

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

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

(2) A conference officer who is a lawyer employed by a judicial district shall not practice family law before a conference officer, permanent hearing officer or permanent or standing master employed by the same judicial district.

Official Note

Conference officers preside at office conferences under Rule 1910.11. Hearing officers preside at hearings under Rule 1910.12. The appointment of masters to hear actions in divorce or for annulment of marriage is authorized by Rule 1920.51.

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

(c) At the conference, the parties shall furnish to the officer true copies of their most recent federal income tax returns, their pay stubs for the preceding six months, verification of child care expenses and proof of medical coverage which they may have or have available to them. In addition, they shall provide copies of their **[i]**Income and **[e]**Expense **[s]**Statements in the forms required by Rule 1910.27(c), completed as set forth below.

(1) For cases which can be determined according to the guideline formula, the **[i]**Income Statement must be completed and the **[e]**Expense **[s]**Statement at Rule 1910.27(c)(2)(A) **[need show only income and extraordinary]** should be completed if a party is claiming unusual needs and unusual fixed expenses.

(2) For cases which are decided according to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), the **[entire]** **[i]**Income Statement and the **[e]**Expense **[s]**Statement at Rule 1910.27(c)(2)(B) must be completed.

* * *

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 **[a temporary]** an interim order in subdivision **[(g)(2)] (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 **[i]Income and [e]Expense [s]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 (**[PA.] 1984**), living expenses are properly considered, and therefore must be presented on the **[i]Income and [e]Expense [s]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.

[In conformity with the amendment of Rule of Civil Procedure 236, subdivision (f) is amended to require that the parties be served with a copy of the order, rather than notice that it has been filed. In addition, subdivision (f) is amended to require the Court to enter an interim order on the basis of the conference summary, expediting the commencement of support payments. The language of subdivisions (g) and (l) is also changed to conform with the amended language of subdivision (f).]

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 twenty 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).

* * *

Rule 1910.27. Form of Complaint. Order. Income Statements and Expense Statements. Health Insurance Coverage Information Form. Form of Support Order. Form Petition for Modification.

* * *

(b) The order to be attached at the front of the complaint set forth in subdivision (a) shall be in substantially the following form:

(Caption)

ORDER OF COURT

You, _____, defendant, are ordered to appear at before _____, a conference officer of the Domestic Relations Section, on the ____ day of _____, 20_____, at ____M., for a conference, after which the officer may recommend that an order for support be entered against you. You are further ordered to bring to the conference

- (1) a true copy of your most recent Federal Income Tax Return, including W-2s, as filed,
- (2) your pay stubs for the preceding six months,

- (3) the Income Statement and the appropriate Expense Statement, if required, attached to this order, completed as required by Rule 1910.11(c),
- (4) verification of child care expenses, and
- (5) proof of medical coverage which you may have, or may have available to you.

If you fail to appear for the conference or to bring the required documents, the court may issue a warrant for your arrest and/or enter an interim support order. If paternity is an issue, the court shall enter an order establishing paternity.

THE APPROPRIATE COURT OFFICER MAY ENTER AN ORDER AGAINST EITHER PARTY BASED UPON THE EVIDENCE PRESENTED WITHOUT REGARD TO WHICH PARTY INITIATED THE SUPPORT ACTION.

Date of Order: _____ J.

YOU HAVE THE RIGHT TO A LAWYER, WHO MAY ATTEND THE CONFERENCE AND REPRESENT YOU. 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.

(c) The ~~Income~~ and ~~Expense~~ ~~Statements~~ to be attached to the order shall be in substantially the following form:

(1) Income Statement. This form must be filled out in all cases.

_____ v, _____ No, _____

THIS FORM MUST BE FILLED OUT

(If you are self-employed or if you are salaried by a business of which you are owner in whole or in part, you must also fill out the Supplemental Income Statement which appears **[on the last page of this Income and Expense Statement]** below.)

INCOME **[AND EXPENSE]** STATEMENT OF

(Name)

(PACSES Number)

I verify that the statements made in this Income **[and Expense]** Statement are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A § 4904 relating to unsworn falsification to authorities.

