

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

---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 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(c) An affidavit of consent may be withdrawn only with leave of court.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), along with the counter-affidavit, unless previously filed, 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 another 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 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. Decrees under § 3301(c) or § 3301(d) of the Divorce Code. Affidavits and Counter-Affidavits. Praecipe to Transmit Record. Requirements of § 3301(c) Affidavit. Notice of Intention to Request Entry of Divorce Decree.**

(a) *Obtaining a divorce decree under §§ 3301(c) and (d).* The court shall enter an appropriate decree if:

(1) in a divorce action under § 3301(c) divorce:

(i) § 3301(c)(1) - both parties have signed and filed an Affidavit of Consent; or

(ii) § 3301(c)(2) - a party has signed and filed an Affidavit of Consent and 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;

(A) the filed affidavits have been served on the other party, along with a blank Counter-Affidavit under § 3301(c)(2);

(B) the other party has admitted or failed to deny the averments in the affidavit; and

- (iii) the Affidavit of Consent and, if necessary, the Affidavit to Establish Presumption of Consent have been signed consistent with subdivision (b)(1); and
- (iv) the requirements of subdivision (c) or (d) have been satisfied.

*Note:* See Pa.R.C.P. No. 1920.72(b) for the Affidavit of Consent for a § 3301(c) divorce. The requirements for a § 3301(c) affidavit are set forth in subdivision (b).

*Note:* See Pa.R.C.P. No. 1920.72(d) for the Affidavit to Establish Presumption of Consent.

*Note:* See Pa.R.C.P. No. 1920.72(f)(2) for the Counter-Affidavit for a §3301(c)(2) divorce.

(2) in a § 3301(d) divorce,

- (i) a party has signed and filed an Affidavit under § 3301(d) alleging the marriage is irretrievably broken and a 2-year separation;
- (ii) the filed affidavit has been served on the other party, along with a blank Counter-Affidavit under § 3301(d);
- (iii) the other party has admitted or failed to deny the averments in the affidavit; and
- (iv) the requirements of subdivision (c) or (d) have been satisfied.

*Note:* See Pa.R.C.P. No. 1920.72(e) for the affidavit for a § 3301(d) divorce.

*Note:* See Pa.R.C.P. No. 1920.72(f)(3) for the Counter-Affidavit for a § 3301(d) divorce. A Counter-Affidavit is required only if the non-moving party has not previously denied the allegations in the moving party's affidavit or has not previously claimed economic relief in a counterclaim or petition.

(3) Related claims pursuant to Pa.R.C.P. Nos. 1920.31 and 1920.33:

- (i) have been resolved by agreement of the parties;
- (ii) have been resolved by order of court;
- (iii) the court has granted a bifurcation in accordance with 23 Pa.C.S. § 3323(c.1); or
- (iv) additional claims have not been raised in the pleadings.

(4) a Praecipe to Transmit the Record has been filed with the prothonotary, who shall transmit the record to the court for review.

*Note:* See Pa.R.C.P. No. 1920.73(b) for the Praecipe to Transmit the Record.

(b) The Affidavit of Consent under § 3301(c) and the Affidavit to Establish Presumption of Consent under § 3301(c)(2):

(1) must have been signed:

- (i) 90 days or more after the filing and service of the complaint; and
- (ii) within 30 days of the date the affidavit was filed with the prothonotary's office;

(2) may be withdrawn only by order of court.

(c) Except as provided in subdivision (d), the court shall enter a decree under § 3301(c) or § 3301(d) of the Divorce Code only if the party requesting the divorce has served on the attorney of record for the other party or, if unrepresented, the other party:

(1) a Notice of Intention to Request Entry of Divorce Decree;

(2) a blank counter-affidavit form for the appropriate section of the Divorce Code;

(3) a copy of the proposed Praecipe to Transmit Record, which shall indicate the date and manner of service of the Notice of Intention to Request Entry of Divorce Decree; and

*Note:* See Pa.R.C.P. No. 1920.73(a) for the Notice of Intention to Request Entry of Divorce Decree.

(d) A Notice of Intention to Request Entry of Divorce Decree shall not be required prior to requesting a divorce decree if:

(1) the parties have signed and filed with the prothonotary a waiver of notice; or

(2) in a § 3301(d) divorce, the court finds that an appearance has not been entered on defendant's behalf and the defendant cannot be located after a diligent search.

Note: See Pa.R.C.P. No. 1920.72(c) for the Waiver of Notice of Intention to Request Divorce Decree.

(e) Service of the Notice of Intention to Request Entry of Divorce Decree shall be:

- (1) at least 20 days after service of the § 3301(c) or (d) affidavit; and
- (2) at least 20 days prior to the date the party intends file the Praecipe to Transmit Record and request the decree.

\* \* \*

### **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, may appoint a master with respect to **[ all or any of ]** the matters specified in subdivision (a)(2)(i) **[ to consider same ]** and **to** issue a report and recommendation. The order of appointment shall specify the matters which 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 claims for alimony, alimony **[pendente lite]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 § 3301(c)(2) 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 § 3301(c)(2).**

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

(iii) **[No]A** master may **not** be appointed 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.

