not attend the hearing as provided in Pa.R.Civ.P. 1930.6(e).

(ii) **Support or Custody Action.** When a paternity issue is raised in a support or custody action, a party does not attend the proceeding as provided in subdivision (b)(1) or (b)(2)(i), respectively.

(6) **Pending Actions.** When a party is requesting relief from the court, including but not limited to a contempt proceeding or a request for special or emergency relief, which may adversely affect a servicemember's civil rights during military service, a party does not attend the proceeding.

Comment: "Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If a parent or guardian is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. §§ 4101 *et seq*., may provide additional protections and procedures.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it meets the requirements of this rule.

Rule 1956. [No] Responsive Pleading Not Required.

No pleading need be filed in response to the petition or the certified emergency order. All averments not admitted shall be deemed denied.

Comment: *See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.

Pennsylvania Rules of Orphans' Court Procedure

-The following text is entirely new-

Rule 2.12. Servicemembers Civil Relief Act.

In any matter brought pursuant to this Chapter, the accountant shall state in a filed affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931, for every proposed representative identified in Rule 2.4(b)(2)–(3) and every interested party not represented pursuant to that rule:

(a) whether the proposed representative or interested party is in military service and showing necessary facts to support the affidavit; or

(b) if the accountant is unable to determine whether the proposed representative or interested party is in military service, that the accountant is unable to determine whether the proposed representative or interested party is in military service.

Comment: As used in this rule, the terms "interested party" and "proposed representative" are limited to individuals, insofar as an entity is incapable of military service. The accountant is not required to provide an affidavit for an entity.

"Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If an interested party is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., may impose additional protections. The Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, also provides protections for Pennsylvania National Guard members in active service of the Commonwealth that, *inter alia*, prohibit the issuance or enforcement of civil process.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it meets the requirements of this rule.

The accountant is not required to file the affidavit for an interested party represented pursuant to Pa.R.O.C.P. 2.4(b)–(c), pertaining to representation of parties in interest.

-The following text is entirely new-

Rule 3.16. Servicemembers Civil Relief Act.

In any matter brought pursuant to this Chapter, the petitioner shall state in a filed affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931, for every proposed representative identified in Rule 3.4(a)(7)(ii)-(iii) and every interested party not represented pursuant to that rule:

(a) whether the proposed representative or interested party is in military service and showing necessary facts to support the affidavit; or

(b) if the petitioner is unable to determine whether the proposed representative or interested party is in military service, that the petitioner is unable to determine whether the proposed representative or interested party is in military service.

Comment: As used in this rule, the terms "interested party" and "proposed representative" are limited to individuals, insofar as an entity is incapable of military service. The petitioner is not required to provide an affidavit for an entity.

"Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If an interested party is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., may impose additional protections. The Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, also provides protections for Pennsylvania National Guard members in active service of the Commonwealth that, *inter alia*, prohibit the issuance or enforcement of civil process.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it meets the requirements of this rule.

The petitioner is not required to file the affidavit for an interested party represented pursuant to Rule 3.4(a)(7)(ii)-(iii), pertaining to representation of parties in interest.

Rule 14.1. Guardianship Petition Practice and Pleading.

(a) **Proceedings for Adjudication of Incapacity and Appointment of a Guardian.** The following petition practice and pleading requirements set forth in Chapter III (Petition Practice and Pleading) shall be applicable to proceedings for the adjudication of incapacity and appointment of a guardian:

(1) Rule 3.2 (Headings; Captions);

(2) Rule 3.3 (Contents of All Petitions; General and Specific Averments);

(3) Rule 3.12 (Signing);

(4) Rule 3.13 (Verification); **[and]**

(5) Rule 3.14 (Amendment); **and**

(6) **Rule 3.16 (Servicemembers Civil Relief Act) for persons identified in Rule 14.2(a)(3)**.

(b) **Responsive Pleadings to a Petition for Adjudication of Incapacity and Appointment of a Guardian Filed Pursuant to Rule 14.2.**

(1) Permitted responsive pleadings to a petition seeking the adjudication of incapacity and appointment of a guardian are limited to those identified in Rule 3.6 (Pleadings Allowed After Petition) and shall be subject to Rules 3.10 (Denials; Effect of Failure to Deny) and 3.11 (Answer with New Matter).