Date: _____

Plaintiff or Defendant

INCOME

Employer: _____

Address: _____

Type of Work: _____

Payroll Number: _____

Pay Period (weekly, biweekly, etc): _____

Gross Pay per Pay Period \$ _____

Itemized Payroll Deductions:

Federal Withholding \$ _____

[Social Security] FICA _____

Local Wage Tax _____

State Income Tax _____

Mandatory Retirement _____

Union Dues _____

[Savings Bonds _____

Credit Union _____

Life Insurance _____]

Health Insurance _____

Other (specify) _____

Net Pay per Pay Period: \$ _____

Other Income:

	Week	Month	Year
	(Fill in Appropriate Column)		
Interest	\$ _____	\$ _____	\$ _____
Dividends	_____	_____	_____
Pension <u>Distributions</u>	_____	_____	_____
Annuity	_____	_____	_____
Social Security	_____	_____	_____
Rents	_____	_____	_____
Royalties	_____	_____	_____
[Expense Account	_____	_____	_____
Gifts]	_____	_____	_____
Unemployment Comp.	_____	_____	_____
[Workmen's] <u>Workers</u>	_____	_____	_____
Comp.			
<u>Employer Fringe Benefits</u>	_____	_____	_____
<u>Other</u>	_____	_____	_____
	_____	_____	_____
Total	\$ _____	\$ _____	\$ _____
TOTAL INCOME		\$ _____	

[EXPENSES	Weekly	Monthly	Yearly
Home	(Fill in Appropriate Column)		
Mortgage/rent	\$ _____	\$ _____	\$ _____
Maintenance	_____	_____	_____
Utilities	_____	_____	_____
Electric	_____	_____	_____
Gas	_____	_____	_____
Oil	_____	_____	_____
Telephone	_____	_____	_____
Water	_____	_____	_____
Sewer	_____	_____	_____
Employment			
Public transportation	\$ _____	\$ _____	\$ _____
Lunch	_____	_____	_____
Taxes			
Real Estate	\$ _____	\$ _____	\$ _____
Personal property	_____	_____	_____
Income	_____	_____	_____
Insurance			
Homeowners	\$ _____	\$ _____	\$ _____
Automobile	_____	_____	_____
Life	_____	_____	_____
Accident	_____	_____	_____
Health	_____	_____	_____
Other	_____	_____	_____
Automobile			
Payments	\$ _____	\$ _____	\$ _____
Fuel	_____	_____	_____
Repairs	_____	_____	_____
Medical			
Doctor	\$ _____	\$ _____	\$ _____
Dentist	_____	_____	_____
Orthodontist	_____	_____	_____
Hospital	_____	_____	_____
Medicine	_____	_____	_____
Special Needs (glasses, braces, orthopedic devices)	_____	_____	_____
Education			
Private school	\$ _____	\$ _____	\$ _____
Parochial school	_____	_____	_____
College	_____	_____	_____
Religious	_____	_____	_____
Personal			
Clothing	\$ _____	\$ _____	\$ _____
Food	_____	_____	_____

Barber/hairdresser	_____	_____	_____
Credit payments			
Credit card	_____	_____	_____
Charge account	_____	_____	_____
Memberships	_____	_____	_____
Loans			
Credit Union	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Miscellaneous			
Household help	\$ _____	\$ _____	\$ _____
Child care	_____	_____	_____
_____	_____	_____	_____
Papers/books/magazines			
Entertainment	_____	_____	_____
Pay TV	_____	_____	_____
Vacation	_____	_____	_____
Gifts	_____	_____	_____
Legal fees	_____	_____	_____
Charitable	_____	_____	_____
contributions			
Other child support	_____	_____	_____
Alimony payments	_____	_____	_____
Other	_____	_____	_____
_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____
Total Expenses	\$ _____	\$ _____	\$ _____1

PROPERTY OWNED

	Description	Value	Ownership*		
			H	W	J
Checking accounts	_____	\$ _____	_____	_____	_____
Savings accounts	_____	_____	_____	_____	_____
Credit Union	_____	_____	_____	_____	_____
Stocks/bonds	_____	_____	_____	_____	_____
Real Estate					
Other	_____	_____	_____	_____	_____
	Total	\$ _____			

INSURANCE

	Company	Policy No.	Coverage*		
			H	W	C
Hospital					
Blue Cross	_____	_____	_____	_____	_____

