

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL [231 PA. CODE CH. 200] Damages for Delay

#### Rule 238. Damages for Delay in an Action for Bodily Injury, Death or Property Damage.

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#### Addendum to Explanatory Comment

The prime rate as set forth in the first edition of the *Wall Street Journal* for a particular year is the basis for calculating damages for delay under Pa.R.C.P. 238 as revised November 7, 1988. The prime rate published in the first edition of the *Wall Street Journal* for each of the years specified is as follows:

Date of Publication	Prime Rate Percentage
January 3, 2006	7 1/4
January 3, 2005	5 1/4
January 2, 2004	4
January 2, 2003	4 1/4
January 2, 2002	4 3/4
January 2, 2001	9 1/2
January 3, 2000	8 1/2
January 4, 1999	7 3/4
January 2, 1998	8 1/2
January 2, 1997	8 1/4
January 2, 1996	8 1/2

**Official Note:** The prime rate for the years 1980 through 1995 may be found in the Addendum to the Explanatory Comment published in the *Pennsylvania Bulletin*, volume 33, page 634 (2/1/03) and on the web site of the Civil Procedural Rules Committee at <http://www.aopc.org>.

By the Civil Procedural Rules Committee  
R. STANTON WETTICK, Jr.,  
Chair

[Pa.B. Doc. No. 06-86. Filed for public inspection January 20, 2006, 9:00 a.m.]

### PART I. GENERAL

#### [231 PA. CODE CHS. 200 AND 2250]

#### Promulgation and Amendment of Notes to Rules Governing Notice of Orders and Joinder of Additional Defendants; Proposed Recommendation No. 208

The Civil Procedural Rules Committee proposes that the note to Rule of Civil Procedure 236(d) governing notice by the prothonotary of the entry of an order or judgment be amended and that notes to Rules 2252(d) and 2255(b) governing joinder of additional defendants be promulgated, as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent not later than March 1, 2006 to:

Harold K. Don, Jr.,  
Counsel  
Civil Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania 17055  
or E-Mail to  
[civil.rules@pacourts.us](mailto:civil.rules@pacourts.us)

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

### Annex A

#### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

#### Rule 236. Notice by Prothonotary of Entry of Order or Judgment.

\* \* \* \* \*

(d) The prothonotary may give the notice required by subdivision (a) or notice of other matters by facsimile transmission or other electronic means if the party to whom the notice is to be given or the party's attorney has filed a written request for such method of notification or has included a facsimile or other electronic address on a prior legal paper filed in the action.

**Official Note:** Except as provided by subdivision (a)(1) relating to the entry of a judgment by confession, Rule 236 does not prescribe a particular method of giving notice. Methods of notice properly used by the prothonotary include, but are not limited to, service via United States mail and courthouse mail. Subdivision (d) governs facsimile transmission and other electronic means if the prothonotary chooses to use such a method.

\* \* \* \* \*

#### CHAPTER 2250. JOINDER OF ADDITIONAL DEFENDANTS

#### Rule 2252. Right to Join Additional Defendants.

\* \* \* \* \*

(d) If the person sought to be joined is a party, the joining party shall, without moving for severance or the filing of a praecipe for a writ or a complaint, assert in the answer as new matter that such party is alone liable to the plaintiff or liable over to the joining party or jointly or severally liable to the plaintiff or liable to the joining party directly setting forth the ground therefor. The case shall proceed thereafter as if such party had been joined by a writ or a complaint.

**Official Note:** In providing for the joinder as an additional defendant of a person already a party to the action, Rule 2252(d) is a device for asserting a cross-claim between defendants and additional defendants.

\* \* \* \* \*

**Rule 2255. Procedure.**

\* \* \* \* \*

(b) No pleadings shall be filed between the additional defendant and any party other than the one joining the additional defendant except that the additional defendant may file a counterclaim against the plaintiff.

**Official Note: In an action in which there is more than one additional defendant, Rule 2255(b) does not bar proceedings pursuant to Rule 2252(d) either between the additional defendants inter se or between the additional defendants and any other party to the action.**

\* \* \* \* \*

**Explanatory Comment**

**I. Amendment to the note to Rule 236(d)**

Rule 236 governs the notice to be given by the prothonotary of the entry of an order or judgment. The proposed amendment to the first paragraph of the note to subdivision (d) of the rule arises from a suggestion that Rule 236 specifically provide for notice by courthouse mail, i.e., placing a copy of the order in the attorney's courthouse mailbox.