(2) The alleged incapacitated person and any person or institution served pursuant to Rule 14.2(f)(2) may file a responsive pleading.

(3) Any responsive pleading shall be filed with the clerk and served pursuant to Rule 4.3 (Service of Legal Paper Other than Citations or Notices) on all others entitled to file a responsive pleading pursuant to **[subparagraph (b)(2)]** **subdivision (b)(2)**.

(4) All responsive pleadings shall be filed and served no later than five days prior to the hearing. The failure to file or timely file and serve a responsive pleading does not waive the right to raise an objection at the hearing.

(5) The court shall determine any objections at the adjudicatory hearing.

(c) **All Other Petitions for Relief.** Unless otherwise provided by **[Rule]** **rule** in this Chapter, the petition practice and pleading requirements set forth in Chapter III shall be applicable to any proceeding under these **[Rules]** **rules** other than a petition seeking the adjudication of incapacity and appointment of a guardian. ''Interested party'' as used in Chapter III shall include all those entitled to service pursuant to Rule 14.2(f).

(d) **Intervention.** A petition to intervene shall set forth the ground on which intervention is sought and a statement of the issue of law or question of fact the petitioner seeks to raise. The petitioner shall attach to the petition a copy of any pleading that the petitioner will file if permitted to intervene. A copy of the petition shall be served pursuant on all those entitled to service pursuant to Rule 14.2(f).

[Explanatory Comment] **Comment:** This **[Rule]** **rule** is intended to specify the provisions and procedures of Chapter III that are applicable to proceedings under Chapter XIV. In proceedings for the adjudication of incapacity and appointment of a guardian, responsive pleadings are permitted as a means of identifying contested legal issues and questions of fact prior to the adjudicatory hearing. However, given the abbreviated time for filing a responsive pleading relative to other proceedings **[(*Compare* Pa. O.C. Rule 3.7(a))]**, the failure to file a responsive pleading should not operate to prelude an issue or objection from being raised and considered at the hearing. ***Compare* Pa.R.O.C.P. 3.7(a)).** Such pleadings should not be filed as a means of delaying the hearing on the merits of the petition.

The practice for other petitions is to follow the requirements of Chapter III. Nothing in this **[Rule]** **rule** is intended to prevent relief being sought on an expedited basis, provided the petitioner or respondent is able to establish circumstances to the satisfaction of the court warranting disregard of procedural requirements. *See* **[Pa. O.C. Rule] Pa.R.O.C.P.** 1.2(a).

Rule 15.7. Voluntary Relinquishment to Agency.

* * *

[Explanatory] Comment: See Rule 15.23 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a birth parent, putative father, or presumptive father does not make an appearance.

Section 2733(c) of the Adoption Act requires the agency, the intermediary or an attorney for a party to provide notice of the opportunity to enter into a Contact Agreement to the Prospective Adoptive Parents, a birth parent, and, in some instances, a child. Notice to a birth relative who is not a birth parent is not statutorily required, although birth relatives may enter into and become parties to a Contact Agreement. An original birth certificate or certification of registration of the child's birth must be filed with the clerk by the time of filing the initial petition to terminate parental rights. *See* **[Rule] Pa.R.O.C.P.** 15.3(b).

Rule 15.8. Voluntary Relinquishment to Adult Intending to Adopt Child.

* * *

[Explanatory] Comment: An original birth certificate or certification of registration of the child's birth must be filed with the clerk by the time of filing the initial petition to terminate parental rights. *See* **[Rule] Pa.R.O.C.P.** 15.3(b).

See Rule 15.23 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a birth parent, putative father, or presumptive father does not make an appearance.

For additional information about notice of the opportunity to enter into a Contact Agreement, see **[the Explanatory Comment to Rule 15.7] Pa.R.O.C.P. 15.7, cmt**.

Rule 15.9. Alternative Procedure for Relinquishment by Confirmation of Consent to Adoption.