Other	_____	_____	_____	_____	_____
Medical					
Blue Shield	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
Health/Accident	_____	_____	_____	_____	_____
Disability Income	_____	_____	_____	_____	_____
Dental	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____

*H=Husband; W=Wife; J=Joint; C=Child

SUPPLEMENTAL INCOME STATEMENT

- (a) This form is to be filled out by a person (check one):
- ☐ (1) who operates a business or practices a profession, or
- ☐ (2) who is a member of a partnership or joint venture, or
- ☐ (3) who is a shareholder in and is salaried by a closed corporation or similar entity.
- (b) Attach to this statement a copy of the following documents relating to the partnership, joint venture, business, profession, corporation or similar entity:
- (1) the most recent Federal Income Tax Return, and
- (2) the most recent Profit and Loss Statement.
- (c) Name of business: _____
- Address and Telephone Number: _____
- (d) Nature of business (check one)
- ☐ (1) partnership
- ☐ (2) joint venture
- ☐ (3) profession
- ☐ (4) closed corporation
- ☐ (5) other
- (f) Annual income from business: _____
- (1) How often is income received? _____
- (2) Gross income per pay period: _____
- (3) Net income per pay period: _____
- (4) Specified deductions, if any: _____

(2) Expense Statements. An Expense Statement is not required in cases which can be determined pursuant to the guidelines unless a party avers unusual needs and expenses that may warrant a deviation from the guideline amount of support pursuant to Rule 1910.16-5 or seeks an apportionment of expenses pursuant to Rule 1910.16-6. (See Rule 1910.11(c)(1)). Child support is calculated under the guidelines based upon the net incomes of the parties, with

additional amounts ordered as necessary to provide for child care expenses, health insurance premiums, unreimbursed medical expenses, mortgage payments and other needs, contingent upon the obligor's ability to pay. The Expense Statement in subparagraph (A) below shall be utilized if a party is claiming that he or she has unusual needs and unusual fixed expenses that may warrant deviation or adjustment in a case determined under the guidelines. In cases which must be determined pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), because the parties' combined net monthly income exceeds \$20,000 per month, the parties must complete the Expense Statement in subparagraph (B) below.

(A) Guidelines Expense Statement. If the combined monthly net income of the parties is \$20,000 or less, it is not necessary to complete this form unless a party is claiming unusual needs and expenses that may warrant a deviation from the guideline amount of support pursuant to Rule 1910.16-5 or seeks an apportionment of expenses pursuant to Rule 1910.16-6. At the conference, each party must provide receipts or other verification of expenses claimed on this statement. The Guidelines Expense Statement shall be substantially in the following form.

EXPENSE STATEMENT OF

(Name)

(PACSES Number)

I verify that the statements made in this Expense Statement are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____

Plaintiff or Defendant

	Weekly	Monthly	Yearly
	(Fill in Appropriate Column)		
<u>Mortgage (including real estate taxes and homeowner's insurance) or Rent</u>	\$ _____	\$ _____	\$ _____
<u>Health Insurance Premiums</u>	_____	_____	_____
<u>Unreimbursed Medical Expenses:</u>			
<u>Doctor</u>	_____	_____	_____
<u>Dentist</u>	_____	_____	_____
<u>Orthodontist</u>	_____	_____	_____
<u>Hospital</u>	_____	_____	_____
<u>Medicine</u>	_____	_____	_____

<u>Special Needs (glasses, braces, orthopedic devices, therapy)</u>	_____	_____	_____
<u>Child Care</u>	_____	_____	_____
<u>Private school</u>	_____	_____	_____
<u>Parochial school</u>	_____	_____	_____
<u>Loans/Debts</u>	_____	_____	_____
<u>Support of Other Dependents:</u>			
<u>Other child support</u>	_____	_____	_____
<u>Alimony payments</u>	_____	_____	_____
<u>Other: (Specify)</u>	_____	_____	_____
_____	_____	_____	_____
<u>Total</u>	\$ _____	\$ _____	\$ _____

(B) Melzer Expense Statement. No later than five business days prior to the conference, the parties shall exchange this form, along with receipts or other verification of the expenses set forth on this form. Failure to comply with this provision may result in an appropriate order for sanctions and/or the entry of an interim order based upon the information provided.

