

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

**Proposed amendments of Pa.R.C.P. Nos. 1920.14, 1920.42, 1920.46, 1920.51,
1920.72 and 1920.73**

The Domestic Relations Procedural Rules Committee (Committee) is planning to propose to the Supreme Court amendments to Pa.R.C.P. Nos. 1920.14, 1920.42, 1920.46, 1920.51, 1920.72 and 1920.73, for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being republished in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Bruce J. Ferguson, Counsel
Domestic Relations Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
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All communications in reference to the proposal should be received by **March 2, 2018**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Domestic Relations Procedural Rules
Committee

David J. Slesnick, Esq.
Chair

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE
RECOMMENDATION 158**

Rule 1920.14. Answer. Denial. Affidavit under Section 3301(d) of the Divorce Code.

(a) The averments in the complaint as to the divorce or annulment, **[all other claims which]ancillary claims that** may be joined under the Divorce Code, and any petition for special relief under these rules shall be deemed denied unless admitted by an answer. Notwithstanding the foregoing, the court may require a response to a petition for special relief.

(b) The averments of the **[affidavit]Affidavit** under Section 3301(d) of the Divorce Code shall be deemed admitted unless denied by counter-affidavit.

Note: See **[Rule]Pa.R.C.P. No. 1920.72([d]e)(3)** for the form of **the** counter-affidavit.

[Explanatory Comment—1994

Subdivision (b) requires that the averments of the plaintiff's affidavit under Section 3301(d) of the Divorce Code be denied by counteraffidavit. If the defendant fails to file a counteraffidavit, all allegations are deemed admitted.

Explanatory Comment—2007

Subdivision (a) has been amended to clarify that the averments in a petition for special relief in a divorce or annulment action are deemed to be denied unless admitted by an answer.]

Explanatory Comment—1994

Subdivision (b) requires that the averments in an Affidavit under Section 3301(d) of the Divorce Code be denied by counter-affidavit. If the non-moving party fails to file a counter-affidavit, all allegations in the moving party's affidavit are deemed admitted.

Explanatory Comment—2007

Subdivision (a) has been amended to clarify that the averments in a petition for special relief in a divorce or annulment action are deemed denied unless admitted by an answer.

---The current rule is deleted in its entirety---

Rule 1920.42. Affidavit and Decree under § 3301(c) or § 3301(d)(1) of the Divorce Code. Notice of Intention to File the Request Entry of Divorce Decree in § 3301(c) and § 3301(d)(1)(i) Divorces. Counter-affidavit.

(a) If a complaint has been filed requesting a divorce on the ground of irretrievable breakdown and

(1) both parties have filed an affidavit under § 3301(c) of the Divorce Code substantially in the form prescribed by Rule 1920.72(b), or

(2) either party has filed a § 3301(d) affidavit under § 3301(d) of the Divorce Code substantially in the form prescribed by Rule 1920.72(d) and has served it upon the other party along with a form counter-affidavit and the other party has admitted or failed to deny the averments of the § 3301(d) affidavit, the prothonotary on praecipe in the form prescribed by Rule 1920.73(b) shall transmit the record to the court, which shall review the record and enter the appropriate decree. No master shall be appointed.

(b) The affidavit required by § 3301(c) of the Divorce Code must have been executed

(1) ninety days or more after both filing and service of the complaint
and

(2) within thirty days of the date the affidavit was filed.

(c) An affidavit of consent may be withdrawn only with leave of court.

(d) (1) Except as provided in (e), no decree shall be entered by the court under § 3301(c) or § 3301(d)(1)(i) of the Divorce Code unless a notice of intention to request entry of divorce decree, substantially in the form prescribed by Rule 1920.73(a), was mailed or delivered to the attorney of record of the party against whom the decree is to be entered or, if there is no attorney of record, to the party, along with a form counter-affidavit if none has been filed, at least twenty days prior to the date of the filing of the praecipe to transmit the record. A copy of the praecipe, which shall state the date and manner of service of the notice, shall be attached.

(2) The affidavit required under § 3301(d) of the Divorce Code shall be filed with the prothonotary and served upon the other party, along with a form counter-affidavit. The moving party must wait a minimum of 20 days after service of the § 3301(d) affidavit before serving the Notice of Intention to File Praecipe to Transmit the

Record and another form counter-affidavit or filing the waiver of notice pursuant to Rule 1920.72(c).

(e) Notice of intention to request entry of divorce decree shall not be required prior to entry of a divorce decree

(1) where the parties have executed and filed with the prothonotary a waiver of notice substantially in the form set forth in Rule 1920.72(c); or

(2) under § 3301(d) where the court finds that no appearance has been entered on defendant's behalf and that defendant cannot be located after diligent search.