* * *

[Explanatory] Comment: An original birth certificate or certification of registration of the child's birth must be filed with the clerk by the time of filing the initial petition to terminate parental rights. *See* **[Rule] Pa.R.O.C.P.** 15.3(b).

See Rule 15.23 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a birth parent, putative father, or presumptive father does not make an appearance.

For additional information about notice of the opportunity to enter into a Contact Agreement, see **[the Explanatory Comment to Rule 15.7] Pa.R.O.C.P. 15.7, cmt**.

Rule 15.10. Involuntary Termination of Parental Rights.

* * *

[Explanatory] Comment: An original birth certificate or certification of registration of the child's birth must be filed with the clerk by the time of filing the initial petition to terminate parental rights. *See* **[Rule] Pa.R.O.C.P.** 15.3(b).

If the petitioner is an agency, Prospective Adoptive Parents need not have been identified prior to the agency's filing of a petition to involuntarily terminate parental rights. Also, an averment of a present intent to adopt the child is not required if the petitioner is an agency. Where petitioner is an individual, see Rule 15.6. Neither the averments nor evidence set forth in subdivisions (a)(13) and (b)(2) are required when the petition has been filed by a parent seeking to involuntarily terminate the parental rights of the other parent pursuant to 23 Pa.C.S. § 2511(a)(7)(relating to a child conceived as a result of a rape or incest). *See* 23 Pa.C.S. § 2514.

See Rule 15.23 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a birth parent, putative father, or presumptive father does not make an appearance at the hearing on the petition.

Section 2733(c) of the Adoption Act requires the agency or intermediary, counsel representing the agency or intermediary, or counsel representing any other party to provide notice to the Prospective Adoptive Parents, birth parents, and, in some instances, a child of the opportunity to enter into a Contact Agreement. The statute does not require notice to birth relatives who are not the birth parents, although birth relatives may enter into and become parties to a Contact Agreement.

It is understood that County Agencies may be encouraged early in the process, even during dependency proceedings, to give notice to a birth parent of the opportunity to enter into a Contact Agreement. Requiring the verified statement to set forth the specific date(s) as to when notice was given is only to further ensure that the particular notice was given and not to suggest that providing this notice is time sensitive and expires after a certain time.

Rule 15.13. Adoption.

* * *

[Explanatory] Comment: The court, in its discretion, can dispense with any statutory requirement of the Adoption Act for cause shown. *See 23* Pa.C.S. § 2901. As a result, if petitioner is unable to satisfy all the prerequisites or attach all the exhibits required by the Adoption Act, the adoption petition should not be dismissed summarily. Rather, the petitioner should be afforded an opportunity to demonstrate why a statutory requirement has not or cannot be met and why the proposed adoptee's best interests nevertheless are served by granting the adoption petition. *In re Adoption of R.B.F. and R.C.F.*, 803 A.2d 1195 (Pa. 2002). If, upon reviewing the petition's averments as to why a statutory requirement should be waived, the court determines that cause has been demonstrated, the court can grant the relief requested and dispense with the relevant statutory requirement without conducting a hearing. However, if the court is not inclined to waive the pertinent statutory requirement, the petitioner is entitled to a hearing and an opportunity to present evidence in support of the averments in the petition. *See In re Adoption of R.B.F. and R.C.F.*

[Subparagraph] Subdivision (c)(1) **[of this Rule]** applies if a parent's parental rights are being terminated as part of the hearing on the adoption petition. In such cases, the birth parent, putative father, or presumptive father whose rights are being terminated must receive notice of the adoption hearing in accordance with Rule 15.4. On the other hand, such persons do not need to be notified of the adoption hearing if (i) he or she previously consented to the adoption and his or her consent was confirmed by the court as provided in 23 Pa.C.S. § 2504 and Rule 15.9; (ii) he or she previously relinquished his or her parental rights as provided in 23 Pa.C.S. §§ 2501, 2502 and Rule 15.7 or Rule 15.8 as applicable; or (iii) his or her parental rights were involuntarily terminated by the court as provided in 23 Pa.C.S. §§ 2511 *et seq.* and Rule 15.10.