EXPENSE STATEMENT OF

(Name)

(PACSES Number)

I verify that the statements made in this Expense Statement are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____

Plaintiff or Defendant

<u>EXPENSES</u>	<u>MONTHLY TOTAL</u>	<u>MONTHLY CHILDREN</u>	<u>MONTHLY PARENT</u>
<u>HOME</u>			
<u>Mortgage or Rent</u>			
<u>Maintenance</u>			
<u>Lawn Care</u>			
<u>2nd Mortgage</u>			
<u>UTILITIES</u>			
<u>Electric</u>			
<u>Gas</u>			
<u>Oil</u>			

<u>Telephone</u>			
<u>Cell Phone</u>			
<u>Water</u>			
<u>Sewer</u>			
<u>Cable TV</u>			
<u>Internet</u>			
<u>Trash/Recycling</u>			
<u>TAXES</u>			
<u>Real Estate</u>			
<u>Personal Property</u>			
<u>INSURANCE</u>			
<u>Homeowners/Renters</u>			
<u>Automobile</u>			
<u>Life</u>			
<u>Accident/Disability</u>			
<u>Excess Coverage</u>			
<u>Long-Term Care</u>			
<u>AUTOMOBILE</u>			
<u>Lease or Loan Payments</u>			
<u>Fuel</u>			
<u>Repairs</u>			
<u>Memberships</u>			
<u>MEDICAL</u>			
<u>Medical Insurance</u>			
<u>Doctor</u>			
<u>Dentist</u>			
<u>Hospital</u>			
<u>Medication</u>			
<u>Counseling/Therapy</u>			
<u>Orthodontist</u>			
<u>Special Needs (glasses, etc.)</u>			
<u>EDUCATION</u>			
<u>Tuition</u>			
<u>Tutoring</u>			
<u>Lessons</u>			
<u>Other</u>			
<u>PERSONAL</u>			
<u>Debt Service</u>			

<u>Clothing</u>			
<u>Groceries</u>			
<u>Haircare</u>			
<u>Memberships</u>			
<u>MISCELLANEOUS</u>			
<u>Child Care</u>			
<u>Household Help</u>			
<u>Summer Camp</u>			
<u>Papers/Books/Magazines</u>			
<u>Entertainment</u>			
<u>Pet Expenses</u>			
<u>Vacations</u>			
<u>Gifts</u>			
<u>Legal Fees/Prof. Fees</u>			
<u>Charitable Contributions</u>			
<u>Children's Parties</u>			
<u>Children's Allowances</u>			
<u>Other Child Support</u>			
<u>Alimony Payments</u>			
<u>TOTAL MONTHLY EXPENSES</u>			

* * *

Explanatory Comment--1994

The support complaint and Income and [e]Expense [s]Statements contain a verification which states that the documents are subject to the penalties of the Crimes Code relating to unsworn falsification to authorities. A notary public is not needed.

Explanatory Comment--2006

Rule 1910.27(c) is amended to separate income and expense information and to elicit the expense information relevant in cases that fall within the guidelines, as well as those that do not. In cases which can be determined under the guidelines, no expense information need be provided unless a party is claiming unusual needs and expenses that may warrant a deviation pursuant to Rule 1910.16-5 or an apportionment of expenses pursuant to Rule 1910.16-6. If a party is claiming such expenses, the form at subsection (c)(2)(A) should be submitted. A separate expense form for cases in which the parties' combined monthly net income exceeds \$20,000 is set forth at subsection (c)(2)(B).

Rule 1910.11(c) was amended, effective in March 1995, to provide that only income and extraordinary expenses need be shown on the Income and

Expense Statement in cases which can be determined pursuant to the guidelines.
The Explanatory Comment--1994 explained the rationale for the amendment.

Nevertheless, because space for both income and expense information was provided on the same form Income and Expense Statement, parties often needlessly expended time and effort to provide expense information that was not relevant at the conference. The amendments are intended to clarify and simplify the submission of expense information.

* * *

Rule 1920.31. Joinder of Related Claims. Child and Spousal Support. Alimony. Alimony Pendente Lite. Counsel Fees. Expenses.

