Lebanon County
Court of Common Pleas

Divorce Handbook
For
Self-Represented
Litigants

March 2019

I. INTRODUCTION

A divorce is a way to legally end your marriage. It is recommended that you at least speak to an attorney so you know your legal rights.

If you decide to represent yourself in the divorce action (known as "pro se"), it will take a lot of time, and cause you difficulty, confusion and frustration. You MUST follow the Rules and Procedures, both state and county, as are required for attorneys. The Court will not allow you to skip any procedure because you "did not know how or when" to do something in your divorce action. This packet is not to be a substitute for professional legal advice tailored to a specific fact situation.

Speaking with an attorney is absolutely recommended if you wish to bring up issues besides legally ending your marriage – such as making claims to items of property and other money from your marriage or for alimony after divorce.

Also, this self-help packet contains instructions <u>only</u> about how to obtain a "no-fault" divorce. Pursuing a divorce on one of the fault grounds in Pennsylvania divorce law requires litigation before a court appointed Divorce Master. Therefore, if a <u>fault</u> based divorce is desired, the assistance of an attorney is strongly recommended.

COURT-STAFFED OFFICES IN THE COURTHOUSE ARE NOT PERMITTED TO GIVE YOU LEGAL ADVICE.

Also, the Judges and Divorce Masters WILL NOT be available to you to provide advice or guide you through the proceedings. You are NOT ALLOWED to contact Judges or Divorce Masters except for filing official paperwork or appearing in court proceedings.

If you feel you need an attorney, you may contact **MidPenn Legal Services at (717)274-2834** weekdays between 8:30 a.m. and 4:30 p.m.

II. DEFINITIONS

Alimony -

An Order for support granted by this Commonwealth or any other state to a former spouse in conjunction with a Decree granting a divorce or annulment.

Alimony Pendente Lite (APL) –

An Order for temporary support granted to a spouse during the pendency of a divorce or annulment proceeding.

Annulment –

Act of making a marriage void retrospectively as well as prospectively; annulment destroys existence of void or voidable marriage, which factors are found in 23 Pa.C.S.A. §3304 and 23 Pa.C.S.A. §3305.

Cohabitation –

Living or abiding or residing together as man and wife.

Contested Divorce –

A divorce where the parties do not agree to a division of property and/or to divorce.

Counterclaim –

An answer to the complaint filed by the Defendant in the same action, which may raise any other matter under the Divorce Code that may be joined with the divorce.

Defendant –

The person being sued.

Divorce -

Divorced from the bonds of matrimony.

Divorce Master –

An attorney appointed by the court to hear testimony on claims filed in a divorce action and make recommendations for resolution of those claims.

Equitable –

Does **not** mean "equal". A percentage division of marital assets after a consideration of all relevant factors set forth in the divorce code.

Ex Parte -

In order to preserve fairness to all in a proceeding, no one party or his/her lawyer can contact the court about issues in the case without the other party's participation; this includes by telephone, mail or in person.

Fault Divorce –

A divorce filed under 23 Pa.C.S.A. §3301(a) or (b).

Grounds for Divorce –

The grounds are enumerated in §3301 of the Domestic Relations Code (relating to grounds for divorce).

Irretrievable Breakdown –

Estrangement due to marital difficulties with no reasonable prospect of reconciliation.

Jurisdiction –

The courts shall have original jurisdiction in cases of divorce and for the annulment of void or voidable marriages and shall determine, in conjunction with any decree granting a divorce or annulment, the following matters, if raised in the pleadings, and issue appropriate decrees or orders with reference thereto, and may retain continuing jurisdiction thereof:

(1) The determination and disposition of property rights and interests between spouses, including any rights created by any antenuptial, postnuptial, or separation agreement and including the partition of property held as tenants by the entireties or otherwise and any accounting between them, and the order of any spousal support, alimony, *alimony pendent lite*, counsel fees or costs authorized by law.

(2) The future care, custody and visitation rights as to children or the marriage or purported marriage.

(3) Any support or assistance which shall be paid of the benefit of any children of the marriage or purposed marriage.