See Rule 15.23 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a birth parent, putative father, or presumptive father does not make an appearance at the hearing on the petition.

-The following text is entirely new-

Rule 15.23. Servicemembers Civil Relief Act.

In any matter brought pursuant to this Chapter, in which a birth parent, putative father, or presumptive father does not make an appearance, and before the court enters judgment in favor of the petitioner, the petitioner shall state in a filed affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931:

(a) whether the non-appearing birth parent, putative father, or presumptive father is in military service and showing necessary facts to support the affidavit; or

(b) if the petitioner is unable to determine whether the non-appearing birth parent, putative father, or presumptive father is in military service, that the petitioner is unable to determine whether the birth parent, putative father, or presumptive father is in military service.

Comment: "Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If a birth parent, putative father, or presumptive father is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. §§ 4101 *et seq*., may provide additional protections and procedures.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it meets the requirements of this rule.

Pennsylvania Rules of Criminal Procedure

Rule 150. Bench Warrants.

* * *

Comment: This rule addresses only the procedures to be followed after a bench warrant is executed, and does not apply to execution of bench warrants outside the Commonwealth, which are governed by the extradition procedures in 42 Pa.C.S. § 9101 *et seq.*, or to warrants issued in connection with probation or parole proceedings.

For the bench warrant procedures when a witness is under the age of 18 years, see Rule 151.

With respect to members of the Pennsylvania National Guard, the Pennsylvania Guard, and the Pennsylvania Militia, "[n]o officer or enlisted person shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty." 51 Pa.C.S. § 4104 (Exemption from arrest).

Paragraph (A)(2) permits the bench warrant hearing to be conducted using two-way simultaneous audio-visual communication, which is a form of advanced communication technology. *See* Rule 103. Utilizing this technology will aid the court in complying with this rule, and in ensuring individuals arrested on bench warrants are not detained unnecessarily.

* * *

Rule 430. Issuance of Warrant.

* * *

Comment: Personal service of a citation under paragraph (B)(1) is intended to include the issuing of a citation to a defendant as provided in Rule 400 and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the defendant fails to respond to the summons, the issuing authority should issue a warrant as provided in either paragraph (A)(1) or (B)(1).

A bench warrant may not be issued under paragraph (B)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 451.

With respect to members of the Pennsylvania National Guard, the Pennsylvania Guard, and the Pennsylvania Militia, "[n]o officer or enlisted person shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty." 51 Pa.C.S. § 4104 (Exemption from arrest).

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

* * *

Rule 431. Procedure When Defendant Arrested With Warrant.

* * *

Comment: For the procedure in court cases following arrest with a warrant initiating proceedings, see Rules 516, 517, and 518. See also the Comment to Rule 706 (Fines or Costs) that recognizes the authority of a common pleas court judge to issue a bench warrant for the collection of fines and costs and provides for the execution of the bench warrant as provided in either paragraphs (C)(1)(c) or (C)(1)(d) and (C)(2) of this rule.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. See also Commonwealth v. Mason, 490 A.2d 421 (Pa. 1985).

With respect to members of the Pennsylvania National Guard, the Pennsylvania Guard, and the Pennsylvania Militia, "[n]o officer or enlisted person shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty." 51 Pa.C.S. § 4104 (Exemption from arrest).

Nothing in paragraph (A) is intended to preclude the issuing authority when issuing a warrant pursuant to Rule 430 from authorizing in writing on the warrant that the police officer may execute the warrant at any time and bring the defendant before that issuing authority for a hearing under these rules.

* * *

Rule 515. Execution of Arrest Warrant.

* * *

Comment: No substantive change in the law is intended by paragraph (A) of this rule; rather, it was adopted to carry on those provisions of the now repealed Criminal Procedure Act of 1860 that had extended the legal efficacy of an arrest warrant beyond the jurisdictional limits of the issuing authority. The Judicial Code now provides that the territorial scope of process shall be prescribed by the Supreme Court's procedural rules. 42 Pa.C.S. §§ 931(d), 1105(b), 1123(c), 1143(b), 1302(c), 1515(b).