Note: This counter-affidavit will be filed only if the party against whom the decree is to be entered has not previously denied the allegations of the other party's affidavit or has not previously claimed economic relief by counterclaim or petition.

---The text below replaces the current rule ---

Rule 1920.42. Obtaining Decrees under Section 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) *Obtaining a divorce decree under Section 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 with the prothonotary;

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

(iii) the ancillary claims under Pa.R.C.P. Nos. 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) either 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 3301(c)(1) and a copy of the proposed Praecipe to Transmit Record indicating the date and manner of service of the Notice of Intention to File the Praecipe to Transmit Record, or, alternatively, the parties have signed and filed Waivers of Notice of Intention to File the Praecipe to Transmit Record; and

(v) the party requesting the divorce decree has completed and filed with the prothonotary 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 the Record.

(2) To the extent that grounds for divorce have been established under Section 3301(c)(1) of the Divorce Code by the parties complying with subdivision (a)(1)(ii), if the parties have been unable to resolve the ancillary claims the court shall enter an Order Approving Grounds for Divorce when the requirements of subdivision (a)(1)(i) has been completed and the moving party:

(i) has served on the other party a Notice of Intention to File the Praecipe to Transmit Record or, alternatively, the other party waived this notice by signing and filing with the prothonotary a Waiver of Notice of Intention to File the Praecipe to Transmit Record; and

(ii) has completed and filed with the prothonotary 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 Praeceptum to Transmit Record.

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

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

(3) After the court issues an order approving grounds for divorce, a party may request, consistent with the judicial district's local rules and procedures, the court either hear the ancillary claims or appoint a master to hear the ancillary claims as outlined in Pa.R.C.P. No. 1920.51.

Note: See Pa. R.C.P. No. 1920.74 for the Motion for Appointment of Master.

(4) If the parties resolve the ancillary claims by agreement after the court approves the grounds for the divorce but before the court entering an order disposing of the ancillary claims, the parties shall notify the court of the agreement and request the entry of the appropriate divorce decree. To the extent the agreement does not address all of the claims raised by the parties in the pleadings, the party raising the claim shall withdraw the claim before the court entering a divorce decree.

(b) *Obtaining a divorce decree under Section 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 with the prothonotary;

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

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

(B) has signed an Affidavit to Establish Presumption of Consent alleging his or her status as a victim of a personal injury crime and that his or her spouse has been convicted of that crime;

(iii) the filed affidavits have been served on the other party, along with a blank Counter-Affidavit under Section 3301(c)(2), and the other party has admitted or failed to deny the averments in the Affidavit to Establish Presumption of Consent;

(iv) the ancillary claims under Pa.R.C.P. Nos. 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) either the party requesting the divorce decree has served on the other party a Notice of Intention to File the Praeceptum to Transmit Record, which included a blank Counter-Affidavit under Section 3301(c)(2) and a copy of the proposed Praeceptum to Transmit Record indicating the date and manner of service of the Notice of Intention to File the Praeceptum to Transmit Record, or, alternatively, the parties have signed and filed Waivers of Notice of Intention to File the Praeceptum to Transmit Record; and

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

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

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

(2) To the extent that grounds for divorce have been established under Section 3301(c)(2) of the Divorce Code by a party complying with subdivision (b)(1)(ii) -

(iii), if the parties have been unable to resolve the ancillary claims the court shall enter an Order Approving Grounds for Divorce when the requirements of subdivision (b)(1)(i) has been completed and the moving party:

(i) has served on the other party a Notice of Intention to File the Praeceptum to Transmit Record or, alternatively, the other party waived this notice by signing and filing with the prothonotary a Waiver of Notice of Intention to File the Praeceptum to Transmit Record; and

(ii) has completed and filed with the prothonotary a Praeceptum 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 Praeceptum to Transmit Record, the moving party shall wait a minimum of 20 days after service of the Notice of Intention to File the Praeceptum to Transmit Record before filing the Praeceptum 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 Praeceptum to Transmit Record.

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

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

(3) After the court issues an order approving grounds for divorce, a party may request, consistent with the judicial district's local rules and procedures, the court either hear the ancillary claims or appoint a master to hear the ancillary claims as outlined in Pa.R.C.P. No. 1920.51.

Note: See Pa. R.C.P. No. 1920.74 for the Motion for Appointment of Master.

(4) If the parties resolve the ancillary claims by agreement after the court approves the grounds for the divorce but prior to the court entering an order disposing of the ancillary claims, the parties shall notify the court of the agreement and request the entry of the appropriate divorce decree. To the extent the agreement does not address all of the claims raised by the parties in the pleadings, the party raising the claim shall withdraw the claim prior to the court entering a divorce decree.

