The Greene Reports

Official Legal Publication for Greene County, Pennsylvania
Owned and operated by Greene County Bar Association
Greene County Courthouse, Waynesburg, PA 15370

Vol. XXXVIIII, No. 58 **August 31, 2023**

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<u>Serving the Legal Community of Greene County</u>
Since October 1982

COURT OF COMMON PLEAS

Honorable Louis Dayich, President Judge
Honorable Jeffry N. Grimes, Judge

MOTIONS
Criminal & Civil & O.C.:
September 5 and 6, 2023

ARGUMENTS
Argument Court: September 25, 2023

CRIMINAL
Arraignments: September 5, 2023
ARDs: September 11, 2023
ARD Revocations: September 11, 2023
Parole Violations: September 5, 2023
Plea Court: September 12, 13 and 14, 2023
License Suspension October 17, 2023
Argument Court: September 20, 2023

CIVIL
Domestic Relations Contempts: September 25, 2023
Domestic Relations Appeals: September 25, 2023

ORPHANS
Accounts Nisi: September 5, 2023
Accounts Absolute: September 15, 2023

JUVENILE
Plea Day: September 21, 2023

SUPREME COURT	Convenes in Pgh.:	October 16-20, 2023
SUPERIOR COURT	Convenes in Pgh.:	October 2-6, 2023
COMMONWEALTH COURT	Convenes in Pgh.:	October 10-13, 2023

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THE GREENE REPORTS

Owned and published by the GREENE COUNTY BAR ASSOCIATION
Editor: Kayla M. Sammons
E-mail address: editor.greenereports@yahoo.com

EDITORIAL POLICY

All articles published in The Greene Reports are intended to inform, educate or amuse. Any article deemed by the editorial staff to be reasonably interpreted as offensive, demeaning or insulting to any individual or group will not be published.

The views expressed in the articles represent the views of the author and are not necessarily the views of The Greene Reports or the Greene County Bar Association.

The Greene Reports welcomes letters to the Editor both for publication and otherwise. All letters should be addressed to: Editor, The Greene Reports, Greene County Courthouse, 10 East High Street, Waynesburg, PA 15370. Letters must include signature, address and telephone number. Anonymous correspondence will not be published. All letters for publication are subject to editing and, upon submission, become the property of The Greene Reports.

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THE GREENE COUNTY BAR ASSOCIATION

Christopher M. Simms, President
Timothy M. Ross, Vice-President
Allen J. Koslovsky, Secretary
Lukas B. Gatten, Treasurer
Jessica L. Phillips, Ex-Officio

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DEED TRANSFERS

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The following property transfers have been recorded in the Greene County Recorder of Deeds office.

ALEPPO TOWNSHIP

Jody L. Bowersox to EQT Production Company, ¾ Acre, O&G, $50.00 (8-23-23)
Harold R. Hughes, Jr., to EQT Production Company, ¾ Acre, O&G, $50.00 (8-23-23)
Donna J. Wysocki to EQT Production Company, ¾ Acre, O&G, $50.00 (8-23-23)

ALEPPO & JACKSON TOWNSHIPS

John Jason Adams, et ux., to EQT Production Company, Tracts, O&G, $516,440.09 (8-23-23)

CUMBERLAND TOWNSHIP

Earl Steven Miller to Gregory W. Miller, Jr., Lots 3-5, $1,500.00 (8-24-23)
Nemacolin Volunteer Fire Company to John Glendenning, Lot, Nemacolin Plan, $10,000.00 (8-24-23)
John Glendenning, et ux., to John Glendenning, et ux., Lot, Nemacolin Plan, $5,000.00 (8-24-23)
Donald L. Grear to John Albert Glendenning, et ux., .7022 Acres, $1,000.00 (8-24-23)
Bryan McCannon, et ux., to Christopher Michael Park, et ux., 15 Acres, $309,900.00 (8-25-23)
Samuel Davis Hawk, III, et al., to Richard Cacurak, Lots 99-101, Colonial Heights, $230,000.00 (8-29-23)
Levi Properties LLC to Pekar Properties LLC, 1.679 Acres, $300,000.00 (8-29-23)
Jennifer M. Whyel to Angelina M. Riggleman, Lot 174, Nemacolin, $2,392.79 (8-29-23)

FRANKLIN TOWNSHIP

Brenda F. Kramer a/k/a Brenda Kramer, et ux., to McClure Enterprises Inc., Tract, $75,000.00 (8-24-23)
Donald M. Headlee, et ux., to Emory B. Johnson, et ux., 2 Lots, $65,000.00 (8-29-23)

JACKSON TOWNSHIP

Robert Wayne Snelson, et ux., to EQT Production Company, 47.921 Acres, O&G, $7,930.39 (8-23-23)
Dennis G. Hughes, et ux., to EQT Production Company, 50.06 Acres, O&G, $4,713.65 (8-23-23)

JEFFERSON TOWNSHIP

Sara Ruth Bradford a/k/a Sara Ruth Opperman, et ux., to Community Minerals II LLC, 145.79 Acres, Mineral & Royalty, $12,000.00 (8-23-23)

MORGAN TOWNSHIP

Ryan M. Milligan, et ux., to Randell Trueblood, et ux., 12.153 Acres, $135,000.00 (8-23-23)
Gregory D. Cowell, et ux., to Kloe Tuttle, et ux., Lot 230, Mather Plan, $99,900.00 (8-24-23)

MORRIS TOWNSHIP

Mark A. Jacobs, et ux., to Consol Pennsylvania Coal Company, LLC, et ux., 1 Acre, $300,000.00 (8-29-23)

SPRINGHILL TOWNSHIP

The Mineral Company LLC, et ux., to EQT Production Company, 49.0822 Acres, O&G, $5,866.22 (8-29-23)

WAYNE TOWNSHIP

Jay Malott to David Jones, Lot 2, Hoy Brothers Plan, $36,068.40 (8-24-23)
Laura E. D'Eletto, et ux., to Coombs Resources Corporation, 3 Tracts, O&G< $182,490.00 (8-29-23)

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ESTATE NOTICES

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NOTICE is hereby given of the grant of letters by the Register of Wills to the Estates of the following named decedents. All persons having claims are requested to make known the same and all persons indebted to the decedent are requested to make payment to the personal representative or his attorney without delay.

FIRST PUBLICATION

MILLER, EDDIS J.
Late of Waynesburg Borough, Greene County, Pennsylvania
Executrix: Brittany N. Miller, 291 Fifth Avenue, Waynesburg, PA 15370
Attorney: David F. Pollock, Esquire, Pollock Morris Belletti & Simms, LLC, 54 South Washington Street, Waynesburg, PA 15370

RICE, JOHN C.
Late of Franklin Township, Greene County, Pennsylvania
Co-Executor: Stanley Scott Rice, 183 Loves Hill Road, PO Box 264, Waynesburg, PA 15370
Co-Executrix: Linda Louise Johnston, 179 Loves Hill Road, Waynesburg, PA 15370
Attorney: Phillips C. Hook, Attorney, 430 East Oakview Drive, Suite 101, Waynesburg, PA 15370

SECOND PUBLICATION

DELANEY, GEORGE L.
Late of Jackson Township, Greene County, Pennsylvania
Executrix: Ramona G. Jenkins, 295 Oak Forest Road, Brave, PA 15316
Attorney: Timothy N. Logan, Esquire, Logan & Gatten Law Offices, 54 N. Richhill Street, Waynesburg, PA 15370

SIMKOVIC, ANDREW STEPHEN A/K/A ANDREW A. SIMKOVIC A/K/A ANDREW SIMKOVIC
Late of Carmichaels, Greene County, Pennsylvania
Administrator: David A. Simkovic, c/o Cheryl Catherine Cowen, Esquire, 769 Lippencott Road, Waynesburg, PA 15370
Attorney: Cheryl Catherine Cowen, Esquire, 769 Lippencott Road, Waynesburg, PA 15370 (724) 627-7646

ZIEFEL, MARY M. A/K/A MARY T. MOORE
Late of Jefferson Township, Greene County, Pennsylvania
Executor: Kevin Daniel Moore, 1593 Wind Flower Road, Chambersburg, PA 17202
Attorney: Timothy N. Logan, Esquire, Logan & Gatten Law Offices, 54 N. Richhill Street, Waynesburg, PA 15370

THIRD PUBLICATION

SHOOK, TIMOTHY R. A/K/A TIMOTHY ROGER SHOOK
Late of Cumberland Township, Greene County, Pennsylvania
Administrator: Cody R. Shook, 13 Haig Lane, PO Box 424, Nemacolin, PA 15351
Attorney: Phillip C. Hook, Attorney, 430 East Oakview Drive, Suite 101, Waynesburg, PA 15370

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LEGAL NOTICE

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IN THE COURT OF COMMON PLEAS OF
GREENE COUNTY, PENNSYLVANIA
CIVIL DIVISION

Redevelopment Authority of the)
County of Greene)
)
v.) No. AD-382-2023
)
Christian R. McDaniel)

IMPORTANT NOTICE

TO: Christian R. McDaniel

TAKE NOTICE that the above-identified Plaintiff has filed a Complaint in Action to Quiet Title against you at the above number and term averring that the Plaintiff is the sole owner of:

ALL those certain lots or parcels of land situate in Morgan Township, Greene County, Pennsylvania, more particularly bounded and described as one-half of Lot No. 43 and one-half of Lot No. 43 upon which House Nos. 81 and 82, respectively, are located on "C" Street in what is known as Teegarden Home Plan of Lots in Morgan Township, Greene County, Pennsylvania, recorded in the Recorder of Deeds office in and for Greene County in Plan Book 2, Page 21, on April 29, 1955.

BEING known as Parcels 17-12-169 and 17-12-169A and having an address of 81-82 C Street, Clarksville, Pennsylvania.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the Complaint, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance

personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

COURT ADMINISTRATOR - LAW LIBRARY
GREENE COUNTY COURTHOUSE
10 EAST HIGH STREET
WAYNESBURG, PA 15370
PHONE: (724) 852-5237

SOUTHWESTERN PENNSYLVANIA LEGAL AID SOCIETY
63 SOUTH WASHINGTON STREET
WAYNESBURG, PA 15370
PHONE: (724) 627-3127

The Court ordered that this Notice be served upon you by publication.

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SHERIFF'S SALE

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By Virtue of a Writ of Execution (Mortgage Foreclosure)
No. ED-3-2022 AD 184-2022

Issued out of the Court of Common Pleas of Greene County, Pennsylvania and to me directed, I will expose the following described property at public sale at the Greene County Courthouse in the City of Waynesburg, County of Greene, Commonwealth of Pennsylvania on:

FRIDAY, SEPTEMBER 15, 2023
AT 10:00 O'CLOCK A.M.

All parties in interest and claimants are further notified that a proposed schedule of distribution will be on file in the Sheriff's Office no later than twenty (20) days after the date of the sale of any property sold hereunder, and distribution of the proceeds will be made in accordance with the schedule ten (10) days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

By virtue of a Writ of Execution No. AD 184-2020/ED-3-2022
PENNSYLVANIA EQUITY RESOURCE, INC. v. CODY A. RUSE

owner(s) of the property situate in the CUMBERLAND TOWNSHIP, GREENE County, Pennsylvania,
being 28 SINGLE STREET, CARMICHAELS, PA 15320
Tax ID No. 05/07/309 & 05/07/311 & 05/07/124B
(Acreage of street address)
Improvements thereon: RESIDENTIAL DWELLING
Attorneys for Plaintiff
Brock & Scott, PLLC

PROPERTY ADDRESS: 28 Single Street, Carmichaels, PA 15320

UPI/TAX PARCEL NUMBER: 05/07/309, 05/07/311, 05/07/124/B

Seized and taken into execution to be sold as the property of CODY A. RUSE in suit of PENNSYLVANIA EQUITY RESOURCES, INC.

Attorney for the Plaintiff:
BROCK & SCOTT
WINSTON SALEM, NC 844-856-6646 x4535

MARCUS N. SIMMS, Sheriff
Greene County, Pennsylvania

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SHERIFF'S SALE

****

By Virtue of a Writ of Execution (Mortgage Foreclosure)
No. ED-24-2022 AD 264-2022

Issued out of the Court of Common Pleas of Greene County, Pennsylvania and to me directed, I will expose the following described property at public sale at the Greene County Courthouse in the City of Waynesburg, County of Greene, Commonwealth of Pennsylvania on:

FRIDAY, SEPTEMBER 15, 2023
AT 10:00 O'CLOCK A.M.

All parties in interest and claimants are further notified that a proposed schedule of distribution will be on file in the Sheriff's Office no later than twenty (20) days after the date of the sale of any property sold hereunder, and distribution of the proceeds will be made in accordance with the schedule ten (10) days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

ALL those two certain tracts of land situate in Morgan Township, Greene County, Pennsylvania, having erected three (3) outbuildings, with an address of 256 Homeville Road, Waynesburg, PA 15370. This parcel is assessed for tax purposes as Greene County Tax Map Numbers 1704124 and 1704134.

PROPERTY ADDRESS: 256 Homeville Rd, Waynesburg, PA 15370

UPI/TAX PARCEL NUMBER: 17/04/124, 17/04/134

Seized and taken into execution to be sold as the property of CHARLES H ROGERS, CHARLES ROGERS in suit of FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF GREENE COUNTY.

Attorney for the Plaintiff:
Kirk A. King
Waynesburg, PA 724-627-6114

MARCUS N. SIMMS, Sheriff
Greene County, Pennsylvania

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SHERIFF'S SALE

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By Virtue of a Writ of Execution (Mortgage Foreclosure)
No. ED-26-2023 AD 255-2023

Issued out of the Court of Common Pleas of Greene County, Pennsylvania and to me directed, I will expose the following described property at public sale at the Greene County Courthouse in the City of Waynesburg, County of Greene, Commonwealth of Pennsylvania on:

FRIDAY, SEPTEMBER 15, 2023
AT 10:00 O'CLOCK A.M.

All parties in interest and claimants are further notified that a proposed schedule of distribution will be on file in the Sheriff's Office no later than twenty (20) days after the date of the sale of any property sold hereunder, and distribution of the proceeds will be made in accordance with the schedule ten (10) days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

By virtue of Writ of Execution No. AD-255-2023
NewRez LLC d/b/a Shell point Mortgage Servicing (Plaintiff)
Vs. Willard C. Harmon, Jr., (Defendant)
Proprty Address 236 Bulldog Run Road, Spraggs, PA 15362
Parcel I.D. No. 25/03/137/B/
Improvements thereon consist of a residential dwelling.

PROPERTY ADDRESS: 236 Bulldog Run Rd, Spraggs, PA 15362

UPI/TAX PARCEL NUMBER: 25/03/137/B/

Seized and taken into execution to be sold as the property of WILLARD C HARMON, JR, WILLARD C HARMON in suit of NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING.

Attorney for the Plaintiff:
Hladik, Onorato & Federman, LLP
North Wales, PA 215-855-9521

MARCUS N. SIMMS, Sheriff
Greene County, Pennsylvania

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SHERIFF'S SALE

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By Virtue of a Writ of Execution (Mortgage Foreclosure)
No. ED-27-2023

Issued out of the Court of Common Pleas of Greene County, Pennsylvania and to me directed, I will expose the following described property at public sale at the Greene County Courthouse in the City of Waynesburg, County of Greene, Commonwealth of Pennsylvania on:

FRIDAY, SEPTEMBER 15, 2023
AT 10:00 O'CLOCK A.M.

All parties in interest and claimants are further notified that a proposed schedule of distribution will be on file in the Sheriff's Office no later than twenty (20) days after the date of the sale of any property sold hereunder, and distribution of the proceeds will be made in accordance with the schedule ten (10) days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

By virtue of Writ of Execution No. AD-257-2023
U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for ICW MAT Trust (Plaintiff)
Vs. Linda Kay John and Jason Michael Francis John (Defendants)
Property Address 302-308 East High Street, Waynesburg, PA 15370
Parcel I.D. No. 27/01/114
Improvements thereon consist of a residential dwelling.
Attorney for Plaintiff: Hladik, Onorato & Federman, LLP
298 Wissahickon Avenue
North Wales, PA 19454

PROPERTY ADDRESS: 302-308 E. High Street, Waynesburg, PA 15370

UPI/TAX PARCEL NUMBER: 27/01/114

Seized and taken into execution to be sold as the property of LINDA KAY JOHN, JASON MICHAEL FRANCIS JOHN, JASON MICHAEL FRANCIS JOHN, JASON MICHAEL FRANCIS JOHN, in suit of US BANK TRUST NATIONAL ASSOCIATION, AS OWNER TRUSTEE.

Attorney for the Plaintiff:
Hladik, Onorato & Federman, LLP
North Wales, PA 215-855-9521

MARCUS N. SIMMS, Sheriff
Greene County, Pennsylvania

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SHERIFF'S SALE

****

By Virtue of a Writ of Execution (Mortgage Foreclosure)
No. ED-25-2023 AD 233-2023

Issued out of the Court of Common Pleas of Greene County, Pennsylvania and to me directed, I will expose the following described property at public sale at the Greene County Courthouse in the City of Waynesburg, County of Greene, Commonwealth of Pennsylvania on:

FRIDAY, SEPTEMBER 15, 2023
AT 10:00 O'CLOCK A.M.

All parties in interest and claimants are further notified that a proposed schedule of distribution will be on file in the Sheriff's Office no later than twenty (20) days after the date of the sale of any property sold hereunder, and distribution of the proceeds will be made in accordance with the schedule ten (10) days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

By virtue of a Writ of Execution No. AD 233-2023
MORTGAGE RESEARCH CENTER, LLC D/B/A VETERANS UNITED HOME LOANS, A MISSOURI LIMITED LIABILITY CORPORATION
v.
JAMES JOHNSON
Owner(s) of property situate in the FRANKLIN TOWNSHIP, GREENE County, Pennsylvania, being 1485 MORRIS ST. WAYNESBURG, PA 15370
Tax ID No. 07-11-105
(Acreage or street address)
Improvements thereon: RESIDENTIAL DWELLING
Judgment Amount: $106,804.45
Attorneys for Plaintiff
Brock & Scott, PLLC

PROPERTY ADDRESS: 1485 MORRIS ST, WAYNESBURG, PA 15370

UPI/TAX PARCEL NUMBER: 07/11/105

Seized and taken into execution to be sold as the property of JAMES JOHNSON in suit of MORTGAGE RESEARCH CENTER, LLC D/B/A VETERANS UNTIED HOME LOANS, A MISSOURI LIMITED LIABILITY CORPORATION.

Attorney for the Plaintiff:
Brock & Scott PLLC
King of Prussia, PA 844-856-6646

MARCUS N. SIMMS, Sheriff
Greene County, Pennsylvania

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SUPREME COURT NOTICE

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SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES COMMITTEE
CIVIL PROCEDURAL RULES COMMITTEE
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

ORPHANS' COURT PROCEDURAL RULES COMMITTEE
CRIMINAL PROCEDURAL RULES COMMITTEE
JUVENILE COURT PROCEDURAL RULES COMMITTEE
MINOR COURT RULES COMMITTEE

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.A.P. 1517, 1732, 1781, 3307, and 3309; Adoption of Pa.R.Civ.P. 243 and 1930.10, Rescission of Pa.R.Civ.P. 1920.46, and Amendment of Pa.R.Civ.P. 216, 237.1, 1037, 1303, 1901.6, 1910.11, 1910.12, 1915.4-2, 1915.4-3,1915.17, 1920.42, 1920.51, 1930.6, 1956, and 2955; Adoption of Pa.R.O.C.P. 2.12,3.16, and 15.23, and Amendment of Pa.R.O.C.P. 14.1, 15.7, 15.8, 15.9, 15.10, and 15.13; Amendment of Pa.R.Crim.P. 150, 430, 431, and 515; Adoption of Pa.R.J.C.P. 1206, and Amendment of Pa.R.J.C.P. 1122, 1242, and 1406; and Amendment of Pa.R.Civ.P.M.D.J. 209, 304, 308, 403, 405, 410, 503, 506, 515, and 516.

The above-captioned Rules Committees are considering proposing to the Supreme Court of Pennsylvania the above-described rulemaking governing procedures for the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*. and the Military and Veterans Code, 51 Pa.C.S. §§ 101 *et seq*., for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 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 report accompanying this proposal was prepared by the Rules Committees to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be 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:

Daniel A. Durst, Chief Counsel
Rules Committees
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
rulescommittees@pacourts.us

All communications in reference to the proposal should be received by November 16, 2023. 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 Rules Committees will acknowledge receipt of all submissions.

By the:
Appellate Court Procedural Rules Committee

Peter J. Gardner, Esq., Chair

Civil Procedural Rules Committee
Maureen M. McBride, Esq., Chair

Domestic Relations Procedural Rules Committee
David. S. Pollock, Esq., Chair

Orphans' Court Procedural Rules Committee
Julian E. Gray, Esq., Chair

Criminal Procedural Rules Committee
Hon. Stefanie J. Salavantis, Chair

Juvenile Court Procedural Rules Committee
Renée D. Merion, Esq., Chair

Minor Court Rules Committee
Hon. Daniel E. Butler, Chair

Pennsylvania Rules of Appellate Procedure

Rule 1517. Applicable Rules of Pleading; Servicemembers Civil Relief Act.

(a) **Rules of Pleading.** Unless otherwise prescribed by these rules, the practice and procedure under this chapter relating to pleadings in original jurisdiction petition for review practice shall be in accordance with the appropriate Pennsylvania Rules of Civil Procedure, so far as they may be applied.

(b) **Servicemembers Civil Relief Act. In any original jurisdiction petition for review under this chapter in which a respondent does not make an appearance, and before the court enters judgment in favor of the petitioner, the petitioner shall state in a filed affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931:**

(1) whether the non-appearing respondent is in military service and showing necessary facts to support the affidavit; or

(2) if the petitioner is unable to determine whether the non-appearing respondent is in military service, that the petitioner is unable to determine whether the non-appearing respondent is in military service.

Comment: "Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If a respondent is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., may impose additional protections. The Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, also provides protections for Pennsylvania National Guard members in active service of the Commonwealth that, *inter alia*, prohibit the issuance or enforcement of civil process.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public. The form can be modified provided the requirements of subdivision (b)(2) are met.

Rule 1732. Application for Stay or Injunction Pending Appeal. Number of Copies to be Filed.

(a) **Application to [trial court] Trial Court**. Application for a stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any *supersedeas*, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, must ordinarily be made in the first instance to the trial court, except where a prior order under this chapter has been entered in the matter by the appellate court or a judge thereof.

(b) **Contents of [application for stay] Application for Stay**. An application for stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any *supersedeas*, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, may be made to the appellate court or to a judge thereof, but the application shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The application shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed such parts of the record as are relevant. Where practicable, the application should be accompanied by the briefs, if any, used in the trial court. The application shall contain the certificate of compliance required by Pa.R.A.P. 127.

(c) **Number of [copies to be filed] Copies to be Filed**. To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its **[Official Note] Comment**.

[Official Note] Comment: *See generally Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), for the criteria for the issuance of a stay pending appeal.

For the availability of a stay for a party in military service, see the Servicemembers Civil Relief Act, 50 U.S.C. § 3932, and the Pennsylvania Military and

Veterans Code, 51 Pa.C.S. § 4105.

Rule 3307. Applications for Leave to File Original Process.

(a) **Scope.** This rule applies only to matters within the original jurisdiction of the Supreme Court under 42 Pa.C.S. § 721**,** which are not in the nature of mandamus or prohibition ancillary to matters within the appellate jurisdiction of the Supreme Court. Applications for relief pursuant to or ancillary to the appellate jurisdiction of the Supreme Court, including relief which may be obtained in the Supreme Court by petition for review or petition for specialized review, are governed by Article I and Article II and may be filed without an application under this rule. *See also* Pa.R.A.P. 3309 (applications for extraordinary relief).

(b) **General [rule] Rule.**

(1) **Application for Leave to File.** The initial pleading in any original action or proceeding shall be prefaced by an application for leave to file such pleading, showing service upon all parties to such action or proceeding. The matter will be docketed when the application for leave to file is filed with the Prothonotary of the Supreme Court.

(2) **Filing Date of Application.** The application shall be deemed filed on the date received by the prothonotary unless it was on an earlier date deposited in the United States mail and sent by first class, express, or priority United States Postal Service mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter, if known, and shall be either enclosed with the application or separately mailed to the prothonotary.

(3) **Entry of Appearance.** Appearances shall be filed as in other original actions.

(4) **Answer.** An adverse party may file an answer no later than 14 days after service of the application. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. An adverse party who does not intend to file an answer to the application shall, within the time fixed by these rules for the filing of an answer, file a letter stating that an answer to the application will not be filed.

(5) **Servicemembers Civil Relief Act. If an adverse party does not enter an appearance pursuant to subdivision (b)(3) or file an answer or letter pursuant to subdivision (b)(4), the applicant shall file an affidavit in accordance with Pa.R.A.P. 1517(b).**

(6) **Distribution.** Upon receipt of the answer to the application, or a letter stating that no answer will be filed, from each party entitled to file such, the application, pleadings, and answer to the application, if any, shall be distributed by the prothonotary to the Supreme Court for its consideration.

(c) **Disposition of [application] Application.** The Supreme Court may thereafter grant or deny the application or set it down for argument. Additional pleadings may be filed, and subsequent proceedings had, as the Supreme Court may direct. If the application is denied, the matter shall be transferred to the appropriate court by the prothonotary in the same manner and with the same effect as matters are transferred under Pa.R.A.P. 751.