Except with respect to subdivision (a)(1) which provides for notice by "ordinary mail" of the entry of a judgment by confession, the rule "does not prescribe a particular method of giving notice." Subdivision (d) relating to notice by facsimile transmission is applicable only if the prothonotary chooses that method of notice.

Since the rule does not prescribe a particular means of notice except as to judgments entered by confession, the rule already accommodates notice by courthouse mail. The proposed revision to the first paragraph of the note to subdivision (d) expressly states the existing availability of courthouse mail as a method of giving notice. The revision effects no change in practice or procedure.

**II. Amendments to Rule 2252(d) and 2255(b)**

Attorneys frequently raise the issue of the relationship of Rules 2252(d) and 2255(b) governing the joinder of additional defendants. Rule 2252(d) provides that a person already a party to an action may be joined as an additional defendant by asserting the basis for joinder in the answer to the complaint as new matter. Rule 2255(b) limits the filing of pleadings between the additional defendant and parties other than the party joining the additional defendant with the exception that a counterclaim may be filed by the additional defendant against the plaintiff.

The new notes proposed to be added to Rules 2252(d) and 2255(b) are intended to make clear that Rule 2255(b) does not bar the assertion of a cross-claim between parties to an action. Specifically, a defendant or an additional defendant may assert a claim against another party to the action through the joinder rules. See the commentary to the 1969 amendments to Rule 2252 in XLI Pennsylvania Bar Association Quarterly 33 (October 1969)) and Goodrich-Amram (1st ed. Supplement 1977) ("Further, the Committee decided to enlarge the scope of the additional defendant practice to permit the equivalent of the cross-claim between two defendants under the federal rules."). See also *Findlay Twp. v. Ryan Homes, Inc.*, 279 Pa. Superior Ct. 294, 420 A.2d 1241 (1980) ("Therefore the object of the rule was to limit pleadings generally and allow responsive pleadings only between

those parties properly joined and having adverse interests." "We find no conflict between Rules 2252(d) and 2255(b) . . .")

*By the Civil Procedural Rules Committee*

R. STANTON WETTICK, Jr.,  
*Chair*

[Pa.B. Doc. No. 06-87. Filed for public inspection January 20, 2006, 9:00 a.m.]

**PART I. GENERAL**

**[231 PA. CODE CHS. 1910 AND 1920]**

**Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 76**

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, April 7, 2006 directed to:

Patricia A. Miles, Esquire  
Counsel, Domestic Relations Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania 17055  
FAX (717) 795-2175  
E-mail: patricia.miles@pacourts.us

*By the Domestic Relations  
Procedural Rules Committee*

NANCY P. WALLITSCH,  
*Chair*

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 1910. ACTIONS FOR SUPPORT**

**Rule 1910.11. Office Conference. Subsequent Proceedings. Order.**

\* \* \* \* \*

(c) At the conference, the parties shall furnish to the officer true copies of their most recent federal income tax returns, their pay stubs for the preceding six months, verification of child care expenses and proof of medical coverage which they may have or have available to them. In addition, they shall provide copies of their [ **income and expense statements** ] **Income and Expense Statements** in the [ **form** ] **forms** required by Rule 1910.27(c), completed as set forth below.

(1) For cases which can be determined according to the guideline formula, the [ **income and the expense statement need show only income and extraordinary** ] **Income Statement must be completed and the Expense Statement at Rule 1910.27(c)(2)(A) should be completed if a party is claiming unusual needs and unusual fixed expenses.**

(2) For cases which are decided according to *Melzer v. Witsberger*, **505 Pa. 462**, 480 A.2d 991 (1984), the [ **entire income and expense statement** ] **Income Statement and the Expense Statement at Rule 1910.27(c)(2)(B) must be completed.**

\* \* \* \* \*

**Explanatory Comment—1994**

\* \* \* \* \*

Because the guidelines are income driven, the trier of fact has little need for the expense information required in the [ **income and expense statement** ] **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** ] **Income and Expense Statement**.