For the definition of police officer, see Rule 103.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. *See also Commonwealth v. Mason*, 507 Pa. 396, 490 A.2d 421 (1985).

With respect to members of the Pennsylvania National Guard, the Pennsylvania Guard, and the Pennsylvania Militia, "[n]o officer or enlisted person shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty." 51 Pa.C.S. § 4104 (Exemption from arrest).

Pursuant to Rule 540, the defendant is to receive a copy of the warrant and the supporting affidavit at the time of the preliminary arraignment.

* * *

Rule 1122. Continuances.

[A.]<u>(a)</u> Generally. In the interests of justice, the court may grant a continuance on its own motion or the motion of any party. On the record, the court shall identify the moving party and state its reasons for granting or denying the continuance.

[B.]<u>(b)</u> Notice and [rescheduling] <u>Rescheduling</u>. If a continuance is granted, all persons summoned to appear shall be notified of the date, place, and time of the rescheduled hearing.

Comment<u>:</u>

Whenever possible, continuances should not be granted when they could be deleterious to the safety or well-being of a party. The interests of justice require the court to look at all the circumstances, effectuating the purposes of the Juvenile Act, 42 Pa.C.S. § 6301, in determining whether a continuance is appropriate.

A party seeking a continuance should notify the court and opposing counsel as soon as possible. Whenever possible, given the time constraints, notice should be written.

Under **[paragraph (B)]** **<u>subdivision (b)</u>**, if a person is summoned to appear and the case is continued, the party is presumed to be under the scope of the original summons and a new summons is not necessary.

See Rules 1344 and 1345 for motion and filing procedures.

See In re Anita H., **[351 Pa. Super. 342,]** 505 A.2d 1014 (**<u>Pa. Super.</u>** 1986).

<u>For the availability of a stay when a party is in military service, see 50 U.S.C. § 3932.</u>

[Official Note: Rule 1122 adopted August 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1122 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).]

-The following text is entirely new-

Rule 1206. Servicemembers Civil Relief Act.

At an initial shelter care hearing, or adjudicatory hearing if a shelter care hearing was not previously conducted, if a parent or guardian does not make an appearance, and before the court enters an order in favor of the county agency, the county agency shall state on the record and in a filed affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931:

(a) whether the non-appearing parent or guardian is in military service and showing necessary facts to support the affidavit; or

(b) if the county agency is unable to determine whether the non-appearing parent or guardian is in military service, that the county agency is unable to determine whether the non-appearing parent or guardian is in military service.

Comment: "Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If a parent or guardian is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. §§ 4101 *et seq*., may provide additional protections and procedures.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it meets the requirements of this rule.

Rule 1242. Shelter Care Hearing.

* * *

Comment:

* * *

See Rule 1330(A) for filing of a petition.

***See* Rule 1206 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a parent or guardian does not make an appearance at the shelter care hearing.**

Rule 1406. Adjudicatory Hearing.

* * *

Comment:

* * *

See Rule 1136 for *ex parte* communications.

***See* Rule 1206 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a parent or guardian does not make an appearance at the adjudicatory hearing.**

Pennsylvania Rules of Civil Procedure Before Magisterial District Judges

Rule 209. Continuances and Stays.

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E. Continuances and stays shall be granted in compliance with federal or state law**[, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*]**.

[Official Note] **Comment:** This rule was amended in 2005 to consolidate the provisions of former Rules 320 (relating to continuances in civil actions) and 511 (relating to continuances in possessory actions) into one general rule governing continuances. The limitations set forth in subdivision C are intended to ensure that these cases proceed expeditiously. The grounds set forth in **[subdivisions D and E, of course,]** **subdivision D** are not intended to be the only grounds on which a continuance will be granted

For the availability of a continuance or stay for a party in military service, see the Servicemembers Civil Relief Act, 50 U.S.C. § 3932, and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105.

Rule 304. Form of Complaint.

…

[Official Note] **Comment:** Rule 304 is designed to promote uniformity, simplification of procedure, and better access by the public to the judicial services of magisterial district judges. The use of a form will help to accomplish this purpose and will also provide easier statistical and other administrative control by the Supreme Court. The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania. See* **[Rule]** **Pa.R.Civ.P.M.D.J.** 217.