Comment: Pa.R.A.P. 1517(b) sets forth the requirement of an affidavit of military service pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931.

Rule 3309. Applications for Extraordinary Relief.

(a) **General [rule] Rule.**

(1) **Service of Application.** An application for relief under 42 Pa.C.S. § 726 (extraordinary jurisdiction), or under the powers reserved by the first sentence of Section 1 of the Schedule to the Judiciary Article, shall show service upon all persons who may be affected thereby, or their representatives, and upon the clerk of any court in which the subject matter of the application may be pending.

(2) **Filing Date of Application.** The application shall be deemed filed on the date received by the prothonotary unless it was on an earlier date deposited in the United States mail and sent by first class, express, or priority United States Postal Service mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter if known and shall be either enclosed with the application or separately mailed to the prothonotary.

(3) **Entry of Appearance.** Appearances shall be governed by Rule 1112 (entry of appearance) unless no appearances have been entered below, in which case appearances shall be filed as in original actions.

[(b)] **(4)** **Answer.** An adverse party may file an answer no later than fourteen days after service of the application. The answer shall be

deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. An adverse party who does not intend to file an answer to the application shall, within the time fixed by these rules for the filing of an answer, file a letter stating that an answer will not be filed.

(5) Servicemembers Civil Relief Act. If an adverse party does not enter an appearance pursuant to subdivision (a)(3) or file an answer or letter pursuant to subdivision (a)(4), the applicant shall file an affidavit in accordance with Pa.R.A.P. 1517(b).

[(c)] **(6)** **Distribution [and disposition]**. Upon receipt of the answer, or a letter stating that no answer will be filed, from each party entitled to file such, the application and answer, if any, shall be distributed by the Prothonotary to the Supreme Court for its consideration.

(b) **Disposition.** The Supreme Court may thereafter grant or deny the application or set it down for argument.

[(d)](c) **Stays and [supersedeas]** ***Supersedeas*****.** Where action is taken under this rule which has the effect of transferring jurisdiction of a matter to the Supreme Court, unless otherwise ordered by the Supreme Court such action shall be deemed the taking of an appeal as of right for the purposes of Chapter 17 (effect of appeals; supersedeas and stays), except that the lower court shall not have the power to grant reconsideration.

[Official Note] **Comment:** Based on 42 Pa.C.S. § 502 (general powers of Supreme Court), 42 Pa.C.S. § 726 (extraordinary jurisdiction) and the first sentence of Section 1 of the Schedule to the Judiciary Article, which preserves inviolate the December 31, 1968 powers of the Supreme Court (principally the so-called King's Bench powers) in the following language: "The Supreme Court shall exercise all the powers and until otherwise provided by law, jurisdiction now vested in the present Supreme Court ...." Former Supreme Court Rule 68 1/2 (416 Pa. xxv) contained a 30-day time limit for seeking review and the failure of **[Rule]** **Pa.R.A.P.** 3309 to set forth a specific time limit shall not be construed to enlarge the time permitted by law for the seeking of appellate review.

Pa.R.A.P. 1517(b) sets forth the requirement of an affidavit of military service pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931.

[EXPLANATORY COMMENT--1979

The stay and supersedeas procedure in the Supreme Court is clarified in King's Bench matters and in cases where the Superior Court or the Commonwealth Court (in its appellate capacity) has acted on a stay or supersedeas application.]

Pennsylvania Rules of Civil Procedure

Rule 216. **Grounds for Continuance.**

(**[A]**a) The following are grounds for continuance:

(1) Agreement of all parties or their attorneys, if approved by the **[Court]** **court**;

(2) Illness of counsel of record, a material witness, or a party. If requested a certificate of a physician shall be furnished, stating that such illness will probably be of sufficient duration to prevent the ill person from participating in the trial;

(3) Inability to subpoena or to take testimony by deposition, commission, or letters rogatory, of any material witness, shown by affidavit which shall state:

(**[a]**i) The facts to which the witness would testify if present or if deposed;

(**[b]ii**) The grounds for believing that the absent witness would so testify;

(**[c]iii**) The efforts made to procure the attendance or deposition of such absent witness; and

(**[d]iv**) The reasons for believing that the witness will attend the trial at a subsequent date, or that the deposition of the witness can and will be obtained.

(4) Such special ground as may be allowed in the discretion of the court;

(5) The scheduling of counsel to appear at any proceeding under the Pennsylvania Rules of Disciplinary Enforcement, whether:

(**[a]**i) as counsel for a respondent-attorney before a hearing committee, special master, the Disciplinary Board or the Supreme Court;

(**[b]ii**) as a special master or member of a hearing committee; or (**[c]iii**) as a member of the Disciplinary Board;

(6) The scheduling of counsel to appear at any proceeding involving the discipline of a justice, judge**,** or magisterial district judge under Section 18 of Article V of the Constitution of Pennsylvania, whether:

(**[a]**i) as counsel for a justice, judge, or magisterial district judge before the special tribunal provided for in 42 Pa.C.S. § 727, the Court of Judicial Discipline, the Judicial Conduct Board or any hearing committee**,** or other arm of the Judicial Conduct Board; or

(**[b]ii**) as a member of the Court of Judicial Discipline, the Judicial Conduct Board**,** or any hearing committee or other arm of the Judicial Conduct Board**[.]**;

(7) **In compliance with state or federal law.**

(**[B]b**) Except for cause shown in special cases, no reason above enumerated for the continuance of a case shall be of effect beyond one application made in behalf of one party or group of parties having similar interests.

(**[C]c**) No application for a continuance shall be granted if based on a cause existing and known at the time of publication or prior call of the trial list unless the same is presented to the court at a time fixed by the court, which shall be at least one week before the first day of the trial period. Applications for continuances shall be made to the court, or filed in writing with the officer

in charge of the trial list, after giving notice of such application by mail, or otherwise, to all parties or their attorneys. Each court may, by local rule, designate the time of publication of the trial list for the purposes of this rule.

(**[D]**__**d**__) No continuance shall be granted due to the absence from court of a witness duly subpoenaed, unless:

(1) Such witness will be absent because of facts arising subsequent to the service of the subpoena and which would be a proper ground for continuance under the provisions of Rule **[216(A)]** __**216(a)**__; or

(2) On the day when the presence of such witness is required a prompt application is made for the attachment of such absent witness; or

(3) The witness, having attended at court has departed without leave, and an application for attachment is made promptly after the discovery of the absence of such witness; or the court is satisfied that the witness has left court for reasons which would be a proper ground for continuance under Rule **[216(A)]** __**216(a)**__.

(**[E]**__**e**__) Each **[Court]** __**court**__ may adopt local rules providing for the temporary passing of cases or governing applications for continuance because of the absence of a witness, not a party, who has not been served with a subpoena.

(**[F]**__**f**__) Rule **[216(B)—(E)]** __**216(b)-(e)**__ and Rule 217 shall not be applicable to a continuance granted for any of the reasons set forth in Rule **[216(A)(5) or (6)]** __**216(a)(5) - (a)(7)**__.

__**Comment: For subdivision (a)(7), see e.g., the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.***__

(This is an entirely new rule.)

Rule 243. Servicemembers Civil Relief Act.

In any civil action in which a defendant does not make an appearance, and before the court enters judgment in favor of the plaintiff, the plaintiff shall state in a filed affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931:

(a) whether the non-appearing defendant is in military service and showing necessary facts to support the affidavit; or

(b) if the plaintiff is unable to determine whether the non-appearing defendant is in military service, that the plaintiff is unable to determine whether the defendant is in military service.

Comment: "Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If a defendant is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., may impose additional protections. The Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, also provides protections for Pennsylvania National Guard members in active service of the Commonwealth that, *inter alia*, prohibit the issuance or enforcement of civil process.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it meets the requirements of this rule.

Rule 237.1. Notice of [Praecipe] __***Praecipe***__ **for Entry of Judgment of [Non Pros]** __***Non***__ __***Pros***__ **for Failure to File Complaint or by Default for Failure to Plead.**

[(a)(1) As used in this rule,

''judgment of non pros'' means a judgment entered by praecipe pursuant to Rules 1037(a) and 1659;

Note: When a defendant appeals from a judgment entered in a magisterial district court, Pa.R.C.P.M.D.J. 1004(b) authorizes the appellant to file a praecipe for a rule as of course upon the appellee to file a complaint or suffer entry of a judgment of non pros. The entry of the judgment of non pros is governed by Pa.R.C.P. No. 1037(a) and is subject to this rule.

''judgment by default'' means a judgment entered by praecipe pursuant to Rules 1037(b), 3031(a) and 3146(a).

(2) No judgment of non pros for failure to file a complaint or by default for failure to plead shall be entered by the prothonotary unless the praecipe for entry includes a certification that a written notice of intention to file the praecipe was mailed or delivered

(i) in the case of a judgment of non pros, after the failure to file a complaint and at least ten days prior to the date of the filing of the praecipe to the party's attorney of record or to the party if unrepresented, or

(ii) in the case of a judgment by default, after the failure to plead to a complaint and at least ten days prior to the date of the filing of the praecipe to the party against whom judgment is to be entered and to the party's attorney of record, if any.

The ten-day notice period in subdivision (a)(2)(i) and (ii) shall be calculated forward from the date of the mailing or delivery, in accordance with Rule 106.

Note: The final sentence of Rule 237.1(a)(2) alters the practice described in the decision of *Williams v. Wade*, 704 A.2d 132 (Pa. Super. 1997).

(3) A copy of the notice shall be attached to the praecipe.

(4) The notice and certification required by this rule may not be waived.

Note: A certification of notice is a prerequisite in all cases to the entry by praecipe of a judgment of non pros for failure to file a complaint or by default for failure to plead to a complaint. Once the ten-day notice has been given, no further notice is required by the rule even if the time to file the complaint or to plead to the complaint has been extended by agreement.

See Rule 237.4 for the form of the notice of intention to enter a judgment of non pros and Rule 237.5 for the form of the notice of intention to enter a judgment by default.

(b) This rule does not apply to a judgment entered
(1) by an order of court,
(2) upon praecipe pursuant to an order of court, or
(3) pursuant to a rule to show cause.

Note: See Rule 3284 which requires that in proceedings to fix fair market value of real property sold, notice must be given pursuant to the requirements of Rule 237.1 *et seq.*]

[EXPLANATORY COMMENT—1994

Rule 237.1 et seq. are intended to (1) avoid snap judgments by requiring notice of the intention to enter certain judgments of non pros and by default, (2) eliminate procedural problems arising from ambiguous agreements to extend time to take required action and (3) ease the procedural burdens upon parties who move promptly to open such judgments.

Rule 237.1--Notice of intention to enter judgment

Rule 237.1 governing judgment of non pros and by default provides that the praecipe for entry of certain judgments include a certification of prior notice of the intent to enter judgment. The rule requires prior notice in those instances in which a party may proceed directly by praecipe to enter a judgment of non pros for failure to file a complaint or a judgment by default for failure to plead to a complaint. Rules 1037(a) and 1659 expressly provide for such a procedure in entering a judgment of non pros while Rules 1037(b), 1511(a), 3031(a) and 3146(a) provide for such a practice in entering a default judgment. New subdivision (a)(1) identifies these rules in specifying the scope of the rule.

The rule provides for the notice to be given once only. A note advises that "[o]nce the ten-day notice has been given, no further notice is required by the rule even if the time to plead to" or file "the complaint has been extended by agreement."

The notice must be in writing. Subdivision (a)(4) clearly provides that the "notice and certification required by this rule may not be waived." Subdivision 237.1(b) contains an exception to the notice requirement with respect to orders of court, discussed below.

The ten-day notice may be mailed or delivered. Registered or certified mail is not required. The ten-day grace period for compliance runs from the date of delivery, if the notice is delivered. If the notice is mailed, the ten-day period runs from the date of mailing and not from the date of receipt. If proof of the date of mailing is important, it may be obtained from the post office by requesting Post Office Form 3817, Certificate of Mailing, which will show the date, the name of the sender, and the addressee.

The rule continues the practice of entering judgment by the filing of a praecipe with the prothonotary. Two additional requirements are imposed. First, the praecipe must contain a certification that notice was given in accordance with the rule. Second, a copy of the notice must be attached to the praecipe.

The foregoing requirements apply irrespective of the type of judgment sought. However, depending upon the judgment to be entered, there are differing provisions with respect to the event triggering the time for giving notice and the persons to whom notice is to be delivered.

Time of notification

Rule 237.1(a) requires that the notice be given after the time for required action has expired and at least ten days prior to the filing of the praecipe for judgment. However, the event which triggers the time for giving notice differs. Rule 237.1(a)(2)(i) governing the judgment of non pros requires notice to be given "after the failure to file a complaint" pursuant to a rule to file a complaint. Rule 237.1(a)(2)(ii) governing the default judgment provides for notice to be given after the failure to plead to a complaint.

The intent of the rule is to afford a minimum of ten days after failure to file a complaint or after failure to plead within which the failure may be cured. To assure this, the notice may not be given until the time for action has elapsed and the failure occurs. This will prevent a plaintiff at the time of service of the complaint or a defendant at the time of service of a rule to file a complaint from including a notice that judgment will be entered on the twenty-first day after service. The notice cannot be given before that day because, prior to that day, no default or failure exists.

Persons notified

Rule 237.1(a)(2)(ii) requires the notice of intention to enter a judgment by default to be mailed or delivered both to the party against whom judgment is to be entered and, if represented, to the party's attorney of record. Dual service is required for two reasons. First, there may be delays in transmittal of process and pleadings from the client to his attorney. This often occurs where papers are forwarded by a party to his insurer through an intermediary, such as an insurance agency. Often the papers never get to defendant's attorney until after the time for filing a responsive pleading has expired. Notice to the party will alert him that there may have been some failure in transmission and prompt inquiry of his insurer may correct this.

Second, even if an appearance has been entered, notice to the client as well as the attorney may have a salutary effect in speeding up action by a dilatory attorney.

Rule 237.1(a)(2)(i), however, provides that notice of the intention to enter a judgment of non pros is to be mailed or delivered only to the party's attorney of record

or, if unrepresented, then to the party. In this instance, dual service is not necessary since the party against whom judgment is to be entered is no stranger to the litigation, having initiated it and continued to actively pursue it.

Form of Notice

Rule 237.4 prescribes the form of notice when a judgment of non pros is to be entered; Rule 237.5 prescribes the form of notice when a judgment by default is sought. Each form of notice is universal, applying to all plaintiffs or defendants as the case may be, whether represented or not and without distinction as to their degree of education or sophistication. As in Rule 1018.1, no attempt is made to apply the notices selectively based on the nature of the action or party involved.

The form of notice to be given when a default judgment is sought is adapted from the notice to defend which Rule 1018.1 requires on every complaint. It informs the defendant of the need for action, the consequences of default and where he can obtain a lawyer. Since the notice will in many cases be sent to an as yet unrepresented defendant, repetition of the notice to defend, in modified form helps to stimulate action and stem the tide of petitions to open default judgments.

The form of notice to be given to a plaintiff when a judgment of non pros is sought is similar to that given when a default judgment is sought but is adapted to the non pros scenario.

Exception to requirement of notification

The requirement of notice does not apply to a judgment entered by an order of court, upon praecipe pursuant to an order of court or pursuant to a rule to show cause. Additional notice serves no purpose when a judgment is entered by the court itself or is directed by the court. Similarly, a rule to show cause is itself notice of action to be taken.

Actions under Act No. 6 of 1974, the Loan Interest and Protection Law, 41 P.S. § 101 et seq., are not exempted from the requirement of notice. The notices required by the Act and Rule 237.1 are not duplicative. The notice under Act No. 6 relates to matters prior to suit, e.g., the default and the right to cure the default, whereas the ten-day notice of Rule 237.1 is directed to procedural rights after suit has been commenced.]

(This is entirely new text.)

(a) **General Rule.**

(1) As used in this rule,

''judgment of *non pros*'' means a judgment entered by *praecipe* pursuant to Rules 1037(a) and 1659;

''judgment by default'' means a judgment entered by *praecipe* pursuant to Rules 1037(b), 3031(a) and 3146(a).

(2) No judgment of *non pros* for failure to file a complaint or by default for failure to plead shall be entered by the prothonotary unless the *praecipe* for entry includes a certification that a written notice of intention to file the *praecipe* was mailed or delivered

(i) in the case of a judgment of *non pros*, after the failure to file a complaint and at least ten days prior to the date of the filing of the *praceipe* to the party's attorney of record or to the party if unrepresented, or

(ii) in the case of a judgment by default, after the failure to plead to a complaint and at least ten days prior to the date of the filing of the *praecipe* to the party against whom judgment is to be entered and to the party's attorney of record, if any.

The ten-day notice period in subdivision (a)(2)(i) and (ii) shall be calculated forward from the date of the mailing or delivery, in accordance with Rule 106.

(3) A copy of the notice shall be attached to the *praecipe*.

(4) The notice and certification required by this rule may not be waived.

(b) **Exceptions.** This rule does not apply to a judgment entered

(1) by an order of court,

(2) upon *praecipe* pursuant to an order of court, or

(3) pursuant to a rule to show cause.

Comment: Rules 237.1 *et seq*. are intended to (1) avoid snap judgments by requiring notice of the intention to enter certain judgments of *non pros* and by default, (2) eliminate procedural problems arising from ambiguous agreements to extend time to take required action and (3) ease the procedural burdens upon parties who move promptly to open such judgments.

Rule 237.1--Notice of Intention to Enter Judgment

Rule 237.1 governing judgment of *non pros* and by default provides that the *praecipe* for entry of certain judgments include a certification of prior notice of the intent to enter judgment. The rule requires prior notice in those instances in which a party may proceed directly by *praecipe* to enter a judgment of *non pros* for failure to file a complaint or a judgment by default for failure to plead to a complaint. Rules 1037(a) and 1659 expressly provide for such a procedure in entering a judgment of *non pros* while Rules 1037(b), 3031(a) and 3146(a) provide for such a practice in entering a default judgment. Subdivision (a)(1) identifies these rules in specifying the scope of the rule.

When a defendant appeals from a judgment entered in a magisterial district court, Pa.R.C.P.M.D.J. 1004(b) authorizes the appellant to file a *praecipe* for a rule as of course upon the appellee to file a complaint or suffer entry of a judgment of *non pros*. The entry of the judgment of *non pros* is governed by Rule 1037(a) and is subject to this rule.

The rule provides for the notice to be in writing and given once only. A certification of notice is a prerequisite in all cases to the entry by *praecipe* of a judgment of *non pros* for failure to file a complaint or by default for failure to plead to a complaint. Once the 10- day notice has been given, no further notice is required by the rule even if the time to file the complaint or to plead to the complaint has been extended by agreement.

Subdivision 237.1(b) contains an exception to the notice requirement with respect to orders of court, discussed below.

The ten-day notice may be mailed or delivered. Registered or certified mail is not required. The ten-day grace period for compliance runs from the date of delivery, if the notice is delivered. If the notice is mailed, the ten-day period runs from the date of mailing and not from the date of receipt. If proof of the date of mailing is important, it may be obtained from the post office by requesting Post Office Form 3817, Certificate of Mailing, which will show the date, the name of the sender, and the addressee.

The rule continues the practice of entering judgment by the filing of a *praecipe* with the prothonotary. Two additional requirements are imposed. First, the *praecipe* must contain a certification that notice was given in accordance with the rule. Second, a copy of the notice must be attached to the *praecipe*.

The foregoing requirements apply irrespective of the type of judgment sought. However, depending upon the judgment to be entered, there are differing provisions with respect to the event triggering the time for giving notice and the persons to whom notice is to be delivered.

Time of Notification

Rule 237.1(a) requires that the notice be given after the time for required action has expired and at least ten days prior to the filing of the *praecipe* for judgment. However, the event which triggers the time for giving notice differs. Rule 237.1(a)(2)(i) governing the judgment of *non pros* requires notice to be given "after the failure to file a complaint" pursuant to a rule to file a complaint. Rule 237.1(a)(2)(ii) governing the default judgment provides for notice to be given after the failure to plead to a complaint.

The intent of the rule is to afford a minimum of ten days after failure to file a complaint or after failure to plead within which the failure may be cured. To assure this, the notice may not be given until the time for action has elapsed and the failure occurs. This will prevent a plaintiff at the time of service of the complaint or a defendant at the time of service of a rule to file a complaint from including a notice that judgment will be entered on the twenty-first day after service. The notice cannot be given before that day because, prior to that day, no default or failure exists.

Persons Notified

Rule 237.1(a)(2)(ii) requires the notice of intention to enter a judgment by default to be mailed or delivered both to the party against whom judgment is to be entered and, if represented, to the party's attorney of record. Dual service is required for two reasons. First, there may be delays in transmittal of process and pleadings from the client to the client's attorney. This often occurs where papers are forwarded by a party to the party's insurer through an intermediary, such as an insurance agency. Often the papers never get to the

defendant's attorney until after the time for filing a responsive pleading has expired. Notice to the party will alert the party that there may have been some failure in transmission and prompt inquiry of the party's insurer may correct this.

Second, even if an appearance has been entered, notice to the client as well as the attorney may have a salutary effect in speeding up action by a dilatory attorney.

Rule 237.1(a)(2)(i), however, provides that notice of the intention to enter a judgment of *non pros* is to be mailed or delivered only to the party's attorney of record or, if unrepresented, then to the party. In this instance, dual service is not necessary since the party against whom judgment is to be entered is no stranger to the litigation, having initiated it and continued to actively pursue it.

Form of Notice

Rule 237.4 prescribes the form of notice when a judgment of *non pros* is to be entered; Rule 237.5 prescribes the form of notice when a judgment by default is sought. Each form of notice is universal, applying to all plaintiffs or defendants as the case may be, whether represented or not and without distinction as to their degree of education or sophistication. As in Rule 1018.1, no attempt is made to apply the notices selectively based on the nature of the action or party involved.

The form of notice to be given when a default judgment is sought is adapted from the notice to defend which Rule 1018.1 requires on every complaint. It informs the defendant of the need for action, the consequences of default and where the defendant can obtain a lawyer. Since the notice will in many cases be sent to an as yet unrepresented defendant, repetition of the notice to defend, in modified form helps to stimulate action and stem the tide of petitions to open default judgments.

The form of notice to be given to a plaintiff when a judgment of *non pros* is sought is similar to that given when a default judgment is sought but is adapted to the *non pros* scenario.

Exception to Requirement of Notification

The requirement of notice does not apply to a judgment entered by an order of court, upon *praecipe* pursuant to an order of court, or pursuant to a rule to show cause. Additional notice serves no purpose when a judgment is entered by the court itself or is directed by the court. Similarly, a rule to show cause is itself notice of action to be taken.

Actions pursuant to Act 6 of 1974, P.L. 13, the Loan Interest and Protection Law, 41 P.S. § 101-605, are not exempted from the requirement of notice. The notices required by Act 6 and Rule 237.1 are not duplicative. The notice under Act 6 relates to matters prior to suit, *e.g.*, the default and the right to cure the default, whereas the ten-day notice of Rule 237.1 is directed to procedural rights after suit has been commenced.

Cross References

See Pa.R.Civ.P. 3284 which requires that in proceedings to fix fair market value of real property sold, notice must be given pursuant to the requirements of Rule 237.1 *et seq.*

See Rule 243 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a defendant does not make an appearance.

Rule 1037. Judgment Upon Default or Admission. Assessment of Damages.

(a) Entry of Judgment by Prothonotary for Action Not Commenced by Complaint. If an action is not commenced by a complaint, the prothonotary, upon **[praecipe]** ***praecipe*** of the defendant, shall enter a rule upon the plaintiff to file a complaint. If a complaint is not filed within **[twenty]** **20** days after service of the rule, the prothonotary, upon **[praecipe]** ***praecipe*** of the defendant, shall enter a judgment of **[non pros]** ***non pros***.

[Note:See Rule 237.1(a)(2) which requires the praecipe for judgment of non pros to contain a certification of written notice of intent to file the praecipe.]

(b) Entry of Judgment by Prothonotary for Action Commenced by Complaint. The prothonotary, on **[praecipe]** ***praecipe*** of the plaintiff, shall enter judgment against the defendant for failure to file within the required time a pleading to a complaint which contains a notice to defend or, except as provided by subdivision (d), for any relief admitted to be due by the defendant's pleadings.

[Note:See Rule 237.1 which requires the praecipe for default judgment to contain a certification of written notice of intent to file the praecipe.

While the prothonotary may enter a default judgment in an action legal or equitable, only the court may grant equitable relief. See subdivision (d).]

(1) The prothonotary shall assess damages for the amount to which the plaintiff is entitled if it is a sum certain or which can be made certain by computation, but if it is not, the damages shall be assessed at a trial at which the issues shall be limited to the amount of the damages.

(2) In all actions in which the only damages to be assessed are the cost of repairs made to property

(i) the prothonotary on **[praecipe]** ***praecipe*** of the plaintiff, waiving any other damages under the judgment, and the filing of the affidavits provided by **[subparagraphs]** subdivisions (ii) and (iii) shall assess damages for the cost of the repairs;

(ii) the **[praecipe]** ***praecipe*** shall be accompanied by an affidavit of the person making the repairs; the affidavit shall contain an itemized repair bill setting forth the charges for labor and material used in the repair of the property; it shall also state the qualifications of the person who made or supervised the repairs, that the repairs were necessary, and that the prices for labor and material were fair and reasonable and those customarily charged;

the plaintiff shall send a copy of the affidavit and repair bill to the defendant by registered mail directed to the defendant's last known address, together with a notice setting forth the date of the intended assessment of damages, which shall be not less than ten days from the mailing of the notice and a statement that damages will be assessed in the amount of the repair bill unless prior to the date of assessment the defendant by written **[praecipe]** ***praecipe*** files with the prothonotary a request for trial on the issue of such damages; an affidavit of mailing of notice shall be filed.