(4) Any property settlement involving any of the matters set forth in parpgraphs (1), (2) and (3) as submitted by the parties.

(5) Any other matters pertaining to the marriage and divorce or annulment authorized by law and which fairly and expeditiously may be determined and disposed of in such action.

Marital Property –

All property acquired by either the husband or the wife during the marriage. It also means any gain in value of the non-marital property from the date of the marriage until the date of final separation. Certain exceptions apply and are set forth in the divorce code 23 Pa.C.S.A. §3501.

No-fault Divorce –

A divorce filed under 23 Pa.C.S.A. §3301(c) or (d).

Non-marital Property –

Property owned before marriage or property acquired in trade for property owned before the marriage; property you and your spouse agree is not marital property; property acquired as a gift (except between spouses) or an

inheritance; property acquired between the final separation date and the date of divorce; property a spouse traded or sold for value or gave away in good faith before the date of final separation; certain veteran's benefits; property mortgaged in good faith and for value before the date of the final separation; and payment received from a claim which arose before the marriage or after the date of final separation.

Pro Se -

For one's own behalf or appearing for oneself.

Plaintiff –

The person filing the case.

Qualified Professionals –

Includes marriage counselors, psychologists, psychiatrists, social workers, ministers, priests, rabbis or other persons who, by virtue of their training and experience, are able to provide counseling.

Separate and Apart –

Complete cessation of any and all cohabitation, whether living in the same residence or not.

Spousal Support –

Care, maintenance and financial assistance.

Uncontested Divorce –

A divorce where the parties agree, which is filed under 23 Pa.C.S.A. §3301(c) or (d).

Venue -

A proceeding for divorce or annulment must be brought in the county (1) where the Defendant resides; (2) if the Defendant resides outside of this Commonwealth, where the Plaintiff resides; (3) of matrimonial domicile, if the Plaintiff has continuously resided in the county; or (4) prior to six months after the date of final separation and with agreement of the Defendant, where the Plaintiff resides, or if neither party continues to reside in the county of matrimonial domicile, where either party resides; or (5) after six months after the date of final separation, where either party resides.

III. FREQUENTLY ASKED QUESTIONS

- **What court costs/fees are involved to file a divorce?** $194.75 as of January 1, 2019 but this fee is subject to change. A schedule of all current family fees is available in the Prothonotary's Office. The fees must be paid at the beginning of the case. Additional fees may be required depending on the type of divorce that is being sought.

- **Can I get a "legal separation"?** In Pennsylvania, there is no statute for a legal separation.

- **Who may file for divorce?** In order for the Commonwealth of Pennsylvania to have jurisdiction over your divorce, either you or your spouse must have lived in Pennsylvania for at least six (6) months or have been stationed in Pennsylvania as a member of the military for at least six (6) months.

- **How long does it take to get a divorce?** There is no certain answer. Each case is different.

  If the spouses agree to divide their property or have no property and are in agreement with the divorce, the divorce can become final in approximately four (4) months. Refer to 23 Pa.C.S.A. §3301(c) and Pa.R.C.P. 1920.1 through 1920.76.

  If one spouse does not agree, the divorce can be prolonged in excess of two (2) years or more from the date of separation under §3301(d) of the Divorce Code. Refer to 23 Pa.C.S.A. §3301(d) and Pa.R.C.P. 1920.1 through 1920.76.

- **Can I get a divorce if I am married by common law?** See a lawyer.

- **I live in another county, can I get divorced in Lebanon County?** Yes, however, the parties must agree in writing or participate in the proceeding. Refer to Pa.R.C.P. No. 1920.2(a)(2). Otherwise, if the parties do not agree, the divorce action must be filed in the proper county. It is always proper to file the action in the county in which the Defendant resides.

- **Can I get divorced if I do not know my spouse's whereabouts?** See a lawyer.

- **What are the grounds for divorce?** Refer to 23 Pa.C.S.A. §3301.

- **What are the procedures and timelines?** Provided in the following section but for a "no-fault" divorce only. (See page 2)

- **What is the difference between spousal support, *alimony pendent lite* and alimony?** See below.

