



No-Asset Divorce

“Just The Basics”

Updated November 2020

About Philadelphia VIP

Philadelphia VIP leverages the powerful resources of the community to provide quality volunteer legal services and ensure access to justice for low-income Philadelphians.

Philadelphia VIP is the hub of pro bono legal services in Philadelphia. For thirty-nine years, we have provided legal services for low-income residents and families facing civil legal problems that threaten their basic human needs.

VIP, through its volunteers and staff, serves more than 3,500 individuals and families yearly who could not afford attorneys and whose cases could or would not be handled by other public interest organizations. We are the agency of last resort for the majority of our clients.

Our clients are among the poorest in the city and region. To be eligible for our services, a client's income must be at or below 200% of the federal poverty guidelines. Thus, our *most financially secure* individual clients earn approximately \$25,760 a year, while a family of 4 lives on \$53,000 annually.

VIP handles any civil matter that is non-fee generating and for which there is no right to counsel. Our caseload has four priority areas:

- Maintaining family income (child support, employment/wage claims, tax issues, disability)
- Preventing homelessness (mortgage foreclosure, landlord/tenant appeals, public housing evictions, probate, tangled title, consumer debt, litigation defense)
- Supporting family stability (child custody, adoption/guardianship, special education and school discipline, name change); and
- Promoting community economic development (small businesses and nonprofits).

Most of VIP's cases are referred to us from our partner organizations, Community Legal Services and Philadelphia Legal Assistance; an additional number come from specialized legal services organizations throughout Philadelphia.

In stark terms, VIP is the agency of last resort for many low-income individuals and families who face critical legal problems that affect their basic needs.

Frequently Asked Volunteer Questions

Q: What happens after I accept a VIP case?

A: After accepting a VIP case you will be sent a VIP referral email, all information included in the VIP file about the case, and a link to the VIP representation agreement. At this same time, your client will receive a letter with your name, address and phone number, and the request that they contact you within 7 days. You will receive a copy of this letter. At the first meeting you and the client should sign the VIP representation agreement. *The scope of representation should be filled in carefully, so that you and the client are clear about any limitations on your services.* (Contact VIP staff if you have any questions about the extent of your representation.) Keep the original in your file, give a copy to your client and please send a copy to VIP.

Q: What if my client does not contact me?

A: Your client may fail to follow through for several reasons. Your client may not be able to read or understand the letter, may not have received the letter or may have other more pressing problems. If your client does not call you within a few days of your receipt of the VIP letter, **please try to call the client.** If after 10 days your client has not contacted you, and you cannot reach them by telephone, write your client a letter stating that if you do not hear from them within 10 days, VIP will close their file. After 10 days, if your client still has not contacted you, call or write VIP, describing your attempts to contact the client. Under most circumstances, VIP will close the case, and another client can be referred to you.

Q: What if my client doesn't have a telephone?

A: Contacting a client who doesn't have a telephone can be challenging. We recommend that you send your client a letter asking the client to call you at a specific time on a specific date and time. After your client reaches you, ask them for the telephone number of a neighbor, relative, and/or employer where you can leave a message if necessary. Another way that you can keep in touch with a client who doesn't have a telephone is to schedule weekly telephone "appointments." (For example, the client would call you every Friday at 1:00 p.m.) By keeping appointments, you will have the opportunity to communicate information to the client.

Q: What if my client does not keep our appointments?

A: Terminating representation of a client due to his/her failure to cooperate is left up to the discretion of the volunteer. Some clients are simply uncooperative, while other clients have personal problems or mental impairments that interfere with their ability to keep appointments. Address this problem with your client and make it clear that without his/her cooperation you will be unable to help him/her. If, after the discussion, the situation continues, you should contact VIP's Managing Attorney and discuss closing the case.

Q: What if my client doesn't speak English?