**Explanatory Comment—2006**

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

**Rule 1910.27. Form of Complaint. Order. Income and Expense Statement. Health Insurance Coverage Information Form. Form of Support Order. Form Petition for Modification.**

\* \* \* \* \*

(b) The order to be attached at the front of the complaint set forth in subdivision (a) shall be in substantially the following form:

(Caption)  
**ORDER OF COURT**

You, \_\_\_\_\_, defendant, are ordered to appear at \_\_\_\_\_ before \_\_\_\_\_, a conference officer of the Domestic Relations Section, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ M., for a conference, after which the officer may recommend that an order for support be entered against you. You are further ordered to bring to the conference

\* \* \* \* \*

(3) the **Income Statement and the appropriate Expense Statement, if required**, attached to this order, completed as required by Rule 1910.11(c),

\* \* \* \* \*

(c) The [ **income and expense statement** ] **Income and Expense Statements** to be attached to the order shall be in substantially the following form:

**(1) Income Statement. This form must be filled out in all cases.**

\_\_\_\_\_ v, \_\_\_\_\_ No, \_\_\_\_\_

**THIS FORM MUST BE FILLED OUT**

(If you are self-employed or if you are salaried by a business of which you are owner in whole or in part, you must also fill out the Supplemental Income Statement which appears [ **on the last page of this Income and Expense Statement** ] below.)

**INCOME AND EXPENSE STATEMENT OF**

I verify that the statements made in this Income and Expense Statement are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_  
\_\_\_\_\_ Plaintiff or Defendant

INCOME

\* \* \* \* \*

Itemized Payroll Deductions:

Federal Withholding \$ \_\_\_\_\_  
 [Social Security] FICA \_\_\_\_\_  
 Local Wage Tax \_\_\_\_\_  
 State Income Tax \_\_\_\_\_  
 Mandatory Retirement \_\_\_\_\_  
 Union Dues \_\_\_\_\_  
 [Savings Bonds \_\_\_\_\_  
 Credit Union \_\_\_\_\_  
 Life Insurance \_\_\_\_\_]

\* \* \* \* \*

Other Income:

**Week** **Month** **Year**  
 (Fill in Appropriate Column)

\* \* \* \* \*

Pension Distributions

\_\_\_\_\_

\* \* \* \* \*

[Expense Account  
 Gifts] \_\_\_\_\_  
 Unemployment Comp. \_\_\_\_\_  
 [Workmen's] Workers Comp. \_\_\_\_\_  
 Employer Fringe Benefits \_\_\_\_\_  
 Other \_\_\_\_\_

\* \* \* \* \*

[EXPENSES

*Weekly* *Monthly* *Yearly*  
 (Fill in Appropriate Column)

Home

**Mortgage/rent** \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
**Maintenance** \_\_\_\_\_  
**Utilities** \_\_\_\_\_  
**Electric** \_\_\_\_\_  
**Gas** \_\_\_\_\_  
**Oil** \_\_\_\_\_  
**Telephone** \_\_\_\_\_  
**Water** \_\_\_\_\_  
**Sewer** \_\_\_\_\_  
**Employment** \_\_\_\_\_  
**Public transportation** \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
**Lunch** \_\_\_\_\_  
**Taxes** \_\_\_\_\_  
**Real Estate** \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
**Personal property** \_\_\_\_\_  
**Income** \_\_\_\_\_  
**Insurance** \_\_\_\_\_  
**Homeowners** \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
**Automobile** \_\_\_\_\_  
**Life** \_\_\_\_\_  
**Accident** \_\_\_\_\_  
**Health** \_\_\_\_\_  
**Other** \_\_\_\_\_  
**Automobile** \_\_\_\_\_  
**Payments** \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
**Fuel** \_\_\_\_\_  
**Repairs** \_\_\_\_\_  
**Medical** \_\_\_\_\_  
**Doctor** \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
**Dentist** \_\_\_\_\_  
**Orthodontist** \_\_\_\_\_  
**Hospital** \_\_\_\_\_  
**Medicine** \_\_\_\_\_