(a) (1) Within thirty days after the service of the pleading or petition containing a claim for child or spousal support, alimony, alimony pendente lite or counsel fees, costs and expenses, each party shall file a true copy of the most recent federal income tax return, pay stubs for the preceding six months, **[and]** a completed **[i]**Income Statement in the form required at Rule 1910.27(c)(1) and a completed **[e]**Expense **[s]**Statement in the **[manner and]** form required by **[Rules 1910.11 and] Rule 1910.27(c)(2)(B).**

(2) If a party fails to file the documents as required by subdivision (a)(1), the court on motion may make an appropriate order under Rule 4019 governing sanctions.

(3) In those counties in which the prothonotary's office does not automatically forward a divorce complaint containing claims for support or alimony pendente lite to the domestic relations section or other appropriate office, **[When]** if a claim for support or alimony pendente lite is filed as a count in a divorce rather than as a separate action, the award shall be retroactive to the date **[of the written demand for hearing unless the order states otherwise]** the moving party delivers a copy of the complaint to the domestic relations section or other appropriate office with a demand for hearing. **[If a demand for hearing appears conspicuously on the front of the divorce pleading, support or alimony pendente lite shall be awarded retroactive to the date of filing of that pleading and the matter shall be set promptly for hearing.**

Official Note

At the time a hearing is demanded on the issue of support, a copy of the divorce pleading which contains that count must be delivered to the domestic relations section.]

* * *

[Explanatory Note -- 1983

Subdivision (a) as originally promulgated required each party to file a completed income and expense statement within thirty days after service of the pleading or petition containing a related claim for relief. That requirement remains unchanged. However, the rule is conformed to Support Rule 1910.11(c) by also requiring each party to file within the same thirty day period a copy of his or her most recent income tax return and the pay stubs for the preceding six months.

New subdivision (a)(2) incorporates by reference Discovery Rule 4019 governing sanctions. When there is a failure to file the documents required by subdivision (a)(1), the broad spectrum of sanctions which is available under Rule 4019(c) will permit the court to impose the sanction appropriate to the facts of the case.

Explanatory Comment -- 1991

The Divorce Code of 1980 has been modified by two recent Acts of Assembly. First, the Divorce Code was codified as part of the Pennsylvania Consolidated Statutes by Act 1990-206. Second, the Divorce Code was substantially amended by Act 1988-13. Many of the rules of civil procedure covered by Recommendation 5 have been amended as a result of this legislation.

I. Codification. Old Rules 1920.1 through 1920.92 were promulgated in 1980 to implement the then recently enacted Divorce Code. The old rules contain many references to the Divorce Code which was enacted as part of the Unconsolidated Statutes, 23 P.S. §101 et seq.

Act 206 of 1990, effective March 19, 1991, repealed the Divorce Code as enacted in 1980 and re-enacted it as Part IV of the Domestic Relations Code, 23 Pa.C.S. § 3101 et seq. Part IV of the Domestic Relations Code continues to be known as the Divorce Code. All statutory references in the new rules refer to the Divorce Code as it is now codified.

For more than ten years, the term “Section 201(c) or (d)” divorce has meant a “no-fault” divorce. Under the new codification, the grounds for a no-fault divorce will be found in Section 3301(c) and (d) of the Divorce Code, 23 Pa.S.C. § 3301(c) and (d). This is one example of the revisions to the divorce rules necessitated by the codification. These revisions merely correct obsolete references and effect no change in practice or procedure. The Committee is developing a proposal to review all of the domestic relations rules to include the new statutory references.

II. Spousal Support. Section 3104 (formerly Section 301) of the Divorce Code, which enumerates the various claims that may be joined in an action of divorce, was amended by Act 1988-13 to include “spousal support.” Old Rule

1920.31, governing the joinder of related claims, has been amended to include the reference to spousal support in conformity with the Divorce Code as amended.

III. Living Separate and Apart. Section 3301(d) (formerly Section 301(d)) of the Divorce Code, providing for a no-fault divorce where the marriage is irretrievably broken and the parties have lived separate and apart, was amended by Act 1988-13 to reduce the waiting period from three years to two years. Old Rule 1920.72(c), governing the form of the plaintiff's affidavit, makes reference to this three year period. New Rule 1920.72(c) refers to the two year period of separation.

