

# Processing a 3301(c) Divorce – after 10/1/19

1. Initial Complaint – no ancillary claims
  - a) Verified Complaint consistent with Pa.R.C.P. 1920.12
  - b) Notice to Defend and Claim Rights with marriage counseling notification – Pa.R.C.P. 1920.71 for Form of Notice
  
2. Service – Pa.R.C.P. 1930.4 for original process
  - a) Personal service – Sheriff or Competent Adult – Service can be made by handing to defendant, to PIC of business/residence, adult family member with whom resides
  - b) Service by mail permitted by 1930.4.(c) – certified mail, return receipt, restricted delivery (signed by defendant ONLY!).
  - c) Acceptance of service by Defendant or Counsel – Acknowledgement of service is unacceptable.
  
3. File an AFFIDAVIT OF SERVICE – Must have a notary's jurat to qualify as an affidavit or VERIFICATION OF SERVICE – Verification language executed by person making service. Must include green return receipt signed by Defendant if served by mail. NOT A CERTIFICATION OF SERVICE AS THIS IS ORIGINAL PROCESS (this is cured by an acceptance of service)
  
4. Calculate 90 days from the date Defendant SERVED not date complaint is filed.
  
5. Parties execute Affidavits of Consent\* – file immediately all consents must be signed no sooner than 90 days from the date of service and within 30 days of execution. Premature and/or stale affidavits will be cause for remand.
  
6. If parties are amendable – execute Waivers \* of notice of intent
  
7. If Waivers not signed – The party requesting the decree must send to the other party a Notice of Intention\*\* to File the Praeceptum to Transmit Record **WITH A BLANK COUNTER-AFFIDAVIT UNDER 3301(C) AND A COPY OF THE PROPOSED PRAECEPTUM TO TRANSMIT WHETHER THE RESPONDING PARTY IS REPRESENTED BY COUNSEL OR PRO SE**
  
8. The moving party must wait 20 days after **service** of the Notice of Intention prior to filing the Praeceptum to Transmit.
  
9. Complete and file Praeceptum to Transmit Record\*

\* Forms are located in Pa.R.C.P. 1920.72, as amended, effective 10/1/19 and have substantial changes.

\*\* Forms are located in PA.R.C.P. 1920.73, as amended, effective 10/1/19 and substantial changes.

Ancillary Claims raised by pleadings – process is same until time for filing Praeceptum to Transmit.

1. Ancillary claims must be:
  - a) Withdrawn by the party that raised the claim – Note: C.C.R.C.P. 1920.42.A. requires 20 day Notice of Intent be sent to the other party prior to filing the Praeceptum to Withdraw Claim.
    - (1) Notice of Intent to withdraw claims can be waived in writing.
  - b) Settled by agreement to be incorporated into Final Decree – Note C.C.R.C.P. 1920.42.A. requires either a Stipulation for Incorporation or a notation on the Praeceptum to Transmit as to the page and paragraph number in the PSA that provides for incorporation
    - (1) an executed copy of the PSA must be filed of record
  - c) Resolved by Report and Recommendation of the Master. No Praeceptum to transmit is required.

**ANCILLARY CLAIMS MUST BE RESOLVED PRIOR TO THE FILING OF A PRAECEPTUM TO TRANSMIT SEEKING THE ENTRY OF A FINAL DECREE UNLESS A BIFURCATION ORDER WAS SIGNED AND THE COURT RETAINED JURISDICTION OVER THE OUTSTANDING CLAIMS.**

**IF GROUNDS FOR DIVORCE HAVE BEEN MET AND CLAIMS REMAIN OUTSTANDING, A PARTY MAY FILE A PRAECEPTUM SEEKING APPROVAL OF GROUNDS FOR DIVORCE PRIOR TO ADJUDICATION OF ANCILLARY MATTERS AND THE APPOINTMENT OF A MASTER. \*\*\***

\*\*\* Requests for Grounds Orders are to be processed through Family Court only.

