

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed amendment of Pa.R.C.P. No. 1920.17**

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania an amendment to Pa.R.C.P. No. 1920.17 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They 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:

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All communications in reference to the proposal should be received by **February 7, 2020**. 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

Walter J. McHugh, Esq.  
Chair

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

**RULE PROPOSAL 177**

**[Rule 1920.17. Discontinuance Withdrawal of Complaint**

**(a) The plaintiff may withdraw the divorce complaint and discontinue the divorce action by praecipe that includes a certification that:**

- (1) no ancillary claims or counterclaims have been asserted by either party; and**
- (2) grounds for divorce have not been established.**

**(b) A party may withdraw a claim of equitable distribution only:**

- (1) by written consent of both parties filed with the court, or**
- (2) after filing and serving on the other party a written notice that the party intends to withdraw the claim of equitable distribution 20 days after service of the notice.]**

**Rule 1920.17. Withdrawing Complaint and Discontinuing Divorce. Withdrawing Claims Raised in Pleadings**

**(a) The plaintiff may withdraw the divorce complaint and discontinue the divorce action by:**

- (1) a praecipe, which includes a certification that the parties have not:**
  - (i) raised equitable division of marital property or custody as an ancillary claim;**
  - (ii) filed a counterclaim; or**
  - (iii) established grounds for divorce; or**
- (2) a motion, which has been served on the defendant, if the parties have:**

- (i) ~~raised equitable division of marital property or custody as an ancillary claim;~~
- (ii) ~~filed a counterclaim; or~~
- (iii) ~~established grounds for divorce.~~

~~(b) A party raising an ancillary claim may withdraw the claim by a praecipe, except that:~~

- ~~(1) a party raising an equitable division of marital property claim may withdraw the claim only:
  - ~~(i) with the parties' written and filed agreement, including as required by Pa.R.C.P. No. 1920.42(a)(4), (b)(4), or (c)(4);~~
  - ~~(ii) the opposing party's written consent; or~~
  - ~~(iii) after filing and serving on the opposing party a notice that the party intends to withdraw the equitable division claim 20 days after service of the notice.~~~~

~~**Note:** See subdivision (c) for the notice.~~

- ~~(2) a party raising a custody count in a divorce action may withdraw the custody claim as provided in Pa.R.C.P. No. 1915.3-1(b).~~

~~(c) The notice required in subdivision (b)(1)(iii) [above] shall be substantially in the following form:~~

~~(Caption)~~

~~**NOTICE OF INTENTION TO WITHDRAW CLAIM FOR EQUITABLE  
[DISTRIBUTION]DIVISION OF MARITAL PROPERTY**~~

~~TO: \_\_\_\_\_  
(PLAINTIFF) (DEFENDANT)~~

~~(Plaintiff) (Defendant) intends to withdraw [(his) (her)]the pending claim for~~

equitable ~~[distribution of property twenty]~~**division of marital property 20** days after the service of this notice. Unless you have already filed ~~[with the court a written claim for equitable distribution]~~**ancillary claims, which are permitted under the Divorce Code, including equitable division of marital property**, you should do so within ~~[twenty]~~**20** days of the service of this notice, or you may lose the right to assert ~~[a claim for equitable distribution. If]~~**those ancillary claims, if the court enters a decree in divorce[ is entered and you have not filed a claim for equitable, you will forever lose the right to equitable distribution of property].**

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)

(d) ***Death of a Party.*** [In the event one party dies during the course of the divorce proceeding, no decree of divorce has been entered and grounds for divorce have been established, neither the complaint nor economic claims can be withdrawn except by the consent of the surviving spouse and the personal representative of the decedent. If there is no agreement, the economic claims shall be determined pursuant to the Divorce Code.]

~~(1) If a party dies after the parties have established grounds for divorce but before the court has entered the divorce decree:~~

~~(i) The surviving spouse or the decedent's personal representative cannot withdraw the complaint or an ancillary claim absent the parties' written consent.~~

~~(ii) The Divorce Code shall determine the disposition of the ancillary claims unless:~~

~~(A) the parties have an agreement that resolves the ancillary claims raised in the pleadings; or~~

~~(B) the parties have withdrawn the complaint or ancillary claims as provided in subdivision (d)(1)(i).~~

**Note: See 23 Pa.C.S. § 3323(g) for establishing grounds for divorce when a party dies during the pendency of the divorce action.**

~~(iii) If [no] a personal representative has **not** been appointed within one year of the decedent's death, [then, ] upon motion of the surviving party, the court may allow the withdrawal or dismissal of the complaint [and/or any] or the pending [economic] ancillary claims.~~

~~(2) If a party dies before the parties have established grounds for divorce, the divorce action shall abate, and the Probate, Estates, and Fiduciary Code, 20 Pa.C.S. §§ 101 et seq, shall determine the property rights.~~

**Note: See *In re Estate of Bullotta*, 838 A.2d 594 (Pa. 2003).**

To the extent that *Tosi v. Kizis*, 85 A.3d 585 (Pa. Super. 2014) holds that 23 Pa.C.S. § 3323(d.1) does not prevent the plaintiff in a divorce action from discontinuing the divorce action following the death of the defendant after grounds for divorce have been established, it is superseded.