A: If you are not fluent in the primary language of your client, VIP can arrange a volunteer to translate. Our pool of volunteers is limited, however, so we request that you first draw on your firm's resources. If your firm is unable to arrange an interpreter, please contact VIP and we will assist you. If the client speaks Spanish, VIP has Spanish-speaking staff members who have already translated many forms into Spanish. It is a good idea to ask your client for the telephone number of a friend, neighbor or relative of the client who can communicate with both of you. If you plan to relay confidential information through the client's interpreter, you should discuss this with your client.

Additional steps must be taken with the Court if your client does not speak English. If a hearing has been scheduled, you should contact the Court to inform the Court that your client will need an interpreter. In addition to the Court's interpreter who interprets the proceedings, you may want to have an interpreter with you at counsel table, so that you can communicate confidentially with your client during the proceedings. This interpreter is not provided by the Court. If you are submitting any documents that are not in English, the documents must be translated and the translation must be certified. VIP can provide information on how to certify the translation.

Q: What if I am fluent in a foreign language and would like to volunteer to interpret for other volunteers?

A: VIP is always in need of volunteers with proficiency in foreign languages. We generally need interpreters who speak Mandarin, Spanish, Russian, French or Vietnamese. Whatever foreign languages you speak, however, please

contact VIP because we may have a client who needs your help.

Q: What if there are costs associated with my representation?

A: VIP will cover certain costs only if approval is obtained from VIP before the cost is incurred. The costs encountered most often are:

- Photocopying medical records - You should first write the doctor and/or hospital and request that the fee be waived. If the doctor refuses, you should ask the client if he/she has the money to pay for the expense. If they do not, VIP may pay to obtain the records if VIP approves the cost before it is incurred.
- Filing fees - The client should qualify for In Forma Pauperis (IFP) status. An IFP petition or Certification of Free Legal Services must be filed with the Court. If the client's IFP petition is denied, the client must pay the filing fees unless VIP determines that the denial was unjustified. VIP has copies of IFP petitions and can explain to you the procedure for filing an IFP.
- VIP determines whether or not to cover litigation expenses on a case-by-case basis. If you would like VIP to cover a cost that is not listed above, please contact VIP's Managing Attorney or Executive Director before incurring any expense.

Q: What if I determine that my case lacks merit?

A: You should not represent a client if you believe the case is not meritorious. Even if you do not represent your client, you provide a valuable service by explaining the situation to your client, advising your client of available options, and suggesting ways to avoid the problem in the future. If you are not sure of the merits of the case, call VIP and discuss the matter with the Managing Attorney or the Executive Director.

Q: What do I do when my case is finished?

A: Please send a closing letter ending the representation and describing the outcome to your client. You should provide VIP with a copy of this closing letter along with an estimate of the number of hours you spent on the case. Please let us know if you're available for another case.

The VIP staff can be reached for questions and assistance at (215) 523-9550.
Todd W. Nothstein is the VIP staff attorney responsible for supporting our family law volunteers. You may contact him directly at tnothstein@phillyvip.org, or 215-523-9554.

Thank You for Volunteering!

Table of Contents

An Introduction to VIP Divorce Cases	7
How to Use This Manual	7
Divorce Checklist	8
I. Preliminary Information on Divorce	9
A. Eligibility for Divorce And Initial Considerations	9
B. §3301(d) Divorce Steps	10
C. §3301(c) Divorce Steps	12
II. Commencing a Divorce Action	14
A. Notice to Defend	15
B. Counselling Notice	16
C. Complaint	17
D. §3301(d) Affidavit	22
E. Blank §3301(d) Counter-affidavit	23
F. Domestic Relations Information Sheet	24
G. Certification of Compliance with Public Access Policy	24
H. Praecipe to Proceed <i>In Forma Pauperis</i>	25
III. The Vicissitudes of Service of Process	26
A. The Basics of Service	26
B. When 30 Days is Not Enough	28
C. When the Defendant is Hard to Find	28
D. Serving Incarcerated Parties	29
E. Seeking Alternative Service	30
IV. Responding to a Divorce Complaint	32
A. Counter Affidavits	32
B. Answer and Counterclaim	32