# Processing a 3301(d) Divorce – after 10/1/19

1. Initial Complaint – no ancillary claims
  - (a) Must be verified
  - (b) Notice to Defend and Claim Rights
  
2. Service – consistent with Pa.R.C.P. 1930.4
  - (a) Personal service
  - (b) Certified Mail
  - (c) Acceptance of Service
  - (d) Special Order of Court - See Pa.R.C.P. 430 for examples of good faith investigation and form of notice
  
3. Affidavit/Verification of Service of Complaint or file proofs consistent with the special order of service
  
4. Wait 20 days before filing the Affidavit under Section 3301(d)
  
5. Serve the 3301(d) affidavit and blank counter-affidavit on other party. (Be sure to file a copy of the blank counter-affidavit with the 3301(d) affidavit at the Prothy's office).  
**NOTE: Service of the 3301(d) affidavit and blank counter-affidavit must be consistent with original process under Pa.R.C.P. 1930.4 as the averments in the affidavit are deemed admitted unless denied.**
  
6. File affidavit/verification of service of the 3301(d) & counter-affidavit.
  
7. File Waivers or
  
8. Wait 20 days from the date of service of the 3301(d) & counter before filing the Notice of Intention to File the Praeceptum to Transmit which includes the proposed Praeceptum to Transmit (Requires additional blank counter-affidavit). Be sure to indicate on Praeceptum to transmit the date and manner of service of the Notice of Intent. Notice of Intent is not required if defendant has no attorney of record and cannot be located after diligent search.
  
9. Wait 20 days from service of the Notice of Intent then file the Praeceptum to Transmit.
  
10. Ancillary Claims must be withdrawn, settled by agreement to be incorporated or adjudicated by master prior to entry of decree unless bifurcation order entered.
  
11. Party may seek an order approving grounds if ancillary claims remain outstanding.

## NEW - Processing a 3301(c)(2) Divorce

23 Pa.C.S.A.3301(c) – Mutual Consent enables the Court to grant a divorce where it is alleged the marriage is irretrievably broken and 90 days have elapsed from the date of filing and service of the action. It can be accomplished by either the parties filing Affidavits of Consent under 3301(c)(1) or presuming the consent of a party has been given where that party has been convicted of committing a personal injury crime **against the other party** . 3301(c)(2). The personal injury crimes for which the spouse was **convicted** must be one of the following Criminal homicide, assault, kidnapping, human trafficking, sexual offenses, arson & related offenses, robbery, victim/witness intimidation, homicide by vehicle, accidents involving death or personal injury.

Initial filings are identical to any divorce under 3301(c)(1) regarding Complaint, service, waiting period. Once the aggrieved party has filed his/her affidavit of consent the moving party shall file an Affidavit to Establish Presumption of Consent under 3301(c)(2) alleging his/her status as a victim of the aforementioned personal injury crime(s) and that the spouse has been convicted of that crime.

Moving party must serve his/her affidavit; the affidavit to establish presumption and a blank counter-affidavit under 3301(c)(2) on the other party. **Note: service must be consistent with original process under Pa.R.C.P. 1930.4 as the averments in the Affidavit are deemed admitted unless denied.**

If responding spouse admits or fails to deny the averments in the affidavit of presumption & no ancillary claims remain outstanding the moving party 20 days after service of the affidavits and blank counter-affidavit can file the Notice of Intention to File the Praeceptum to Transmit with a copy of the proposed Praeceptum to transmit indicating the date and manner of service of the Notice of Intent.

Once 20 days have passed from service of the Notice of Intention, moving party can file Praeceptum to Transmit.

Notice of Intent not required if waivers were executed and filed by both parties.

If the responding party denies the averments in the affidavit of presumption either party may present a motion asking the Court to resolve the issue. Consistent with Pa.R.C.P. 1920.51, a master may be appointed to hear testimony and issue a report and recommendation.

Ancillary claims and requests for grounds orders are the same as under 3301(c), (d)

**PA.R.C.P. 1920.42 HAS BEEN REPLACED IN ITS ENTIRETY!**

**PA.R.C.P. 1920.72 & 1920.73 – MASSIVE CHANGES TO THE FORMS INCLUDING AFFIDAVITS OF CONSENT, 3301(d) AFFIDAVIT, COUNTER-AFFIDAVITS, NEW UNDER 3301(C)(2), NOTICES, WAIVERS, PRAECIPE TO TRANSMIT, MOTION FOR MASTER.**

**EFFECTIVE 10/1/19 – FTC WILL RESULT IN REMANDS FOR COMPLIANCE.**