[Note: By Definition Rule 76, registered mail includes certified mail.]

(c) Entry of Judgment by Court. In all cases, the court, on motion of a party, may enter an appropriate judgment against a party upon default or admission.

[Note: For the form of notice to defend, see Rule 1018.1.]

(d) Entry of Judgment by Court for Equitable Relief Cases. In all cases in which equitable relief is sought, the court shall enter an appropriate order upon the judgment of default or admission and may take testimony to assist in its decision and in framing the order.

Comment:

Subdivision (a). See Pa.R.Civ.P. 237.1(a)(2), which requires the *praecipe* for judgment of *non pros* to contain a certification of written notice of intent to file the *praecipe*.

Subdivision (b). See Pa.R.Civ.P. 237.1 which requires the *praecipe* for a default judgment to contain a certification of written notice of intent to file the *praecipe*. While the prothonotary may enter a default judgment in an action legal or equitable, only the court may grant equitable relief pursuant to subdivision (d).

See Rule 243 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a defendant does not make an appearance.

See Pa.R.Civ.P. 76 (definitions), registered mail includes certified mail.

Subdivision (c). See Pa.R.Civ.P. 1018.1 for the form of the notice to defend.

[EXPLANATORY COMMENT--JUNE 16, 1994

Effective July 1, 1984, the former actions of assumpsit and trespass were consolidated into the present civil action. Prior to the consolidation one of the principal differences in practice between the two actions was in the manner of responding to a complaint. The assumpsit rules required an answer specifically denying each averment

of fact in the complaint. The trespass rules, however, gave the attorney the option of either filing a full answer as in assumpsit or filing no answer at all. If the attorney filed an entry of appearance but chose not to file an answer, the effect was to admit specified averments of fact in the complaint and to deny the remainder. However, the new civil action rules eliminated this option and required the assumpsit-type answer in all cases.

At the same time, the proposal that the specific denial of Rule 1029 be deleted in favor of a general denial was not adopted. Thus, there remained the requirement of a specific denial not only in assumpsit or contract cases but also in cases not formerly subject to the rule, i.e., trespass or tort cases. Both attorneys and judges have expressed dissatisfaction with the necessity to file answers specifically denying allegations of fact in a complaint in tort actions. The practice results in pleadings containing unnecessary repetition of language, overwhelming paperwork for both the court and the parties, and complexity of pleading which in many cases does not contribute to the narrowing of the issues or the resolution of the action.

In 1991 the Civil Procedural Rules Committee published Recommendation No. 109 which proposed that a responding party be given in all cases the alternatives of filing an answer or filing merely an entry of appearance which would have the effect of a denial. As the result of the comments received, the Committee republished the recommendation as Recommendation No. 109a which proposed that the civil action rules be amended to include the former practice of giving the attorney the option not to file an answer in a limited class of cases, i.e., the trespass-type case. The ultimate evolution of the proposal is that set forth in the amended rules: an answer is required in all cases but, in actions seeking monetary relief for bodily injury, death or property damage, the answer may consist of a general denial.

The amendments to the rules are described as follows.

Rule 1037. Judgment Upon Default or Admission. Assessment of Damages

Subdivision (b) of Rule 1037 provided for the entry of judgment upon praecipe resulting from a default or admission. The rule spoke of failure to file "an answer". This left unclear the effect of filing preliminary objections. The rule is changed to refer to "a pleading", a term which under Rule 1017(a) includes both an answer and preliminary objections. The filing of an answer or preliminary objections clearly will prevent the entry of a default judgment.

A new note cross-refers to the requirement of Rule 237.1 that the praecipe to enter a judgment by default contain a certification that notice of the intent to enter the judgment was given as provided by that rule.]

[EXPLANATORY COMMENT--2003

See Explanatory Comment preceding Pa.R.C.P. No. 1501.]

Rule 1303. Hearing. Notice.

(a) **Procedure Set by Local Rule.**

(1) The procedure for fixing the date, time, and place of hearing before a board of arbitrators shall be prescribed by local rule, provided that **[not less than thirty days']** notice in writing shall be given to the parties or their attorneys of record **not less than 30 days from the date of the hearing**.

[Note: See Rule 248 as to shortening or extending the time for the giving of notice.]

(2) The local rule may provide that the written notice required by subdivision (a)(1) include the following statement:

"This matter will be heard by a board of arbitrators at the time, date and place specified but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial **[de novo]** ***de novo*** on appeal from a decision entered by a judge."

[Note: A party is present if the party or an attorney who has entered an appearance on behalf of the party attends the hearing.]

(b) **Party Not Ready to Proceed.** When the board is convened for hearing, if one or more parties is not ready the case shall proceed and the arbitrators shall make an award unless the court

(1) orders a continuance, or

(2) hears the matter if the notice of hearing contains the statement required by subdivision (a)(2) and all parties present consent.

[Note:] Comment:

Subdivision (a). Existing local rules now provide a wide variety of procedures as to notice, place, and time of hearing. In some counties the prothonotaries or the trial list administrators give notice of the hearing. In other counties the chairman of the arbitration board gives notice of both the hearing and the filing of the report and award. In many counties the arbitrators sit in the courthouse. In others, because of the shortage of courtrooms, the arbitrators meet in the chair's office or that of a member of the board or at the Bar association law library where conference rooms are made available. Nonetheless, every local practice must give written notice not less than 30 days' notice of the date of the hearing. In exigent circumstances the court, under Rule 248, can extend or shorten the time of notice.

A party is present if the party or an attorney who has entered an appearance on behalf of the party attends the hearing.

Subdivision (b). This subdivision addresses the failure of a party to attend a hearing.

It is within the discretion of the court whether it should hear the matter or whether the matter should proceed in arbitration. If the court is to hear the matter, it should be heard on the same date as the scheduled arbitration hearing.

In hearing the matter, the trial court may take action not available to the arbitrators, including the entry of a nonsuit if the plaintiff is not ready or a **[non pros]** ***non pros*** if neither party is ready. If the defendant is not ready, it may hear the matter and enter a decision.

[For relief from a nonsuit, see Rule 227.1 governing post-trial practice. See also Rule] **See Pa.R.Civ.P. 227.1 (post-trial relief) for relief from a nonsuit; *see also* Pa.R.Civ.P.** 3051 governing relief from a judgment of **[non pros]** ***non pros***.

Following an adverse decision, a defendant who has failed to appear may file a motion for post-trial relief which may include a request for a new trial on the ground of a satisfactory excuse for the defendant's failure to appear.

See Rule 243 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a defendant does not make an appearance.

[EXPLANATORY COMMENT--1981

Subdivision (a). Existing local rules now provide a wide variety of procedures as to notice, place, and time of hearing. In some counties the prothonotaries or the trial list administrators give notice of the hearing. In other counties the chairman of the arbitration board gives notice of both the hearing and the filing of the report and award. In many counties the arbitrators sit in the courthouse. In others, because of the shortage of courtrooms, the arbitrators meet in the chairman's office or that of a member of the board or at the Bar association law library where conference rooms are made available.

Local practice will continue under Rule 1303(a), except for the requirement that not less than thirty days' notice in writing be given of the date of hearing. In exigent circumstances the court, under Rule 248, can extend or shorten the time of notice.

Subdivision (b). A problem frequently encountered in present practice is the failure of a party to appear at the hearing. Present practice does not permit a nonsuit of a non-appearing plaintiff. Indeed a nonsuit would be impractical, since there is no machinery by which a nonsuit could be removed by the arbitrators. Rule 1303(b) provides that if a plaintiff does not appear, the arbitrators shall, unless the court has ordered a continuance, proceed to enter an award. Similarly, if a defendant does not appear, and the court has not ordered a continuance, the arbitrators proceed to hear the matter and enter an award. The remedy for dissatisfaction with the award is to appeal.

As a matter of professional courtesy, one party appearing when the other party does not might not wish to proceed without a further opportunity for opposing counsel to explain his absence. This poses a delicate question. The arbitrators are given no power to grant continuances. Only the court may do so, under Rule 1303(b). Although under Rule 1304(b) the arbitrators may "adjourn an uncompleted hearing from day to day," adjournment of a hearing that has never begun is in effect a continuance. Nor is a request of counsel for a continuance as a courtesy to his opponent sufficient to permit the arbitrators to continue the matter. Perhaps one solution would be for counsel to ask the arbitrators to pass the case temporarily to give him time to move the court for a continuance.

Local rules may regulate this problem, but must do so with great care so as to provide that it is the court, and not the arbitrators that controls the progress of the case.]

[EXPLANATORY COMMENT--1998

If at a hearing before a board of arbitrators one party was ready and the other was not, Rule of Civil Procedure 1303 previously provided for the arbitration to proceed and an award to be made unless the court ordered a continuance. Under this rule, some courts experienced the problem of a party failing to appear for the arbitration hearing and then appealing for a trial *de novo* before the court.

Rule 1303 has been amended to provide an additional alternative in such a circumstance and allow a court of common pleas by local rule to provide that the court may hear the case if the notice of hearing so advised the parties and all parties present agree. If the court hears the matter, then the parties will have had their trial in the court of common pleas. Relief from the decision of the court will be by motion for post-trial relief following the entry of a nonsuit or a decision of the court or by petition to open a judgment of non pros. Relief from the action of the trial court will be by appeal to an appellate court. As the new notice advises, there will be "no right to a de novo trial on appeal from a decision entered by a judge."

Rule 218 governs the instance when a party is not ready when a case is called for trial. The note to subdivision (c) prior to its amendment referred to the right of a plaintiff to seek relief from the entry of a nonsuit or a judgment of non pros but omitted any reference to a defendant seeking relief from the decision of the court following a trial. A new paragraph has been added to the note calling attention to the defendant's right to file a motion for post-trial relief "on the ground of a satisfactory excuse for the defendant's failure to appear."]

Rule 2955. Confession of Judgment.

(a) **Complaint.** The plaintiff shall file with the complaint a confession of judgment substantially in the form provided by Rule 2962.

(b) **Signature.** The attorney for the plaintiff may sign the confession as attorney for the defendant unless an Act of Assembly or the instrument provides otherwise.

[Note: There are local rules in some counties requiring the filing of an affidavit of non-military service. See also the Servicemembers Civil Relief Act, 50 U.S.C.A. Appendix § 521.]

Comment: See Rule 243 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a defendant does not make an appearance.

Rule 1901.6. Responsive Pleading Not Required.

A defendant is not required to file an answer or other responsive pleading to the petition or the certified order, and all averments not admitted shall be deemed denied.

[*Note:*] **Comment:** For procedures as to the time and manner of hearings and issuance of orders, *see* 23 Pa.C.S. § 6107. For provisions as to the scope of relief available, *see* 23 Pa.C.S. § 6108. For provisions as to contempt for violation of an order, *see* 23 Pa.C.S. § 6114.

See **[Pa.R.C.P. No.]** **Rule** 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

See **Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.**

Rule 1910.11. Office Conference. [Subsequent Proceedings.] Interim Order. Demand for *De Novo* Hearing.

(a) **Office Conference.**

(1) A conference officer shall conduct the office conference.
(2) A lawyer serving as a conference officer employed by, or under contract with, a judicial district or appointed by the court shall not practice family law before a conference officer, hearing officer, or judge of the same judicial district.

[*Note*: Conference officers preside at office conferences under Pa.R.C.P. No. 1910.11. Hearing officers preside at hearings under Pa.R.C.P. No. 1910.12. The appointment of a hearing officer to hear actions in divorce or for annulment of marriage is authorized by Pa.R.C.P. No. 1920.51.]

(b) **Failure to Appear.** If a party fails to appear at a conference as directed by the court, the conference may proceed.
(c) **Documentation.**
(1) At the conference, the parties shall provide to the conference officer the following documents:
(i) the most recently filed individual federal income tax returns, including all schedules, W-2s, and 1099s;
(ii) the partnership or business tax returns with all schedules, including K-1, if the party is self-employed or a principal in a partnership or business entity;
(iii) pay stubs for the preceding six months;
(iv) verification of child care expenses;
(v) child support, spousal support, alimony *pendente lite*, or alimony orders or agreements for other children or former spouses;
(vi) proof of available medical coverage; and
(vii) an Income Statement and, if necessary, an Expense Statement on the forms provided in **[Pa.R.C.P. No.]** **Rule** 1910.27(c) and completed as set forth in subdivisions (c)(**[1]2**) and (**3[2]**).

[*Note: See* Pa.R.C.P. No. 1930.1(b). To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions (e.g., divorce, custody), the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* shall apply.]

(**[1]2**) The parties shall provide the conference officer with a completed:
(i) Income Statement as set forth in **[Pa.R.C.P. No.]** **Rule** 1910.27(c)(1) in all support cases, including high-income cases under **[Pa.R.C.P. No.]** **Rule** 1910.16-3.1; and
(ii) Expense Statement as set forth in **[Pa.R.C.P. No.]** **Rule** 1910.27(c)(2)(A), if a party:
(A) claims that unusual needs and unusual fixed expenses may warrant a deviation from the guideline support amount pursuant to **[Pa.R.C.P. No.]** **Rule** 1910.16-5; or
(B) seeks expense apportionment pursuant to **[Pa.R.C.P. No.]** **Rule** 1910.16-6.

(**[2]3**) For high-income support cases, as set forth in **[Pa.R.C.P. No.]** **Rule** 1910.16-3.1, the parties shall provide to the conference officer the Expense Statement in **[Pa.R.C.P. No.]** **Rule** 1910.27(c)(2)(B).

(d) **Conference Officer Recommendation.**
(1) The conference officer shall calculate and recommend a guideline support amount to the parties.
(2) If the parties agree on a support amount at the conference, the conference officer shall:
(i) prepare a written order consistent with the parties' agreement and substantially in the form set forth in **[Pa.R.C.P. No.]** **Rule** 1910.27(e), which the parties shall sign; and
(ii) submit to the court the written order along with the conference officer's recommendation for approval or disapproval.
(iii) The court may enter the order in accordance with the agreement without hearing from the parties.
(3) In all cases in which one or both parties are unrepresented, the parties must provide income information to the domestic relations section so that a guidelines calculation can be performed.
(4) In cases in which both parties are represented by counsel, the parties shall not be obligated to provide income information and the domestic relations section shall not be required to perform a guidelines calculation if the parties have reached an agreement about the amount of support and the amount of contribution to additional expenses.

(e) **Conference Summary.** At the conclusion of the conference or not later than 10 days after the conference, the conference officer shall prepare a conference summary and furnish copies to the court and to both parties.

The conference summary shall state:

(1) the facts upon which the parties agree;

(2) the contentions of the parties with respect to facts upon which they disagree; and

(3) the conference officer's recommendation; if any, of

(i) the amount of support and by and for whom the support shall be paid; and

(ii) the effective date of any order.

(f) **Interim Order.** If an agreement for support is not reached at the conference, the court, without hearing the parties, shall enter an interim order calculated in accordance with the guidelines and substantially in the form set forth in Rule 1910.27(e). Each party shall be provided, either in person at the time of the conference or by mail, with a copy of the interim order and written notice that any party may, within 20 days after the date of receipt or the date of the mailing of the interim order, whichever occurs first, file a written demand with the domestic relations section for a hearing before the court.

(g) **No stay.** A demand for a hearing before the court shall not stay the interim order entered under subdivision (f) unless the court so directs.

(h) **Final Order.** If no party demands a hearing before the court within the 20 day period, the interim order shall constitute a final order.

(i) **Hearing *De Novo*.** If a demand is filed, there shall be a hearing *de novo* before the court. The domestic relations section shall schedule the hearing and give notice to the parties. The court shall hear the case and enter a final order substantially in the form set forth in Rule 1910.27(e) within **[sixty]** **60** days from the date of the written demand for hearing.

(j) **Separate Listing.**

(1) Promptly after receipt of the notice of the scheduled hearing, a party may move the court for a separate listing **[where]** **if**:

(i) there are complex questions of law, fact**,** or both; **[or]**

(ii) the hearing will be protracted; or

(iii) the orderly administration of justice requires that the hearing be listed separately.

(2) If the motion for separate listing is granted, discovery shall be available in accordance with Rule 4001 *et seq.*

[*Note:* The rule relating to discovery in domestic relations matters generally is Rule 1930.5.]

(k) **Post-Trial Relief.** No motion for post-trial relief may be filed to the final order of support.

[EXPLANATORY COMMENT--1994

The domestic relations office conference provided by Rule 1910.11 constitutes the heart of the support procedure. There are two primary advantages to the inclusion of a conference. First, in many cases the parties will agree upon an amount of support and a final order will be prepared, to be entered by the court, thus dispensing with a judicial

hearing. Second, those cases which do go to hearing can proceed more quickly because the necessary factual information has already been gathered by the conference officer.

Subdivision (a)(2) prohibits certain officers of the court from practicing family law before fellow officers of the same court. These officers are the conference officer who is an attorney (Rule 1910.11), the hearing officer (Rule 1910.12), and the standing or permanent master who is employed by the court (Rule 1920.51). The amendments are not intended to apply to the attorney who is appointed occasionally to act as a master in a divorce action.

Subdivision (e)(3) makes clear that even if the parties agree on an amount of support, the conference officer is still empowered to recommend to the court that the agreement be disapproved. This provision is intended to protect the destitute spouse who might out of desperation agree to an amount of support that is unreasonably low or which would in effect bargain away the rights of the children.

The officer's disapproval of the agreement serves to prevent an inadequate order being entered unwittingly by the court.

The provision for an interim order in subdivision (f) serves two purposes. First, it ensures that the obligee will receive needed support for the period during which the judicial determination is sought. Second, it eliminates the motive of delay in seeking a judicial determination.

Because the guidelines are income driven, the trier of fact has little need for the expense information required in the Income and Expense Statement. Therefore in guideline cases, the rule no longer requires that expense information be provided. If a party feels that there are expenses so extraordinary that they merit consideration by the trier of fact, that party is free to provide the information. In cases decided according to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), living expenses are properly considered, and therefore must be presented on the Income and Expense Statement.

EXPLANATORY COMMENT--1995

Rule 1910.11(e) is amended to eliminate the need for a party to request a copy of the conference summary.

Because the court is required to enter a guideline order on the basis of the conference officer's recommendation, there is no need for (g)(2), which provided for a hearing before the court where an order was not entered within five days of the conference. It is eliminated accordingly.

Pursuant to subdivision (g), support payments are due and owing under the interim order which continues in effect until the court enters a final order after the hearing de novo. The provision for an interim order serves two purposes. First, it ensures that the obligee will receive needed support for the period during which the judicial determination is sought. Second, it eliminates the motive of delay in seeking a judicial determination. Therefore, the plaintiff and the dependent children are not prejudiced by allowing the court sixty days, rather than the original forty-five, in which to enter its final order.

EXPLANATORY COMMENT--2006

The time for filing a written demand for a hearing before the court has been expanded from ten to 20 days. The purpose of this amendment is to provide ample opportunity for litigants and counsel to receive notice of the entry of the order, to assure Commonwealth-wide consistency in calculation of time for filing and to conform to applicable general civil procedural rules.

The amendments reflect the separated Income Statement and Expense Statements in Rule 1910.27(c).

EXPLANATORY COMMENT--2010

When the parties' combined net income exceeds $30,000 per month, calculation of child support, spousal support and alimony pendente lite shall be pursuant to Rule 1910.16-3.1. Rule 1910.16-2(e) has been amended to eliminate the application of *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), in high income child support cases.

EXPLANATORY COMMENT--2011

The rule has been amended to require that income information be provided in all cases, unless both parties are represented in reaching an agreement, so that a guidelines calculation can be performed. The guidelines create a rebuttable presumption that the amount calculated pursuant to them is the correct amount, so there should be a calculation in every case. If parties agree to receive or to pay an order other than the guideline amount, they should know what that amount is so that they can enter an agreement knowingly. If both parties are represented by counsel, it is assumed that their entry into the agreement for an amount other than a guidelines amount is knowing as it is counsels' responsibility to advise the parties. In addition, part of the mandatory quadrennial review of the support guidelines mandates a study of the number of cases in which the support amount ordered varies from the amount that would result from a guidelines calculation. Federal regulations presume that if a large percentage of cases vary from the guideline amount, then the guidelines are not uniform statewide.]

Comment: Conference officers preside over office conferences conducted pursuant to this rule. Hearing officers preside over hearings conducted pursuant to Rule 1910.12. The appointment of hearing officer to hear actions in divorce or for annulment of marriage is authorized by Rule 1920.51.

The rule relating to discovery in domestic relations matters generally is Rule 1930.5.

To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions, *e.g.*, divorce, custody, the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* shall apply. *See* Rule 1930.1(b).

Subdivision (a)(2) prohibits certain officers of the court from practicing family law before other officers of the same court. These officers are the conference officer who is an attorney, the hearing officer, Rule 1910.12, and the standing or permanent hearing

officer who is employed by the court, Rule 1920.51. This subdivision is not intended to apply to an attorney occasionally appointed as a hearing officer in a divorce action.

Subdivision (d)(2)(i)(B) clarifies that, even if the parties agree on an amount of support, the conference officer is still empowered to recommend to the court that the agreement be disapproved. This provision is intended to protect the destitute spouse who might, out of desperation, agree to an amount of support that is unreasonably low or which would in effect bargain away the rights of the children. The officer's disapproval of the agreement serves to prevent an inadequate order being entered unwittingly by the court.

Pursuant to subdivision (f), support payments are due and owing under the interim order and continue in effect until the court enters a final order after the hearing *de novo*. The provision for an interim order serves two purposes. First, it ensures that the obligee will receive needed support for the period during which the judicial determination is sought. Second, it eliminates the motive of delay in seeking a judicial determination. Therefore, the plaintiff and any dependent children are not prejudiced by allowing the court 60 days to enter its final order.

The domestic relations office conference provided by this rule constitutes the heart of the support procedure. There are two primary advantages to the inclusion of a conference. First, in many cases the parties will agree upon an amount of support and a final order will be prepared, to be entered by the court, thus dispensing with a judicial hearing. Second, those cases which do proceed to hearing can proceed more quickly because the necessary factual information has already been gathered by the conference officer.

Because the guidelines are income driven, the trier of fact has little need for the expense information required in the Expense Statement. Therefore, in guideline cases, the rule no longer requires that expense information be provided. If a party feels that there are expenses so extraordinary that they merit consideration by the trier of fact, the party is free to provide the information. In cases decided according to *Melzer v. Witsberger*, 480 A.2d 991 (Pa. 1984), living expenses are properly considered, and therefore must be presented in the Expense Statement.

***See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.**

Rule 1910.12. Alternative Hearing Procedures. Office Conference. Record Hearing. [Record.] Report. Exceptions. [Order]

(a) **Office Conference.** There shall be an office conference as provided by **[Pa.R.C.P. No.] Rule** 1910.11(a) through (d). The provisions of **[Pa.R.C.P. No.] Rule** 1910.11(d)(3) and (d)(4) regarding income information apply in cases proceeding pursuant to **[Pa.R.C.P. No.] Rule** 1910.12.

(b) **Conference Conclusion.**

(1) At the conclusion of a conference attended by both parties, if an agreement for support has not been reached, and the conference and hearing are not scheduled on the same day, the

court, without hearing the parties, shall enter an interim order calculated in accordance with the guidelines and substantially in the form set forth in **[Pa.R.C.P. No.]** **Rule** 1910.27(e), and the parties shall be given notice of the date, time and place of a hearing. A record hearing shall be conducted by a hearing officer who must be a lawyer.

(2) If either party, having been properly served, fails to attend the conference, the court may enter an interim order calculated in accordance with the guidelines and substantially in the form set forth in Pa.R.C**iv**.P. **[No.]** **Rule** 1910.27(e). Within 20 days after the date of receipt or the date of mailing of the interim order, whichever occurs first, either party may demand a hearing before a hearing officer. If no hearing is requested, the order shall become final.

(3) Any lawyer serving as a hearing officer employed by, or under contract with, a judicial district or appointed by the court shall not practice family law before a conference officer, hearing officer, or judge of the same judicial district.

[*Note*: Conference officers preside at office conferences under Pa.R.C.P. No. 1910.11. Hearing officers preside at hearings under Pa.R.C.P. No. 1910.12. The appointment of a hearing officer to hear actions in divorce or for annulment of marriage is authorized by Pa.R.C.P. No. 1920.51.]

(c) **Separate Listing.**

(1) Except as provided in subdivision (c)(2), promptly after the conference's conclusion, a party may

(i) there are complex questions of law, fact or both;

(i) the hearing will be protracted; or

(ii) the orderly administration of justice requires that the hearing be listed separately.

(2) When the conference and hearing are scheduled on the same day, all requests for separate listing shall be presented to the court at least seven days prior to the scheduled court date.

(3) If the motion for separate listing is granted, discovery shall be available in accordance with **[Pa.R.C.P. No.]** **Rule** 4001 *et seq*.

[*Note*: The rule relating to discovery in domestic relations matters generally is Pa.R.C.P. No. 1930.5.]