V. Alimony Pendente Lite (APL)	34
A. Relevance to No-Asset Cases	34
B. What is APL?	34
C. Petition for APL	34
D. Expense Statement	35
E. Hearing	35
VI. Approaching the Finish Line	36
A. Obtaining a Divorce Decree Under §3301(c)	36
B. Obtaining a Divorce Decree Under §3301(d)	40
VII. Miscellaneous Final Thoughts	42
A. Retaking Prior Name	42
B. Public Access Policy	42

An Introduction to VIP Divorce Cases

“Philadelphia VIP’s divorce representation program was effective, spectacularly so. The program made a difference in its participants’ lives. There is little more to say.”

– “Trapped in Marriage,” Study from the Harvard Law School Access to Justice Lab

Divorce is consistently an area of high need at Philadelphia VIP. We depend on volunteers like you to recognize the importance of assisting low income clients with divorce. A recent study by Harvard University’s Access to Justice Lab found that represented litigants were five times more likely than *pro se* litigants to obtain a divorce within three years. Divorce presents numerous obstacles to the *pro se* litigant that most attorneys can manage with ease. The process is replete with waiting periods, and even the simplest divorces require multiple pleadings.

Attorneys, however, are accustomed to managing such procedures. You can help balance the scales for VIP clients as they navigate divorce. To support you in this task, this introduction outlines a no-asset divorce in a step-by-step fashion. Greater detail about each step is offered later in the manual. The purpose of this section, however, is to provide a roadmap of the overall process.

How to Use This Manual

This manual, is intended to provide the tools necessary to represent a divorce client in a basic divorce where there are no assets to be distributed among the parties. At VIP, these are commonly called “no-asset divorces.” In our efforts to create a user-friendly manual, we begin with a step-by-step description of the process of a no asset divorce in Philadelphia County. We then proceed through each step of the process providing images of relevant forms in the order that an attorney will most likely need them. Along the way, you will find useful links, checklists and timelines to guide you in assisting a VIP divorce client. The general checklist on the following page, is intended as an organizational tool. *Imagine that you have just accepted a VIP no-asset divorce, and your client is the **plaintiff*** (which is the case in the vast majority of our cases).

Divorce Checklist

Complaint in Divorce

Separation Date: _____

File Date: _____

Service Date: _____

Note: service date must be within 30 days of filing

Affidavit of Service (may need cert. mail receipt)

Execution Date: _____

File Date: _____

AND

Affidavit of Signature

Execution Date: _____

File Date: _____

Acceptance of Service

Execution Date: _____

File Date: _____

AND

Affidavit of Signature

Execution Date: _____

File Date: _____

Note: If personal service, no need for Affidavit of Signature

3301(c)(2) Consent Divorce with Personal Injury Conviction

Affidavit of Personal Injury Conviction

File Date: _____

Service Date: _____

After 90 days from date of service:

3301(c)(1)(2) Affidavit of Consent (no waiver)

S1's Execution Date: _____

S1's File Date: _____

S2's Execution Date: _____

S2's File Date: _____

OR

Affidavit of Consent (with waiver)

S1's Execution Date: _____

S1's File Date: _____

S2's Execution Date: _____

S2's File Date: _____

After 1 year of separation:

3301(d) Affidavit 1-yr Separation

Execution Date: _____

Service Date: _____

(with Counter-Affidavit)

File Date: _____

OR

Note: 3301(d) can be filed simultaneously with Complaint if 1 year already elapsed

After 20 days from filing 3301(c)(1)(2) OR 3301(d) without waiver

Note: If you have a waiver, no notice of intent is needed

Notice of Intent to Request Divorce Decree

Mailing Date: _____

Notice of Intention to File Praeipite to Transmit for Approval of Divorce Grounds