	<i>Weekly</i>	<i>Monthly</i>	<i>Yearly</i>
Special Needs (glasses, braces, orthopedic devices)	_____	_____	_____
<b>Education</b>			
Private school	\$ _____	\$ _____	\$ _____
Parochial school	_____	_____	_____
College	_____	_____	_____
Religious	_____	_____	_____
<b>Personal</b>			
Clothing	\$ _____	\$ _____	\$ _____
Food	_____	_____	_____
Barber/hairdresser	_____	_____	_____
Credit payments	_____	_____	_____
Credit card	_____	_____	_____
Charge account	_____	_____	_____
Memberships	_____	_____	_____
<b>Loans</b>			
Credit Union	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____
_____	_____	_____	_____
<b>Miscellaneous</b>			
Household help	\$ _____	\$ _____	\$ _____
Child care	_____	_____	_____
Papers/books/magazines	_____	_____	_____
Entertainment	_____	_____	_____
Pay TV	_____	_____	_____
Vacation	_____	_____	_____
Gifts	_____	_____	_____
Legal fees	_____	_____	_____
Charitable contributions	_____	_____	_____
Other child support	_____	_____	_____
Alimony payments	_____	_____	_____
Other	_____	_____	_____
_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____
<b>Total Expenses</b>	\$ _____	\$ _____	\$ _____]

\* \* \* \* \*

(2) **Expense Statements.** An Expense Statement is not required in cases which can be determined pursuant to the guidelines unless a party avers unusual needs and expenses that may warrant a deviation from the guideline amount of support pursuant to Rule 1910.16-5 or an apportionment of expenses pursuant to Rule 1910.16-6. (See Rule 1910.11(c)(1)). Child support is calculated under the guidelines based upon the net incomes of the parties, with additional amounts ordered as necessary to provide for child care expenses, health insurance premiums, unreimbursed medical expenses, mortgage payments and other needs, contingent upon the obligor's ability to pay. The Expense Statement in subparagraph (A) below shall be utilized if a party is claiming that he or she has unusual needs and unusual fixed expenses that may warrant deviation or adjustment in a case determined under the guidelines. In cases which must be determined pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), because the parties' combined net monthly income exceeds \$20,000 per month, the parties must complete the Expense Statement in subparagraph (B) below.

(A) **Guidelines Expense Statement. Unusual Needs and Unusual Fixed Expenses.** At the conference, each party must provide receipts or other verification of needs and expenses claimed on this statement.

Expense Statement of \_\_\_\_\_ PACSES Number \_\_\_\_\_

	Weekly	Monthly	Yearly
	(Fill in Appropriate Column)		
<b>Mortgage (including real estate taxes and homeowner's insurance) or Rent</b>	\$ _____	\$ _____	\$ _____
<b>Health Insurance Premiums</b>	_____	_____	_____
<b>Unreimbursed Medical Expenses</b>	_____	_____	_____
<b>Doctor</b>	_____	_____	_____
<b>Dentist</b>	_____	_____	_____
<b>Orthodontist</b>	_____	_____	_____
<b>Hospital</b>	_____	_____	_____
<b>Medicine</b>	_____	_____	_____
<b>Special Needs (glasses, braces, orthopedic devices)</b>	_____	_____	_____
<b>Child Care</b>	_____	_____	_____
<b>Private school</b>	_____	_____	_____
<b>Parochial school</b>	_____	_____	_____
<b>Loans/Debts</b>	_____	_____	_____
<b>Support of Other Dependents</b>	_____	_____	_____
<b>Other child support</b>	_____	_____	_____
<b>Alimony payments</b>	_____	_____	_____
<b>Other: (Specify)</b>	_____	_____	_____
_____	_____	_____	_____
<b>Total Unusual Needs and Unusual Fixed Expenses</b>	\$ _____	\$ _____	\$ _____

(B) Melzer Expense Statement. No later than five business days prior to the conference, the parties shall exchange this form, along with receipts or other verification of the expenses set forth on this form. Failure to comply with this provision may result in an appropriate order for sanctions and/or the entry of an interim order based upon the information provided.