(d) **Report.** The hearing officer shall receive evidence, hear argument and, not later than 20 days after the close of the record, file with the court a report containing a recommendation with respect to the entry of an order of support. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order substantially in the form set forth in Rule 1910.27(e) stating:

(1) the amount of support calculated in accordance with the guidelines;

(2) by and for whom it shall be paid; and

(3) the effective date of the order.

(e) **Interim Order.** The court, without hearing the parties, shall enter an interim order consistent with the proposed order of the hearing officer. Each party shall be provided, either in person at the time of the hearing or by mail, with a copy of the interim order and written notice that any party may, within 20 days after the date of receipt or the date of mailing of the order, whichever occurs first, file with the domestic relations section written exceptions to the report of the hearing officer and interim order.

[*Note:* Objections to the entry of an interim order consistent with the proposed order may be addressed pursuant to Rule 1910.26.]

(f) **Exceptions.** Within 20 days after the date of receipt or the date of mailing of the report by the hearing officer, whichever occurs first, any party may file exceptions to the report or any part thereof, to rulings on objections to evidence, to statements or findings of facts, to conclusions of law, or to any other matters occurring during the hearing. Each exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived unless, prior to entry of the final order, leave is granted to file exceptions raising those matters. If exceptions are filed, any other party may file exceptions within 20 days of the date of service of the original exceptions.

(g) **Final Order.** If no exceptions are filed within the 20-day period, the interim order shall constitute a final order.

(h) **Argument.** If exceptions are filed, the interim order shall continue in effect. The court shall hear argument on the exceptions and enter an appropriate final order substantially in the form set forth in Rule 1910.27(e) within 60 days from the date of the filing of exceptions to the interim order. No motion for post-trial relief may be filed to the final order.

[EXPLANATORY COMMENT--1995

Language is added to subdivision (b) to acknowledge that the conference and hearing can be held the same day, and to provide for the immediate entry of an interim order in judicial districts where the hearing occurs at a later date. New subdivision (b)(2) permits entry of a guideline order after a conference which the defendant, though properly served, fails to attend. New subdivision (c)(2) is intended to prevent delays in the hearing of complex cases by requiring that requests for separate listing be made at least seven days in advance where the conference and hearing are scheduled on the same day.

In addition, the phrase "record hearing" in subdivision (a) replaces the reference to a "stenographic record" in recognition of the variety of means available to create a reliable record of support proceedings.

Amended subdivision (e) allows an interim order to be entered and served on the parties at the conclusion of the hearing, rather than after the expiration of the exceptions period as was true under the old rule. In addition, the amended subdivision requires that the interim order include language advising the parties of their right to file exceptions within ten days of the date of the order.

Support payments are due and owing under the interim order which continues in effect until the court enters a final order after considering the parties' exceptions.

Therefore, extension of the deadline for entering the final order by fifteen days does not prejudice the persons dependent upon payment of the support.

EXPLANATORY COMMENT—2006

The time for filing exceptions has been expanded from ten to 20 days. The purpose of this amendment is to provide ample opportunity for litigants and counsel to receive notice of the entry of the order, to assure Commonwealth-wide consistency in calculation of time for filing and to conform to applicable general civil procedural rules.]

Comment: Conference officers preside over office conferences completed pursuant to Rule 1910.11. Hearing officers preside over hearings conducted pursuant to Rule 1910.12. The appointment of hearing officers to hear actions in divorce or for annulment of marriage is authorized by Rule 1920.51.

The rule relating to discovery in domestic relations matters generally is Rule 1930.5.

Objections to the entry of an interim order consistent with the proposed order may be addressed pursuant to Rule 1910.26.

***See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.**

Rule 1915.4-2. Partial Custody. Office Conference. Hearing. Record. Exceptions. Order.

(a) **Office Conference.**

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

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

(3) The conference officer may make a recommendation to the parties relating to partial custody or supervised physical custody of the child or children. If an agreement for partial custody or supervised physical custody is reached at the conference, the conference officer shall prepare a written order in conformity with the agreement for signature by the parties and submission to the court together with the officer's recommendation for approval or disapproval. The court may enter an order in accordance with the agreement without hearing the parties.

(4) At the conclusion of the conference, if an agreement relating to partial custody or supervised physical custody has not been reached, the parties shall be given notice of the date, time, and place of a hearing before a hearing officer, which may be the same day, but in no event shall be more than 45 days from the date of the conference.

(b) **Hearing.**

(1) The hearing shall be conducted by a hearing officer who **[must] shall** be a lawyer, and a record shall be made of the testimony. A hearing officer who is a lawyer employed by, or under contract with, a judicial district or appointed by the court shall not practice family law before a conference officer, hearing officer, or judge of the same judicial district.

(2) The hearing officer shall receive evidence and hear argument. The hearing officer may recommend to the court that the parties or the subject child or children submit to examination and evaluation by experts pursuant to Rule 1915.8.

(3) Within ten days of the conclusion of the hearing, the hearing officer shall file with the court and serve upon all parties a report containing a recommendation with respect to the entry of an order of partial custody or supervised physical custody. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order, including a specific schedule for partial custody or supervised physical custody.

(4) Within 20 days after the date the hearing officer's report is mailed or received by the parties, whichever occurs first, any party may file exceptions to the report or any part thereof, to rulings on objections to evidence, to statements or findings of fact, to conclusions of law, or to any other matters occurring during the hearing. Each exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived unless, prior to entry of the final order, leave is granted to file exceptions raising those matters. If exceptions are filed, any other party may file exceptions within 20 days of the date of service of the original exceptions.

(5) If no exceptions are filed within the 20-day period, the court shall review the report and, if approved, enter a final order.

(6) If exceptions are filed, the court shall hear argument on the exceptions within 45 days of the date the last party files exceptions, and enter an appropriate final order within **[fifteen] 15** days of argument. No motion for **[P]p**ost-**[T]t**rial **[R]r**elief

may be filed to the final order.

[EXPLANATORY COMMENT--2006

The time for filing exceptions has been expanded from ten to 20 days. The purpose of this amendment is to provide ample opportunity for litigants and counsel to receive notice of the entry of the order, to assure Commonwealth-wide consistency in calculation of time for filing and to conform to applicable general civil procedural rules.]

Comment: *See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance. *See also* 50 U.S.C. § 3938 and 51 Pa.C.S. §§ 4109, 4110 related to child custody proceedings during a servicemember's deployment.

Rule 1915.4-3. [Non-Record Proceedings. Trials] Court Procedures.

(a) **Non-Record Proceedings.** In judicial districts utilizing an initial non-record proceeding, *i.e.,* office conference, if an agreement is not finalized by the conclusion of the proceeding, the conference officer shall promptly notify the court that the matter should be listed for trial. A lawyer employed by, or under contract with, a judicial district or appointed by the court to serve as a conference officer to preside over a non-record proceeding shall not practice family law before a conference officer, hearing officer, or judge of the same judicial district.

(b) **Trial.** The trial before the court shall be *de novo*. The court shall hear the case and render a decision within the time periods set forth in **[Pa.R.C.P. No.]** **Rule** 1915.4.

[EXPLANATORY COMMENT--2018

The amendment to this rule, in conjunction with the amendment to Pa.R.C.P. No. 1915.1, standardizes terminology used in the custody process and identifies court personnel by title and in some cases qualifications. Of note, the term "mediator," which had been included in the rule, has been omitted and is specifically defined in Pa.R.C.P. No. 1915.1.

As in the support rules, custody conference officers preside over conferences and hearing officers preside over hearings. Regardless of the individual's title, presiding over a conference or a hearing triggers the family law attorney practice preclusion in this rule and in Pa.R.C.P. No. 1915.4-2(b) in the case of a hearing officer. Mediators, as defined in Pa.R.C.P. No. 1915.1 and as qualified in Pa.R.C.P. No. 1940.4, do not preside over custody conferences or hearings; rather, mediators engage custody litigants in alternative dispute resolution methods pursuant to Chapter 1940 of the Rules of Civil Procedure and, as such, the preclusion from practicing family law in the same judicial district in which an attorney/mediator is appointed is inapplicable.]

Comment: *See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance. *See also* 50 U.S.C. § 3938 and 51 Pa.C.S. §§ 4109, 4110 related to child custody proceedings during a servicemember's deployment.

Rule 1915.17. Relocation. [Notice and Counter-Affidavit]

(a) **Notice.** A party proposing to change the residence of a child which significantly impairs the ability of a non-relocating party to exercise custodial rights **[must]** **shall** notify every other person who has custodial rights to the child and provide a counter-affidavit by which a person may agree or object. The form of the notice and counter-affidavit are set forth in subdivisions (i) and (j) below. The notice shall be sent by certified mail, return receipt requested, addressee only or pursuant to **[Pa.R.C.P No.]** **Rule** 1930.4, no later than the [sixtieth] **60th** day before the date of the proposed change of residence or other time frame set forth in 23 Pa.C.S. § 5337(c)(2).

(b) **Objection.** If the other party objects to the proposed change in the child's residence, that party must serve the counter-affidavit on the party proposing the change by certified mail, return receipt requested, addressee only, or pursuant to **[Pa.R.C.P. No.]** **Rule** 1930.4 within 30 days of receipt of the notice required in subdivision (a) above. If there is an existing child custody case, the objecting party also shall file the counter-affidavit with the court.

(c) **No Objection.** If no objection to a proposed change of a child's residence is timely served after notice, the proposing party may change the residence of the child and such shall not be considered a "relocation" under statute or rule.

(d) **Expedited Process.** The procedure in any relocation case shall be expedited. There shall be no requirement for parenting education or mediation prior to an expedited hearing before a judge.

(e) **Order Confirming Relocation.** If the party proposing the relocation seeks an order of court, has served a notice of proposed relocation as required by 23 Pa.C.S. § 5337, has not received notice of objection to the move, and seeks confirmation of relocation, the party proposing the relocation shall file:

(1) a complaint for custody and petition to confirm relocation, when no custody case exists, or

(2) a petition to confirm relocation when there is an existing custody case and

(3) a proposed order including the information set forth at 23 Pa.C.S. § 5337(c)(3).

(f) **Process for Relocating Party After Objection.** If the party proposing the relocation has received notice of objection to the proposed move after serving a notice of proposed relocation as required by 23 Pa.C.S. §§ 5337 *et seq*., the party proposing relocation shall file:

(1) a complaint for custody or petition for modification, as applicable;
(2) a copy of the notice of proposed relocation served on the non- relocating party;
(3) a copy of the counter-affidavit indicating objection to relocation; and
(4) a request for a hearing.

(g) <u>**Process for Opposing Party After Service of Notice.**</u> If the non-relocating party has been served with a notice of proposed relocation and the party proposing relocation has not complied with subdivision (f) **[above]**, the non-relocating party may file:
(1) a complaint for custody or petition for modification, as applicable;
(2) a counter-affidavit as set forth in 23 Pa.C.S. § 5337(d)(1), and
(3) a request for a hearing.

(h) <u>**Order Preventing Relocation.**</u> If a non-relocating party has not been served with a notice of proposed relocation and seeks an order of court preventing relocation, the non-relocating party shall file:
(1) a complaint for custody or petition for modification, as applicable;
(2) a statement of objection to relocation; and
(3) a request for a hearing.

(i) <u>**Form of Notice.**</u> The notice of proposed relocation shall be substantially in the following form:

(Caption)

NOTICE OF PROPOSED RELOCATION

You, ___________________________, are hereby notified that _______ (party proposing relocation) _______________________ proposes to relocate with the following minor child(ren):
____

To object to the proposed relocation, you must complete the attached counter-affidavit and serve it on the other party by certified mail, return receipt requested, addressee only, or pursuant to **[Pa.R.C.P. No.]** <u>**Rule**</u> 1930.4 within 30 days of receipt of this notice. If there is an existing child custody case, you also must file the counter-affidavit with the court. If you do not object to the proposed relocation within 30 days, the party proposing relocation has the right to relocate and may petition the court to approve the proposed relocation and to modify any effective custody orders or agreements. FAILURE TO OBJECT WITHIN 30 DAYS WILL PREVENT YOU FROM OBJECTING TO THE RELOCATION ABSENT EXIGENT CIRCUMSTANCES.

Address of the proposed new residence:
____

☐ *Check here if the address is confidential pursuant to 23 Pa.C.S. § 5336(b).*

Mailing address of intended new residence (if not the same as above)
____

☐ *Check here if the address is confidential pursuant to 23 Pa.C.S. § 5336(b).*

Names and ages of the individuals who intend to reside at the new residence:

Name Age
____
____
____

☐ *Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).*

Home telephone number of the new residence:
☐ *Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).*
Name of the new school district and school the child(ren) will attend after relocation:
____

☐ *Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).*

Date of the proposed relocation:
☐ *Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).*
Reasons for the proposed relocation:
____
____
____

☐ *Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).*

Proposed modification of custody schedule following relocation:

____
____

Other information:
____

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.

____

____

____

[*Note: See* Pa.R.C.P. No. 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.]

(j) The counter-affidavit that **[must]** **shall** be served with the relocation notice shall be substantially in the following form as set forth in 23 Pa.C.S.§ 5337(d):

COUNTER-AFFIDAVIT REGARDING RELOCATION

This proposal of relocation involves the following child/children:

Child's Name	Age	Currently residing at:
____________	________	____________
____________	________	____________
____________	________	____________

I have received a notice of proposed relocation and (*check all that apply*):

1. □ I do not object to the relocation

2. □ I do not object to the modification of the custody order consistent with the proposal for modification set forth in the notice.

3. □ I do not object to the relocation, but I do object to modification of the custody order.

4. □ I plan to request that a hearing be scheduled by filing a request for hearing with the court:

   a. □ Prior to allowing (name of child/children) to relocate.
   b. □ After the child/children relocate.

5. □ I do object to the relocation

6. □ I do object to the modification of the custody order.

I understand that in addition to objecting to the relocation or modification of the custody order above, I must also serve this counter-affidavit on the other party by certified mail, return receipt requested, addressee only, or pursuant to **[Pa.R.C.P. No.]** **Rule** 1930.4, and, if there is an existing custody case, I must file this counter-affidavit with the court. If I fail to do so within 30 days of my receipt of the proposed relocation notice, I understand that I will not be able to object to the relocation at a later time.

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) (Signature)

[*Note: See* Pa.R.C.P. No. 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.]

Comment: *See* Rule 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

***See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance. *See also* 50 U.S.C. § 3938 and 51 Pa.C.S. §§ 4109, 4110 related to child custody proceedings during a servicemember's deployment.**

Rule 1920.42. Obtaining Divorce Decrees Under [Section] 23 Pa.C.S. § 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) <u>**23 Pa.C.S. § 3301(c)(1).**</u> Obtaining a divorce decree under **[Section]** <u>**23 Pa.C.S. §**</u> 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;

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

(iii) the ancillary claims under **[Pa.R.C.P. No.]** <u>**Rule**</u> 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) the parties have signed and filed Waivers of Notice of Intention to File the *Praecipe* to Transmit Record or, alternatively, 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]** <u>**23 Pa.C.S. §**</u> 3301(c)(1) and a copy of the proposed *Praecipe* to Transmit Record that indicated the date and manner of service of the Notice of Intention to File the *Praecipe* to Transmit Record; and

(v) the party requesting the divorce decree has completed and filed 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 Record.]**

(1) To the extent that grounds for divorce have been established under **[Section]** <u>**23 Pa.C.S. §**</u> 3301(c)(1) **[of the Divorce Code]** as outlined in subdivision (a)(1)(ii) and the parties have been unable to resolve the ancillary claims, the court shall enter an order approving grounds for divorce after:

(vi) the parties have signed and filed Waivers of Notice of Intention to File the *Praecipe* to Transmit Record or, alternatively, the party requesting the order approving grounds 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 that indicated the date and manner of service of the Notice of Intention to File the *Praecipe* to Transmit Record; and

(vii) the party requesting the order approving grounds has completed and filed 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 *Praecipe* to Transmit Record.

***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 Record.]**

(2) After the court enters an order approving grounds for divorce, a party may request, consistent with the judicial district's local rules and procedures, that the court either hears the ancillary claims or appoints a hearing officer to hear the ancillary

claims as outlined in **[Pa.R.C.P. No.]** **Rule** 1920.51.

[*Note: See* Pa.R.C.P. No. 1920.74 for the Motion for Appointment of Hearing Officer.]

(3) If the parties resolve the ancillary claims by agreement after the court approves the grounds for the divorce but before the court enters an order disposing of the ancillary claims, the parties shall file a *Praecipe* to Transmit Record requesting the court enter the appropriate divorce decree. To the extent the agreement does not address all of the parties' claims raised in the pleadings, the party raising the outstanding claims shall withdraw the claims before the court enters a divorce decree.

(b) **23 Pa.C.S. § 3301(c)(2).** Obtaining a divorce decree under **[Section]** **23** **Pa.C.S. §** 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;

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

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

(B) has signed and filed an Affidavit to Establish Presumption of Consent under **[Section]** **23 Pa.C.S. §** 3301(c)(2) **[of the Divorce Code]** alleging **[his or her]** **the party's** status as a victim of a personal injury crime and that **[his or her]** **the party's** spouse has been convicted of that crime;

(iii) the filed affidavits and a blank Counter-Affidavit under **[Section]** **23 Pa.C.S. §** 3301(c)(2) **[of the Divorce Code]** have been served on the other party consistent with **[Pa.R.C.P. No.]** **Rule** 1930.4, and the other party has admitted or failed to deny the averments in the Affidavit to Establish Presumption of Consent under **[Section]** **23** **Pa.C.S. §** 3301(c)(2) **[of the Divorce Code]**;

(A) If a party files a Counter-Affidavit **[under Section 3301(c)(2) of the Divorce Code]** denying an averment in the Affidavit to Establish Presumption of Consent **[under Section 3301(c)(2) of the Divorce Code]**, either party may present a motion requesting the court resolve the issue.

(B) After presentation of the motion in subdivision (A), the court may hear the testimony or, consistent with **[Pa.R.C.P. No.]** **Rule** 1920.51(a)(1)(ii)(D), appoint a hearing officer to hear the testimony and to issue a report and recommendation.

[*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 to Establish Presumption of Consent under Section 3301(c)(2) of the Divorce Code are deemed admitted unless denied. *See* Pa.R.C.P. No. 1930.4 for service of original process and Pa.R.C.P. No. 1920.14(b) regarding failure to deny averments in the affidavit.]

(iv) the ancillary claims under **[Pa.R.C.P. Nos.]** **Rules** 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) a minimum of 20 days from the date of service of the affidavits and blank Counter-Affidavit **[under Section 3301(c)(2)]** as set forth in **subdivision** (b)(1)(iii), 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 copy of the proposed *Praecipe* to Transmit Record that indicated the date and manner of service of the Notice of Intention to File the *Praecipe* to Transmit Record, except that service of such Notice of Intention is not required if:

(A) the parties have signed and filed Waivers of Notice of Intention to File the *Praecipe* to Transmit Record; or

(B) the court finds that an attorney has not entered an appearance on the defendant's behalf and that the defendant cannot be located after a diligent search; and

(vi) the party requesting the divorce decree has completed and filed 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. 1920.72(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 *Praecipe* to Transmit Record.**

***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 Record.]**

(2) To the extent that grounds for divorce have been established **[under Section 3301(c)(2) of the Divorce Code]** as outlined in subdivision (b)(1)(ii)-(iii) and the parties have been unable to resolve the ancillary claims, the court shall enter an order approving grounds for divorce after:

(i) a minimum of 20 days from the date of service of the affidavits and blank Counter-Affidavit **[under Section 3301(c)(2) of the Divorce Code]** as set forth in **subdivision** (b)(1)(iii), the party requesting the order approving grounds has served on the other party a Notice of Intention to File the *Praecipe* to Transmit Record, which included a copy of the proposed *Praecipe* to Transmit Record that indicated the date and manner of service of the Notice of Intention to File the *Praecipe* to Transmit Record, except that service of such Notice of Intention is not required if:

(A) the parties have signed and filed Waivers of Notice of Intention to File the *Praecipe* to Transmit Record; or

(B) the court finds that an attorney has not entered an appearance on the defendant's behalf and that the defendant cannot be located after a diligent search; and

(ii) the party requesting the order approving grounds has completed and filed 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 *Praecipe* to Transmit Record.

***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 Record.]**

(3) After the court enters an order approving grounds for divorce, a party may request, consistent with the judicial district's local rules and procedures, that the court either hears the ancillary claims or appoints a hearing officer to hear the ancillary claims as outlined in **[Pa.R.C.P. No.]** **Rule** 1920.51.

[*Note: See* Pa.R.C.P. No. 1920.74 for the Motion for Appointment of Hearing Officer.]

(4) If the parties resolve the ancillary claims by agreement after the court approves the grounds for the divorce but before the court enters an order disposing of the ancillary claims, the parties shall file a *Praecipe* to Transmit Record requesting the court enter the appropriate divorce decree. To the extent the agreement does not address all of the parties' claims raised in the pleadings, the party raising the outstanding claims shall withdraw the claims before the court enters a divorce decree.

(c) **23 Pa.C.S. § 3301(d).** Obtaining a divorce decree under **[Section]** **23** **Pa.C.S. §** 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 after:

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

(ii) a party has signed and filed an Affidavit under **[Section]** **23** **Pa.C.S. §** 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 **[a]**<u>**A**</u>ffidavit and a blank Counter-Affidavit under **[Section]** <u>**23 Pa.C.S. §**</u> 3301(d) **[of the Divorce Code]** have been served on the other party consistent with **[Pa.R.C.P. No.]** <u>**Rule**</u> 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]**;

(A) If a party files a Counter-Affidavit **[under Section 3301(d) of the Divorce Code]** denying an averment in the Affidavit **[under Section 3301(d) of the Divorce Code]**, including the date of separation, either party may present a motion requesting the court to resolve the issue.

(B) After presentation of the motion in subdivision (A), the court may hear the testimony or, consistent with **[Pa.R.C.P. No.]** <u>**Rule**</u> 1920.51(a)(1)(ii)(D), appoint a hearing officer to hear the testimony and to issue a report and recommendation.

[*Note:* This subdivision requires service of the counter-affidavit on the nonmoving 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. *See* Pa.R.C.P. No. 1930.4 for service of original process and Pa.R.C.P. No. 1920.14(b) regarding failure to deny averments in the affidavit.]

(iv) the ancillary claims under **[Pa.R.C.P. Nos.]** <u>**Rules**</u> 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) a minimum of 20 days from the date of service of the **[a]**<u>**A**</u>ffidavit and blank Counter-Affidavit **[under Section 3301(d) of the Divorce Code]** as set forth in <u>**subdivision**</u> (c)(1)(iii), 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 copy of the proposed *Praecipe* to Transmit Record that indicated the date and manner of service of the Notice of Intention to File the

Praecipe to Transmit Record, except that service of such Notice of Intention is not required if:

(A) the parties have signed and filed Waivers of Notice of Intention to File the *Praecipe* to Transmit Record; or

(B) the court finds that an attorney has not entered an appearance on the defendant's behalf and that the defendant cannot be located after a diligent search; and

(vi) the party requesting the divorce decree has completed and filed 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(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 *Praecipe* to Transmit Record.**

***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 Record.]**

(2) To the extent that grounds for divorce have been established **[under Section 3301(d) of the Divorce Code]** as outlined in subdivision (c)(1)(ii)-(c)(1)(iii) and the parties have been unable to resolve the ancillary claims, the court shall enter an order approving grounds for divorce after:

(i) a minimum of 20 days from the date of service of the **[a]**<u>**A**</u>ffidavit and blank Counter-Affidavit **[under Section 3301(d) of the Divorce Code]** as set forth in <u>**subdivision**</u> (c)(1)(iii), the party requesting the order approving grounds has served on the other party a Notice of Intention to File the *Praecipe* to Transmit Record, which included a copy of the proposed *Praecipe* to Transmit Record that indicated the date and manner of service of the Notice of Intention to File the *Praecipe* to Transmit Record, except that service of such Notice of Intention is not required if:

(A) the parties have signed and filed Waivers

of Notice of Intention to File the *Praecipe* to Transmit Record; or

(B) the court finds that an attorney has not entered an appearance on the defendant's behalf and that the defendant cannot be located after a diligent search; and

(ii) the party requesting the order approving grounds has completed and filed 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 *Praecipe* to Transmit Record.**

***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 Record.]**

(3) After the court enters an order approving grounds for divorce, a party may request, consistent with the judicial district's local rules and procedures, that the court either hears the ancillary claims or appoints a hearing officer to hear the ancillary claims as outlined in **[Pa.R.C.P. No.]** <u>Rule</u> 1920.51.

[*Note: See* Pa.R.C.P. No. 1920.74 for the Motion for Appointment of Hearing Officer.]

(4) If the parties resolve the ancillary claims by agreement after the court approves the grounds for the divorce but before the court enters an order disposing of the ancillary claims, the parties shall file a *Praecipe* to Transmit Record requesting the court enter the appropriate divorce decree. To the extent the agreement does not address all of the parties' claims raised in the pleadings, the party raising the outstanding claims shall withdraw the claims before the court enters a divorce decree.

[EXPLANATORY COMMENT--2019

On April 21, 2016, Act 24 of 2016 (Act of Apr. 21, 2016, P.L. 166, No. 24) amended the Divorce Code by adding 23 Pa.C.S. § 3301(c)(2). Section 3301(c)(2) creates a presumption of consent to a divorce if 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. To effectively incorporate procedures for the newly enacted Section 3301(c)(2) into the Rules of Civil Procedure, Pa.R.C.P. No. 1920.42 was rescinded and replaced.