A civil action that alleges tortious conduct was formerly called an action in trespass. A civil action in which the claim is contractual was formerly called an action in assumpsit.

Subdivision D requires the plaintiff to affirm if the defendant is or is not in the military service, or if the defendant's military service status is unknown. This information is required to ensure that an eligible defendant receives the protections afforded by the Servicemembers Civil Relief Act, **[50 U.S.C. §§ 3901 *et seq.*]** **50 U.S.C. § 3931**. **[The affidavit shall be made in writing on a form prescribed by the State Court Administrator.]** **A form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it is substantially similar in content with the form.**

Rule 308. Service Upon Individuals.

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[Official Note] **Comment**: **[Compare Pa.R.C.P. Nos. 402-403]** ***Compare*** **Pa.R.Civ.P. 402–403**. Subdivisions (1), (2) and (3) are not intended to be preferential in the order of their numbering.

See the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, for exemption from civil process for eligible servicemembers.

Rule 403. Issuance and Reissuance of Order of Execution.

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[Official Note] Comment: Under subdivision A, the order may be executed by the sheriff of the county in which the office of the issuing magisterial district judge is situated, as well as by any certified constable in that county.

If payment of the judgment was ordered to be made in installments under Rule 323, the magisterial district judge should not issue an order of execution on the judgment unless it appears that there was a default in the installment payments.

Subdivision B will permit the reissuance of an order of execution upon a timely-filed written request of the plaintiff. *Compare* **[Pa.R.C.P. No. 3106(b)]** **Pa.R.Civ.P. 3106(b).** The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order of execution form, ''Reissuance of order of execution requested,'' subscribed by the plaintiff. The magisterial district judge shall mark all copies of the reissued order of execution, ''Reissued. Request for reissuance filed _____ (time and date).'' A new form may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark ''/s/.'' There are no filing costs for reissuing an order of execution, for the reissuance is merely a continuation of the original proceeding. However, there may be additional server costs for service of the reissued order of execution.

[The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*] **For the availability of a stay for a party in military service, see the Servicemembers Civil Relief Act, 50 U.S.C. § 3932, and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105.**

Rule 405. Service of Order of Execution.

[Note] Comment: The **[60 day] 60-day** limitation in subdivision A was considered to allow the executing officer sufficient time in which to make the levy. The executing officer may make as many levies as necessary within the **[60 day] 60-day** limitation under an order of execution.

See the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, for exemption from civil process for eligible servicemembers.

Rule 410. Stay of Execution Generally.

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[Official Note] **Comment**: *Compare* **[Pa.R.C.P. No. 3121(a)]** **Pa.R.Civ.P. 3121(a)**. Other rules in this chapter may also provide for a stay in specific circumstances covered by those rules. **[The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*]** **For the availability of a stay for a party in military service, see the Servicemembers Civil Relief Act, 50 U.S.C. § 3932, and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105.**

Rule 503. Form of Complaint.

…

[Official Note] **Comment**: As in the other rules of civil procedure for magisterial district judges, the complaint will be on a printed form. The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.* *See* **[Rule 217]** **Pa.R.Civ.P.M.D.J. 217**. As to notice to remove, the form will simply state that such a notice, when required, was given to the tenant in accordance with law. *See* **[§ 501 of the Landlord and Tenant Act,]** 68 P.S. § 250.501**[, as amended by § 2(a) of the Judiciary Act Repealer Act, Act of April 28, 1978, P.L. 202, No. 53, 42 P.S. § 20002(a)]**.

In subdivision B(8) the landlord is permitted to claim, in addition to the specific amount of rent due and unpaid at the date of filing, whatever unspecified amount of rent will remain due and unpaid at the date of the hearing. As to claiming damages for injury to property, **[*compare* Pa.R.C.P. No. 1055]** **compare Pa.R.Civ.P. 1055**.