Expense Statement Of \_\_\_\_\_ PACSES Case Number \_\_\_\_\_

EXPENSES	MONTHLY TOTAL	MONTHLY CHILDREN	MONTHLY PARENT
<b>HOME</b>			
<b>Mortgage or Rent</b>			
<b>Maintenance</b>			
<b>Lawn Care</b>			
<b>2nd Mortgage</b>			
<b>UTILITIES</b>			
<b>Electric</b>			
<b>Gas</b>			
<b>Oil</b>			
<b>Telephone</b>			
<b>Cell Phone</b>			
<b>Water</b>			
<b>Sewer</b>			
<b>Cable TV</b>			
<b>Internet</b>			
<b>Trash/Recycling</b>			
<b>TAXES</b>			

<b>EXPENSES</b>	<b>MONTHLY TOTAL</b>	<b>MONTHLY CHILDREN</b>	<b>MONTHLY PARENT</b>
<b>Real Estate</b>			
<b>Personal Property</b>			
<b>INSURANCE</b>			
<b>Homeowners</b>			
<b>Automobile</b>			
<b>Life</b>			
<b>Accident/Disability</b>			
<b>Excess Coverage</b>			
<b>Long-Term Care</b>			
<b>AUTOMOBILE</b>			
<b>Lease or Loan Payments</b>			
<b>Fuel</b>			
<b>Repairs</b>			
<b>Memberships</b>			
<b>MEDICAL</b>			
<b>Medical Insurance Doctor</b>			
<b>Dentist</b>			
<b>Hospital</b>			
<b>Medication</b>			
<b>Counseling/Therapy</b>			
<b>Orthodontist</b>			
<b>Special Needs (glasses, etc.)</b>			
<b>EDUCATION</b>			
<b>Tuition</b>			
<b>Tutoring</b>			
<b>Lessons</b>			
<b>Other</b>			
<b>PERSONAL</b>			
<b>Debt Service</b>			
<b>Clothing</b>			
<b>Groceries</b>			
<b>Haircare</b>			
<b>Memberships</b>			
<b>MISCELLANEOUS</b>			
<b>Child Care</b>			
<b>Household Help</b>			
<b>Summer Camp</b>			
<b>Papers/Books/Magazines</b>			
<b>Entertainment</b>			
<b>Pet Expenses</b>			
<b>Vacations</b>			

EXPENSES	MONTHLY TOTAL	MONTHLY CHILDREN	MONTHLY PARENT
Gifts			
Legal Fees/Prof. Fees			
Charitable Contributions			
Children's Parties			
Children's Allowances			
Other Child Support			
Alimony Payments			
<b>TOTAL MONTHLY EXPENSES</b>			

\* \* \* \* \*

(d) The form to be used to obtain information relating to health insurance coverage from a party shall be in substantially the following form:

\* \* \* \* \*

**Explanatory Comment—2006**

Rule 1910.27(c) is amended to separate income and expense information and to elicit the expense information relevant in cases that fall within the guidelines, as well as those that do not. In cases which can be determined under the guidelines, no expense information need be provided unless a party is claiming unusual needs and expenses that may warrant a deviation pursuant to Rule 1910.16-5 or an apportionment of expenses pursuant to Rule 1910.16-6. If a party is claiming such expenses, the form at subsection (c)(2)(A) should be submitted. A separate expense form for cases in which the parties combined monthly net income exceeds \$20,000 is set forth at subsection (c)(2)(B).

Rule 1910.11(c) was amended, effective in March 1995, to provide that only income and extraordinary expenses need be shown on the Income and Expense Statement in cases which can be determined pursuant to the guidelines. The Explanatory Comment—1994 explained the rationale for the amendment:

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 pursuant 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.

Nevertheless, because space for both income and expense information was provided on the same form Income and Expense Statement, parties often needlessly expended time and effort to provide expense information that was not relevant at the conference. The amendments are intended to clarify and simplify the submission of expense information.

**CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE**

**Rule 1920.31. Joinder of Related Claims. Child and Spousal Support. Alimony. Alimony Pendente Lite. Counsel Fees. Expenses.**

(a)(1) Within thirty days after the service of the pleading or petition containing a claim for child or spousal support, alimony, alimony pendente lite or counsel fees, costs and expenses, each party shall file a true copy of the most recent federal income tax return, pay stubs for the preceding six months [ and ], a completed [ income and expense statement in the manner and ] Income Statement in the form required at Rule 1910.27(c)(1) and a completed Expense Statement in the form required by [ Rules 1910.11 and ] Rule 1910.27 (c)(2)(B).

\* \* \* \* \*

(3) When a claim for support or alimony pendente lite is filed as a count in a divorce rather than as a separate action, the award shall be retroactive to the date of the [ written demand for hearing unless the order states otherwise ] complaint, so long as the moving party delivers a copy of the complaint to the domestic relations section with a demand for hearing at the time that the divorce complaint containing a claim for spousal support or alimony pendente lite is filed. [ If a demand for hearing appears conspicuously on the front of the divorce pleading, support or alimony pendente lite shall be awarded retroactive to the date of filing of that pleading and the matter shall be set promptly for hearing.