In implementing Section 3301(c)(2), the rule utilizes an affidavit/counter-affidavit procedure similar to a Section 3301(d) divorce, which served as a template for the new procedure. The process for establishing the presumption of consent in Section 3301(c)(2) requires the party to aver in an affidavit 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 allegedly convicted spouse may oppose the establishment of the presumption by completing and filing a counter-affidavit. If the allegedly 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. As part of the revised divorce procedures, amended Pa.R.C.P. No. 1920.51(a)(1) permits the appointment of a master for a determination of the presumption under Section 3301(c)(2). To effectuate the new procedures for Section 3301(c)(2) divorces, several additional forms, including an Affidavit to Establish Presumption of Consent and a Counter- Affidavit under Section 3301(c)(2), have been added to the rules. *See* Pa.R.C.P. No. 1920.72(c) and (e)(2).

In addition to the changes to the rule related to 23 Pa.C.S. § 3301(c)(2), the rule has been further revised to provide a uniform practice across the Commonwealth for establishing a definitive point when the parties can move the court for resolution of any ancillary claims. As the court cannot resolve the ancillary claims until grounds for divorce have been established, Pa.R.C.P. No. 1920.42 includes procedures for obtaining approval of grounds for divorce in cases in which the parties have unresolved ancillary claims. This process requires that 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 claims raised in the pleadings. Forms have been correlatively amended or retitled to reflect this new procedure. The Waiver of Notice of Intention has been moved from Pa.R.C.P. No. 1920.72 to Pa.R.C.P. No. 1920.73.

As a result of these changes, Pa.R.C.P. No. 1920.42 specifically outlines the process for obtaining a decree for Section 3301(c)(1), Section 3301(c)(2), and Section 3301(d) divorces. Although the rule's length has expanded extensively, the detailed procedure alleviates confusion on when and how to obtain a divorce decree and further assists unrepresented parties to maneuver through a complicated procedure.]

<u>**Comment:** ***See*** **Rule 1920.72(b) for the Affidavit of Consent.**</u>

<u>**See Rule 1920.72(c) for the Affidavit to Establish Presumption of Consent under 23 Pa.C.S. § 3301(c)(2).**</u>

<u>**See Rule 1920.72(d) for the Affidavit under 23 Pa.C.S. § 3301(d).**</u>

<u>See Rule 1920.72(e)(1) for the Counter-Affidavit under 23 Pa.C.S. § 3301(c)(1).</u>

<u>See Rule 1920.72(e)(2) for the Counter-Affidavit under 23 Pa.C.S. § 3301(c)(2).</u>

<u>See Rule 1920.72(e)(3) for the Counter-Affidavit under 23 Pa.C.S. § 3301(d).</u>

<u>See Rule 1920.73(a) for the Notice(s) of Intention to File the *Praecipe* to Transmit Record.</u>

<u>See Rule 1920.73(b) for the Waiver of Notice of Intention to File the *Praecipe* to Transmit Record.</u>

<u>See Rule 1920.73(c) for the *Praecipe* to Transmit Record.</u>

<u>See Rules 1920.51(a)(3) and 1920.74(a) for the Motion for Appointment of Hearing Officer.</u>

<u>Subdivision (e) requires service of the counter-affidavit on the non-moving party consistent with original process since the averments in the moving party's Affidavit to Establish Presumption of Consent under 23 Pa.C.S. § 3301(c)(2) are deemed admitted unless denied. See Rule 1930.4 for service of original process and Rule 1920.14(b) regarding failure to deny averments in the affidavit.</u>

<u>Subdivision (i) requires service of the counter-affidavit on the nonmoving party consistent with original process since the averments in the moving party's Affidavit under 23 Pa.C.S. § 3301(d) are deemed admitted unless denied. See Rule 1930.4 for service of original process and Rule 1920.14(b) regarding failure to deny averments in the affidavit.</u>

<u>*See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.</u>

Rule 1920.46. [Affidavit of Non-Military Service] <u>Rescinded</u>.

[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 comprises the entirety of the rule and the title has been amended to reflect that the rule applies only to the affidavit regarding military service.]

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

(a) **<u>Hearing.</u>** In an action of divorce or annulment:

(1) the court may:

(i) hear the testimony; or

(ii) upon motion of a party or of the court, appoint a hearing officer:

(A) before entry of the divorce decree to hear the testimony for the ancillary claims of alimony, equitable division of marital property, partial physical custody, supervised physical custody, counsel fees, and costs and expenses, which are raised in the pleadings, and to issue a report and recommendation, provided that grounds for divorce under **[Sections]** **<u>23 Pa.C.S. §§</u>** 3301(c) or 3301(d) **[of the Divorce Code]** have been established and approved by the court as outlined in **[Pa.R.C.P. No.]** **<u>Rule</u>** 1920.42;

(B) before approving grounds for divorce under **[Sections]** **<u>23 Pa.C.S. §§</u>** 3301(c) or 3301(d) **[of the Divorce Code]** for the limited purpose of assisting the parties and the court on issues of discovery or settlement;

(C) to hear the testimony for establishing grounds for divorce under **[Sections]** **<u>23 Pa.C.S. §§</u>** 3301(a) or 3301(b) **[of the Divorce Code]** or annulment and the ancillary claims, which are raised in the pleadings, and to issue a report and recommendation; or

(D) after a party files a counter-affidavit denying the averments in the affidavit in an action under **[Section]** **<u>23 Pa.C.S. §§</u>**

3301(c)(2) or 3301(d) **[of the Divorce Code]**, including the date of separation, to hear the testimony and to issue a report and recommendation.

(2) the court shall not appoint a hearing officer:

(i) to approve grounds for divorce under **[Sections]** __**23 Pa.C.S.**__ __**§§**__ 3301(c) or 3301(d) **[of the Divorce Code]**; or

[Note: See **Pa.R.C.P. No. 1920.42 for approving grounds for divorce under Sections 3301(c) and 3301(d) of the Divorce Code.]**

(ii) for the claims of legal custody, sole physical custody, primary physical custody, shared physical custody, or paternity.

[*Note*: Section 3321 of the Divorce Code prohibits the appointment of a hearing officer as to the claims of custody and paternity. However, as set forth in Pa.R.C.P. No. 1920.91(3), the Supreme Court of Pennsylvania suspended Section 3321 insofar as that section prohibits the appointment of a hearing officer in partial physical custody cases.]

(3) The Motion for the Appointment of a Hearing Officer and the order shall be substantially in the form prescribed by **[Pa.R.C.P. No.]** __**Rule**__ 1920.74. The order appointing the hearing officer shall specify the issues or ancillary claims that are referred to the hearing officer.

(4) A permanent or standing hearing officer employed by or under contract with a judicial district or appointed by the court shall not practice family law before a conference officer, hearing officer, permanent or standing hearing officer, or judge of the same judicial district.

[*Note*: Conference officers preside at office conferences under Pa.R.C.P. No. 1910.11. Hearing officers preside at hearings under Pa.R.C.P. No. 1910.12. The appointment of hearing officer to hear actions in divorce or annulment is authorized by Section 3321 of the Divorce Code.]

(b) __**Hearing Notice.**__ Written notice of the hearing shall be given to each attorney of record by the hearing officer. If a hearing officer has not been appointed, the prothonotary, clerk, or other officer designated by the court shall give the notice.

(c) __**Service of Notice.**__ If no attorney has appeared of record for a party, notice of the hearing shall be given to the party by the hearing officer, or if a hearing officer has not been appointed, by the prothonotary, clerk, or other officer designated by the court, as follows:

(1) to the plaintiff, by ordinary mail to the address on the complaint;

(2) to the defendant,

(i) if service of the complaint was made other than pursuant to special order of court, by ordinary mail to the defendant's last known address; or

(ii) if service of the complaint was made pursuant to special order of court, **[(a)]** __**either**__ by sending a copy of the notice by ordinary mail to the persons, if any, named in the investigation affidavit, likely to know the present whereabouts of the defendant; **[and (b)]** __**or**__ by sending a copy by registered mail to the defendant's last known address.

[*Note:* Under Rule 76, registered mail includes certified mail.]

(d) __**Advertising.**__ Advertising of notice of the hearing shall not be required.

(e) __**Proof of Notice.**__ Proof of notice shall be filed of record.

[*Note:* Consistent with Section 3301(e) of the Divorce Code as amended, these rules contemplate that if a divorce decree may be entered under the no fault provisions of §§ 3301(c) or (d), a divorce decree will be entered on these grounds and no hearing shall be required on any other grounds.]

[EXPLANATORY COMMENT--1994

While subdivision (a)(2)(ii) clearly prohibits appointment of a master to determine a divorce claim brought under §§ 3301(c) or 3301(d), the provision does permit a master to hear claims which are joined with the divorce action.

The rule is amended to conform with proposed new Rules 1915.4-1 and 1915.4-2, and to remove the implied prohibition against the use of hearing officers in partial custody or visitation cases.

EXPLANATORY COMMENT--2010

The rule is amended to clarify the role of the master in a divorce case when either party has asserted grounds for divorce pursuant to § 3301(c) or § 3301(d) of the Divorce Code. The rule had been interpreted in some jurisdictions as requiring the entry of a bifurcated decree before a master could be appointed to hear economic claims.

EXPLANATORY COMMENT--2019

Subdivision (a)(1)(ii)(A) provides for the appointment of a master to hear, *inter alia*, partial physical custody cases. The authority for a master to hear partial physical custody cases is 23 Pa.C.S. § 3321, which the Supreme Court of Pennsylvania suspended in part to allow masters to hear partial physical custody cases. However, this rule should not be construed to require a court to appoint masters in partial physical custody or supervised physical custody cases. Nor should the rule be construed as inconsistent with Pa.R.C.P. Nos. 1915.4-1, 1915.4-2, or 1915.4- 3 that provide for conference officers and hearing officers in custody cases.]

__**Comment: *See* Rule 1920.42 for approving grounds for divorce under 23 Pa.C.S. §§ 3301(c) and 3301(d).**__

__**23 Pa.C.S. § 3321 prohibits the appointment of a hearing officer as to the claims of custody and paternity. However, as set forth in Rule 1920.91 the Supreme Court**__

of Pennsylvania suspended 23 Pa.C.S. § 3321 insofar as that section prohibits the appointment of a hearing officer in partial physical custody cases.

***See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.**

Conference officers preside at office conferences under Rule 1910.1. Hearing officers preside at hearings under Rule 1910.12. The appointment a hearing officer to hear actions in divorce or annulment is authorized by 23 Pa.C.S. § 3321.

Under Rule 76, registered mail includes certified mail.

Consistent with 23 Pa.C.S. § 3301(e), these rules contemplate that if a divorce decree may be entered under the no fault provisions of §§ 3301(c) or (d), a divorce decree will be entered on these grounds and no hearing shall be required on any other grounds.

Subdivision (a)(1)(ii)(A) provides for the appointment of a hearing officer to hear, *inter alia*, partial physical custody cases. The authority for a master to hear partial physical custody cases is 23 Pa.C.S. § 3321, which the Supreme Court of Pennsylvania suspended in part to allow hearing officers to hear partial physical custody cases. However, this rule should not be construed to require a court to appoint hearing officers in partial physical custody or supervised physical custody cases. Nor should the rule be construed as inconsistent with Pa.R.Civ.P. 1915.4-1, 1915.4-2, or 1915.4-3 that provide for conference officers and hearing officers in custody cases.

Rule 1930.6. Paternity. [Actions. Scope. Venue. Commencement of Action]

(a) This rule shall govern the procedure by which a putative father may initiate a civil action to establish paternity and seek genetic testing. Such an action shall not be permitted if an order already has been entered as to the paternity, custody, or support of the child, or if a support or custody action to which the putative father is a party is pending.

(b) An action may be brought only in the county in which the defendant or the child**[(ren)]** resides.

(c) An action shall be commenced by filing a verified complaint to establish paternity and for genetic testing substantially in the form set forth in subdivision (c)(1). The complaint shall have as its first page the Notice of Hearing and Order set forth in subdivision (c)(2).

[*Note: See* Pa.R.C.P. No. 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.]

(1) The complaint filed in a civil action to establish paternity shall be substantially in the following form:

(Caption)

COMPLAINT TO ESTABLISH PATERNITY AND FOR GENETIC TESTING

Plaintiff, _____________, requests genetic testing to establish paternity pursuant to 23 Pa.C.S. § 4343 and in support of that request states that:

1. Plaintiff is an adult individual who resides at

2. Defendant is an adult individual who resides at

3. Defendant is the natural mother and Plaintiff believes that he may be the natural father of the following child(ren):

Child's Name	Date of Birth

4. The above-named children reside at the following address with the following individuals:

Address	Person(s) Living with Child

5. Defendant was/was not married at the time the child(ren) was/were conceived or born.

6. Defendant is/is not now married.

   If married, spouse's name:

7. There is/is not a custody, support or other action involving the paternity of the above-named child(ren) now pending in any jurisdiction.

   Identify any such actions by caption and docket number

8. There has/has not been a determination by any court as to the paternity of the child(ren) in any prior support, custody, divorce, or any other action.

   If so, identify the action by caption and docket number

9. Plaintiff agrees to pay all costs associated with genetic testing directly to the testing facility in accordance with the procedures established by that facility.

Wherefore, Plaintiff requests that the court order Defendant to submit to genetic testing and to make the child(ren) available for genetic testing.

I verify that the statements made in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Petitioner

____

(2) The Notice of Hearing and Order required by this rule shall be substantially in the following form:

(Caption)

NOTICE OF HEARING AND ORDER

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following papers, you must appear at the hearing scheduled below. If you fail to do so, the case may proceed against you and a final order may be entered against you granting the relief requested by the plaintiff.

Plaintiff and Defendant are directed to appear on the ____________________________________ day of ____________________________________, 20___ at ___.m. in courtroom ____________________________________ for a hearing on Plaintiff's request for genetic testing. If you fail to appear as ordered, the court may enter an order in your absence requiring you and your child(ren) to submit to genetic tests.

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)

____

Americans with Disabilities Act of 1990

The Court of Common Pleas of ____________________ County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference or hearing.

(d) **Service.** Service of original process and proof of service in a civil action to establish paternity shall be in accordance with Rule 1930.4.

(e) **Hearing and Order.** At the hearing, the judge will determine whether or not the plaintiff is legally entitled to genetic testing and, if so, will issue an order directing the defendant and the child(ren) to submit to genetic testing, the cost of which shall be borne by the plaintiff.

[EXPLANATORY COMMENT--2001

Where the paternity of a child born out-of-wedlock is disputed, 23 Pa.C.S. § 4343 provides that the court shall make the determination of paternity in a civil action without a jury. That statutory provision also states, "A putative father may not be prohibited from initiating a civil action to establish paternity." Rule 1930.6 governs the procedures by which a putative father may initiate a civil action to establish paternity outside the context of a support or custody proceeding.]

Comment: *See* Rule 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

Where the paternity of a child born out-of-wedlock is disputed, 23 Pa.C.S. § 4343 provides that the court shall make the determination of paternity in a civil action without a jury. That statutory provision also states, "A putative father may not be prohibited from initiating a civil action to establish paternity." This rule governs the procedures by which a putative father may initiate a civil action to establish paternity outside the context of a support or custody proceeding.

***See* Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.**

-The following

text is entirely new- Rule 1930.10.

Servicemembers Civil

Relief Act.

(a) **Affidavit.** If a defendant/respondent does not make an appearance in a proceeding, and before the court enters an order in favor of the plaintiff/petitioner, the plaintiff/petitioner shall file an affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931:

(1) stating whether the non-appearing defendant/respondent is in military service and showing necessary facts to support the affidavit; or

(2) if the plaintiff/petitioner is unable to determine whether the non- appearing defendant/respondent is in military service, that

the plaintiff/petitioner is unable to determine whether the non-appearing defendant/respondent is in military service.

(b) **Proceeding.** For purposes of this rule, the term "proceeding" shall have the following meanings in the indicated actions.

(1) **Support.** When a party does not attend an office conference as set forth in Pa.R.Civ.P. 1910.11 or 1910.12.

(2) **Divorce or Annulment.**

(1) **Sections 3301(a) or (b), or Section 3303.** When a party does not attend a judicial or divorce hearing officer's conference or conciliation; or

(2) **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.Civ.P. 1920.42(b)(1)(ii) or (c)(1)(ii).

(3) **Protection from Abuse and Protection of Victims of Sexual Violence or Intimidation Matters.** When a party does not attend a temporary or final hearing pursuant to Pa.R.Civ.P. 1901, *et seq*. or Pa.R.Civ.P. 1951, *et seq*.

(4) **Custody.**

(i) **Initial Proceeding or Modification.** When a party does not attend an office conference as set forth in Pa.R.Civ.P. 1915.4-2 or a non-record proceeding as set forth in Pa.R.Civ.P. 1915.4-3;04

(ii) **Relocation.** When a party proposes a relocation as set forth in Pa.R.Civ.P. 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.

(5) **Paternity.**

(i) **Civil Action.** When a putative father initiates a civil action to establish paternity and requests genetic testing pursuant to Pa.R.Civ.P. 1930.6, the mother does not attend the hearing as provided in Pa.R.Civ.P. 1930.6(e).

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

(6) **Pending Actions.** When a party is requesting relief from the court, including but not limited to a contempt proceeding or a request for special or emergency relief, which may adversely affect a servicemember's civil rights during military service, a party does not attend the proceeding.

Comment: "Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If a parent or guardian is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. §§ 4101 *et seq*., may provide additional protections and procedures.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it meets the requirements of this rule.

Rule 1956. [No] Responsive Pleading <u>Not</u> Required.

No pleading need be filed in response to the petition or the certified emergency order. All averments not admitted shall be deemed denied.

<u>**Comment:** *See* **Rule 1930.10 (Servicemembers Civil Relief Act) for affidavit of military service requirements if an opposing party does not make an appearance.**</u>

Pennsylvania Rules of Orphans' Court Procedure

-The following text is entirely new-

Rule 2.12. Servicemembers Civil Relief Act.

In any matter brought pursuant to this Chapter, the accountant shall state in a filed affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931, for every proposed representative identified in Rule 2.4(b)(2)–(3) and every interested party not represented pursuant to that rule:

(a) whether the proposed representative or interested party is in military service and showing necessary facts to support the affidavit; or

(b) if the accountant is unable to determine whether the proposed representative or interested party is in military service, that the accountant is unable to determine whether the proposed representative or interested party is in military service.

Comment: As used in this rule, the terms "interested party" and "proposed representative" are limited to individuals, insofar as an entity is incapable of military service. The accountant is not required to provide an affidavit for an entity.

"Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If an interested party is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., may impose additional protections. The Pennsylvania Military and Veterans Code, 51

Pa.C.S. § 4105, also provides protections for Pennsylvania National Guard members in active service of the Commonwealth that, *inter alia*, prohibit the issuance or enforcement of civil process.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it meets the requirements of this rule.

The accountant is not required to file the affidavit for an interested party represented pursuant to Pa.R.O.C.P. 2.4(b)–(c), pertaining to representation of parties in interest.

-The following text is entirely new- Rule 3.16. Servicemembers Civil Relief Act.

In any matter brought pursuant to this Chapter, the petitioner shall state in a filed affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931, for every proposed representative identified in Rule 3.4(a)(7)(ii)-(iii) and every interested party not represented pursuant to that rule:

(a) whether the proposed representative or interested party is in military service and showing necessary facts to support the affidavit; or

(b) if the petitioner is unable to determine whether the proposed representative or interested party is in military service, that the petitioner is unable to determine whether the proposed representative or interested party is in military service.

Comment: As used in this rule, the terms "interested party" and "proposed representative" are limited to individuals, insofar as an entity is incapable of military service. The petitioner is not required to provide an affidavit for an entity.

"Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If an interested party is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., may impose additional protections. The Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, also provides protections for Pennsylvania National Guard members in active service of the Commonwealth that, *inter alia*, prohibit the issuance or enforcement of civil process.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it meets the requirements of this rule.

The petitioner is not required to file the affidavit for an interested party represented pursuant to Rule 3.4(a)(7)(ii)-(iii), pertaining to representation of parties in interest.

Rule 14.1. Guardianship Petition Practice and Pleading.

-

(a) **Proceedings for Adjudication of Incapacity and Appointment of a Guardian.** The following petition practice and pleading requirements set forth in Chapter III (Petition Practice and Pleading) shall be applicable to proceedings for the adjudication of incapacity and appointment of a guardian:

(1) Rule 3.2 (Headings; Captions);
(2) Rule 3.3 (Contents of All Petitions; General and Specific Averments);
(3) Rule 3.12 (Signing);
(4) Rule 3.13 (Verification); **[and]**
(5) Rule 3.14 (Amendment); **<u>and</u>**
(6) **<u>Rule 3.16 (Servicemembers Civil Relief Act) for persons identified in Rule 14.2(a)(3)</u>**.

(b) **Responsive Pleadings to a Petition for Adjudication of Incapacity and Appointment of a Guardian Filed Pursuant to Rule 14.2.**

(1) Permitted responsive pleadings to a petition seeking the adjudication of incapacity and appointment of a guardian are limited to those identified in Rule 3.6 (Pleadings Allowed After Petition) and shall be subject to Rules 3.10 (Denials; Effect of Failure to Deny) and 3.11 (Answer with New Matter).
(2) The alleged incapacitated person and any person or institution served pursuant to Rule 14.2(f)(2) may file a responsive pleading.
(3) Any responsive pleading shall be filed with the clerk and served pursuant to Rule 4.3 (Service of Legal Paper Other than Citations or Notices) on all others entitled to file a responsive pleading pursuant to **[subparagraph (b)(2)]** **<u>subdivision (b)(2)</u>**.
(4) All responsive pleadings shall be filed and served no later than five days prior to the hearing. The failure to file or timely file and serve a responsive pleading does not waive the right to raise an objection at the hearing.
(5) The court shall determine any objections at the adjudicatory hearing.

(c) **All Other Petitions for Relief.** Unless otherwise provided by **[Rule]** **<u>rule</u>** in this Chapter, the petition practice and pleading requirements set forth in Chapter III shall be applicable to any proceeding under these **[Rules]** **<u>rules</u>** other than a petition seeking the adjudication of incapacity and appointment of a guardian. ''Interested party'' as used in Chapter III shall include all those entitled to service pursuant to Rule 14.2(f).

(d) **Intervention.** A petition to intervene shall set forth the ground on which intervention is sought and a statement of the issue of law or question of fact

the petitioner seeks to raise. The petitioner shall attach to the petition a copy of any pleading that the petitioner will file if permitted to intervene. A copy of the petition shall be served pursuant on all those entitled to service pursuant to Rule 14.2(f).

[Explanatory] Comment: This **[Rule]** **rule** is intended to specify the provisions and procedures of Chapter III that are applicable to proceedings under Chapter XIV. In proceedings for the adjudication of incapacity and appointment of a guardian, responsive pleadings are permitted as a means of identifying contested legal issues and questions of fact prior to the adjudicatory hearing. However, given the abbreviated time for filing a responsive pleading relative to other proceedings **[(*Compare* Pa. O.C. Rule 3.7(a))]**, the failure to file a responsive pleading should not operate to prelude an issue or objection from being raised and considered at the hearing. ***Compare* Pa.R.O.C.P. 3.7(a)).** Such pleadings should not be filed as a means of delaying the hearing on the merits of the petition.

The practice for other petitions is to follow the requirements of Chapter III. Nothing in this **[Rule]** **rule** is intended to prevent relief being sought on an expedited basis, provided the petitioner or respondent is able to establish circumstances to the satisfaction of the court warranting disregard of procedural requirements. *See* **[Pa. O.C. Rule]** **Pa.R.O.C.P.** 1.2(a).

Rule 15.7. Voluntary Relinquishment to Agency.

* * *

[Explanatory] Comment: See Rule 15.23 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a birth parent, putative father, or presumptive father does not make an appearance.

Section 2733(c) of the Adoption Act requires the agency, the intermediary or an attorney for a party to provide notice of the opportunity to enter into a Contact Agreement to the Prospective Adoptive Parents, a birth parent, and, in some instances, a child. Notice to a birth relative who is not a birth parent is not statutorily required, although birth relatives may enter into and become parties to a Contact Agreement. An original birth certificate or certification of registration of the child's birth must be filed with the clerk by the time of filing the initial petition to terminate parental rights. *See* **[Rule]** **Pa.R.O.C.P.** 15.3(b).

Rule 15.8. Voluntary Relinquishment to Adult Intending to Adopt Child.

* * *

[Explanatory] Comment: An original birth certificate or certification of registration of the child's birth must be filed with the clerk by the time of filing the initial petition to terminate parental rights. *See* **[Rule]** **Pa.R.O.C.P.** 15.3(b).

See Rule 15.23 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a birth parent, putative father, or presumptive father does not make an appearance.

For additional information about notice of the opportunity to enter into a Contact Agreement, see **[the Explanatory Comment to Rule 15.7]** **Pa.R.O.C.P. 15.7, cmt**.

Rule 15.9. Alternative Procedure for Relinquishment by Confirmation of Consent to Adoption.

* * *

[Explanatory] Comment: An original birth certificate or certification of registration of the child's birth must be filed with the clerk by the time of filing the initial petition to terminate parental rights. *See* **[Rule]** **Pa.R.O.C.P.** 15.3(b).