Subdivision D requires the landlord to affirm if the tenant is or is not in the military service, or if the tenant's military service status is unknown. This information is required to ensure that an eligible tenant receives the protections afforded by the Servicemembers Civil Relief Act, **[50 U.S.C. §§ 3901 *et seq.*]** **50 U.S.C. § 3931.** **[The affidavit shall be made in writing on a form prescribed by the State Court Administrator.]** **A form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it is substantially similar in content with the form.**

See **[Act of January 24, 1966, P.L.(1965) 1534, § 1, as amended by Act of August 11, 1967, P.L. 204, No. 68, § 1, Act of June 11, 1968, P.L. 159, No. 89, § 2,]** 35 P.S. § 1700-1, which states that “no tenant shall be evicted for any reason whatsoever while rent is deposited in escrow” because the dwelling in question has been certified as unfit for human habitation by the appropriate city or county agency. It seems appropriate to leave the matter of evidencing or pleading such a certification or lack thereof to local court of common pleas rules.

Rule 506. Service of Complaint.

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[Official Note] **Comment**: Under subdivision A of this rule, service must be made both by first class mail and delivery for service in the manner prescribed. In actions where wage garnishment may be sought under **[Pa.R.C.P. No. 3311]** **Pa.R.Civ.P. 3311**, the landlord may authorize the sheriff or constable to make personal service upon the tenant. If the tenant is not present at the property the sheriff or constable is authorized to post the complaint so that the underlying landlord-tenant action may proceed. The landlord may authorize the sheriff or constable to make additional attempts to effectuate personal service upon the tenant so the landlord can later prove such service if attempting to garnish wages under **[Pa.R.C.P. No. 3311]** **Pa.R.Civ.P. 3311**. Additional service attempts by the sheriff or constable may result in additional fees.

See the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, for exemption from civil process for eligible servicemembers.

Rule 515. Request for Order for Possession.

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[Official Note] **Comment**: The 15 days in subdivision A of this rule, when added to the 16-day period provided for in Rule 519A, will give the tenant time to obtain a *supersedeas* within the appeal period. *See* **[Rules 1002, 1008, 1009, and 1013]** **Pa.R.Civ.P.M.D.J. 1002, 1008, 1009, and 1013**.

The 1995 amendment to **[section 513 of The Landlord and Tenant Act of 1951,]** 68 P.S. § 250.513**[,]** established a 10-day appeal period from a judgment for possession of real estate arising out of a residential lease. *See also* **[Rule 1002B(1)]** **Pa.R.Civ.P.M.D.J. 1002B(1)**. Rule 1002B(2)(a) provides for a 30-day appeal period for tenants who are victims of domestic violence. In most cases, the filing of the request for an order for possession in subdivision B(1) is not permitted until after the appeal period has expired. In cases arising out of a residential lease, the request for an order for possession generally must be filed within 120 days of the date of the entry of the judgment.

If the tenant is a victim of domestic violence, he or she may file a domestic violence affidavit to stay the execution of the order for possession until the tenant files an appeal with the prothonotary pursuant to Rule 1002, 30 days after the date of entry of the judgment, or by order of the court of common pleas, whichever is earlier. *See* **[Rule 514.1C]** **Pa.R.Civ.P.M.D.J. 514.1C**. No posting of money or bond is required to obtain a stay with the filing of a domestic violence affidavit; however, upon the filing of an appeal pursuant to Rule 1002, the stay is lifted, and the *supersedeas* requirements of Rule 1008 shall apply.

[The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*] **For the availability of a stay for a party in military service, see the Servicemembers Civil Relief Act, 50 U.S.C. § 3932, and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105.**

Subdivision B(2) provides that in a case arising out of a residential lease, if a *supersedeas* (resulting from an appeal or writ of *certiorari*) or bankruptcy or other stay is stricken, dismissed, lifted, or otherwise terminated, thus allowing the landlord to proceed with requesting an order for possession, the request may be filed only within 120 days of the date the *supersedeas* or the bankruptcy or other stay is stricken, dismissed, lifted, or otherwise terminated.