*Official Note:* At the time a hearing is demanded on the issue of support, a copy of the divorce pleading which contains that count must be delivered to the domestic relations section. ]

\* \* \* \* \*

**[ Explanatory Note—1983**

Subdivision (a) as originally promulgated required each party to file a completed income and expense statement within thirty days after service of the pleading or petition containing a related claim for relief. That requirement remains unchanged. However, the rule is conformed to Support Rule 1910.11(c) by also requiring each party to file within the same thirty day period a copy of his or her most recent income tax return and the pay stubs for the preceding six months.



New subdivision (a)(2) incorporates by reference Discovery Rule 4019 governing sanctions. When there is a failure to file the documents required by subdivision (a)(1), the broad spectrum of sanctions which is available under Rule 4019(c) will permit the court to impose the sanction appropriate to the facts of the case.

#### Explanatory Comment—1991

The Divorce Code of 1980 has been modified by two recent Acts of Assembly. First, the Divorce Code was codified as part of the Pennsylvania Consolidated Statutes by Act 1990-206. Second, the Divorce Code was substantially amended by Act 1988-13. Many of the rules of civil procedure covered by Recommendation 5 have been amended as a result of this legislation.

**I. Codification.** Old Rules 1920.1 through 1920.92 were promulgated in 1980 to implement the then recently enacted Divorce Code. The old rules contain many references to the Divorce Code which was enacted as part of the Unconsolidated Statutes, 23 P. S. § 101 et seq.

Act 206 of 1990, effective March 19, 1991, repealed the Divorce Code as enacted in 1980 and re-enacted it as Part IV of the Domestic Relations Code, 23 Pa.C.S. § 3101 et seq. Part IV of the Domestic Relations Code continues to be known as the Divorce Code. All statutory references in the new rules refer to the Divorce Code as it is now codified.

For more than ten years, the term “Section 201(c) or (d)” divorce has meant a “no-fault” divorce. Under the new codification, the grounds for a no-fault divorce will be found in Section 3301(c) and (d) of the Divorce Code, 23 Pa.S.C. § 3301(c) and (d). This is one example of the revisions to the divorce rules necessitated by the codification. These revisions merely correct obsolete references and effect no change in practice or procedure. The Committee is developing a proposal to review all of the domestic relations rules to include the new statutory references.

**II. Spousal Support.** Section 3104 (formerly Section 301) of the Divorce Code, which enumerates the various claims that may be joined in an action of divorce, was amended by Act 1988-13 to include “spousal support.” Old Rule 1920.31, governing the joinder of related claims, has been amended to include the reference to spousal support in conformity with the Divorce Code as amended.

**III. Living Separate and Apart.** Section 3301(d) (formerly Section 301(d)) of the Divorce Code, providing for a no-fault divorce where the marriage is irretrievably broken and the parties have lived separate and apart, was amended by Act 1988-13 to reduce the waiting period from three years to two years. Old Rule 1920.72(c), governing the form of the plaintiff’s affidavit, makes reference to this three year period. New Rule 1920.72(c) refers to the two year period of separation.

Old Rule 1920.42(a), governing the procedure in a divorce under Section 3301(d) of the Divorce Code, referred to “the plaintiff” filing an affidavit. Old Rule 1920.72(c) provides the form of the “Plaintiff’s” affidavit. However, the Divorce Code uses the phrase “an affidavit has been filed.” Consequently, there is no reason why a defendant may not file the

affidavit to initiate the procedure for entering the decree. Old Rules 1920.42(a)(2) and (c)(2) and 1920.72(c) and (d) have been revised to allow filing of the affidavit by either party.

**IV. Establishing Grounds for Divorce.** New Section 3301(e) (formerly Section 201(e)) of the Divorce Code was added by Act 1988-13, and provides that, if grounds are established under the no-fault provisions of Sections 3301(c) or (d), “the court shall grant a divorce without requiring a hearing on any other grounds.” A note has been added to old Rule 1920.51 referring to this provision.