See Rule 15.23 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a birth parent, putative father, or presumptive father does not make an appearance.

For additional information about notice of the opportunity to enter into a Contact Agreement, see **[the Explanatory Comment to Rule 15.7]** **Pa.R.O.C.P. 15.7, cmt**.

Rule 15.10. Involuntary Termination of Parental Rights.

* * *

[Explanatory] Comment: An original birth certificate or certification of registration of the child's birth must be filed with the clerk by the time of filing the initial petition to terminate parental rights. *See* **[Rule]** **Pa.R.O.C.P.** 15.3(b).

If the petitioner is an agency, Prospective Adoptive Parents need not have been identified prior to the agency's filing of a petition to involuntarily terminate parental rights. Also, an averment of a present intent to adopt the child is not required if the petitioner is an agency. Where petitioner is an individual, see Rule 15.6. Neither the averments nor evidence set forth in subdivisions (a)(13) and (b)(2) are required when the petition has been filed by a parent seeking to involuntarily terminate the parental rights of the other parent pursuant to 23 Pa.C.S. § 2511(a)(7)(relating to a child conceived as a result of a rape or incest). *See* 23 Pa.C.S. § 2514.

See Rule 15.23 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a birth parent, putative father, or presumptive father does not make an appearance at the hearing on the petition.

Section 2733(c) of the Adoption Act requires the agency or intermediary, counsel representing the agency or intermediary, or counsel representing any other party to provide notice to the Prospective Adoptive Parents, birth parents, and, in some instances, a child of the opportunity to enter into a Contact Agreement. The statute does not require notice to birth relatives who are not the birth parents, although birth relatives may enter into and become parties to a Contact Agreement.

It is understood that County Agencies may be encouraged early in the process, even during dependency proceedings, to give notice to a birth parent of the opportunity to enter into a Contact Agreement. Requiring the verified statement to set forth the specific date(s) as to when notice was given is only to further ensure that the particular notice was given and not to suggest that providing this notice is time sensitive and expires after a certain time.

Rule 15.13. Adoption.

* * *

[Explanatory] Comment: The court, in its discretion, can dispense with any statutory requirement of the Adoption Act for cause shown. *See 23* Pa.C.S. § 2901. As a result, if petitioner is unable to satisfy all the prerequisites or attach all the exhibits required by the Adoption Act, the adoption petition should not be dismissed summarily. Rather, the petitioner should be afforded an opportunity to demonstrate why a statutory requirement has not or cannot be met and why the proposed adoptee's best interests nevertheless are served by granting the adoption petition. *In re Adoption of R.B.F. and R.C.F.*, 803 A.2d 1195 (Pa. 2002). If, upon reviewing the petition's averments as to why a statutory requirement should be waived, the court determines that cause has been demonstrated, the court can grant the relief requested and dispense with the relevant statutory requirement without conducting a hearing. However, if the court is not inclined to waive the pertinent statutory requirement, the petitioner is entitled to a hearing and an opportunity to present evidence in support of the averments in the petition. *See In re Adoption of R.B.F. and R.C.F.*

[Subparagraph] **Subdivision** (c)(1) **[of this Rule]** applies if a parent's parental rights are being terminated as part of the hearing on the adoption petition. In such cases, the birth parent, putative father, or presumptive father whose rights are being terminated must receive notice of the adoption hearing in accordance with Rule 15.4. On the other hand, such persons do not need to be notified of the adoption hearing if (i) he or she previously consented to the adoption and his or her consent was confirmed by the court as provided in 23 Pa.C.S. § 2504 and Rule 15.9; (ii) he or she previously relinquished his or her parental rights as provided in 23 Pa.C.S. §§ 2501, 2502 and Rule 15.7 or Rule 15.8 as applicable; or (iii) his or her parental rights were involuntarily terminated by the court as provided in 23 Pa.C.S. §§ 2511 *et seq.* and Rule 15.10.

See Rule 15.23 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a birth parent, putative father, or presumptive father does not make an appearance at the hearing on the petition.

-The following text is entirely new- Rule 15.23. Servicemembers Civil Relief Act.

In any matter brought pursuant to this Chapter, in which a birth parent, putative father, or presumptive father does not make an appearance, and before the court enters judgment in favor of the petitioner, the petitioner shall state in a filed affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931:

(a) whether the non-appearing birth parent, putative father, or presumptive father is in military service and showing necessary facts to support the affidavit; or

(b) if the petitioner is unable to determine whether the non-appearing birth parent, putative father, or presumptive father is in military service, that the petitioner is unable to determine whether the birth parent, putative father, or presumptive father is in military service.

Comment: "Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If a birth parent,

putative father, or presumptive father is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. §§ 4101 *et seq*., may provide additional protections and procedures.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it meets the requirements of this rule.

Pennsylvania Rules of Criminal

Procedure Rule 150. Bench Warrants.

* * *

Comment: This rule addresses only the procedures to be followed after a bench warrant is executed, and does not apply to execution of bench warrants outside the Commonwealth, which are governed by the extradition procedures in 42 Pa.C.S. § 9101 *et seq.*, or to warrants issued in connection with probation or parole proceedings.

For the bench warrant procedures when a witness is under the age of 18 years, see Rule 151.

With respect to members of the Pennsylvania National Guard, the Pennsylvania Guard, and the Pennsylvania Militia, "[n]o officer or enlisted person shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty." 51 Pa.C.S. § 4104 (Exemption from arrest).

Paragraph (A)(2) permits the bench warrant hearing to be conducted using two-way simultaneous audio-visual communication, which is a form of advanced communication technology. *See* Rule 103. Utilizing this technology will aid the court in complying with this rule, and in ensuring individuals arrested on bench warrants are not detained unnecessarily.

* * *

Rule 430. Issuance of Warrant.

* * *

Comment: Personal service of a citation under paragraph (B)(1) is intended to include the issuing of a citation to a defendant as provided in Rule 400 and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the defendant fails to respond to the summons, the issuing authority should issue a warrant as provided in either paragraph (A)(1) or (B)(1).

A bench warrant may not be issued under paragraph (B)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 451.

With respect to members of the Pennsylvania National Guard, the Pennsylvania Guard, and the Pennsylvania Militia, "[n]o officer or enlisted person shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty." 51 Pa.C.S. § 4104 (Exemption from arrest).

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

* * *

Rule 431. Procedure When Defendant Arrested With Warrant.

* * *

Comment: For the procedure in court cases following arrest with a warrant initiating proceedings, see Rules 516, 517, and 518. See also the Comment to Rule 706 (Fines or Costs) that recognizes the authority of a common pleas court judge to issue a bench warrant for the collection of fines and costs and provides for the execution of the bench warrant as provided in either paragraphs (C)(1)(c) or (C)(1)(d) and (C)(2) of this rule.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. See also Commonwealth v. Mason, 490 A.2d 421 (Pa. 1985).

With respect to members of the Pennsylvania National Guard, the Pennsylvania Guard, and the Pennsylvania Militia, "[n]o officer or enlisted person shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty." 51 Pa.C.S. § 4104 (Exemption from arrest).

Nothing in paragraph (A) is intended to preclude the issuing authority when issuing a warrant pursuant to Rule 430 from authorizing in writing on the warrant that the police officer may execute the warrant at any time and bring the defendant before that issuing authority for a hearing under these rules.

* * *

Rule 515. Execution of Arrest Warrant.

* * *

Comment: No substantive change in the law is intended by paragraph (A) of this rule; rather, it was adopted to carry on those provisions of the now repealed Criminal Procedure Act of 1860 that had extended the legal efficacy of an arrest warrant beyond the jurisdictional limits of the issuing authority. The Judicial Code now provides that the territorial scope of process shall be prescribed by the Supreme Court's procedural rules. 42 Pa.C.S. §§ 931(d), 1105(b), 1123(c), 1143(b), 1302(c), 1515(b).

For the definition of police officer, see Rule 103.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. *See also Commonwealth v. Mason*, 507 Pa. 396, 490 A.2d 421 (1985).

With respect to members of the Pennsylvania National Guard, the Pennsylvania Guard, and the Pennsylvania Militia, "[n]o officer or enlisted person shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty." 51 Pa.C.S. § 4104 (Exemption from arrest).

Pursuant to Rule 540, the defendant is to receive a copy of the warrant and the supporting affidavit at the time of the preliminary arraignment.

* * *

Pennsylvania Rules of Juvenile Court Procedure

Rule 1122. Continuances.

[A.](a) **Generally.** In the interests of justice, the court may grant a continuance on its own motion or the motion of any party. On the record, the court shall identify the moving party and state its reasons for granting or denying the continuance.

[B.](b) **Notice and [rescheduling] Rescheduling.** If a continuance is granted, all persons summoned to appear shall be notified of the date, place, and time of the rescheduled hearing.

Comment:

Whenever possible, continuances should not be granted when they could be deleterious to the safety or well-being of a party. The interests of justice require the court to look at all the circumstances, effectuating the purposes of the Juvenile Act, 42 Pa.C.S. § 6301, in determining whether a continuance is appropriate.

A party seeking a continuance should notify the court and opposing counsel as soon as possible. Whenever possible, given the time constraints, notice should be written.

Under **[paragraph (B)]** **subdivision (b)**, if a person is summoned to appear and the case is continued, the party is presumed to be under the scope of the original summons and a new summons is not necessary.

See Rules 1344 and 1345 for motion and filing procedures.

See In re Anita H., **[351 Pa. Super. 342,]** 505 A.2d 1014 (**Pa. Super.** 1986).

For the availability of a stay when a party is in military service, see 50 U.S.C.§ 3932.

[Official Note: Rule 1122 adopted August 21, 2006, effective February 1, 2007.
Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1122 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).]

-The following text is entirely new-

Rule 1206. Servicemembers Civil Relief Act.

At an initial shelter care hearing, or adjudicatory hearing if a shelter care hearing was not previously conducted, if a parent or guardian does not make an appearance, and before the court enters an order in favor of the county agency, the county agency shall state on the record and in a filed affidavit pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3931:

(a) whether the non-appearing parent or guardian is in military service and showing necessary facts to support the affidavit; or
(b) if the county agency is unable to determine whether the non-appearing parent or guardian is in military service, that the county agency is unable to determine whether the non-appearing parent or guardian is in military service.

Comment: "Military service" is defined by 50 U.S.C. § 3911(2) and a report of a person's "military status" can be requested at https://scra.dmdc.osd.mil/scra/#/home. If a parent or guardian is in military service, then the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*., and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. §§ 4101 *et seq*., may provide additional protections and procedures.

The requirement of an affidavit may be satisfied by an unsworn document containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102. A verified statement form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it meets the requirements of this rule.

Rule 1242. Shelter Care Hearing.

* * *

Comment:

* * *

See Rule 1330(A) for filing of a petition.

***See* Rule 1206 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a parent or guardian does not make an appearance at the shelter care hearing.**

Rule 1406. Adjudicatory Hearing.

* * *

Comment:

* * *

See Rule 1136 for *ex parte* communications.

***See* Rule 1206 (Servicemembers Civil Relief Act) for affidavit of military service requirement if a parent or guardian does not make an appearance at the adjudicatory hearing.**

Pennsylvania Rules of Civil Procedure Before Magisterial District Judges Rule

209. Continuances and Stays.

***

E. Continuances and stays shall be granted in compliance with federal or state law**[, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*]**.

[Official Note] **Comment:** This rule was amended in 2005 to consolidate the provisions of former Rules 320 (relating to continuances in civil actions) and 511 (relating to continuances in possessory actions) into one general rule governing continuances. The limitations set forth in subdivision C are intended to ensure that these cases proceed expeditiously. The grounds set forth in **[subdivisions D and E, of course,]** **subdivision** **D** are not intended to be the only grounds on which a continuance will be granted

For the availability of a continuance or stay for a party in military service, see the Servicemembers Civil Relief Act, 50 U.S.C. § 3932, and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105.

Rule 304. Form of Complaint.

…

[Official Note] **Comment:** Rule 304 is designed to promote uniformity, simplification of procedure, and better access by the public to the judicial services of magisterial district judges. The use of a form will help to accomplish this purpose and will also provide easier statistical and other administrative control by the Supreme Court. The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania. See* **[Rule]** **Pa.R.Civ.P.M.D.J.** 217.

A civil action that alleges tortious conduct was formerly called an action in trespass. A civil action in which the claim is contractual was formerly called an action in assumpsit.

Subdivision D requires the plaintiff to affirm if the defendant is or is not in the military service, or if the defendant's military service status is unknown. This information is required to ensure that an eligible defendant receives the protections afforded by the Servicemembers Civil Relief Act, **[50 U.S.C. §§ 3901 *et seq.*]** **50 U.S.C. § 3931**. **[The affidavit shall be made in writing on a form prescribed by the State Court Administrator.]** **A form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it is substantially similar in content with the form.**

Rule 308. Service Upon Individuals.

***

[Official Note] **Comment**: **[Compare Pa.R.C.P. Nos. 402-403]** *Compare* **Pa.R.Civ.P. 402–403**. Subdivisions (1), (2) and (3) are not intended to be preferential in the order of their numbering.

See the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, for exemption from civil process for eligible servicemembers.

Rule 403. Issuance and Reissuance of Order of Execution.

***

[Official Note] **Comment**: Under subdivision A, the order may be executed by the sheriff of the county in which the office of the issuing magisterial district judge is situated, as well as by any certified constable in that county.

If payment of the judgment was ordered to be made in installments under Rule 323, the magisterial district judge should not issue an order of execution on the judgment unless it appears that there was a default in the installment payments.

Subdivision B will permit the reissuance of an order of execution upon a timely-filed written request of the plaintiff. *Compare* **[Pa.R.C.P. No. 3106(b)]** **Pa.R.Civ.P. 3106(b).** The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order of execution form, ''Reissuance of order of execution requested,'' subscribed by the plaintiff. The magisterial district judge shall mark all copies of the reissued order of execution, ''Reissued. Request for reissuance filed _____ (time and date).'' A new form may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark ''/s/.'' There are no filing costs for reissuing an order of execution, for the reissuance is merely a continuation of the original proceeding. However, there may be additional server costs for service of the reissued order of execution.

[The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*] **For the availability of a stay for a party in military service, see the Servicemembers Civil Relief Act, 50 U.S.C. § 3932, and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105.**

Rule 405. Service of Order of Execution.

[Note] **Comment**: The **[60 day]** **60-day** limitation in subdivision A was considered to allow the executing officer sufficient time in which to make the levy. The executing officer may make as many levies as necessary within the **[60 day]** **60-day** limitation under an order of execution.

See the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, for exemption from civil process for eligible servicemembers.

Rule 410. Stay of Execution Generally.

***

[Official Note] **Comment**: *Compare* **[Pa.R.C.P. No. 3121(a)]** **Pa.R.Civ.P. 3121(a)**. Other rules in this chapter may also provide for a stay in specific circumstances covered by those rules. **[The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*]** **For the availability of a stay for a party in military service, see the Servicemembers Civil Relief Act, 50 U.S.C. § 3932, and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105.**

Rule 503. Form of Complaint.

…

[Official Note] **Comment**: As in the other rules of civil procedure for magisterial district judges, the complaint will be on a printed form. The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania. See* **[Rule 217]** **Pa.R.Civ.P.M.D.J. 217**. As to notice to remove, the form will simply state that such a notice, when required, was given to the tenant in accordance with law. *See* **[§ 501 of the Landlord and Tenant Act,]** 68 P.S. § 250.501**[, as amended by § 2(a) of the Judiciary Act Repealer Act, Act of April 28, 1978, P.L. 202, No. 53, 42 P.S. § 20002(a)]**.

In subdivision B(8) the landlord is permitted to claim, in addition to the specific amount of rent due and unpaid at the date of filing, whatever unspecified amount of rent will remain due and unpaid at the date of the hearing. As to claiming damages for injury to property, **[*compare* Pa.R.C.P. No. 1055]** **compare Pa.R.Civ.P. 1055**.

Subdivision D requires the landlord to affirm if the tenant is or is not in the military service, or if the tenant's military service status is unknown. This information is required to ensure that an eligible tenant receives the protections afforded by the Servicemembers Civil Relief Act, **[50 U.S.C. §§ 3901 *et seq.*]** **50 U.S.C. § 3931.** **[The affidavit shall be made in writing on a form prescribed by the State Court Administrator.]** **A form is available for the convenience of users at https://www.pacourts.us/forms/for-the-public and can be modified provided it is substantially similar in content with the form.**

See **[Act of January 24, 1966, P.L.(1965) 1534, § 1, as amended by Act of August 11, 1967, P.L. 204, No. 68, § 1, Act of June 11, 1968, P.L. 159, No. 89, § 2,]** 35 P.S. § 1700-1, which states that "no tenant shall be evicted for any reason whatsoever while rent is deposited in escrow" because the dwelling in question has been certified as unfit for human habitation by the appropriate city or county agency. It seems appropriate to leave the matter of evidencing or pleading such a certification or lack thereof to local court of common pleas rules.

Rule 506. Service of Complaint.

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[Official Note] **Comment**: Under subdivision A of this rule, service must be made both by first class mail and delivery for service in the manner prescribed. In actions where wage garnishment may be sought under **[Pa.R.C.P. No. 3311]** **Pa.R.Civ.P. 3311**, the landlord may authorize the sheriff or constable to make personal service upon the tenant. If the tenant is not

present at the property the sheriff or constable is authorized to post the complaint so that the underlying landlord-tenant action may proceed. The landlord may authorize the sheriff or constable to make additional attempts to effectuate personal service upon the tenant so the landlord can later prove such service if attempting to garnish wages under **[Pa.R.C.P. No. 3311]** **Pa.R.Civ.P. 3311**. Additional service attempts by the sheriff or constable may result in additional fees.

See the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105, for exemption from civil process for eligible servicemembers.

Rule 515. Request for Order for Possession.

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[Official Note] **Comment**: The 15 days in subdivision A of this rule, when added to the 16-day period provided for in Rule 519A, will give the tenant time to obtain a *supersedeas* within the appeal period. *See* **[Rules 1002, 1008, 1009, and 1013]** **Pa.R.Civ.P.M.D.J. 1002, 1008, 1009, and 1013**.

The 1995 amendment to **[section 513 of The Landlord and Tenant Act of 1951,]** 68 P.S. § 250.513**[,]** established a 10-day appeal period from a judgment for possession of real estate arising out of a residential lease. *See also* **[Rule 1002B(1)]** **Pa.R.Civ.P.M.D.J. 1002B(1)**. Rule 1002B(2)(a) provides for a 30-day appeal period for tenants who are victims of domestic violence. In most cases, the filing of the request for an order for possession in subdivision B(1) is not permitted until after the appeal period has expired. In cases arising out of a residential lease, the request for an order for possession generally must be filed within 120 days of the date of the entry of the judgment.

If the tenant is a victim of domestic violence, he or she may file a domestic violence affidavit to stay the execution of the order for possession until the tenant files an appeal with the prothonotary pursuant to Rule 1002, 30 days after the date of entry of the judgment, or by order of the court of common pleas, whichever is earlier. *See* **[Rule 514.1C]** **Pa.R.Civ.P.M.D.J. 514.1C**. No posting of money or bond is required to obtain a stay with the filing of a domestic violence affidavit; however, upon the filing of an appeal pursuant to Rule 1002, the stay is lifted, and the *supersedeas* requirements of Rule 1008 shall apply.

[The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*] **For the availability of a stay for a party in military service, see the Servicemembers Civil Relief Act, 50 U.S.C. § 3932, and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105.**

Subdivision B(2) provides that in a case arising out of a residential lease, if a *supersedeas* (resulting from an appeal or writ of *certiorari*) or bankruptcy or other stay is stricken, dismissed, lifted, or otherwise terminated, thus allowing the landlord to proceed with requesting an order for possession, the request may be filed only within 120 days of the date the *supersedeas* or the bankruptcy or other stay is stricken, dismissed, lifted, or otherwise terminated.

In many judicial districts, appeals of magisterial district court judgments are submitted to compulsory arbitration pursuant to **[Pa.R.C.P. Nos. 1301—1314]** **Pa.R.Civ.P. 1301 – 1314**. If, after the arbitration, the prothonotary enters an award for possession on the docket in favor of the landlord and the tenant fails to maintain the

supersedeas required by Rule 1008 prior to the prothonotary entering judgment on the award, then the landlord may terminate the *supersedeas* pursuant to Rule 1008B and request an order of possession from the magisterial district judge pursuant to Rule 515. If the prothonotary enters an award on the docket in favor of the tenant and the tenant fails to maintain the *supersedeas* prior to the prothonotary entering judgment on the award, the landlord may not obtain an order of possession between the time that the prothonotary enters the arbitration award on the docket and the time that the landlord files a notice of appeal.

The time limits in which the landlord must request an order for possession imposed in subdivision B apply only in cases arising out of residential leases and in no way affect the landlord's ability to execute on the money judgment. *See* **[Rule 516, Note, and Rule 521A]** **Pa.R.Civ.P.M.D.J. 516, cmt. and Pa.R.Civ.P.M.D.J. 521A**.

At the time the landlord files the request for an order for possession, the magisterial district court should collect server fees for all actions through delivery of possession. Thereafter, if the order for possession is satisfied 48 hours or more prior to a scheduled delivery of possession, a portion of the server costs may be refundable. *See* **[Rules 516 through 520]** **Pa.R.Civ.P.M.D.J. 516 – 520** and 44 Pa.C.S. § 7161(d).

Rule 516. Issuance and Reissuance of Order for Possession.

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[Official Note] **Comment**: The order for possession deals only with delivery of possession of real property and not with a levy for money damages. A landlord who seeks execution of the money judgment part of the judgment must proceed under Rule 521A, using the forms and procedure there prescribed. The reason for making this distinction is that the printed notice requirements on the two forms, and the procedures involved in the two matters, differ widely.

Subdivision B provides for reissuance of the order for possession for one additional 60-day period. However, pursuant to subdivision C, in cases arising out of a residential lease, the request for reissuance of the order for possession must be filed within 120 days of the date of the entry of the judgment or, in a case in which the order for possession is issued and subsequently superseded by an appeal, writ of *certiorari, supersedeas* or a stay pursuant to a bankruptcy proceeding or other federal or state law or Rule 514.1C, only within 120 days of the date the appeal, writ of *certiorari*, or *supersedeas* is stricken, dismissed, or otherwise terminated, or the bankruptcy or other stay is lifted. The additional 60-day period need not necessarily immediately follow the original 60-day period of issuance. The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order for possession form, ''Reissuance of order for possession requested,'' subscribed by the landlord. The magisterial district judge shall mark all copies of the reissued order for possession, ''Reissued. Request for reissuance filed_ (time and date).'' A new form may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark ''/s/.'' There are no filing costs for reissuing an order for possession, for the reissuance is merely a continuation of the original proceeding. However, there may be additional server costs for service of the reissued order for possession.

[The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*] **For the availability of a stay for a party in military service, see the Servicemembers Civil Relief**

Act, 50 U.S.C. § 3932, and the Pennsylvania Military and Veterans Code, 51 Pa.C.S. § 4105.

In many judicial districts, appeals of magisterial district court judgments are submitted to compulsory arbitration pursuant to **[Pa.R.C.P. Nos. 1301—1314]** **Pa.R.Civ.P. 1301 – 1314**. If, after the arbitration, the prothonotary enters an award for possession on the docket in favor of the landlord and the tenant fails to maintain the *supersedeas* required by Rule 1008 prior to the prothonotary entering judgment on the award, then the landlord may terminate the *supersedeas* pursuant to Rule 1008B and request an order of possession from the magisterial district judge pursuant to Rule 515. If the prothonotary enters an award on the docket in favor of the tenant and the tenant fails to maintain the *supersedeas* prior to the prothonotary entering judgment on the award, the landlord may not obtain an order of possession between the time that the prothonotary enters the arbitration award on the docket and the time that the landlord files a notice of appeal.

The time limits in which the landlord must request reissuance of an order for possession imposed in subdivision C apply only in cases arising out of residential leases and in no way affect the landlord's ability to execute on the money judgment. *See* **[Rule 521A]** **Pa.R.Civ.P.M.D.J. 521A**.

SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES COMMITTEE
CIVIL PROCEDURAL RULES COMMITTEE
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE
ORPHANS' COURT PROCEDURAL RULES COMMITTEE
CRIMINAL PROCEDURAL RULES COMMITTEE
JUVENILE COURT PROCEDURAL RULES COMMITTEE
MINOR COURT RULES COMMITTEE

PUBLICATION REPORT

A proposal is being considered for the amendment of Pennsylvania Rules of Appellate Procedure 1517, 1732, 1781, 3307, and 3309; adoption of Pennsylvania Rules of Civil Procedure 243 and 1930.10, rescission of Rule 1920.46, and amendment of Rules 216, 237.1, 1037, 1303, 1901.6, 1910.11, 1910.12, 1915.4-2, 1915.4-3, 1915.17, 1920.42, 1920.51, 1930.6, 1956, and 2955; adoption of Pennsylvania Rules of Orphans' Court Procedure 2.12, 3.16, and 15.23, and amendment of Rules 14.1, 15.7, 15.8, 15.9, 15.10, and 15.13; amendment of Pennsylvania Rules of Criminal Procedure 150, 430, 431, and 515; adoption of Pennsylvania Rule of Juvenile Court Procedure 1206, and amendment of Rules 1122, 1242, and 1406; and amendment of Pennsylvania Rules of Civil Procedure before Magisterial District Judges 209, 304, 308, 403, 405, 410, 503, 506, 515, and 516. The intent of this proposal is to establish uniform procedures for the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. §§ 3901 *et seq*. and the Military and Veterans Code ("Code"), 51 Pa.C.S. §§ 101 *et seq.*

The Rules of Civil Procedure Before Magisterial District Judges and the Rules of Civil Procedure both recognized portions of an earlier version of the SCRA. *See* Pa.R.Civ.P.M.D.J. 209(E); 403, Comment; Pa.R.Civ.P. 237.1, Comment; 1920.46; 2955, Comment; and 3031, Comment. The Minor Court Rules Committee published proposed

amendments to update citations to the SCRA and codify the affidavit requirement of 50 U.S.C. § 3931(b)(1). *See* 49 Pa.B. 1900 (April 20, 2019). Thereafter, effective September 1, 2020, Pa.R.Civ.P.M.D.J. 209, 304, 403, 410, 503, 515, and 516 were amended. *See* 50 Pa.B. 2252 (May 2, 2020). Afterward, the Civil Procedural Rules Committee at 51 Pa.B. 1003 (February 27, 2021), and the Domestic Relations Procedural Rules Committee at 51 Pa.B. 1014 (February 27, 2021), published similar proposals. After publication, further rulemaking was halted so that the other Committees could consider whether similar amendments implementing the SCRA, as well as the Code, were advisable.

The Appellate Court Procedural Rules Committee, the Civil Procedural Rules Committee, the Domestic Relations Procedural Rules Committee, the Orphans' Court Procedural Rules Committee, the Criminal Procedural Rules Committee, the Juvenile Court Procedural Rules Committee, and the Minor Court Rules Committee jointly consulted to maintain a consistent approach to rulemaking on these topics. The Committees encountered a dearth of case law in Pennsylvania applying the SCRA and Code to certain proceedings governed by the various bodies of rules. For some types of proceedings, applicability could be readily determined by the plain language of the SCRA and Code, but for other types of proceedings, applicability was less clear. A common concern was whether rulemaking to implement procedures or to recognize authority may operate to determine the applicability of the substantive protections provided by the SCRA and Code. To this end, the Committees consulted case law in other jurisdictions applying the SCRA and statutory interpretation of the Code.

Background

During the course of service and for reasons that should be obvious, military servicemembers may not be able to assert their legal rights. Both Congress and Pennsylvania's General Assembly have long provided protection to servicemembers from civil proceedings during times of military service. For example, during the Civil War those legislative bodies enacted moratoriums on civil actions brought against servicemembers. *See* Act of April 18, 1861, P.L. 409; Act of June 11, 1864, ch. 118, 13 Stat. 123.[1] During World War I, Congress enacted the Soldiers' and Sailors' Civil Relief Act of 1918 directing trial courts to take equitable action when a servicemember's rights were involved in a controversy. *See* Act of March 8, 1918, ch. 20, 40 Stat. 440; Judge Advocate General's School, U.S. Army, JA 260, *Soldiers' and Sailors' Civil Relief Act Guide*, 1-1 (April 1998); Chandler, Maj. Garth K., *The Impact of a Request for a Stay of Proceedings Under the Soldiers' and Sailors' Civil Relief Act*, 102 Mil. L. Rev. 169, 169-70 (1983). The Soldiers' and Sailors' Civil Relief Act of 1940 ("SSCRA") was a substantial reenactment of the 1918 Act. *See* Act of October 17, 1940, ch. 888, 54 Stat. 1178; *Boone v. Lightner*, 319 U.S. 561, 568 (1943). The 1940 Act was significantly amended in 1942 to provide further protections to servicemembers. *See* Act of October 6, 1942, Ch. 581, 56 Stat. 769. Subsequent conflicts necessitated further amendments to modernize the provisions, including changing the name of the act to the "Servicemembers Civil Relief Act." *See, e.g*., Act of December 19, 2003, 17 Stat. 2835.[2] The purpose of the SCRA is:

> [T]o provide for, strengthen, and expedite the national defense through protection extended by this chapter to servicemembers of the

United States to enable such persons to devote their entire energy to the defense needs of the Nation; and to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

50 U.S.C. § 3902.

The SCRA covers servicemembers in "military service," which is defined as:

(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard –
  (i) active duty, as defined in section 101(d)(1) of Title 10, and
  (ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of Title 32 for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

Id. § 3911(2)(A); *see also* 10 U.S.C. § 101(d) (defining "active duty" and "active service"). If a servicemember, including a member of the National Guard, does not meet this definition of "military service," then the servicemember is not covered by the SCRA.

For the purpose of this discussion, the National Guard may operate in three statuses: 1) on full-time federal active duty in military service of the United States pursuant to Title 10 of the United States Code, *i.e*., "federalized"; 2) on full-time National Guard duty when the Governor, with the approval of the President or Secretary of Defense, orders members to duty for Homeland Defense activities pursuant to Title 32 of the United States Code; and 3) on state active duty when activated by the Governor on the basis of a state statute and state funding. *See* Congressional Research Service, *Reserve Component Personnel Issues: Questions and Answers*, pp. 19-21 (Nov. 2, 2021) at https://sgp.fas.org/crs/natsec/RL30802.pdf (last visited November 18, 2022). Through the definition of "servicemember," the SCRA will cover National Guard members in Title 10 service and under certain, but not all, Title 32 service. The SCRA does not cover National Guard members on state active duty.

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1 The various Pennsylvania statutes providing servicemember protections through the years are described in *Fister v. Bollinger*, 51 Pa. D.&C. 621 (Berks 1944).

2 The SCRA was previously codified at 50 U.S.C. App. §§ 501-597b. Effective December 1, 2015, the SCRA was reclassified and is now found at 50 U.S.C. §§ 3901- 4043. *See* https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra (last visited September 15, 2022).

Pennsylvania's analogue to the SCRA is the Military and Veterans Code, which contains substantive protections from court proceedings when a member of the National Guard is "going to, remaining at, or returning from, a place where [the member] is ordered to attend for military duty" or "in the active service of the Commonwealth." *See* 51 Pa.C.S. § 4104 (exemption from arrest), § 4105 (exemption from civil process).

In addition, the Code contains specific provisions for child custody proceedings "while the eligible servicemember is deployed in support of a contingency operation." *See* 51 Pa.C.S. § 4109(a), § 4110. An "eligible servicemember" includes a member of the Pennsylvania National Guard "serving on active duty, other than active duty for training, for at least 30 consecutive days in support of a contingency operation." 51 Pa.C.S. § 4109(f) (Definitions). One might argue that the use of "active duty" in § 4109(f) is intended to mean "active duty," as used in the definition of "military service" in 10 U.S.C. § 3911(2)(A)(i). Thus, § 4109 is an adjunct to § 3938 of the SCRA, protecting Pennsylvania National Guard members also protected by the SCRA. *See also id*. § 3938(d) (permitting state law preemption if the state law provides a high standard of protection for the servicemember). However, it is not clear from the statute whether "active duty" in § 4109(f) means "state active duty" or "federal active duty."

Turning to whether a National Guard member on "'active duty' deployed in support of a contingency operation" is in "military service" under the SCRA, the definitions of "contingency operation" in Title 10 of the United States Code and § 4109(f) of Pennsylvania's Military and Veterans Code are nearly identical. *Compare* 10 U.S.C. § 101(a)(13) *with* 51 Pa. Code. § 4109(f).[3] Title 10 states:

The term "contingency operation" means a military operation that –

(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of this title, chapter 13 of this title, section 3713 of title 14, or any other provision of law during a war or during a national emergency declared by the President or Congress.

3 The definition within 51 Pa.C.S. § 4109(f) ostensibly omits references to 10 U.S.C. § 12304a pertaining to reservists and 14 U.S.C. § 3713 pertaining to the Coast Guard because Pennsylvania's Code governs National Guard members.

10 U.S.C. § 101(a)(13). Army Regulation 135-200, *Active Duty for Missions, Projects, and Training for Reserve Component Soldiers* (October 20, 2020) is instructive. Within the discussion of "Active Duty for Operational Support," the regulation describes "contingency operations" as including individual Army National Guard members voluntarily serving in support of contingency operations. *See id*. § 6-19(b). An order issued under this regulation is required to state, *inter alia*, its authority pursuant to 10 U.S.C. § 12301(d). *See id*. § 6-25(a)(1). While this citation of authority is not one included in the definition of "contingency operation," *see infra*, § 12301(d) would be included in the "catch all" language of 10 U.S.C. § 101(a)(13)(B) ("any other provision of law") and 51 Pa.C.S. § 4109(f) ("or any other provision of 10 U.S.C.").[4] Accordingly, a member of the National Guard supporting a contingency operation, as defined by 10 U.S.C. § 101(a)(13), would be on "active duty" pursuant to 10 U.S.C. § 12301(d), as that term is defined by 10 U.S.C. § 101(d)(1), and, therefore, within the definition of "military service" pursuant to 10 U.S.C. § 3911(2)(A)(i) of the SCRA. *See also* 32 U.S.C. § 101(12) (defining "active duty" as full-time duty in the active military service of the United States).

Concerning Title 32 status, not all active service, *i.e.*, full-time duty, of National Guard members is covered by the SCRA. *See also* 10 U.S.C. § 101(d)(3) (defining "active service" to include "full-time National Guard duty"). Pursuant to 10 U.S.C. § 101(d)(5), full-time National Guard duty is authorized by Sections 316 and 502-505 of Title 32. Coverage by the SCRA vis-à-vis the definition of "military service" of full-time National Guard duty is limited to a call to active service by the President or Secretary of Defense pursuant to 32 U.S.C. § 502(f) for a period of 30 or more consecutive days. *See* 50 U.S.C. § 3911(2)(A)(ii). *See, e.g.,* 84 F.R. 48545 (September 12, 2019) (presidential notice of the continuation of the national emergency with respect to certain terrorist attacks); 85 F.R. 19639 (April 2, 2020) (presidential memorandum invoking 32 U.S.C. § 502(f) for COVID-19 response with 30 days of federal funding); 86 F.R. 7481 (January 21, 2021) (secretary memorandum invoking 32 U.S.C. § 502(f) for COVID-19 response with funding through September 30, 2021). Hence, a National Guard member may serve full-time under multiple Sections of Title 32, but only full-time service under the aforementioned circumstance pursuant to § 502(f) will receive the protection of the SCRA.

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4 There exists case law interpreting the "catch all" language of 10 U.S.C. § 101(a)(13) with application to other federal statutes that have required a "connection" between service pursuant to 10 U.S.C. § 12301(d) and the emergency at hand. *See O'Farrell v. Department of Defense*, 882 F.3d 1080 (Fed. Cir. 2018); *Adams v. Department of Homeland Security*, 3 F.4th 1375 (Fed. Cir. 2021).

Servicemembers Civil Relief Act

The purpose of the SCRA is to provide for the temporary suspension of judicial proceedings that may adversely affect the civil rights of servicemembers during their military service so that they are able to devote their entire energy to the defense needs of the Nation. 50 U.S.C. § 3902. The SCRA contains procedural requirements that "appl[y] to any civil action or proceeding, including any child custody proceeding." *Id*. § 3931(a), § 3932(a). These requirements include: 1) the required use of an affidavit of military service prior to the entry of a judgment against a servicemember in a civil proceeding when the servicemember

does not appear, *id.* § 3931; and 2) the ability of a servicemember to seek a stay of a civil proceeding, *id*. § 3932. The SCRA also contains provisions for child custody proceedings if a servicemember's unavailability is due to deployment. *See id*. § 3938. In construing the SCRA's predecessor, the Supreme Court of the United States has held:

> The Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation. The discretion that is vested in trial courts to that end is not to be withheld on nice calculations as to whether prejudice may result from absence, or absence result from the service. Absence when one's rights or liabilities are being adjudged is usually *prima facie* prejudicial. But in some few cases absence may be a policy, instead of the result of military service, and discretion is vested in the courts to see that the immunities of the Act are not put to such unworthy use.

Boone, 319 U.S. at 575.

Affidavit of Military Service, 50 U.S.C. § 3931.

As mentioned, the § 3931 affidavit of military service requirement "applies to any civil action or proceeding, including any child custody proceeding." 50 U.S.C. § 3931. Implicitly, this application includes proceedings governed by the Pennsylvania Rules of Civil Procedure, including "family court proceedings" under Chapter 1900, and civil proceedings governed by the Pennsylvania Rules of Civil Procedure before Magisterial District Judges. *See also* 50 U.S.C. § 3911(5) (defining "court" to include non-record courts).

Less obvious is whether § 3931 applies to dependency proceedings governed by 42 Pa.C.S. §§ 6301 *et seq.* and Pa.R.J.C.P. 1101 *et seq*., and termination of parental rights proceedings governed by 23 Pa.C.S. §§ 2501 *et seq*. and Pa.R.O.C.P. 15.7, 15.8, 15.9, and 15.10. A "child custody proceeding," in terms of the Uniform Child Custody Jurisdiction and Enforcement Act, is defined to include a dependency proceeding. *See* 23 Pa.C.S. § 5402. Further, the Juvenile Act provides for the award of custody by the dependency court. Insofar as termination proceedings adjudicate a parent's legal custody of a child, these types of proceeding appear to fit within the notion of a "child custody" proceeding.

A question arose whether adoption proceedings may be included in the scope of this analysis given that parental rights are typically determined prior to adoption. Pa.R.O.C.P. 15.13(c)(1) (notice and decree) contemplates a scenario when parental rights are terminated as part of the adoption proceeding rather than prior to the adoption proceeding. The Comment to this rule states: "[subdivision] (c)(1) of this Rule applies if a parent's parental rights are being terminated as part of the hearing on the adoption petition." This scenario may arise when an agency is not involved in the filing of a termination petition and the petitioner files either a Report of Intention to Adopt or an adoption petition. *See* Pa.R.O.C.P. 15.6. Arguably, if the parent received notice of a hearing in which a termination determination will also be made, then the court should be apprised whether that person is in military service as in other termination matters. Accordingly, adoption proceedings appear to be a "child custody" proceeding under the SCRA.

Case law from other jurisdictions was considered. In California, the courts have held that the SCRA was applicable to dependency proceedings. *See In re Amber*, 184 Cal.App.4th 1223 (2010); *In re A.R.*, 170 Cal.App.4th 733 (2009); *George v. Superior Court*, 127 Cal.App.4th 216 (2005). Those cases, however, concerned stays under the SCRA and not the use of affidavits of military service. In *In re C.K.*, No. 12-1279, 2013 WL 5788570, at *1 (W. Va. Oct. 28, 2013) (unpublished opinion), the West Virginia Supreme Court reversed a trial court's involuntary termination of parental rights, citing the SCRA and the uncertain determination of the father's military status. These cases, while not binding in Pennsylvania, informed that provisions of the SCRA apply to dependency proceedings governed by the Pennsylvania Rules of Juvenile Court Procedure, and adoption and termination of parental rights proceedings governed by Chapter XV of the Pennsylvania Rules of Orphans' Court Procedure.

In determining whether § 3931 applied to orphans' court proceedings involving proceedings governed by Chapter II, Pa.R.O.C.P. 2.1-2.11, and Chapter III, Pa.R.O.C.P. 3.1-3.15, of the Pennsylvania Rules of Orphans' Court Procedure, the general applicability of the SCRA was first considered. In *McCoy v. Atlantic Coast Line R. Co.*, 47 S.E. 2d 532 (N.C. 1948), a servicemember and his two siblings were heirs to their father's estate, which also had a cause of action for wrongful death. The servicemember was not appointed administrator of his father's estate until the servicemember was discharged from military service. Thereafter, the estate commenced the wrongful death action. The defendant asserted that the wrongful action was barred by a one-year statute of limitations. The servicemember contended that the statute of limitations was tolled by the Soldiers' and Sailors' Civil Relief Act of 1942 ("SSCRA"), 50 U.S.C. app. § 525, a precursor of 50 U.S.C. § 3936 within the SCRA. The Supreme Court of North Carolina deferred to the liberal construction of the SCCRA but held that the SSCRA was not intended to hold up estate administration when other heirs were eligible to serve as administrators. Further, the wrongful death action was on behalf of the estate and not personal to the servicemember. The court held that the SSCRA did not apply in these circumstances even with most liberal construction of the SSCRA.[5]

In *Perry v. Perry*, 168 S.W.3d 577 (Mo. App. W.D. 2005), a decedent's son, a servicemember, sought to probate the decedent's will after the one-year statute of limitations had passed. The son claimed the statute of limitations was tolled by the SCRA, 50 U.S.C. app. § 525. The appellate court observed that the presentment of a will is significantly different than a tort or contract action, but it nonetheless involved a judicial proceeding that may adversely affect the right of a servicemember to administer the estate and receive an inheritance. Additionally, the resultant letter of administration is part of an *in rem* proceeding that continues until final distribution and discharge of the personal representative. Accordingly, the SCRA and its tolling provision applied to the probate action.

As one commentator stated about the applicability of the SSCRA to probate proceedings:

> While some informality exists in probate pleadings and procedure, and frequently no specific defendants are named in proceedings with reference to the probating of wills or the filing of claims, yet it must be conceded that the rights of certain persons are sought to be adjudicated in cases of this type. The so-called "defendants" include all persons who may be interested in the estate of the decedent and are brought into court by institution of probate proceedings and the publication of notices addressed to persons variously described as "All persons interested in the estate of John Doe, deceased," or "To Whom It May Concern." Some persons interested in the estate may be in the service. If so, and if the order or decree of the probate court has the effect of being a final determination of adjudication of the rights of such persons, then I see no escape from the conclusion that such persons who may be in the service are entitled to the protection of the Act.

Harold J. Reed, *Soldiers' and Sailors' Civil Relief Act of 1940*, 28 Iowa Law Review 14, 29 (1943).

5 The statute of limitations for a wrongful death action may by tolled under § 525 of the SSCRA when the sole surviving heir is in military service. *See, e.g., Worlow v. Mississippi River Fuel Corp.*, 444 S.W.2d 461 (Mo. 1969).

McCoy and *Perry*, *supra*, are but two examples of the courts applying the SCRA and its predecessor, the SSCRA, to subject matters that would be under the purview of the orphans' court if commenced in Pennsylvania. However, these cases concerned the tolling provision, which might arguably be broader in scope than the affidavit requirement. *Compare* 50 U.S.C. § 3936(a) ("The period of a servicemember's military service may not be included in computing any period limited by law … for the bringing of *any action* or proceeding in a court.") (emphasis added) with 50 U.S.C. § 3931(a) ("This section applies to *any civil action* or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.") (emphasis added). However, the phrase may also be a distinction without a difference with regard to orphans' court proceedings.

The analysis from other jurisdictions regarding affidavits has focused on whether the underlying proceeding is adversarial or will result in a judgement. For example, in *In re Cool's Estate*, 18 A.2d 714 (Orphans' Ct. N.J. 1941), an executor presented an account for confirmation. No interested parties made an appearance, and the executor did not file any affidavits of military service pursuant to the SSCRA. The court held that "defendant" included an interested party in the orphans' court and that "judgment" included any final decree of a probate court. Accordingly, the executor was required to file affidavits concerning any non-appearing interested parties. *See id.* at 238; *see also In re Adoption of a Minor*, 136 F.2d 790 (construing "defendant" under the SSCRA to include birth parent in an adoption proceeding); *In re Steingrabe's Estate*, 1 Pa. D&C 3d 164, 167 (Mercer Co. 1976) (holding that a confirmation of an account is the equivalent of a judgement by default).[6]

In *McLaughlin v. McLaughlin*, 46 A.2d 307, 309 (Md. 1946), the probate of a will was not considered an adversarial proceeding so there was no requirement to file an affidavit. A similar holding is found in *Case v. Case*, 124 N.E.2d 856, 860-61 (Prob. Ct. Ohio 1955) with the probate court observing that persons having adverse interests to a will admitted to probate can thereafter contest the will. Please note that "court," as defined in the SCRA, means "a court or an administrative agency of the United States or of any State (including any

political subdivision of a State), whether or not a court or administrative agency of record." Arguably, the register of wills is not strictly a "court" although it may function similarly to one.

The purpose of the SCRA is, *inter alia*, "to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the *civil rights* of servicemembers during their military service." 50 U.S.C. § 3902(2) (emphasis added). The affidavit requirement of § 3931 is not merely a procedural burden; it is part of a legislative scheme designed to inform the court about whether a servicemember's civil rights in a civil proceeding may be implicated and whether the court should appoint counsel and grant a temporary stay. A liberal construction of § 3931 would apply the affidavit requirement whenever a servicemember's civil rights may be adversely affected and not just when a servicemember is a named defendant in an action.

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6 Please note that *In re Steingrabe's Estate* concerned § 520(4) of the SSCRA and the reopening of judgements, not the affidavit requirement.

Relative to the probate rules of other jurisdictions, two states reference the SCRA in their rules governing petition practice in probate proceedings. First, Connecticut requires a petition to include "whether a party is in the active military service of the United States when commencing a proceeding concerning: (1) a decedent's estate; (2) a trust;
(3) a children's matter; or (4) any other matter in which adjudication of an interest of a servicemember is sought." Conn. R. Prob. 7.2(c) (Filing Requirements). "Party" is defined to include an executor or administrator of a decedent's estate, a trustee of a trust, a conservator, a guardian of the estate of a minor, a temporary custodian or guardian of the person of a minor, a guardian of an adult with an intellectual disability, a *guardian ad litem*, and certain other fiduciaries. *See* CT R. Prob Rule 4.2.

Second, Massachusetts requires the filing of a "military affidavit certifying the military status of each defendant, respondent or other interested person who has not appeared or answered" before any subsequent request for a court hearing, the date of the next scheduled court event, or a temporary order in the case. *See* Mass. R. Prob. Ct. 25. (Military Affidavits). Thus, both the Connecticut and Massachusetts rules require the use of a military service affidavit in petition practice.

Finally, Allegheny County has a local rule relating to the SCRA. Allegheny O.C.R. 3.1(3) provides: "[w]hen any interested party in any proceeding in this court is in the military service of the United States, the procedure shall conform to the provisions of the Servicemembers Civil Relief Act, as amended, 50 U.S.C.A. [§§] 3901 *et seq*."

Based on this analysis, the Orphans' Court Procedural Rules Committee concluded that the SCRA applied to Chapter II and Chapter III of the Pennsylvania Rules of Orphans' Court Procedure.

Under § 3991 of the SCRA, if a "defendant does not make an appearance," before a court can enter a judgment against a defendant, the plaintiff must file an affidavit indicating whether the defendant is in military service or whether the plaintiff is unable to make such a determination. *See* 50 U.S.C. § 3931(a), (b)(1). If the defendant is in military service, then counsel is appointed, and a stay may be granted. *See id*. § 3931(b)(2), (d). If the defendant's

military status cannot be determined, then the plaintiff may be required to post a bond. *See id*. § 3931(b)(3).

Preliminarily, while the title of § 3931 of the SCRA refers to "default judgments," the statute applies when a defendant does not make an appearance. *See* 50 U.S.C. § 3931(a). Section 3931(b), which contains the actual affidavit requirement, states: "In any action or proceeding covered by this section, the court, before entering *judgment* for the plaintiff, shall require the plaintiff to file with the court an affidavit …." *Id*. § 3931(b) (emphasis added). "Judgment" is defined broadly by the SCRA to mean any judgment, decree, order, or ruling, final or temporary. *See* 50 U.S.C. § 3911(9). Thus, the affidavit requirements of § 3931(b) apply to any judgment or orders and are not limited to "default judgments." Please note that § 3911(g)-(h) specifically addresses default judgments.

This distinction is relevant because, in Pennsylvania civil practice, "default judgments" are often considered judgments in favor of the plaintiff based upon the complaint without the necessity of the plaintiff having to prove the facts alleged in the complaint. *See, e.g.*, Pa.R.Civ.P. 1037. While the title of § 3931 refers to "default judgments," the statute applies when a defendant does not make an appearance and is without limitation on whether the plaintiff must prove the facts alleged. Consequently, the affidavit requirements of § 3931 appear to also apply in proceedings that do not permit "default judgments," *e.g.*, custody, see also Pa.R.Civ.P. 1915.9 (no default judgments in child custody proceeding).

When a defendant does not make an appearance in a civil proceeding, there will usually be only one order – a final order granting judgement in favor of the plaintiff. However, when a defendant does not make an appearance in a child custody proceeding, there may be serial orders granting temporary relief and then final relief. With the broad definition of "judgment," the need to file an affidavit of military service may arise prior to the final judgment. Indeed, given the intent of the SCRA, § 3931 would apply to any order that would "adversely affect the civil rights of servicemembers during their military service." 50 U.S.C. § 3902.

The pre-condition of § 3931(a) that the "defendant does not make an appearance" cannot precisely mesh with Pennsylvania procedures insofar as an appearance is "entered" rather than "made." *See, e.g.*, Pa.R.Civ.P. 1012; Pa.R.Civ.P. 1930.8; Pa.R.O.C.P. 1.7; Pa.R.A.P. 120. However, there exists a permissible practice in certain circumstances wherein a party may simply appear and participate in a proceeding without entering an appearance or filing a responsive pleading. In those circumstances, it is believed the defendant "makes" an appearance in that it demonstrates the defendant received notice of the proceeding. *Cf.* 50 U.S.C. § 3932 (availability of a stay when a servicemember has notice of an action or proceeding). The phrase, "make an appearance" has been incorporated into this proposal and it is intended to encompass when a defendant either enters an appearance, files a responsive pleading, or physically appears at a proceeding. If a defendant does not make an appearance by these means, then the plaintiff must file an affidavit of military service.