Old Rule 1920.42(a), governing the procedure in a divorce under Section 3301(d) of the Divorce Code, referred to "the plaintiff" filing an affidavit. Old Rule 1920.72(c) provides the form of the "Plaintiff's" affidavit. However, the Divorce Code uses the phrase "an affidavit has been filed." Consequently, there is no reason why a defendant may not file the affidavit to initiate the procedure for entering the decree. Old Rules 1920.42(a)(2) and (c)(2) and 1920.72(c) and (d) have been revised to allow filing of the affidavit by either party.

IV. Establishing Grounds for Divorce. New Section 3301(e) (formerly Section 201(e)) of the Divorce Code was added by Act 1988-13, and provides that, if grounds are established under the no-fault provisions of Sections 3301(c) or (d), "the court shall grant a divorce without requiring a hearing on any other grounds." A note has been added to old Rule 1920.51 referring to this provision.

V. Inventory; Pre-trial Statement. Section 3505(b) (formerly Section 403(b)) of the Divorce Code was enacted in 1980 provides for "an inventory and appraisal of all property owned or possessed at the time the action was commenced." Old Rule 1920.33 was adopted to implement this provision. The rule did not work very well. The inventory and appraisal were seldom filed within sixty days after a claim for determination and distribution of property is filed, as required by the rule. The old rule further required that the parties use the date the action was commenced as the valuation date. In most instances, the date the action was commenced was irrelevant for valuation purposes.

Section 3505(b)(1) of the Divorce Code, as amended by Act 1988-13, requires that the inventory and appraisal contain a list of property owned or possessed by either or both parties as of both the date of separation and a date thirty days prior to the date of the hearing on equitable distribution. There are three problems with this Divorce Code provision. First, the date of separation is frequently unclear and is itself a disputed issue in the action. Second, an inventory which contains values and liabilities as of a date thirty days prior to trial must be filed very late in the proceedings. Third, even if the date of separation is undisputed, a valuation as of that date is frequently irrelevant.

New Rules 1920.33 and 1920.75 rescind old Rules 1920.33 and 1920.75, and suspend Section 3505(b) as amended by Acts 1988-13 and 1990-206. New Rule 1920.33 substitutes the devices of an inventory and a pre-trial statement. New Rule 1920.75 provides a form for the inventory.

New Rule 1920.33(a) requires that each party file an inventory within ninety days after the filing of a claim for the distribution of property. The inventory must include “all property owned or possessed at the time the action was commenced,” including all marital property, as well as all non-marital property. At this point in the action, a valuation of the property need not be provided.

New Rule 1920.75 provides for a form of inventory which is consistent with the requirements of new Rule 1920.33(a). For the most part, the only information that is required is a description of the property involved in the claim and the identification of the owners. The form of inventory retains the checklist of property found in the old rule.

New Rule 1920.33(b) requires each party to file and serve a pre-trial statement within the time specified by court order or the written direction of the master, or, if none, at least sixty days before the hearing on the claim for distribution of property. Eleven subparagraphs specify the content of the pre-trial statement. Preparation of the pre-trial statement requires the parties to prepare their cases well before trial, thus facilitating the presentation of evidence at the trial, and enhancing the prospect of early settlement.

Section 3505(b)(2) of the Divorce Code provides for the inventory and appraisal to contain a valuation of the property as of three dates: the date of acquisition, the date of separation and the date thirty days prior to the date of the hearing on equitable distribution. New Rule 1920.33(b)(1) does not specify a date for valuation. It provides that the pre-trial statement shall include a list of assets specifying “(i) the marital assets, their value, the date of valuation . . . and (ii) the non-marital assets, their value, the date of valuation...”. It is incumbent upon each party to show why property should or should not be valued as of a certain date. Consequently, each party needs to provide the value as of the date he or she intends to prove at the hearing. Three valuations are generally unnecessary.