**V. Inventory; Pre-trial Statement.** Section 3505(b) (formerly Section 403(b)) of the Divorce Code was enacted in 1980 provides for “an inventory and appraisal of all property owned or possessed at the time the action was commenced.” Old Rule 1920.33 was adopted to implement this provision. The rule did not work very well. The inventory and appraisal were seldom filed within sixty days after a claim for determination and distribution of property is filed, as required by the rule. The old rule further required that the parties use the date the action was commenced as the valuation date. In most instances, the date the action was commenced was irrelevant for valuation purposes.

Section 3505(b)(1) of the Divorce Code, as amended by Act 1988-13, requires that the inventory and appraisal contain a list of property owned or possessed by either or both parties as of both the date of separation and a date thirty days prior to the date of the hearing on equitable distribution. There are three problems with this Divorce Code provision. First, the date of separation is frequently unclear and is itself a disputed issue in the action. Second, an inventory which contains values and liabilities as of a date thirty days prior to trial must be filed very late in the proceedings. Third, even if the date of separation is undisputed, a valuation as of that date is frequently irrelevant.

New Rules 1920.33 and 1920.75 rescind old Rules 1920.33 and 1920.75, and suspend Section 3505(b) as amended by Acts 1988-13 and 1990-206. New Rule 1920.33 substitutes the devices of an inventory and a pre-trial statement. New Rule 1920.75 provides a form for the inventory.

New Rule 1920.33(a) requires that each party file an inventory within ninety days after the filing of a claim for the distribution of property. The inventory must include “all property owned or possessed at the time the action was commenced,” including all marital property, as well as all non-marital property. At this point in the action, a valuation of the property need not be provided.

New Rule 1920.75 provides for a form of inventory which is consistent with the requirements of new Rule 1920.33(a). For the most part, the only information that is required is a description of the property involved in the claim and the identification of the owners. The form of inventory retains the checklist of property found in the old rule.

New Rule 1920.33(b) requires each party to file and serve a pre-trial statement within the time specified by court order or the written direction of the master, or, if none, at least sixty days before the hearing on the claim for distribution of property. Eleven subparagraphs specify the content of the

pre-trial statement. Preparation of the pre-trial statement requires the parties to prepare their cases well before trial, thus facilitating the presentation of evidence at the trial, and enhancing the prospect of early settlement.

Section 3505(b)(2) of the Divorce Code provides for the inventory and appraisal to contain a valuation of the property as of three dates: the date of acquisition, the date of separation and the date thirty days prior to the date of the hearing on equitable distribution. New Rule 1920.33(b)(1) does not specify a date for valuation. It provides that the pre-trial statement shall include a list of assets specifying "(i) the marital assets, their value, the date of valuation . . . and (ii) the non-marital assets, their value, the date of valuation . . .". It is incumbent upon each party to show why property should or should not be valued as of a certain date. Consequently, each party needs to provide the value as of the date he or she intends to prove at the hearing. Three valuations are generally unnecessary.

Section 3505(b)(3) of the Divorce Code provides for the inventory and appraisal to contain a list of liabilities of either or both parties as of thirty days prior to the date of the hearing on equitable distribution. New Rule 1920.33(b)(6) requires the pre-trial statement to include the current expense statement required in an action for support if the party filing the statement intends to offer testimony concerning his or her expenses. Subparagraph (10) of the new rule requires that the pre-trial statement includes "a list of marital debts including the amount of each debt as of the date of separation" and specified additional information concerning that debt. New Rule 1920.33 is therefore more comprehensive than the Divorce Code because it requires a current expense statement and a history of marital debt.

New Rule 1920.33(c) provides for sanctions as authorized by Discovery Rule 4019(c) for failure to file either the inventory or the pre-trial statement.

New Rule 1920.33(d) provides two evidentiary sanctions relating only to the pre-trial statement. Under subparagraph (1), a party may be barred from offering any testimony or introducing any evidence with regard to a matter not included in the statement. Subparagraph (2) provides that a party may not offer testimony or introduce evidence which "is inconsistent with or which goes beyond the fair scope of the information in the pre-trial statement."

The evidentiary sanctions set forth in new Rule 1920.33(d) do not apply to the inventory. Because the inventory is filed within ninety days after a claim has been made for equitable distribution, there may be insufficient time for the parties to learn of all of the property which may be subject to that claim. Consequently, the rule contemplates that any omissions will be corrected in the pre-trial statement.