In many judicial districts, appeals of magisterial district court judgments are submitted to compulsory arbitration pursuant to **[Pa.R.C.P. Nos. 1301—1314]**

Pa.R.Civ.P. 1301 – 1314. If, after the arbitration, the prothonotary enters an award for possession on the docket in favor of the landlord and the tenant fails to maintain the *supersedeas* required by Rule 1008 prior to the prothonotary entering judgment on the award, then the landlord may terminate the *supersedeas* pursuant to Rule 1008B and request an order of possession from the magisterial district judge pursuant to Rule 515. If the prothonotary enters an award on the docket in favor of the tenant and the tenant fails to maintain the *supersedeas* prior to the prothonotary entering judgment on the award, the landlord may not obtain an order of possession between the time that the prothonotary enters the arbitration award on the docket and the time that the landlord files a notice of appeal.

The time limits in which the landlord must request an order for possession imposed in subdivision B apply only in cases arising out of residential leases and in no way affect the landlord's ability to execute on the money judgment. *See* **[Rule 516, Note, and Rule 521A] Pa.R.Civ.P.M.D.J. 516, cmt. and Pa.R.Civ.P.M.D.J. 521A**.

At the time the landlord files the request for an order for possession, the magisterial district court should collect server fees for all actions through delivery of possession. Thereafter, if the order for possession is satisfied 48 hours or more prior to a scheduled delivery of possession, a portion of the server costs may be refundable. *See* **[Rules 516 through 520] Pa.R.Civ.P.M.D.J. 516 – 520** and 44 Pa.C.S. § 7161(d).
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Rule 516. Issuance and Reissuance of Order for Possession.

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[Official Note] **Comment**: The order for possession deals only with delivery of possession of real property and not with a levy for money damages. A landlord who seeks execution of the money judgment part of the judgment must proceed under Rule 521A, using the forms and procedure there prescribed. The reason for making this distinction is that the printed notice requirements on the two forms, and the procedures involved in the two matters, differ widely.

Subdivision B provides for reissuance of the order for possession for one additional 60-day period. However, pursuant to subdivision C, in cases arising out of a residential lease, the request for reissuance of the order for possession must be filed within 120 days of the date of the entry of the judgment or, in a case in which the order for possession is issued and subsequently superseded by an appeal, writ of *certiorari, supersedeas* or a stay pursuant to a bankruptcy proceeding or other federal or state law or Rule 514.1C, only within 120 days of the date the appeal, writ of *certiorari*, or *supersedeas* is stricken, dismissed, or otherwise terminated, or the bankruptcy or other stay is lifted. The additional 60-day period need not necessarily immediately follow the original 60-day period of issuance. The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order for possession form, ''Reissuance of order for possession requested,'' subscribed by the landlord. The magisterial district judge shall mark all copies of the reissued order for possession, ''Reissued. Request for reissuance filed_____ (time and date).'' A new form may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark ''/s/.'' There are no filing costs for reissuing an order for possession, for the reissuance is merely a continuation of the original proceeding. However, there may be additional server costs for service of the reissued order for possession.

[The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*] **For the availability of a stay for a party in military service, see the Servicemembers Civil Relief Act, 50 U.S.C. § 3932, and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105.**

In many judicial districts, appeals of magisterial district court judgments are submitted to compulsory arbitration pursuant to **[Pa.R.C.P. Nos. 1301—1314]** **Pa.R.Civ.P. 1301 – 1314**. If, after the arbitration, the prothonotary enters an award for possession on the docket in favor of the landlord and the tenant fails to maintain the *supersedeas* required by Rule 1008 prior to the prothonotary entering judgment on the award, then the landlord may terminate the *supersedeas* pursuant to Rule 1008B and

request an order of possession from the magisterial district judge pursuant to Rule 515. If the prothonotary enters an award on the docket in favor of the tenant and the tenant fails to maintain the *supersedeas* prior to the prothonotary entering judgment on the award, the landlord may not obtain an order of possession between the time that the prothonotary enters the arbitration award on the docket and the time that the landlord files a notice of appeal.

The time limits in which the landlord must request reissuance of an order for possession imposed in subdivision C apply only in cases arising out of residential leases and in no way affect the landlord's ability to execute on the money judgment. *See* **[Rule 521A] Pa.R.Civ.P.M.D.J. 521A**.