\* \* \*

**Rule 1920.72. Form of Complaint. Affidavits under § 3301(c) or § 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 § 3301(c) or **§** 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 required by § 3301(c) of the Divorce Code and **[Rule]Pa.R.C.P. No. 1920.42(a)(1)(i)** shall be substantially in the following form:

\* \* \*

(c) The waiver permitted by **[Rule]Pa.R.C.P. No. 1920.42([e])d(1)** shall be **[in]** substantially **in** the following form:

\* \* \*

**(d) The affidavit to establish presumption of consent under § 3301(c)(2) of the Divorce Code and Pa.R.C.P. No. 1920.42(a)(1)(ii) shall be substantially in the following form:**

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

(Caption)

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

1. I am the victim of a “personal injury crime,” as that term is 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 is 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)](e)** The affidavit required by § 3301(d) of the Divorce Code and **[Rule]Pa.R.C.P. No. 1920(a)(2)(i)** shall be substantially in the following form:

\* \* \*

**[(e)](f)(1)** The counter-affidavit **for a § 3301(c)(1) divorce, as** prescribed by **[Rule]Pa.R.C.P. No. 1920.42[(d)(2)](c)(2)**, shall be substantially in the following form[  
**in a § 3301(c) divorce**]:

(Caption)

**COUNTER-AFFIDAVIT UNDER § 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 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 CLAIM  
ECONOMIC RELIEF, YOU SHOULD NOT FILE  
THIS COUNTER-AFFIDAVIT.

**(2) The counter-affidavit for a § 3301(c)(2), as prescribed by Pa.R.C.P. No. 1920.42(a)(1)(ii)(A) and (c)(2), shall be substantially in the following form:**

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

(Caption)

**COUNTER-AFFIDAVIT  
UNDER § 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 that term is 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 either (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 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.

\* \* \*

**[(2)](3)** The counter-affidavit **for a § 3301(d) divorce, as** prescribed by **[Rule]Pa.R.C.P. No. 1920.42[(d)(2)](a)(2)(ii) and (c)(2)**, shall be substantially in the following form **[ in a § 3301(d) divorce]**:

\* \* \*

**Rule 1920.73. Notice of Intention to Request Entry of Divorce Decree. Praecepto to Transmit Record Forms.**

(a) (1) The notice of the intention to request entry of divorce decree prescribed by **[Rule]Pa.R.C.P. No. 1920.42[(d)](c)(1)** shall be substantially in the following form if there is an attorney of record:

\* \* \*

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

\* \* \*

**(ii) The notice of the intention to request entry of § 3301(c)(2) divorce decree prescribed by Pa.R.C.P. No. 1920.42(c)(1) shall be substantially in the following form if there is no attorney of record:**

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

(Caption)

**NOTICE OF INTENTION TO REQUEST ENTRY OF  
§ 3301(c)(2) DIVORCE DECREE**

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

You have been sued in an action for divorce. You have failed to file a counter-affidavit to the Affidavit to Establish Presumption of Consent under § 3301(c)(2) of the Divorce Code. Therefore, on or after \_\_\_\_\_, 20\_\_\_\_, the other party can request the court to enter a final decree in divorce.

If you do not file with the prothonotary of the court a counter-affidavit by the above date, the court can enter a final decree in divorce. A counter-affidavit which 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 and you will 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)

*Note:* The above lines are to be completed with the name, address and telephone number of the officer, organization, agency or person designated by the court in accordance with Pa.R.C.P. No. 1018.1(c).

The date to be inserted in the first paragraph of the notice must be at least twenty days after the date on which the notice was mailed or delivered.

\* \* \*

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

\* \* \*

(b) The praecipe to transmit the record prescribed by **[Rule] Pa.R.C.P. No. 1920.42~~(a)(4)~~** 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 § (3301(c)) § (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 § 3301(c) of the Divorce Code: by plaintiff: \_\_\_\_\_; by defendant: \_\_\_\_\_.**

(b)(1) Date of execution of the affidavit required by § 3301(d) of the Divorce Code: \_\_\_\_\_;

(2) Date of filing and service of the § 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---

### 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: ir retrievable breakdown

Check the applicable section of the Divorce Code:

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

2. Service of the Complaint:

(a) Date served: \_\_\_\_\_.

(b) Manner of service: \_\_\_\_\_.

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

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

Plaintiff: \_\_\_\_\_;  
Defendant:\_\_\_\_\_.

(1) The date the Affidavit to Establish Presumption of Consent under § 3301(c)(2) of the Divorce Code was signed:

\_\_\_\_\_;

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

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

(1) The date the Affidavit under § 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 Request Entry of Divorce Decree:

(1) Date served: \_\_\_\_\_.

(2) Manner of service: \_\_\_\_\_.

(b) The date the Waiver of Notice of Intention to Request Entry of Divorce Decree was filed with the Prothonotary:

(1) Plaintiff's Waiver: \_\_\_\_\_.

(2) Defendant's Waiver: \_\_\_\_\_.

\_\_\_\_\_  
(Attorney for)(Plaintiff)(Defendant)