(c) *Obtaining a divorce decree under Section 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 when the parties have completed the following requirements:

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

(ii) a party has signed and filed an Affidavit under Section 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 affidavit, along with a blank Counter-Affidavit under Section 3301(d) of the Divorce Code, has been served on the other party consistent with Pa.R.C.P. No. 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;

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 under § 3301(d) of the Divorce Code are deemed admitted unless denied. Pa.R.C.P. No. 1930.4 is the Domestic Relations rule for service of original process.

(iv) the ancillary claims under Pa.R.C.P. Nos. 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) either the party requesting the divorce decree has served on the other party a Notice of Intention to File the Praeceptum to Transmit Record, which included a blank Counter-Affidavit under Section 3301(d) of the Divorce Code and a copy of the proposed Praeceptum to Transmit Record indicating the date and manner of service of the Notice of Intention to File the Praeceptum to Transmit Record, or, alternatively, the parties have signed and filed Waivers of Notice of Intention to File the Praeceptum to Transmit Record; and

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

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

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

(2) To the extent that grounds for divorce have been established under Section 3301(d) of the Divorce Code by a party complying with subdivision (c)(1)(ii) - (iii), if the parties have been unable to resolve the ancillary claims the court shall enter an Order Approving Grounds for Divorce when the requirements of subdivision (c)(1)(i) has been completed and the moving party:

(i) has served on the other party a Notice of Intention to File the Praeceptum to Transmit Record or, alternatively, the other party waived this notice by signing and filing with the prothonotary a Waiver of Notice of Intention to File the Praeceptum to Transmit Record; and

(ii) has completed and filed with the prothonotary a Praeceptum 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 Praeceptum to Transmit Record, the moving party shall wait a minimum of 20 days after service of the Notice of Intention to File the Praeceptum to Transmit Record before filing the Praeceptum 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 Praeceptum to Transmit Record.

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

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

(3) After the court issues an order approving grounds for divorce, a party may request, consistent with the judicial district's local rules and procedures, the court either hear the ancillary claims or appoint a master to hear the ancillary claims as outlined in Pa.R.C.P. No. 1920.51.

Note: See Pa. R.C.P. No. 1920.74 for the Motion for Appointment of Master.

(4) If the parties resolve the ancillary claims by agreement after the court approves the grounds for the divorce but prior to the court entering an order disposing of the ancillary claims, the parties shall notify the court of the agreement and request the entry of the appropriate divorce decree. To the extent the agreement does not address all of the claims raised by the parties in the pleadings, the party raising the claim shall withdraw the claim prior to the court entering a divorce decree.

Rule 1920.46. Affidavit of Non-Military Service

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 **[Rule]Pa.R.C.P. No. 1920.42[(a)(2)](c)(1)(ii)**.

Note: The Servicemembers Civil Relief Act, **[50 App. U.S.C.A. Section 521]50 U.S.C. app Section 521**, requires that in cases in which the defendant does not make an appearance, the plaintiff must file an affidavit of non-military 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, **[no]a judgment [may]shall not** be entered until the court appoints an attorney to represent the defendant and protect his or her interest.

[Rule 1920.42(a)(2) governs an]An action for divorce under Section 3301(d)(1)(i) of the Divorce Code **is governed by Pa.R.C.P. No. 1920.42(c)**.

* * *

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

(a) (1) The court may hear the testimony or, upon **[its own motion or the motion of either party,]motion of a party or of the court**, may appoint a master **[with respect to all or any of the matters]to hear the matters and ancillary claims** specified in subdivision (a)(2)(i)**[to consider same]** and issue a report and recommendation. The order of appointment shall specify the **[matters which]matters and ancillary claims that** are referred to the master.

(2) (i) The court may appoint a master in an action of divorce under Section 3301(a), (b), **(c)(2)**, and (d)(1)(ii) of the Divorce Code, an action for annulment, and the **ancillary** claims for alimony, **[alimony pendente lite]**, equitable **[distribution]division** of marital property**[, child support]**, partial custody**[or visitation, or]**, counsel fees, **and** costs and expenses**[, or any aspect thereof]**.

Note: The appointment of a master in a Section 3301(c)(2) divorce may be necessary to establish the presumption of consent if a party denies the averments in the Affidavit to Establish Presumption of Consent on the Counter-Affidavit under Section 3301(c)(2) of the Divorce Code.

(ii) **[If there are no claims other than divorce, no master may be appointed]The Court shall not appoint a master** to determine grounds for divorce if **[either]a** party has asserted grounds for divorce pursuant to **[\$]Section 3301(c)(1)** or **[\$]Section 3301(d)(1)(i)** of the Divorce Code, **unless a party raised ancillary claims in the pleadings.** **[A master may be appointed to hear ancillary economic claims in a divorce action pursuant to § 3301(c) or § 3301(d) of the Divorce Code. The master may be appointed to hear ancillary economic claims prior to]****An appointment of a master for resolution of the ancillary claims in a Section 3301(c) or Section 3301(d) divorce may be before** the entry of a divorce decree if grounds for divorce have been established **and approved by the court.**

(iii) Before the court hears or appoint a master to hear the ancillary claims, a party shall request the court enter an order approving grounds for divorce.