Section 3931 uses the term "affidavit," which "may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury." 50 U.S.C. § 3931(b)(4). Similarly, Pennsylvania authority defines "affidavit" in judicial matters to also include an unsworn statement pursuant to 18 Pa.C.S. § 4904. *See* 42 Pa.C.S. § 102; Pa.R.Civ.P. 76. However, the Revised Uniform Law on Notarial Acts indicates that an affidavit is "a declaration, made by an individual on

oath or affirmation before a notarial officer, that a statement in a record is true." 57 Pa.C.S. § 302.

The term "affidavit" was retained in this proposal to maintain a linkage to the SCRA's requirements. But to resolve any confusion whether "affidavit," as used in this proposal, requires a notarial act, the Comments accompanying the proposed rules indicate that only a verified statement is necessary.

A one-page statewide form affidavit already exists and is available on the UJS website at https://www.pacourts.us/forms/for-the-public. Contained within the form is a reference to a Department of Defense website where the status of servicemembers under the SCRA can be determined: https://scra.dmdc.osd.mil/scra/#/home. The form and information solicited is relatively uncomplicated. It also contains a response option indicating that the affiant is unable to determine the non-appearing party's military status.

Stay of Proceedings, 50 U.S.C. § 3932.

Another procedural protection for a servicemember under the SCRA is the availability of a stay of proceedings when the servicemember has notice of the proceeding or action. *See* 50 U.S.C. § 3932(a). A court may *sua sponte* grant a stay or the servicemember may apply for a stay. A stay sought by a servicemember pursuant to § 3932 is mutually exclusive of the protections afforded by § 3931. *See id.* § 3932(e).

The applicability of § 3932 to certain types of proceedings would be identical to that of § 3931. Therefore, the analysis and conclusions regarding §3931 are apropos of § 3932. Yet, the stay provisions of § 3932 do not appear to require codification in the procedural rules. A party or their counsel can file a motion or application and cite that authority as the basis for a stay. Notably, a stay under § 3932 is available to either a plaintiff or a defendant in military service. Thereafter, the court can decide whether to grant a stay based upon the facts and law. For the purpose of this proposal and to implement the SCRA, a "stay" is considered synonymous with a "continuance" insofar as both operate to suspend the immediate proceeding for a finite period of time. To aid readers, § 3932 would be referenced in the commentary to existing rules generally governing stays or continuances, if those rules exist.

Child Custody Protections, 50 U.S.C. § 3938.

In addition to the affidavit requirement of § 3931 and the availability of a stay pursuant to § 3932, the SCRA provides specific limitations on the duration of temporary child custody orders when a servicemember is deployed and the consideration of the servicemember's deployment in determining a child's best interest. *See* 50 U.S.C. §3938(a), (b). Further, when a state law involving temporary child custody provides a higher standard of protection to a servicemember than the SCRA, the court shall apply the higher state standard. *See id.* § 3938(d).

Pennsylvania Military and Veterans Code

As mentioned, the Pennsylvania's Military and Veterans Code contains protections from criminal and civil court proceedings when a member of the National Guard is on active

state service, and child custody proceedings when an "eligible servicemember" is deployed or about to be deployed.

Exemption from Arrest, 51 Pa.C.S. § 4104.

Concerning criminal proceedings, the Code provides that no National Guard member "shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty." 51 Pa.C.S. § 4104; s*ee also Commonwealth v. Arcelay*, 190 A.3d 609, 616 (Pa. Super. 2018) (§ 4104 applies only to members of the Pennsylvania National Guard, Pennsylvania Guard, and Militia). This provision, while ostensibly broader than state "active service," see § 4105, *infra*, appears to be substantive and self-executing. There are no additional procedures necessary to assert this servicemember right. Section 4104 does not appear to specifically restrain the issuance of an arrest warrant; rather, it prohibits execution of the arrest warrant until the servicemember concludes his or her military duty. Should the servicemember be arrested pursuant to a warrant while on duty, the servicemember's right may be then asserted by motion.

Exemption from Civil Process, 51 Pa.C.S. § 4105.

Concerning civil proceedings, the Code provides:

> No civil process shall issue or be enforced against any officer or enlisted person of the Pennsylvania National Guard in the active service of the Commonwealth during so much of the term as he shall be engaged in active service under orders nor until 30 days after he shall have been relieved therefrom. The operation of all statutes of limitations and presumptions arising from lapse of time shall be suspended upon all claims by or against such officer or enlisted person during the aforesaid period.

51 Pa.C.S. § 4105. This provision contains two components. The first component is a stay on the issuance or enforcement of civil process until 30 days after the defendant's return from state active service. *See Breitenbach v. Bush*, 44 Pa. 313, 317 (1863).[7] The second component tolls "all statutes of limitations and presumptions arising from lapse of time" during the stay. Unlike the SCRA, § 4105 does not contain procedures for the defendant to invoke this protection or recognize any exceptions to its operation.

Notably, the phrase, "active service of the Commonwealth," is undefined by the Code. Previous versions of § 4105 included the active service of the United States but presumably the scope has since narrowed given the coverage of the SSCRA and then the SCRA when National Guard members are "federalized." The phrase arguably encompasses state active duty pursuant to 51 Pa.C.S. § 508 (active duty for emergency), and, perhaps, 51 Pa.C.S. § 506.1 (use of Pennsylvania National Guard for special state duty). It is unclear whether "active service of the Commonwealth" is intended to include "full-time National Guard duty," as that phrase is defined by 32 U.S.C. § 101(19), so as to extend the protection of § 4105 to members serving in a Title 32 status. Notably, 51 Pa.C.S. § 508(b) only mentions Title 32 in the context of assisting another state. At this juncture, the precise reach of § 4105 is better resolved by the legislature or case law, rather than by procedural rule.

Unresolved is whether "civil process," as used in § 4105, would include "child custody proceedings" in the absence of such a phrase contained therein. A broad interpretation of "civil" should be tempered by the result of applying § 4105 to stay "child custody proceedings" for the duration of the servicemember's state active service plus 30 days. If a § 4105 stay was applicable, there remains a concern about how the child's safety and needs would be addressed during the interim. The application of § 4109 during state active service may seem intuitive because it governs "child custody proceedings," but § 4109 is applicable when a servicemember is deployed in support of a contingency operation, not state active service. Rather than straining the interpretation of "civil" in § 4105 to include "child custody proceedings," the Committees believed the better course is for case law or legislation to clarify the application of § 4105 to those types of proceedings, before adopting any procedural rule.

Child Custody Proceedings During Military Deployment, 51 Pa.C.S. § 4109.

The Code contains within § 4109 specific parameters concerning temporary custody orders, assignments of custody to family members, terms of custody orders, and best interest determinations applicable to child custody proceedings when "an eligible servicemember is deployed in support of a contingency operation." 51 Pa.C.S. § 4109.

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7 In *Breitenbach*, the Court considered a prior, similarly worded version of § 4105 found in the Act of April 18, 1861, P.L. 409. The Court described the effect of the law as a stay of all legal process for the term in which the servicemember is engaged. 44 Pa. at 317.

Notably, "eligible servicemember" is defined to include "a member of the Pennsylvania National Guard or a member of an active or reserve component of the Armed Forces of the United States who is serving on active duty, other than active duty for training, for a period of 30 or more consecutive days, in support of a contingency operation." *Id.* § 4109(f). The Code also provides for expedited hearings and use of advanced communication technology for child custody proceedings subject to § 4109. *See* 51 Pa.C.S. § 4110.

Within § 4109, subdivision (a) states:

> If a petition for change of *custody of a child* of an eligible servicemember is filed with any court in this Commonwealth while the eligible servicemember is deployed in support of a contingency operation, no court may enter an order modifying or amending any previous judgment or order, or issue a new order, that changes the custody arrangement for that child that existed as of the date of the deployment of the eligible servicemember, except that a court may enter a temporary custody order if it is in the best interest of the child.

51 Pa.C.S. § 4109(a) (emphasis added). Arguably, subdivision (a) is limited to child custody proceedings governed by 23 Pa.C.S. Chapter 53 and Pa.R.Civ.P. 1915.1 *et seq*., and not dependency and termination proceedings. Indeed, when subdivisions (a) and (a.1) are read *in pari materia*, there may be support for that argument given the reference within subdivision

(a.1) to Chapter 53 of Title 23. However, the absence of a specific reference to Chapter 53 of Title 23 in subdivision (a) may suggest that "child custody," as used in that subdivision, was intended to be broadly construed relative to subdivision (a.1) of § 4109. Accordingly, the Committees concluded that dependency and termination of parental rights proceedings are subject to § 4109(a) of the Code. As § 4110(a)-(b) refers to "custody matters instituted under [§] 4109," the Committees concluded that section of the Code also applies to dependency and termination proceedings. This conclusion would also represent a consistent interpretation and application of the phrase, "child custody," in both the Code and the SCRA.

Note was taken of House Bill 82 (Reg. Sess. 2023-2024), a form of model legislation crafted by the National Conference on Commissioners on Uniform State Laws, that would repeal § 4109 and § 4110. Those sections would have been replaced with an entirely new chapter governing the same topic but significantly broader in scope. *See* 51 Pa.C.S. §§ 4601-4652 (proposed). It appears similar legislation was introduced in 2015, 2017, and 2021.

The Bill would have provided for notice of pending deployment, temporary change of residence, custodial agreements together with modification and cancellation of same, powers of attorney, procedures, and limitations on granting temporary custody while a parent is deployed, child support, termination of custody, and limitation on deployment as a factor in determining a child's best interest. Presumably, the Bill would provide a "higher standard of protection" than the SCRA.

The proposed legislation, insofar as it relates to this proposal, would apply only if a court has jurisdiction under 23 Pa.C.S. Ch. 54 relating to uniform child custody jurisdiction and enforcement. *See* 51 Pa.C.S. § 4604 (proposed). The change would resolve any ambiguity arising from 51 Pa.C.S. § 4109(a) and whether "child custody" includes dependency matters commenced pursuant to 42 Pa.C.S. § 6321 and voluntary relinquishment, involuntary termination, and adoption proceedings pursuant to 23 Pa.C.S. § 2301. If the Bill was enacted, it would be clear that those provisions of the Code would not apply, for lack of jurisdiction, to dependency and orphans' court proceedings notwithstanding that those proceedings involve child custody.

Rulemaking Proposals

The Committees have attempted to establish uniform rules for each body of procedural rules with slight variations to reflect the applicability of the SCRA and Code to certain types of proceedings. To the extent practicable, the Committees have adopted a "hub and spoke" approach wherein (1) each body of rules would have one rule setting forth the requirements with (2) references back to that rule inserted in the text or commentary of other rules governing proceedings where the requirements may apply. This approach is intended to reduce the need to reiterate the requirements within each applicable rule within a body of rules.

The "hub" rule places the burden of the affidavit requirement of § 3931 on the party filing the action, prior to the entry of judgment, when a party against whom an action has been filed does not "make an appearance." While the party designations are often "plaintiff" and "defendant," those designations may vary depending on the nature of the action. The required content of the affidavit is taken directly from § 3931(b)(1)(A)-(B).

In "child custody" cases and other family court cases where there may be serial orders entered, the rules would require the party commencing the action to file an affidavit when the other party does not make an appearance at the first proceeding that may "adversely affect the civil rights of servicemembers during their military service." 50 U.S.C. § 3902. For example, in a support matter, the first proceeding may be an office conference. *See* Pa.R.Civ.P. 1910.11, 1910.12. In the dependency context, the first proceeding may be a shelter care hearing. *See* Pa.R.J.C.P. 1240-1243.

Commentary accompanying the "hub rules" refers the reader to federal legal authority defining "military service" and a website where a person's status of being in "military service" can be ascertained. Next, there is a statement indicating that, if a defendant is in "military service," then the SCRA may provide additional protections. Additionally, a reference to § 4105 of the Code is included. For those types of proceedings where the applicability of § 4105 is unresolved, this specific reference will be omitted. For rules applicable to "child custody proceedings," there will be additional references to § 3938 of the SCRA, and § 4109 and § 4110 of the Code.

The Comments also inform the reader that a verified, unsworn document can satisfy the requirements of the rule. Alternatively, the reader is directed to a website containing a form that can be used or modified for use provided it meets the requirements of the rule.

For those bodies of rules with continuance or stay rules, a statement and citation would be added to the commentary indicating that the SCRA may provide protections for a person in military service, including a stay. A reference to § 4105 of the Code will also be included for those rules governing proceedings subject to § 4105. The rules were not considered an appropriate vehicle to fully advise servicemembers of their all their statutory rights so no further exposition on those rights would be contained in the commentary.

Notably, neither the SCRA nor the Code appear to contain evidentiary provisions necessitating amendment of the Pennsylvania Rules of Evidence. Section 4109(c) of the Code states that deployment shall not be considered in determining a child's best interest and § 3938(b) of the SCRA states that deployment may not be the sole factor. *See* 51 Pa.C.S. § 4109(c); 50 U.S.C. § 3938(b). Those provisions govern the weight assigned to deployment in determining a child's best interest, but do not operate to admit or exclude evidence for any other purpose. Arguably, a rule of evidence similar to Pa.R.E. 411 could be fashioned to exclude evidence of deployment for a specific purpose. However, because child custody proceedings are heard by a judge and not a jury, judges are able to hear evidence of deployment and give it the necessary weight for purposes other than the best interest of the child without concern about the judges being unduly prejudiced.

The Civil Procedural Rules Committee previously proposed Pa.R.Civ.P. 243 setting forth the affidavit requirements with revised commentary to the "judgment rules" of Pa.R.Civ.P. 237.1, 1037, 1303, and 2955. That proposal has been revised to reflect the uniform rule language in Pa.R.Civ.P. 243 and to add cross-references within the "judgment rules" to Pa.R.Civ.P. 243. Further, the Committee proposes amending Pa.R.Civ.P. 216 to recognize that a basis for granting a continuance is to comply with state or federal law – this is the approach taken with Pa.R.Civ.P.M.D.J. 209(E). A Comment added to the rule would cite the SCRA as an example of a federal law.

As mentioned, Pa.R.Civ.P.M.D.J. 209, 304, 403, 410, 503, 515, and 516 were previously amended to reference the affidavit requirements of the SCRA, 50 U.S.C. §3931(b)(1). With actions initiated in the magisterial district courts, the approach adopted

was for the plaintiff to file an affidavit with every complaint and not just when the defendant does not make an appearance. The rationale for this approach is Pa.R.Civ.P.M.D.J. 319(B), which requires the magisterial district judge to enter a judgment in the plaintiff's favor when the defendant does not attend the hearing regardless of whether the plaintiff appears. Further, there was a desire for cases to be resolved in one hearing. *See* 50 Pa.B. 2252 (May 2, 2020) (final report describing rulemaking). To avoid delaying judgment until the plaintiff files an affidavit for a non-appearing defendant, the plaintiff is now required to file an affidavit with all complaints. *See* Pa.R.Civ.P.M.D.J. 304(D), 503(D). With the present proposal, the Minor Court Rules Committee proposes to further revise the Comments to Pa.R.Civ.P.M.D.J. 209, 403, 410, 515, and 516 to specifically reference § 4105 of the Code.

The Domestic Relations Procedural Rules Committee proposes the rescission of Pa.R.Civ.P. 1920.46 requiring an affidavit of military service pursuant to § 3931 of the SCRA to be filed in divorce proceedings. This rule would be replaced with Pa.R.Civ.P. 1930.10, to require an affidavit of military service to be filed in all proceedings governed by Chapter 1900 of the Pennsylvania Rules of Civil Procedure, including support, divorce, protection from abuse, protection from sexual abuse or intimidation, custody, and paternity actions. The proposed rule would set forth the first proceedings in which the civil rights of non-appearing defendant in military service may be adversely affected. The commentary to this rule would reference § 4105 of the Code for support and divorce proceedings only. In addition, the Comments to Pa.R.Civ.P. 1901.6, 1910.11, 1910.12, 1920.42, 1920.51, 1930.6, and 1956 would contain a reference to Pa.R.Civ.P. 1930.10 and the SCRA generally. The Comments to Pa.R.Civ.P. 1915.4-2, 1915.4-3, and 1915.17 would contain a reference to Pa.R.Civ.P. 1930.10 if the opposing party does not make an appearance and specific reference to § 3938 of the SCRA and § 4109 of the Code because of their applicability to child custody proceedings.

The Juvenile Court Procedural Rules Committee proposes Pa.R.J.C.P. 1206 as a standalone rule setting forth the affidavit requirements. The rule is largely based on the "uniform rule." It would require the party seeking shelter care, *i.e.*, a county agency, for a child or pursuing dependency to complete and file an affidavit of military service when the other party or parties, *i.e.*, parent or guardian, have not made an appearance at the proceeding. The requirement for filing an affidavit at the adjudicatory hearing is conditioned on whether a shelter care hearing was previously conducted. If a shelter care hearing was conducted prior to the adjudicatory hearing, then the county agency would have already filed an affidavit of military service if the parent or guardian did not make an appearance. Obviously, if a parent or guardian did make an appearance at the shelter care hearing, then there would be no need for an affidavit of military service to be filed at the adjudicatory hearing.

In addition to the filing requirement, the county agency would be required to inform the court at the time of the hearing so the presiding judicial officer can receive the information without delaying the proceeding. With proceedings involving persons having a familial relationship, it is presumed the party filing the action likely has a modicum of knowledge whether the other party is in "military service" and be able to accurately inform the court on the record and complete an affidavit at the time of the adjudicatory proceeding in which the parent or guardian does not make an appearance.

The Comments to Pa.R.J.C.P. 1242 and Pa.R.J.C.P. 1406 would be revised to refer readers to Pa.R.J.C.P. 1206. The Comment to Pa.R.J.C.P. 1122 (Continuances) would be revised to include a reference to § 3932 of the SCRA.

The Orphans' Court Procedural Rules Committee proposes Pa.R.O.C.P. 2.12 and

3.16 to require the filing of an affidavit of military service for every proposed representative identified in Rules 2.4(b)(2)–(3) and 3.4(a)(7)(ii)-(iii) and every interested party not represented pursuant to those rules in matters commenced pursuant to Chapter II and Chapter III, respectively. This approach, similar to that in magisterial district courts, was believed to be the better practice when completed at the beginning of administration or the commencement of an action rather than after deadlines have passed. Further, proceedings would not be delayed for the filing of an affidavit. Moreover, some orphans' court matters involve multiple orders over the course of a proceeding that may impact a person's rights, see, *e.g.*, Pa.R.A.P. 342 (Appealable Orphans' Court Orders), an "early and all" approach was favored without waiting to see if an interested party "makes an appearance." Finally, this approach was deemed prudent given the dearth of case law to inform practitioners precisely what types of orders would require an affidavit.

Proposed Rules 2.12 and 3.16 accommodate the use of "virtual representation," permitting the representation of certain individuals or classes of individuals by others in accounting and petition practice. *See* 20 Pa.C.S. §§ 751(6), 7721–7726; Pa.R.O.C.P. 2.4(b)(2)–(3) and 3.4(a)(7)(ii)-(iii). Rather than requiring an affidavit for every interested party, the proposed rules limit the filing of affidavits in orphans' court matters to proposed representatives identified in Rules 2.4(b)(2)–(3) and 3.4(a)(7)(ii)-(iii), as well as interested parties not so represented. This practice will ensure that the court is advised of the military service status of every interested party actively participating in the matter in order to protect individual and class rights, consistent with the use of virtual representation in the orphans' courts.

The Committee welcomes input on the most effective time to file the affidavit and whether filing the affidavit early in the proceeding is sufficient to protect the parties. Some proceedings in orphans' court span many years or decades. Relatedly, the Committee has limited the filing requirement to interested parties and proposed representatives and welcomes feedback relative to requiring affidavits for other parties, insofar as they may have an interest in the matter that could be threatened should they not receive notice due to military status.

In guardianship practice, the Committee proposes amending Pa.R.O.C.P. 14.1 to require the filing of an affidavit of military service for certain individuals with a petition for adjudication of incapacity and appointment of a guardian. New subdivision (a)(6) limits the affidavit requirement to those individuals identified in Rule 14.2(a)(3), namely "the spouse, parents, and presumptive intestate heirs of the alleged incapacitated person." The Committee finds this approach consistent with 20 Pa.C.S. § 5511(a), which requires notice of the guardianship petition and hearing to persons who "would be entitled to share in the estate of the alleged incapacitated person if he died intestate at that time." Advising the court of the military status of such persons is warranted because of their interest in the alleged incapacitated person's estate. *See In the Matter of Brown*, 507 A.2d 418, 419 (Pa. Super. 1986) (individuals entitled to share in the alleged incapacitated person's estate have standing in guardianship proceedings).

The Committee also proposes Pa.R.O.C.P. 15.23 to create a "hub rule" for actions governed by Chapter XV. This rule would require an affidavit of military service to be completed and filed for a non-appearing birth parent, putative father, or presumptive father. Arguably, this requirement could be conditioned on whether an affidavit was previously filed in an earlier dependency proceeding but, given that a termination of parental rights or adoption proceeding may be separately docketed from a prior proceeding, the affidavit requirement begins anew. Further, not all proceedings governed by Chapter 15 involve a prior dependency proceeding. Proposed amendments of the Comments to Pa.R.O.C.P. 15.7, 15.8, 15.9, 15.10, and 15.13 are the "spokes" referring readers to Pa.R.O.C.P. 15.23 if the birth parent, putative father, or presumptive father does not make an appearance.

The SCRA, as might be assumed by its title, does not contain protections for a servicemember against state court criminal proceedings. However, the Code provides that "No officer or enlisted person shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty." 51 Pa.C.S. § 4104. To ensure that those responsible for the execution of warrants are aware of the prohibition codified at 51 Pa.C.S. § 4104, the Criminal Procedural Rules Committee proposes to amend the Comments to Pa.R.Crim.P. 150 (Bench Warrants), 430 (Issuance of Warrant), 431 (Procedure When Defendant Arrested With Warrant), and 515 (Execution of Arrest Warrant) to include: "With respect to members of the Pennsylvania National Guard, the Pennsylvania Guard, and the Pennsylvania Militia, '[n]o officer or enlisted person shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty.' 51 Pa.C.S. § 4104 (Exemption from arrest)."

The Appellate Court Procedural Rules Committee considered the applicability of the SCRA and Code in appellate court proceedings and original jurisdiction actions. In the context of appellate court proceedings, if the appellant-servicemember did not make an appearance in the trial court, there would be no appeal. If an appellant-servicemember filed an appeal, then the appellant has made an appearance and § 3931 would not apply.

Possibly, although improbably, a plaintiff could lose in the trial court against a non-appearing defendant-servicemember and then appeal. However, the § 3931 affidavit should have already been filed in the trial court where the defendant servicemember did not make an appearance and the trial court judge would have already provided an appropriate remedy, *e.g.*, appointment of counsel and a stay.

In sum, the Committee concluded there would be no need for an affidavit in appellate proceedings. At this stage of legal proceedings, a servicemember in military service during the pendency of an appeal should seek a stay from the appellate court pursuant to § 3932.

For original jurisdiction actions in the appellate courts, the Committee concluded that the affidavit requirements of § 3931 of the SCRA would apply. Section 4105 of the Code may arguably apply to original jurisdiction actions given its broad mandate that "no civil process shall issue or be enforced against any officer or enlisted person [of the National Guard while in state active service]." Although the prohibitions of § 4105 are applicable to the plaintiff, a defendant-servicemember in state active service obviously could assert them as a shield in court. In those circumstances, the servicemember could raise § 4105 via preliminary objection or seek a dismissal pursuant to Pa.R.A.P. 1972(a)(3) for want of personal jurisdiction.

The Committee proposes amendment of Pa.R.A.P. 1517 (Applicable Rules of Pleading) setting forth the SCRA's affidavit of military service requirements separately within the rule. Please note, the title of the rule would also be amended because the affidavit requirement is not strictly a "pleading" requirement. Further, the Committee proposes amendments to Pa.R.A.P. 3307 and 3309 to contain an SCRA affidavit requirement for completeness and consistency. Readers should note that the preconditions for not filing an

affidavit of military service in Pa.R.A.P. 3307 and 3309 is an "entry of appearance" or a responsive filing by the adverse party, rather than the terminology "make an appearance."

Similar to the approach of other Committees, the Appellate Court Procedural Rules Committee concluded that the stay provisions of § 3932 of the SCRA do not appear to need specific codification in the procedural rules. A party or their counsel can file a Pa.R.A.P. 123 application and cite that authority as the basis for a stay. In that manner, the appellate courts could determine the applicability of the SCRA in appellate proceedings; there is no need for a separate or additional stay provision.

During the pendency of an appeal, it was observed that a party could also seek relief pursuant to Chapter 17, albeit that Chapter addresses stays of trial court orders and not of appellate proceedings. Also, the SCRA applies to administrative matters. *See* 50 U.S.C. §§ 3912(b) (applicability to administrative proceeding), 3911(5) (defining "court" to mean administrative agency of any state). To address these scenarios, the Committee proposes adding a reference to the SCRA and the Code to the Comments to Pa.R.A.P. 1732 (stay pending appeal) and 1781 (stay pending action on petition for review or petition for specialized review)

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The Committees invite all comments, concerns, and suggestions regarding this rulemaking proposal.