Section 3505(b)(3) of the Divorce Code provides for the inventory and appraisal to contain a list of liabilities of either or both parties as of thirty days prior to the date of the hearing on equitable distribution. New Rule 1920.33(b)(6) requires the pre-trial statement to include the current expense statement required in an action for support if the party filing the statement intends to offer testimony concerning his or her expenses. Subparagraph (10) of the new rule requires that the pre-trial statement includes “a list of marital debts including the amount of each debt as of the date of separation” and specified additional information concerning that debt. New Rule 1920.33 is therefore more

comprehensive than the Divorce Code because it requires a current expense statement and a history of marital debt.

New Rule 1920.33(c) provides for sanctions as authorized by Discovery Rule 4019(c) for failure to file either the inventory or the pre-trial statement.

New Rule 1920.33(d) provides two evidentiary sanctions relating only to the pre-trial statement. Under subparagraph (1), a party may be barred from offering any testimony or introducing any evidence with regard to a matter not included in the statement. Subparagraph (2) provides that a party may not offer testimony or introduce evidence which “is inconsistent with or which goes beyond the fair scope of the information in the pre-trial statement.”

The evidentiary sanctions set forth in new Rule 1920.33(d) do not apply to the inventory. Because the inventory is filed within ninety days after a claim has been made for equitable distribution, there may be insufficient time for the parties to learn of all of the property which may be subject to that claim. Consequently, the rule contemplates that any omissions will be corrected in the pre-trial statement.

Act 1988-13 added new Section 3502(e) (formerly Section 401(k)) to the Divorce Code relating to enforcement of an order or an agreement of equitable distribution. New Rule 1920.33(e) states that orders for equitable distribution entered pursuant to the Divorce Code may be enforced as provided by the rules governing actions for support and divorce, and under the Divorce Code. Remedies available for enforcement for equitable distribution orders are set forth in Divorce Code Sections 3323(b) (formerly Section 410(b)) and 3505(a) (formerly 403(a)), as well as Section 3502(e).

It should be noted that 23 Pa.C.S. § 3105(a) (formerly Section 401.1(a)) states that an agreement is enforceable by any means available pursuant to the Divorce Code for enforcement of an order, as though the agreement were an order of court, except as otherwise provided in the agreement. Thus, although new Rule 1920.33(e) refers only to enforcement of orders, it also applies to enforcement of agreements.

Explanatory Comment -- 1994

In its opinion in *McKeown v. McKeown*, 612 A.2d 1060 (Pa. Super. 1992), the court indicates that spousal support cannot be converted automatically to alimony pendente lite. However, in many cases there is a need for alimony pendente lite after the decree is entered, just as there is spousal support before. Because of the recent change in Rule 1910.16-1, which states that the amount of alimony pendente lite is determined according to the guidelines, there is little difference between the two. Although the entitlement defense continues to be available, if

the dependent spouse is already receiving spousal support, the amended rule permits automatic conversion to alimony pendente lite upon entry of the decree.

Explanatory Comment -- 1995

New subdivision (a)(3) is added because, unlike a separate action for support, a count in a divorce which requires support is often filed in the interest of preserving every possible claim rather than because either party wishes to have that claim heard. Where a support claim is not pursued for months, or even years, allowing retroactivity to the date of filing in accordance with Rule 1910.17 can create massive and unjust arrearages.

This amendment permits retroactivity only for the period of time during which the support claim has been actively pursued. Thus, if a demand for support hearing appears on the front of a divorce pleading, support is available retroactive to the date of filing. However, where the demand does not appear on the front of the divorce pleading, retroactivity will be allowed only from the date upon which the hearing is eventually demanded.]

* * *

Rule 1920.33. Joinder of Related Claims. Distribution of Property. Enforcement.

(a) Within ninety days after service of a pleading or petition containing a claim for determination and distribution of property under Section 3502 of the Divorce Code, each party shall file an inventory specifically describing all property owned or possessed at the time the action was commenced. The inventory shall set forth as of the date of the filing of the complaint:

(1) a specific description of all marital property in which either or both have a legal or equitable interest individually or with any other person and the name of such other person; and

(2) a specific description of all property in which a spouse has a legal or equitable interest which is claimed to be excluded from marital property and the basis for such exclusion.

Official Note

Subdivision (c) of this rule provides sanctions for failure to file an inventory as required by this subdivision. An inventory filed within the ninety day period may be incomplete where the party filing it does not know of all of the property involved in the claim for equitable distribution. Consequently, the rule does not contemplate that a party be precluded from presenting testimony or offering

evidence as to property omitted from the inventory. The omission may be supplied by the pre-trial statement required by subdivision (b).