- **WHAT IS SPOUSAL SUPPORT?** 23 Pa.C.S.A. §4321.
  Spousal support originates from the Pennsylvania support law, which states that married persons are liable for the support of each other according to their respective abilities to provide support, as provided by law. Generally, the spouse with the higher income or earning capacity will be ordered to pay a periodic amount of spousal support to the spouse who earns less. The spouse who earns less often is referred to as a dependent spouse.

- **HOW DO I FILE FOR SPOUSAL SUPPORT?** Pa.R.C.P. 1910.4; 1910.27(a)
  Spousal support cases are filed at the Domestic Relations Section and follow the procedure for support cases.

- **HOW IS THE AMOUNT OF SPOUSAL SUPPORT DETERMINED?** Pa.R.C.P. 1910.16-1 through 1910.16-7; 23 Pa.C.S.A. §4322
  Spousal support is determined through a clear cut guideline calculation based on the parties' incomes set forth in the Pennsylvania support guidelines.

- **AND IF YOUR SPOUSE GETS WELFARE CASH ASSISTANCE . . . ?** Pa.C.S.A. §§4378; 4379; 4306(b.1)
  A spouse who applies and qualifies for cash benefits from the Pennsylvania Department of Public Welfare (DPW) is required to file a spousal support claim against his or her spouse as a condition of receiving the cash assistance from DPW. This DPW filing requirement is imposed regardless of the wishes, inclination, or conduct of the filing spouse.

- **WHEN DOES SPOUSAL SUPPORT STOP?** Pa.R.C.P. 1910.16-5(b)
  A spousal support award terminates upon the entry of a divorce decree, although a court may terminate it sooner due to the duration of the parties' marriage or modify an amount due to a change in circumstances.

- **IS THERE ANY WAY TO DEFEAT A SPOUSAL SUPPORT CLAIM?**
  No legal citation – case law defines this issue.
  A claim for spousal support may be defeated through what is known as the *entitlement defense*. The entitlement defense obligates the spouse who left the marital residence to prove that his or her leaving the marriage was justified. That person will have the burden of convincing a court the other spouse engaged in a course of conduct in line with one of the grounds for fault divorce.

- **AND HOW IS APL DIFFERENT?** 23 Pa.C.S.A. §3702

- **HOW IS THE AMOUNT OF APL DETERMINED?** Pa.R.C.P. 1910.16-7

Like spousal support, APL is determined through a clear cut guideline calculation based upon the parties' incomes, using Pennsylvania's support guidelines.

- **MAY I USE AN ENTITLEMENT DEFENSE TO COUNTER AN ALIMONY PENDENTE LITE CLAIM?**
  No, unlike spousal support, the entitlement defense is not applicable to APL proceedings.

- **WILL WELFARE MAKE MY SPOUSE FILE AN APL CLAIM?**
  No. DPW does not require APL filing.

- **DO I FILE FOR APL AT DOMESTIC RELATIONS?**
  The short answer is "Yes". An APL claim can only be filed concurrently with a divorce action or after a divorce action has been filed. After filing, APL complaints will first be scheduled with a conference officer. APL will be calculated per the child support guidelines based on the parties' incomes. If there is no agreement or a deviation from the child support guidelines is requested, an interim order will be entered after the conference, and the case will be scheduled to be heard by a Domestic Relations Hearing Master.

- **WHEN DOES APL STOP?**
  APL awards are modifiable by the court after a showing of change of circumstances. APL awards typically terminate upon resolution of all claims raised in a divorce action.

- **WHAT IS ALIMONY?** 23 Pa.C.S.A. §3701
  Alimony is a claim that originates from the Pennsylvania Divorce code whereby a dependent spouse can request a periodic support payment from his or her spouse so they might maintain themselves after the entry of a divorce decree. Alimony payments do not start until all claims raised in a divorce are resolved. Since alimony originates from the Divorce Code, an alimony claim needs to be filed in a divorce action at the Office of the Prothonotary. Alimony may not be filed at the Domestic Relations Section. Alimony is established by testimony and other evidence relating to statutory factors presented at a hearing before a Divorce Master.

