

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

NOTICE OF PROPOSED RULEMAKING

Proposed rescission of Pa.R.C.P. No. 1920.46 and adoption of Pa.R.C.P. No. 1932

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the rescission of Pa.R.C.P. No. 1920.46 and adopted of Pa.R.C.P. No. 1932 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 **May 14, 2021**. 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

The Honorable Daniel J. Clifford
Chair

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

RULE PROPOSAL 179

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 [Affidavit of Non-military Service]Rescinded

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

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

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

EXPLANATORY COMMENT—2003

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

***** This is an entirely new rule *****

Rule 1932. Servicemembers Civil Relief Act

(a) In a domestic relations action in which a party fails to appear after proper service and notice to appear, the party initiating the action shall conduct an investigation into the nonappearing party's military service status as set forth in subdivision (d).

Note: See Servicemembers Civil Relief Act, 50 U.S.C. § 3911, for the definition of military service.

(b) For purposes of this rule, the term "fails to appear" shall have the following meanings in the indicated actions.

- (1) *Support.* When a party or an attorney on the party's behalf does not attend an office conference as set forth in Pa.R.C.P. No. 1910.11 or 1910.12.
- (2) *Custody.*
 - (i) *Initial Proceeding or Modification.* When a party or an attorney on the party's behalf does not attend an office conference as set forth in Pa.R.C.P. No. 1915.4-2 or non-record proceeding as set forth in Pa.R.C.P. No. 1915.4-3; or
 - (ii) *Relocation.* When a party proposes a relocation as set forth in Pa.R.C.P. No. 1915.17 and after service of the Notice of Proposed Relocation, the non-relocating party does not return or file the counter-affidavit within the specified time.
- (3) *Divorce or Annulment.*
 - (i) *Sections 3301(a) or (b) or Section 3303.* When a party or an attorney on the party's behalf does not attend a judicial or divorce hearing officer's conference or conciliation; or
 - (ii) *Sections 3301(c)(2) or (d).* When a party does not file a counter-affidavit within the specified time after service of the affidavit required by Pa.R.C.P. No. 1920.42(b)(1)(ii) or (c)(1)(ii).
- (4) *Paternity.*

(1) *Civil Action.* When a putative father initiates a civil action to establish paternity and requests genetic testing pursuant to Pa.R.C.P. No. 1930.6, the mother or an attorney on the mother's behalf does not attend the hearing as provided in Pa.R.C.P. No. 1930.6(d).

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

(c) *Pending Actions.*

(1) In an action pending before the court, a party shall complete and file the affidavit when:

(i) a party knows or is uncertain whether a nonappearing party is on active duty military service; and

(ii) the party is requesting relief from the court, including but not limited to contempt proceedings and requests for special or emergency relief, which will adversely affect another party's civil rights who may be on active duty military service; or

(iii) directed by the court.

(2) Due to the ongoing nature of domestic relations actions, a party may have to conduct more than one investigation into another party's military service status during the action.

(d) *Investigating and Determining Military Service Status.* When a party is required to file an affidavit regarding another party's military status, the party shall:

(1) obtain the non-appearing party's Status Report Pursuant to Servicemembers Civil Relief Act from the U.S. Department of Defense Servicemembers Civil Relief Act website at <https://scra.dmdc.osd.mil/>;

(2) attach the Status Report Pursuant to Servicemembers Civil Relief Act to the affidavit; and

(3) complete the affidavit and include additional facts that may assist

the court in determining the other party's military service status.

Note: The Servicemembers Civil Relief Act Affidavit is available at <http://www.pacourts.us>.

Comment — 2021

The Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*, requires that in cases in which a party does not make an appearance, the moving party is required to file an affidavit of the nonappearing party's military service status before the court may enter judgment or an order that may adversely affect the putative Servicemember's civil rights during military service. If the party is in the military service and an attorney has not entered an appearance on behalf of the party or the party has not otherwise appeared in the action, the court shall not enter a judgment or an order against a nonappearing party until the court appoints an attorney to represent the party to protect the putative servicemember's interest.

Unlike other civil actions, domestic relations actions do not require a party to answer pleadings in most circumstances so knowing when a party has failed to appear in the action, which would trigger the affidavit filing requirement for the nonappearing party's military service status, is not as clear as in other civil actions and also varies based on the type of domestic relations action. The rule provides a clear triggering event in each action for the party to prepare and file the affidavit.

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

PUBLICATION REPORT

RULE PROPOSAL 179

The Domestic Relations Procedural Rules Committee (Committee) is proposing rescinding Pa.R.C.P. No. 1920.46 and adopting Pa.R.C.P. No. 1932. The proposed new rule addresses the Servicemembers' Civil Relief Act (SCRA), 50 USC §§ 3901, *et seq.* Also, the Civil Procedural Rules Committee is publishing a companion rule proposal to address the SCRA in other civil actions. In addition to SCRA procedures, an affidavit indicating the nonappearing party's military status applicable to all procedural rules is proposed for use in all bodies of rules and will be included on the Unified Judicial Systems (UJS) forms webpage at <http://www.pacourts.us>.

Currently, the domestic relations rules address the SCRA in divorce actions only under Pa.R.C.P. No. 1920.46 - Affidavit of Non-Military Service. However, the SCRA applies to all civil actions, which would include divorce, custody, and support. The SCRA requires that in cases in which a party does not make an appearance, the plaintiff is required to investigate the nonappearing party's military service status and file an affidavit of that party's military status before the court may enter judgment or an order that may adversely affect the putative Servicemember's civil rights during military service. If the party is in the military service and an attorney has not entered an appearance on behalf of the party or the party has not otherwise appeared in the action, the court cannot enter a judgment or an order against the nonappearing party until the court appoints an attorney to represent the party to protect the putative Servicemember's interest.

Inherently and unlike most civil actions (*e.g.*, landlord/tenant, contract actions), domestic relations actions, such as child custody and support, are ongoing with future modification proceedings that may span years. Generally, the SCRA requires that the plaintiff must file an affidavit when the defendant fails to appear and the plaintiff is requesting relief from the court (often a default judgment); however, the domestic relation rules do not require a party to answer pleadings in most circumstances and do not permit default judgments so knowing when a party has failed to appear in the action, which would trigger the nonappearing party's military service affidavit filing requirement, is not as clear as in other civil actions. Moreover, the type of domestic relations action could impact the timing of when a party has failed to appear. The proposed rule provides a clear triggering event in each domestic relations action for the moving party to prepare and file the affidavit.

Similarly, in domestic relations actions, the plaintiff may be the servicemember, who is on active duty or gets called to active duty during the course of an action, and is the nonappearing party in a modification proceeding. As such, the Rule Proposal recognizes that either party can be the moving party and does not use the same nomenclature as the SCRA that refers to the moving party exclusively as the plaintiff. The proposed rule refers to the parties as the moving party or nonappearing party rather than plaintiff and defendant. As such, either party in a domestic relations action may be required to file multiple affidavits and conduct multiple investigations into another party's military service status over the course of the action.

As the SCRA is applicable to divorce, custody, and support actions, the Committee is proposing adding the proposed rule to the 1930s series of rules rather than a separate rule in each of the rules. As such, the Committee is proposing that the current divorce rule, Pa.R.C.P. No. 1920.46, addressing the SCRA would be rescinded. For uniformity in the practice, an affidavit that is required in all rules' bodies will be added to the UJS website.

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