Note: See Pa.R.C.P. No. 1920.42(a)(2) for the procedures for obtaining an order approving grounds for a Section 3301(c)(1) divorce.

See Pa.R.C.P. No. 1920.42(b)(2) for the procedures for obtaining an order approving grounds for a Section 3301(c)(2) divorce.

See Pa.R.C.P. No. 1920.42(c)(2) for the procedures for obtaining an order approving grounds for a Section 3301(d) divorce.

[(iii)](iv) [No master may be appointed]The Court shall not appoint a master in a claim for legal, physical or shared custody or paternity.

Note: Section 3321 of the Divorce Code, 23 Pa.C.S. § 3321, prohibits the appointment of a master as to the claims of custody and paternity. **However, as set forth in Pa.R.C.P. No. 1920.91(3), Section 3321 has been suspended insofar as that section prohibits the appointment of masters in partial custody cases.**

* * *

Rule 1920.72. Form of Complaint. Affidavits under [\$]Section 3301(c) or [\$]Section 3301(d) of the Divorce Code. [Counter-affidavit]Counter-Affidavits. [Waiver of Notice of Intention to Request Decree under § 3301(c) and § 3301(d)].

(a) The complaint in an action **[of]for a** divorce under **[\$]Section** 3301(c) or **Section** 3301(d) shall begin with the Notice to Defend and Claim Rights required by **[Rule]Pa.R.C.P. No.** 1920.71 and shall be substantially in the following form:

* * *

(b) The **[affidavit of consent]Affidavit of Consent** required by Section 3301(c) of the Divorce Code and **[Rule]Pa.R.C.P. No.** 1920.42(a)(1)**(ii) or (b)(1)(ii)** shall be substantially in the following form:

(Caption)

AFFIDAVIT OF CONSENT

1. A Complaint in divorce under Section 3301(c) of the Divorce Code was filed on _____ **and served on the defendant on** _____.
(Date) (Date)

2. The marriage of plaintiff and defendant is irretrievably broken and **[ninety]90** days have elapsed from the date of filing and service of the Complaint.

3. I consent to the entry of a final decree of divorce after service of notice of intention to request entry of the decree.

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

Date: _____
[(Plaintiff)/(Defendant)](PLAINTIFF) (DEFENDANT)

[(c) The waiver permitted by Rule 1920.42(e) shall be in substantially the following form:

(Caption)

**Waiver of Notice of Intention to Request
Entry of a Divorce Decree under
§ 3301(c) and § 3301(d) of the Divorce Code**

1. I consent to the entry of a final decree of divorce without notice.

2. I understand that I may lose rights concerning alimony, division of property, lawyer’s fees or expenses if I do not claim them before a divorce is granted.

3. I understand that I will not be divorced until a divorce decree is entered by the Court and that a copy of the decree will be sent to me immediately after it is filed with the prothonotary.

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

Date: _____
(PLAINTIFF) (DEFENDANT)]

(c) The Affidavit to Establish Presumption of Consent under Section 3301(c)(2) of the Divorce Code and Pa.R.C.P. No. 1920.42(b)(1)(ii)(B) shall be substantially in the following form:

---The text below is an entirely new form---

(Caption)

**AFFIDAVIT TO ESTABLISH PRESUMPTION OF CONSENT
UNDER SECTION 3301(c)(2) OF THE DIVORCE CODE**

1. I am the victim of a “personal injury crime” as defined in 23 Pa.C.S. § 3103.

2. My spouse was convicted of the crime averred in Paragraph 1 on insert date in the Court of Common Pleas of insert county name County. The docket number(s) is/are insert docket number.

3. The personal injury crime(s) for which my spouse was convicted:

Check all that apply:

- 18 Pa.C.S. Ch. 25 (relating to criminal homicide)
- 18 Pa.C.S. Ch. 27 (relating to assault)
- 18 Pa.C.S. Ch. 29 (relating to kidnapping)
- 18 Pa.C.S. Ch. 30 (relating to human trafficking)
- 18 Pa.C.S. Ch. 31 (relating to sexual offenses)
- 18 Pa.C.S. § 3301 (relating to arson and related offenses)
- 18 Pa.C.S. Ch. 37 (relating to robbery)
- 18 Pa.C.S. Ch. 49 Subch. B (relating to victim and witness intimidation)

- 75 Pa.C.S. § 3732 (relating to homicide by vehicle)
- 75 Pa.C.S. § 3742 (relating to accidents involving death or personal injury)

I verify that the statements made in this 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 (PLAINTIFF) (DEFENDANT)

* * *

(d) The **[affidavit required by §]Affidavit under Section** 3301(d) of the Divorce Code [and **]required by** Pa.R.C.P. No. 1920.42**[(a)(2)](c)(1)(ii)** shall be substantially in the following form:

(Caption)

NOTICE

If you wish to deny any of the statements outlined in this affidavit, you must file a counter-affidavit within 20 days after this affidavit has been served on you or the statements will be admitted.