  Alimony pendente lite (APL) is a claim that originates from the Pennsylvania Divorce code whereby a dependent spouse can request a periodic support payment from his or her spouse so they are able to maintain themselves during the pendency of a divorce action. Like spousal support, the spouse with the higher income or earning capacity will be ordered to pay an amount of APL to their dependent spouse. A court will not award both spousal support and APL during the same time.

IV. PROCEDURES – (A) SIMPLE NO FAULT DIVORCE UNDER §3301(C) OF THE DIVORCE CODE – IF BOTH PARTIES AGREE:

FILING

- A divorce case is started with the filing of a "Complaint". Refer to Pa. R.C.P. 1920.12. All filings require the original plus two copies of the Complaint. The original stays with the court and two copies are returned to you; one for you and one for the other spouse. An accompanying civil cover sheet is to be included with the Complaint. (See form 1.)
- Pay a filing fee to the Prothonotary's Office, located in the Courthouse. The Prothonotary shall file the original, assign a case number and return two (2) timed-stamped copies to you.
- The Prothonotary's Office is located in Room 104 of the Lebanon County Municipal Building, 400 S. Eighth Street, Lebanon, Pennsylvania 17042. The hours of operation are from 8:30 a.m. until 4:30 p.m. Monday through Friday, excluding legal holidays.

SERVICE

- Service of the Complaint must be made by either personal service (form 2A or 2b) or certified mail (form 3) in accordance with Pa. R.C.P. 1930.4.
- A copy of the Divorce Complaint must be served upon the other party within thirty (30) days. Refer to Pa. R.C.P. No. 1930.4(e). Otherwise, the Complaint must be reinstated and re-served in accordance with Pa. R.C.P. 1930.4(g).

FINALIZATION

- After ninety (90) days have passed from the date the Complaint was served upon the other spouse and both parties agree to the divorce, both parties must file an Affidavit of Consent (form 4a and b) and Waiver of Notice of Intention to Request Entry of Divorce Decree (form 5a and b) in accordance with Pa. R.C.P. 1920.42(b)(1). The Waiver of Notice and Affidavit of Consent, in accordance with Pa. R.C.P. 1920.42(b)(2), must be filed within thirty (30) days after that Affidavit was signed and dated. (Refer also to Pa. R.C.P. 1920.72(b)(c).)
- Upon the filing of both parties' Affidavits of Consent and Waivers of Notice of Intention to Request Entry of Divorce Decree with the Court, the divorce may be concluded by either party filing with the court, a Praecipe to Transmit the Record (form 6) and Praecipe of Service (form 7), four (4) copies of the proposed Divorce Decree (form 9). Refer to Pa. R.C.P. 1920.46. You must also provide the court with self-addressed and stamped envelopes for yourself and your spouse.

PROCEDURES – (B) SIMPLE NO FAULT DIVORCE UNDER §3301(D) OF THE DIVORCE CODE – TWO-YEAR SEPARATION:

FILING

- A divorce case is started with the filing of a "Complaint". Refer to Pa. R.C.P. 1920.12. All filings require the original plus two copies of the Complaint. The original stays with the court and two copies are returned to you; one for you and one for the other spouse. An accompanying civil cover sheet is to be included with the Complaint. (See form 1.)
- Pay a filing fee to the Prothonotary's Office located in the Courthouse. The Prothonotary shall file the original, assign a case number and return two (2) time-stamped copies to you.
- The Prothonotary's Office is located in Room 104 of the Lebanon County Municipal Building, 400 S. Eighth Street, Lebanon, Pennsylvania 17042. The hours of operation are from 8:30 a.m. until 4:30 p.m. Monday through Friday, excluding legal holidays.

SERVICE

- Service of the Complaint must be made by either personal service (form 2A or 2b) or certified mail (form 3) in accordance with Pa. R.C.P. 1930.4.
- A copy of the Divorce Complaint must be served upon the other party within thirty (30) days. Refer to Pa. R.C.P. No. 1930.4(e). Otherwise, the Complaint must be reinstated and re-served in accordance with Pa. R.C.P. 1930.4(g).