Mailing Date: _____

After 20 days from filing of / mailing of Notices of Intent

Praeipite to Transmit Record with envelopes (for self and opposing counsel/unrepresented party)

Original Property Settlement Agreement (if applicable)

Execution Date: _____

Divorce Decree

Date Issued: _____

I. Preliminary Information on Divorce

Divorce in Pennsylvania is governed by 23 Pa. C.S. § 3301 *et seq.* Related rules of civil procedure are found at Pa. R.C.P. 1920.1 *et seq.* This manual only addresses no-fault divorces, which constitute the vast majority of contemporary divorces. A no-fault divorce can be obtained on the basis of 23 Pa. C.S. § 3301 (c)(1), and (c)(2), or on the basis of 23 Pa. C.S. §3301 (d). A §3301(c)(1) divorce requires mutual consent of the parties. A 3301(c)(2) divorce implies consent where one party is convicted of a personal injury crime against the other party. In contrast, a §3301 (d) does not require consent. Rather, the marriage must be irretrievably broken, and the parties must have lived separate and apart for one year if their date of separation is after December 5, 2016. If the date of separation was before December 5, 2016, the parties must have been separated for two years. **VIP recommends that you plead both §3301(c) and §3301(d) in your divorce complaint.** Below are some important points to think about at the outset of your divorce case.

A. Eligibility for Divorce And Initial Considerations

1. Residency Requirements 23 Pa. C.S. §3104(a) ; Pa.R.C.P. 1920 (a)(4):

- At least one party must have been a bonafide resident in Pennsylvania for at least **six months**. “Bonafide” means genuine, or in good faith.
- Venue is proper in Philadelphia if either party lives in Philadelphia.
- Has a complaint already been filed in another jurisdiction? If so, it must be withdrawn or dismissed before proceeding in Philadelphia.

2. No-Fault Grounds for Divorce 23 Pa.C.S. §3301(c); 23 Pa.C.S. §3301(d)):

- §3301(c)(1) of the Divorce Code -- Consent furnishes grounds for divorce. Parties may file affidavits of consent 90 days after service of a divorce complaint.
- §3301(c)(2) of the Divorce Code – Consent also furnishes grounds for divorce, but *consent is implied where one party is convicted of an enumerated personal injury crime against the other party*. Parties still must wait until 90 days after the service of the complaint to file their affidavit of consent.
- §3301(d) of the Divorce Code – Time of separation furnishes grounds for divorce. One year of separation is required if the parties separated after December 5, 2016, and

two years is required if the date of separation was before that date. One party must also aver that the marriage is irretrievably broken.

- a. Separation can mean living separate and apart under the same roof.
- b. Separation is easier to prove when there are separate residences.
- c. The date of separation can never be later than the date on which a complaint was filed.

N.B.: VIP does not handle fault-based divorces. Information on fault-based grounds for divorce can be found at 23 Pa.C.S. §3301(a).

3. Suggested Topics for an Initial Conversation with Your Client:

- Verify client's goals and confirm that this is a no-asset divorce. Ask about:
 - a. Income (pay stubs/tax returns from other party if available).
 - b. Assets (real estate, auto, bank account, pension/ retirement account).
 - c. Debts (mortgage, credit card, car loan, student loan, personal loan).
 - d. Any previous divorce or support related filings by either party.

B. § 3301(d) Divorce Steps

1. Complaint:

Prepare, file and serve the divorce complaint and all accompanying documents. Generally, **Philadelphia Family Court does not offer e-filing**, and you file in person at the clerk's office on the 11th floor of 1501 Arch St. As of this writing, however, restrictions are in place due to COVID-19. All non-emergency filings can be filed by mail or email:

- Mail – non-emergency filings may be made by mail to the Office of the Clerk of Family Court, 11th Floor, 1501 Arch Street, Philadelphia, PA 19102.
- Email– non-emergency filings may be emailed to the following email address: DRCLerkRoutine@courts.phila.gov. The court will return a time stamped copy of your filing either by mail or by email.
- Anything filed for a VIP case should be accompanied by a [Praecipe to Proceed In Forma Pauperis](#) to avoid filing fees for the client.
- If you file by mail, submit a self-addressed, stamped envelope (SASE).