AFFIDAVIT UNDER SECTION 3301(d)
OF THE DIVORCE CODE

1. The parties to this action separated on _____ insert date.
2. Check (a) or (b):
 - (a) The date of separation was prior to December 5, 2016, and the parties have continued to live separate and apart for a period of at least two years.
 - (b) The date of separation was on or after December 5, 2016, and the parties have continued to live separate and apart for a period of at least one year.
3. The marriage is irretrievably broken.
4. I understand that I may lose rights concerning alimony, division of property, lawyer's fees or expenses if I do not claim them before a divorce is granted.

I verify that the statements made in this 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: _____
(PLEAINTIFF) (DEFENDANT)

(e) (1) The ~~[counter-affidavit prescribed]~~**Counter-Affidavit under Section 3301(c)(1) of the Divorce Code required** by Pa.R.C.P. No. 1920.42[(d)(2) for a divorce under § 3301(c)](a)(1)(iv) shall be substantially in the following form:

(Caption)

COUNTER-AFFIDAVIT UNDER [§]SECTION 3301(c)(1) OF THE DIVORCE CODE

I wish to claim economic relief which may include alimony, division of property, lawyer’s fees or expenses or other important rights.

[I understand that I must file my economic claims with the prothonotary in writing and serve them on the other party. If I fail to do so before the date set forth on the Notice of Intention to Request Divorce Decree, the divorce decree may be entered without further notice to me, and I shall be unable thereafter to file any economic claims.]

I UNDERSTAND THAT I MUST ALSO FILE ALL OF MY ECONOMIC CLAIMS WITH THE PROTHONOTARY IN WRITING AND SERVE THEM ON THE OTHER PARTY. IF I FAIL TO DO SO BEFORE THE DATE SET FORTH ON THE NOTICE OF INTENTION TO FILE THE PRAECIPE TO TRANSMIT RECORD OR AN ORDER APPROVING GROUNDS FOR DIVORCE, THE DIVORCE DECREE OR ORDER MAY BE ENTERED WITHOUT FURTHER NOTICE TO ME, AND I MAY BE UNABLE THEREAFTER TO FILE ANY ECONOMIC CLAIMS.

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: _____
(PLEAINTIFF) (DEFENDANT)

NOTICE: IF YOU DO NOT WISH TO CLAIM ECONOMIC RELIEF, YOU SHOULD NOT FILE THIS COUNTER-AFFIDAVIT.

(2) The Counter-Affidavit under Section 3301(c)(2) of the Divorce Code required by Pa.R.C.P. No. 1920.42(b)(1)(iii) shall be substantially in the following form:

---The text below is an entirely new form---

(Caption)

**COUNTER-AFFIDAVIT
UNDER SECTION 3301(c)(2) OF THE DIVORCE CODE**

1. Check either (a) or (b):

- (a) I do not oppose the entry of a divorce decree.
- (b) I oppose the entry of a divorce decree because:

(Check (i), (ii), or both)

(i) I have not been convicted of a "personal injury crime" as defined in 23 Pa.C.S. § 3103.

(ii) My spouse was not the victim of a personal injury crime for which I have been convicted.

2. Check (a), (b), or (c):

(a) I do not wish to make any claims for economic relief. I understand that I may lose rights concerning alimony, division of property, lawyer's fees or expenses if I do not claim them before a divorce is granted.

(b) I wish to claim economic relief, which may include alimony, division of property, lawyer's fees, costs and expenses, or other important rights.

I UNDERSTAND THAT IN ADDITION TO CHECKING 2(b), I MUST ALSO FILE ALL OF MY ECONOMIC CLAIMS WITH THE PROTHONOTARY IN WRITING AND SERVE THEM ON THE OTHER PARTY. IF I FAIL TO DO SO BEFORE THE DATE SET FORTH ON THE NOTICE OF INTENTION TO REQUEST DIVORCE DECREE OR AN ORDER APPROVING GROUNDS FOR DIVORCE, THE DIVORCE DECREE OR ORDER MAY BE ENTERED WITHOUT FURTHER NOTICE TO ME, AND I MAY BE UNABLE THEREAFTER TO FILE ANY ECONOMIC CLAIMS.

(c) Economic claims have been raised and are not resolved.