FINALIZATION

- Pursuant to Pa. R. CP. 1920.42(a)(2), and after two (2) years following separation of the parties have passed, either party may sign an Affidavit under §3301(d) of the Divorce Code (form 10), file an original and two copies with the Prothonotary's Office, and serve a copy upon the other spouse. Service of the Affidavit may be made by first class mail. After service has been made, the original Certificate of Service (form 10a) must be filed in the Prothonotary's Office.
- Pursuant to Pa. R.C.P. 1920.42(d)(1), and twenty (20) days after the Affidavit under §3301(d) of the Divorce Code referred to immediately above has been filed with the Prothonotary's Office and served upon the other spouse, a Notice of Intention to Request Entry of Divorce Decree (form 11) and copy of *proposed* Praecipe to Transmit the Record (form 6) is filed with the Prothonotary's Office and served upon the other spouse and any attorney of record along with a Certificate of Service (form 10a) listing all persons you have so served. Service of this Notice may be made by first class mail.
- Pursuant to Pa. R.C.P. 1920.46 and 1920.73, and upon twenty (20) days after the Notice referred to immediately above has been filed and served upon the other spouse, the divorce may be concluded by either party filing with the court, the

original Praecipe to Transmit the Record (form 6) and Praecipe of Service (form 7), four (4) copies of the proposed Divorce Decree (form 9). Also, if the Defendant has not filed any papers related to the action, the Plaintiff must file an Affidavit of Nonmilitary Service (form 8). (See Pa. R.C.P. 1920.46.) You must also provide the court with self-addressed and stamped envelopes for yourself and your spouse.

V. FORMS

#	NAME OF FORM
1.	COMPLAINT UNDER §3301(C) OR (D) OF THE DIVORCE CODE
2(a).	SERVICE DOCUMENT BY PERSONAL SERVICE
2(b).	SERVICE DOCUMENT BY ACCEPTING SERVICE
3.	SERVICE DOCUMENT BY CERTIFIED MAIL
4(a).	AFFIDAVIT OF CONSENT FOR PLAINTIFF'S SIGNATURE
4(b).	AFFIDAVIT OF CONSENT FOR DEFENDANT'S SIGNATURE
5(a).	WAIVER OF NOTICE OF INTENTION TO REQUEST ENTRY OF DIVORCE DECREE UNDER §3301(C) OF THE DIVORCE CODE FOR PLAINTIFF'S SIGNATURE
5(b).	WAIVER OF NOTICE OF INTENTION TO REQUEST ENTRY OF DIVORCE DECREE UNDER §3301(C) OF THE DIVORCE CODE FOR DEFENDANT'S SIGNATURE
6.	PRAECIPE TO TRANSMIT THE RECORD
7.	SERVICE FORM FOR PRAECIPE TO TRANSMIT THE RECORD
8.	AFFIDAVIT OF NONMILITARY SERVICE
9.	DIVORCE DECREE
10.	AFFIDAVIT UNDER §3301(D) OF THE DIVORCE CODE
10(a).	CERTIFICATE OF SERVICE OF AFFIDAVIT UNDER §3301(D) OF THE DIVORCE CODE
11.	NOTICE OF INTENTION TO REQUEST ENTRY OF DIVORCE DECREE UNDER §3301(D) OF THE DIVORCE CODE
12.	COMPLAINT WITH COUNT I – ALIMONY PENDENTE LITE
13.	MOTION FOR APPOINTMENT OF MASTER

NOTE: The approved forms for Lebanon County divorce proceedings can be found on the Lebanon County website as indicated above. Statewide divorce forms are also available on the Unified Judicial System website at www.pacourts.us.

VI. RULES

- Rules pertaining to divorce can be found in the Pennsylvania Rules of Court beginning at Rule No. 1920.1 through 1920.75.

- Rules pertaining to divorce can be found in the Lebanon County Local Rules specifically Rules No. 252.2(a) and 252.2(b).

- A copy of the Pennsylvania and local Lebanon County Rules of Court can be found at the Lebanon County Law Library. The Lebanon County Rules of Court may also be accessed on the Lebanon County website which is at www.lebcounty.org. To access the Local Rules, click on "Departments", "Court System", and then "Forms and Rules for Practitioners".