## Comment - 2020

The rule has been revised to include in subdivision (b)(1) that the party may withdraw an equitable division claim by praecipe if the parties have a written agreement, the opposing party otherwise consents in writing, or after filing and serving the subdivision (c) notice on the opposing party. The Notice warns the opposing party that the moving party intends to withdraw the equitable division claim 20 days after service of the Notice and informs the opposing party to file ancillary claims, including equitable division, prior to the entry of a divorce decree in order to preserve his or her rights.

Also, as a child custody claim is permitted in a divorce complaint under the Divorce Code, subdivision (b)(2) is added to address withdrawing a custody count. Pa.R.C.P. No. 1920.32 requires a custody claim raised in a divorce action to following the custody practices and procedures, and Pa.R.C.P. No. 1915.3-1(b) provides specific limitations on withdrawing a custody action. As such, subdivision (b)(2) has been added to clarify that a party desiring to withdraw a custody claim raised in a divorce pleading must do so consistent with Pa.R.C.P. No. 1915.3-1(b).

Subdivision (d) has been rewritten to include the current subdivision into (d)(1) and adding (d)(2). In subdivision (d)(1), if a party in a divorce action dies prior to the court entering a decree but after the parties had established grounds for divorce, the Divorce Code would dispose of the ancillary claims raised in the pleadings. Subdivision (d)(2) addresses how a divorce action would proceed if a party dies prior to establishing grounds for divorce as set forth in case law, *In re Estate of Bullotta*, 838 A.2d 594 (Pa. 2003).

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

**PUBLICATION REPORT**

**RULE PROPOSAL 177**

The Domestic Relations Procedural Rules Committee (Committee) is proposing an amendment to Pa.R.C.P. No. 1920.17. Specifically, the proposed amendment will delineate the practice of withdrawing divorce complaints and claims raised in divorce pleadings.

Currently, Pa.R.C.P. No. 1920.17(a) provides procedures for withdrawing and discontinuing a divorce complaint and action by praecipe if the parties have not raised ancillary claims or counterclaims and grounds for divorce have not been established. Pa.R.C.P. No. 1920.17(b) addresses how a party may withdraw a claim for equitable distribution of marital property. Subdivision (b) indicates that the claim can be withdrawn with the consent of the parties or by filing and serving on the opposing party the notice in subdivision (c).

The point of inquiry was whether the rules should include a procedure for withdrawing a divorce complaint when the parties have raised claims or counterclaims. The current rule does not address this circumstance, which could be interpreted to mean that those actions with claims or counterclaims cannot be withdrawn and discontinued, which may be inconsistent with Pa.R.C.P. No. 229(a) that provides, “[a] discontinuance shall be the exclusive method of voluntary termination of an action, in whole or part, by the plaintiff before commencement of trial.”

The proposed amendment rewrites subdivision (a), detailing the circumstances in which a plaintiff may withdraw and discontinue a divorce complaint and action by praecipe in subdivision (a)(1). The Committee proposes adding subdivision (a)(2) that details procedures for withdrawing and discontinuing a complaint and action by motion, including the circumstance that initiated the Committee’s interest in this Rule Proposal.

In conjunction with the rewriting of subdivision (a), the Committee is proposing a rewrite of subdivision (b), as well, that currently addresses only withdrawing a claim for equitable division of marital property. The current subdivision (b) allows a party to withdraw the equitable division claim by consent of the parties or by serving the subdivision (c) notice on the opposing party. However, the current subdivision does not identify the pleading necessary to initiate the withdrawal.

Instead, the Committee proposes in subdivision (b)(1) that the withdrawing party may do so by praecipe if the parties have a written agreement, the opposing party

otherwise consents in writing, or after filing and serving the subdivision (c) notice on the opposing party. The Notice warns the opposing party that the moving party intends to withdraw the equitable division claim 20 days after service of the Notice and warns the opposing party to file ancillary claims, including equitable division, prior to the entry of a divorce decree in order to preserve his or her rights.

Also, as a child custody claim is permitted in a divorce complaint under the Divorce Code, the Committee believed withdrawing a custody count should be included in this rule, especially since Pa.R.C.P. No. 1915.3-1(b) limits withdrawing a custody action and Pa.R.C.P. No. 1920.32 requires a custody claim raised in a divorce action to following the custody practices and procedures. As such, the Committee proposes adding subdivision (b)(2) to clarify that a party desiring to withdraw a custody claim raised in a divorce pleading must do so consistent with Pa.R.C.P. No. 1915.3-1(b).

Finally, the Committee proposes an amendment to subdivision (d), which addresses the death of a party in a pending divorce action. The proposed amendment rewrites the current subdivision (d) into subdivision (d)(1) and into a more detailed outline format. The current rule provides that if a party in a divorce action dies prior to the court entering a decree but after the parties had established grounds for divorce, the Divorce Code would dispose of the ancillary claims raised in the pleadings. However, the rule is silent on how a divorce action would proceed if a party dies prior to establishing grounds for divorce. The Committee proposes adding subdivision (d)(2) to address that circumstance as set forth in case law, *In re Estate of Bullotta*, 838 A.2d 594 (Pa. 2003).

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