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: _____

(PLAINTIFF) (DEFENDANT)

NOTICE: IF YOU DO NOT WISH TO OPPOSE THE ENTRY OF A DIVORCE DECREE AND YOU DO NOT WISH TO MAKE ANY CLAIM FOR ECONOMIC RELIEF, YOU SHOULD NOT FILE THIS COUNTER-AFFIDAVIT.

* * *

[(2)](3) The **[counter-affidavit prescribed by §]Counter-Affidavit under Section 3301(d)** of the Divorce Code **[and]required by** Pa.R.C.P. No. 1920.42**[(d)(2)](c)(1)(iii)** shall be substantially in the following form:

(Caption)

COUNTER-AFFIDAVIT UNDER **[\$]SECTION** 3301(d)
OF THE DIVORCE CODE

1. Check either (a) or (b):

- (a) I do not oppose the entry of a divorce decree.
 (b) I oppose the entry of a divorce decree because:

Check (i), (ii), (iii) or all:

(i) The parties to this action have not lived separate and apart for the required separation period: two years for parties that separated prior to December 5, 2016, and one year for parties that separated on or after December 5, 2016.

- (ii) The marriage is not irretrievably broken.
 (iii) There are economic claims pending.

(2) Check (a), (b) or (c):

(a) I do not wish to make any claims for economic relief. I understand that I may lose rights concerning alimony, division of property, lawyer's fees or expenses if I do not claim them before a divorce is granted.

(b) I wish to claim economic relief, which may include alimony, division of property, lawyer's fees, [or]costs and expenses, or other important rights.

I UNDERSTAND THAT IN ADDITION TO CHECKING **(2)(b)[ABOVE]**, I MUST ALSO FILE ALL OF MY ECONOMIC CLAIMS WITH THE PROTHONOTARY IN WRITING AND SERVE THEM ON THE OTHER PARTY. IF I FAIL TO DO SO BEFORE THE DATE SET FORTH ON THE NOTICE OF INTENTION TO REQUEST DIVORCE DECREE, THE DIVORCE DECREE MAY BE ENTERED WITHOUT FURTHER NOTICE TO ME, AND I SHALL BE UNABLE THEREAFTER TO FILE ANY ECONOMIC CLAIMS.

(c) Economic claims have been raised and are not resolved.

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: _____

(PLAINTIFF) (DEFENDANT)

NOTICE: IF YOU DO NOT WISH TO OPPOSE THE ENTRY OF A DIVORCE DECREE AND YOU DO NOT WISH TO MAKE ANY CLAIM FOR ECONOMIC RELIEF, YOU SHOULD NOT FILE THIS COUNTER-AFFIDAVIT.

* * *

**Rule 1920.73. Notice of Intention to [Request Entry of Divorce Decree]File
Praeipce to Transmit Record. Waiver of Notice of Intention to File Praeipce to
Transmit Record. Praeipce to Transmit Record[Forms].**

(a) (1) The **[notice of the intention to request entry of divorce decree prescribed by Rule 1920.42(d)]Notice of Intention to File the Praeipce to Transmit Record required by Pa.R.C.P. No. 1920.42(a)(1)(iv), (b)(1)(v), and (c)(1)(v)**, shall be substantially in the following form if there is an attorney of record:

(Caption)
**[NOTICE OF INTENTION TO REQUEST ENTRY
OF DIVORCE DECREE]
NOTICE OF INTENTION TO FILE
THE PRAEIPCE TO TRANSMIT RECORD**

TO: _____
(PLAINTIFF/DEFENDANT)

_____ (PLAINTIFF/DEFENDANT) intends to file with the court the attached Praeceptum to Transmit Record on or after _____, 20____ requesting **[that a final decree in divorce be entered]the court enter a final decree in divorce or an order approving grounds for divorce as indicated on the proposed Praeceptum to Transmit Record, which is attached.**

Attorney for (PLAINTIFF/DEFENDANT)

(2) (i) The **[notice of the intention to request entry of a § 3301(c) divorce decree prescribed by Rule 1920.42(d)]Notice of Intention to File the Praeceptum to Transmit Record required by Pa.R.C.P. No. 1920.42(a)(1)(iv) or (b)(1)(v)** shall be substantially in the following form if there is no attorney of record:

(Caption)

**[NOTICE OF INTENTION TO REQUEST ENTRY OF
§ 3301(c) DIVORCE DECREE]
NOTICE OF INTENTION TO FILE
THE PRAECEPTUM TO TRANSMIT RECORD
SECTION 3301(c) OF THE DIVORCE CODE**

TO: _____
(PLAINTIFF/DEFENDANT)

You have signed **[a § 3301(c) affidavit]an Affidavit of Consent under Section 3301(c) of the Divorce Code** consenting to the entry of a divorce decree. Therefore, on or after _____, 20____, the other party can request the court to enter a final decree in divorce **or an order approving grounds for divorce as indicated on the proposed Praeceptum to Transmit Record, which is attached.**

Unless you have already filed with the court a written claim for economic relief, you must do so by the date in the paragraph above, or the court may grant the divorce **or an order approving grounds for divorce** and you **[will]may** lose forever the right to ask for economic relief. The filing of the form counter-affidavit alone does not protect your economic claims.