(b) Within the time required by order of court or written directive of the master or, if none, at least sixty days before the scheduled hearing on the claim for the determination and distribution of property, each party shall file and serve upon the other party a pre-trial statement. The pre-trial statement shall include the following matters, together with any additional information required by special order of the court:

(1) a list of assets, which may be in chart form, specifying:

(i) the marital assets, their value, the date of the valuation, whether any portion of the value is non-marital, and any liens or encumbrances thereon~~[,]~~; and

(ii) the non-marital assets, their value, the date of the valuation, and any liens or encumbrances thereon;

(2) the name and address of each expert whom the party intends to call at trial as a witness. A report of each expert witness listed shall be attached to the pre-trial statement. The report shall describe the witness's qualifications and experience and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion;

(3) the name, address and a short summary of the testimony of each person, other than the party, whom the party intends to call at trial as a witness;

(4) a list of all of the exhibits which the party expects to offer in evidence, each containing an identifying mark. Any exhibits that do not exceed three pages shall be attached to the pre-trial statement, and any exhibits which exceed three pages shall be described;

(5) the party's gross income from all sources, each payroll deduction, and the party's net income, including the party's most recent state and federal income tax returns and pay stubs;

(6) if the party intends to offer any testimony as to his or her expenses, **[a current] an [e]Expense [s]Statement** in the form required by **[the practice and procedure governing an action in support] Rule 1910.27(c)(2)(B)**;

(7) the value of a pension or retirement benefits, the marital portion thereof, and the facts and documentation upon which the party relies to support the valuation;

(8) if there is a claim for counsel fees, the amount of fees to be charged, the basis for the charge, and a detailed itemization of the services rendered;

(9) where there is a dispute, the description and value of any items of tangible personal property, the method of evaluating each item, and the evidence, including documentation, to be offered in support of the valuation;

(10) a list of marital debts including the amount of each debt as of the date of separation, the date on which the debt was initially incurred, the initial amount of the debt and its purpose, the amounts and dates of payments made since the date of separation, and the evidence that will be offered in support of the claim;

(11) a proposed resolution of the economic issues.

(c) If a party fails to file either an inventory as required by subdivision (a) or a pre-trial statement as required by subdivision (b), the court may make an appropriate order under Rule 4019(c) governing sanctions.

(d) (1) A party who fails to comply with a requirement of subdivision (b) of this rule shall, except upon good cause shown, be barred from offering any testimony or introducing any evidence in support of or in opposition to claims for the matters not covered therein.

(2) A party shall, except upon good cause shown, be barred from offering any testimony or introducing any evidence that is inconsistent with or which goes beyond the fair scope of the information set forth in the pre-trial statement.

(e) An order distributing property under Section 3502 of the Divorce Code may be enforced as provided by the rules governing actions for support and divorce, and in the Divorce Code.

[Official Note

See, inter alia, Section 3323(b) of the Divorce Code relating to enforcement of the rights of any party under a decree, Section 3505(a) relating to injunction against disposition of property pending suit, and Section 3502(e) providing remedies for failure to comply with an order of equitable distribution or the terms of an agreement between the parties.]

Explanatory Comment--1994

23 Pa. C.S. §3105(a) states that an agreement is enforceable by any means available pursuant to the Divorce Code for enforcement on an order, as though the agreement were an order of court, except as otherwise provided in the agreement. Thus, although Rule 1920.33 refers only to enforcement of orders, it also applies to enforcement of agreements.

Rule 1920.54. Hearing by Master. Report. Related Claims.

(a) If claims for child support, alimony pendente lite, or counsel fees and expenses have been referred to a master pursuant to Rule 1920.51(a), the master's report shall contain separate sections captioned "Child Support," "Alimony Pendente Lite," or "Counsel Fees and Expenses" as appropriate. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order stating:

- (1) the amount of support or alimony pendente lite~~[,]~~;
- (2) by and for whom it shall be paid~~[,]~~; and
- (3) the effective date of the order.

The ~~[i]~~Income and ~~[e]~~Expense ~~[s]~~Statements shall be attached to the report.

* * *