If filing in person, you would need an original that is unredacted, one redacted copy (if redacting is necessary) one to be served on the opposing party, and one for yourself. You would want time-stamped copies to serve on the opposing party. VIP can provide you with sample forms of all kinds. Consult Pa.R.C.P. 1920.4; 1930.4, and Phila. D.R.R 1920.4(c) for guidance on service. You may serve an unrepresented defendant by including an Acceptance of Service form for them to sign and filing it along with an Affidavit of Signature where your client avers that the signature belongs to the opposing spouse. See Phila. D.R.R 1920.4(c). An

example of a complaint can be found [here](#).

2. The §3301(d) Affidavit:

If the parties have been separated for one year, or two-years if they separated before December 5, 2016, your client should sign a §3301(d) Affidavit. The best practice is to file and serve it with the complaint because it must be served by original process. *If the necessary period of separation has not yet passed, the client must wait until it has passed to file and serve the §3301(d) Affidavit.* A blank §3301(d) counter-affidavit form must be served with the §3301(d) Affidavit. The Defendant may or may not sign and file the form. Additionally, an *affidavit of non-military service* must be filed and served at the time you file the §3301(d) affidavit (best practice is to include both in a package along with a complaint). This form can be found on the VIP website [here](#).

3. Affidavit of Service:

File Affidavit of Service within 30 days (or 90 days for service outside the Commonwealth) of the filing of the Complaint. If the defendant signs an acceptance of service, you must file it along with an Affidavit of Signature where your client attests that the signature is that of the opposing spouse. See Pa. R.C.P 1920.4; Phila. D.R.R 1920.4(c). An Affidavit of Signature is also required when service is completed by registered mail. For proof of service required in cases of personal service consult Pa.R.C.P. 1930.4. An affidavit of service form can be found [here](#).

4. Defendant's Response:

Defendant may file a §3301(d) counteraffidavit, and an answer, and counterclaim raising economic claims or disputing the date of separation. It is possible that a hearing may be required to resolve the date of separation, but it is extremely rare in our no-asset cases. VIP makes every effort to assure that a case labelled “no-asset” is not likely to become an equitable distribution case. Generally speaking, in no-asset cases the clients have reported that *neither* side owns anything in which the other side might be interested. Allow the defendant 20 days to respond to the complaint.

5. Waiver of Notice of Intent:

20 days after service of the §3301(d) Affidavit, you can ask the opposing party to sign a waiver of the required notice of intent to file a “Praeceptum to Transmit the Record for Entry of a Divorce Decree.” Both parties must sign one of these waivers and you file them both. A notice of intent waiver can be found [here](#).

6. Notice of Intent:

If the parties did not execute waivers of the notice of intent, this notice of intent must be filed and served 20 days before a “Praeceptum to Transmit the Record for Entry of a Decree

of Divorce” may be filed. If waivers were signed, you can file the praecipe along with the waivers. Note that a different form of the notice of intent is required depending on whether the opposing party is represented or unrepresented. See VIP’s website, or ask VIP staff for the appropriate form.

7. Praecipe For Decree

File the “Praecipe to Transmit Record for A Decree of Divorce.” Include a blank decree form available on the VIP website and the Court website. *The Court will typically issue a decree in about a month, and your case will be ready to close.* A blank decree can be found [here](#).

C. § 3301(c) Divorce Steps

1. Complaint

Prepare, file and serve the divorce complaint and all accompanying documents with Philadelphia Family Court as described above. Consult Pa. R.C.P. 1920.4; 1930.4, and Phila. D.R.R 1920.4(c) for guidance on service. You may serve an unrepresented defendant by including an Acceptance of Service form for them to sign and filing it along with an Affidavit of Signature where your client avers that the signature belongs to the opposing spouse. See Phila. D.R.R 1920.4(c). An example of a complaint can be found [here](#).