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)

* * *

(ii) The **[notice of the intention to request entry of § 3301(d) divorce decree prescribed by Rule 1920.42(d)]**Notice of Intention to File the Praecipe to Transmit Record required by Pa.R.C.P. No. 1920.42(c)(1)(v) shall be substantially in the following form if there is no attorney of record:

(Caption)

**[NOTICE OF INTENTION TO REQUEST ENTRY
OF § 3301(d) DIVORCE DECREE]
NOTICE OF INTENTION TO FILE
THE PRAECIPE TO TRANSMIT RECORD
UNDER SECTION 3301(d) OF THE DIVORCE CODE**

TO: _____
(PLAINTIFF/DEFENDANT)

You have been sued in an action for divorce. You have failed to answer the complaint or file a counter-affidavit to the **[§ 3301(d) affidavit]**Affidavit under Section 3301(d) of the Divorce Code. Therefore, on or after _____, 20____, the other party can request the court to enter a final decree in divorce **or an order approving grounds for divorce as indicated on the proposed Praecipe to Transmit Record, which is attached.**

If you do not file with the prothonotary of the court an answer with your signature notarized or verified or a counter-affidavit by the above date, the court can enter a final decree in divorce **or an order approving grounds for divorce.** A counter-affidavit **[which]that** you may file with the prothonotary of the court is attached to this notice.

Unless you have already filed with the court a written claim for economic relief, you must do so by the above date, or the court may grant the divorce **or an order approving grounds for divorce** and you **[will]may** lose forever the right to ask for

economic relief. The filing of the form counter-affidavit alone does not protect your economic claims.

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)

* * *

(b) The waiver permitted by Pa.R.C.P. No. 1920.42(a)(2)(i), (b)(2)(i), and (c)(2)(i) shall be substantially in the following form:

---The text below is an entirely new form---

(Caption)

WAIVER OF NOTICE OF INTENTION TO FILE
THE PRAECIPE TO TRANSMIT RECORD

1. Without further notice, I consent to the entry of:
 a final decree of divorce; or
 an order approving grounds for divorce.

2. I understand that I may lose rights concerning alimony, division of property, lawyer's fees, or expenses if I do not claim them before a divorce is granted.

3. I understand that I will not be divorced until a divorce decree is entered by the Court and that a copy of the decree will be sent to me immediately after it is filed with the prothonotary.

I verify that the statements made in this 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: _____
(PLAINTIFF) (DEFENDANT)

[(b)c] The [praecipe to transmit the record prescribed by Rule]Praecipe to Transmit Record required by Pa.R.C.P. No. 1920.42(a)(1)(v), (b)(1)(vi), and (c)(1)(vi) shall be [in] substantially in the following form:

[(Caption)

PRAECIPE TO TRANSMIT RECORD

To the Prothonotary:

Transmit the record, together with the following information, to the court for entry of a divorce decree:

1. Grounds for divorce: irretrievable breakdown under Section (3301(c)) Section (3301(d)(1)) of the Divorce Code. (Strike out inapplicable section).

2. Date and manner of service of the complaint: _____

3. Complete either paragraph (a) or (b).

(a) Date of execution of the affidavit of consent required by Section 3301(c) of the Divorce Code: by plaintiff: _____ ; by defendant: _____

(b)(1) Date of execution of the affidavit required by Section 3301(d) of the Divorce Code: _____;

(2) Date of filing and service of the Section 3301(d) affidavit upon the opposing party: _____.

4. Related claims pending: _____

5. Complete either (a) or (b).

(a) Date and manner of service of the notice of intention to file

praecipe a copy of which is attached: _____.

(b) Date plaintiff's Waiver of Notice was filed with the Prothonotary: _____
_____.

Date defendant's Waiver of Notice was filed with the Prothonotary: _____
_____.

(Attorney for)(Plaintiff)(Defendant)]

---The text below replaces the current form in its entirety---

(Caption)

PRAECIPE TO TRANSMIT RECORD

To the Prothonotary:

Transmit the record, together with the following information, to the court for:

Check one of the following:

- entry of a divorce decree;
- entry of a divorce decree with marital settlement agreement attached;
- entry of a bifurcated divorce decree with the Court retaining jurisdiction over unresolved ancillary claims; or
- an order approving grounds for divorce with the Court retaining jurisdiction over unresolved ancillary claims.