Act 1988-13 added new Section 3502(e) (formerly Section 401(k)) to the Divorce Code relating to enforcement of an order or an agreement of equitable distribution. New Rule 1920.33(e) states that orders for equitable distribution entered pursuant to the Divorce Code may be enforced as provided

by the rules governing actions for support and divorce, and under the Divorce Code. Remedies available for enforcement for equitable distribution orders are set forth in Divorce Code Sections 3323(b) (formerly Section 410(b)) and 3505(a) (formerly 403(a)), as well as Section 3502(e).

It should be noted that 23 Pa.C.S. § 3105(a) (formerly Section 401.1(a)) states that an agreement is enforceable by any means available pursuant to the Divorce Code for enforcement of an order, as though the agreement were an order of court, except as otherwise provided in the agreement. Thus, although new Rule 1920.33(e) refers only to enforcement of orders, it also applies to enforcement of agreements.

#### Explanatory Comment—1994

In its opinion in *McKeown v. McKeown*, 417 Pa. Super 520, 612 A.2d 1060 (1992), the court indicates that spousal support cannot be converted automatically to alimony pendente lite. However, in many cases there is a need for alimony pendente lite after the decree is entered, just as there is spousal support before. Because of the recent change in Rule 1910.16-1, which states that the amount of alimony pendente lite is determined according to the guidelines, there is little difference between the two. Although the entitlement defense continues to be available, if the dependent spouse is already receiving spousal support, the amended rule permits automatic conversion to alimony pendente lite upon entry of the decree.

#### Explanatory Comment—1995

New subdivision (a)(3) is added because, unlike a separate action for support, a count in a divorce which requires support is often filed in the interest of preserving every possible claim rather than because either party wishes to have that claim heard. Where a support claim is not pursued for months, or even years, allowing retroactivity to the date of filing in accordance with Rule 1910.17 can create massive and unjust arrearages.

This amendment permits retroactivity only for the period of time during which the support claim has been actively pursued. Thus, if a demand for support hearing appears on the front of a divorce pleading, support is available retroactive to the date of filing. However, where the demand does not appear on the front of the divorce pleading, retroactivity will be allowed only from the date upon which the hearing is eventually demanded. ]

#### Rule 1920.33. Joinder of Related Claims. Distribution of Property. Enforcement.

(a) Within ninety days after service of a pleading or petition containing a claim for determination and distribution of property under Section 3502 of the Divorce Code, each party shall file an inventory specifically describing all property owned or possessed at the time the action was commenced. The inventory shall set forth as of the date of the filing of the complaint:

\* \* \* \* \*

(b) Within the time required by order of court or written directive of the master or, if none, at least sixty days before the scheduled hearing on the claim for the determination and distribution of property, each party shall file and serve upon the other party a pre-trial statement. The pre-trial statement shall include the

following matters, together with any additional information required by special order of the court:

(1) a list of assets, which may be in chart form, specifying:

(i) the marital assets, their value, the date of the valuation, whether any portion of the value is non-marital, and any liens or encumbrances thereon[ , ]; and

\* \* \* \* \*

(6) if the party intends to offer any testimony as to his or her expenses, [ a current expense statement ] an Expense Statement in the form required by [ the practice and procedure governing an action in support ] Rule 1910.27(c)(2)(B);

\* \* \* \* \*

[ Official Note: See, inter alia, Section 3323(b) of the Divorce Code relating to enforcement of the rights of any party under a decree, Section 3505(a) relating to injunction against disposition of property pending suit, and Section 3502(e) providing remedies for failure to comply with an order of equitable distribution or the terms of an agreement between the parties. ]

**Rule 1920.54. Hearing by Master. Report. Related Claims.**

(a) If claims for child support, alimony pendente lite, or counsel fees and expenses have been referred to a master pursuant to Rule 1920.51(a), the master's report shall contain separate sections captioned "Child Support," "Alimony Pendente Lite," or "Counsel Fees and Expenses" as appropriate. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order stating:

(1) the amount of support or alimony pendente lite[ , ];

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

\* \* \* \* \*

The [ income and expense statements ] Income and Expense Statements shall be attached to the report.

\* \* \* \* \*

[Pa.B. Doc. No. 06-88. Filed for public inspection January 20, 2006, 9:00 a.m.]

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