1. Check the applicable section of the Divorce Code.

Grounds for divorce: irretrievable breakdown under:

- Section 3301(c)(1)
- Section 3301(c)(2)
- Section 3301(d)

2. Service of the Complaint:

- (a) Date served: _____.
- (b) Manner of service: _____.

3. Complete either paragraph (a) or (b).

(a) **Section 3301(c)(1) or (2) of the Divorce Code** - Insert the date each party signed their Affidavit of Consent, or if the ground for divorce is under Section 3301(c)(2) of the Divorce Code, next to the appropriate party insert the date the spouse was convicted of the personal injury crime identified in 23 Pa.C.S. Section 3103 and complete (1) and (2).

Plaintiff: _____;

Defendant:_____.

(1) The date the party signed the Affidavit to Establish Presumption of Consent under Section 3301(c)(2) of the Divorce Code: _____;

(2) The date of filing and service of the Affidavit to Establish Presumption of Consent under Section 3301(c)(2) of the Divorce Code upon the other party:
_____.

(b) **Section 3301(d) of the Divorce Code:**

(1) The date the Affidavit under Section 3301(d) of the Divorce Code was signed: _____;

(2) Date of filing and service of the affidavit upon the other party:
_____.

4. Related claims pending: _____.

5. Complete either (a) or (b).

(a) Notice of Intention to File the Praeceptum to Transmit Record:

(1) Date served: _____.

(2) Manner of service: _____.

(b) The date of filing of the party's Waiver of Notice of Intention to File the Praeceptum to Transmit Record with the Prothonotary:

(1) Plaintiff's Waiver: _____.

(2) Defendant's Waiver: _____.

(Attorney for)(PLAINTIFF)(DEFENDANT)

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

REPUBLICATION REPORT

RECOMMENDATION 158

The Domestic Relations Procedural Rules Committee (Committee) is proposing amendments to Pa.R.C.P. Nos. 1920.14, 1920.42, 1920.46, 1920.51, 1920.72 and 1920.73. The impetus for the amendments was Act 24 of 2016 that amended the Divorce Code by adding 23 Pa.C.S. § 3301(c)(2), which provides for a presumption of consent to a divorce if there is an allegation that 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. The Committee previously published this Recommendation in the *Pennsylvania Bulletin*, 46 Pa.B. 6113 (October 1, 2016); however, after additional deliberations on the related divorce procedural issues, the Committee has comprehensively revised the Recommendation.

In implementing § 3301(c)(2), the Committee borrowed from the familiar process for obtaining a § 3301(d) divorce by incorporating an affidavit/counter-affidavit procedure. The process for establishing the presumption of consent in § 3301(c)(2) using an affidavit requires the party to aver 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 convicted spouse may oppose the establishment of the presumption by completing and filing a counter-affidavit. If the 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. Currently, Pa.R.C.P. No. 1920.51 does not permit the appointment of a master to determine grounds for divorce under § 3301(c); however, as part of the Recommendation, the Committee proposes an amendment to Pa.R.C.P. No. 1920.51(a)(2) permitting the appointment of a master for a determination of the presumption under § 3301(c)(2).

To effectuate the new procedures for § 3301(c)(2) divorces, the Committee proposes several additional forms, including an Affidavit to Establish Presumption of Consent and a Counter-Affidavit under § 3301(c)(2). The Committee also proposes additional amendments to several other forms, including the Notice of Intention to Request Entry of a Divorce Decree, Waiver of Notice of Intention to Request Entry of a Divorce Decree, and the Praecipe to Transmit Record.

Also, after researching the divorce procedures from various counties across the Commonwealth, the Committee concluded that in many counties, a party or counsel could simply request the court hear the economic claims or appoint a divorce master without definitively asserting or establishing that the case was ripe for resolution.

Conversely, the Committee reviewed local rules and procedures from several counties that require the parties obtain an order approving grounds for divorce before seeking resolution of the economic claims. As the court cannot resolve the ancillary claims until grounds for divorce have been established, the Committee has incorporated procedures into Pa.R.C.P. No. 1920.42 for obtaining approval of grounds for divorce in cases in which the parties have unresolved ancillary claims. This process requires 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 economic claims raised in the pleadings. The process ensures a uniform practice across the Commonwealth by providing a definitive point when the parties can move the court for resolution of the ancillary claims.

In this Recommendation, the Committee has completely rewritten Pa.R.C.P. No. 1920.42. The current rule is difficult to follow and comprehend, and including additional procedures for § 3301(c)(2) divorces into the current rule would have furthered the problem. The proposed revision to Pa.R.C.P. No. 1920.42 outlines in detail the process for obtaining a decree for Section 3301(c)(1), Section 3301(c)(2), and Section 3301(d) divorces. Although the Committee has expanded the rule extensively, it believes the detailed procedure will alleviate confusion in obtaining a divorce decree and further assist unrepresented parties to maneuver through a complicated procedure.