2. §3301(c)(2) Affidavit

If the opposing party has been *convicted* of a personal injury crime against your client, and you want to plead implied consent under 23 Pa.C.S. 3301(c)(2), file and serve a §3301(c)(2) affidavit averring that the opposing party has been convicted of such a crime. Qualifying crimes are listed on the affidavit form, which can be found [here](#) on VIP’s website.

3. Affidavit of Service:

File Affidavit of Service within 30 days (or 90 days for service outside the Commonwealth) of the filing of the Complaint. If the defendant signs an acceptance of service, you must file it along with an Affidavit of Signature where your client attests that the signature is that of the opposing spouse. See Pa. R.C.P 1920.4; Phila. D.R.R 1920.4(c). An Affidavit of Signature is also required when service is completed by registered mail. For proof of service required in cases of personal service consult Pa. R.C.P. 1930.4. If you can’t serve within 30 days, you need to file a praecipe to reinstate the complaint. An affidavit of service form can be found [here](#).

4. Defendant’s Response:

Defendant may file a §3301(d) counteraffidavit, and an answer, and/or counterclaim raising economic claims or disputing the date of separation. It is possible that a hearing

may be required to resolve the date of separation, but it is extremely rare in our no-asset cases. VIP makes every effort to assure that a case labelled “no-asset” is not likely to become an equitable distribution case. Generally speaking, in no-asset cases the clients have reported that *neither* side owns anything in which the other side might be interested. Allow the defendant 20 days to respond to the complaint.

5. Affidavits of Consent:

90 days after service has been made both parties can sign affidavits of consent (3301(c) affidavits). You may also send the defendant a waiver form asking them to waive the requirement that you provide a Notice of Intent to file a Praecipe to Transmit the Record for Entry of a Divorce Decree. Both parties must sign such a waiver. Follow these links to find an example of an affidavit of consent from [Plaintiff](#) and [Defendant](#) respectively. A notice of intent waiver can be found [here](#).

6. Notice of Intent:

If the parties did not execute waivers of the notice of intent, this notice of intent must be filed and served 20 days before a Praecipe to Transmit may be filed. If waivers were signed, you can file the praecipe along with the waivers. Note that a different form of the notice of intent is required depending on whether the opposing party is represented or unrepresented. See VIP’s website, or ask VIP staff for the appropriate form.

7. Praecipe For Decree

“File the Praecipe to Transmit Record for A Decree of Divorce.” Include a blank decree form available on the VIP website and the Court website. *The Court will typically issue a decree in about a month and your case will be ready to close.* A Praecipe to enter a decree can be found [here](#). A blank decree can be found [here](#).

N.B.: Claims for child support, spousal support and alimony pendente lite (APL) can no longer be included in a complaint for divorce. If your client wants those forms of economic relief, you will need to file a separate complaint or petition. See Pa. R.C.P. 1920.31(a)(2).

N.B.: If you are filing for divorce, and your client needs some financial support while it is pending, it makes sense to file a petition for APL, not spousal support. There are no defenses to APL but there are defenses to spousal support. Spousal support is best for clients who want to get support but don’t want to file the divorce yet. This may occur either because it doesn’t benefit them to get divorced, or because there is a reason for them not to be the filing party.

II. Commencing a Divorce Action

It is useful to think of the beginning of a divorce as submitting a package of documents that accompany a complaint in divorce. As described in the section above, these filings are normally submitted in person to Office of the Clerk of the Family Court on the 11th floor of the Family Court Building at 1501 Arch Street. *Currently, COVID-19 restrictions require that filings be submitted by mail and email as detailed in the previous section.* If you are filing by mail, or going in person, you should provide *at least three* copies to have time-stamped. One is for the court, one is for your records, and one is for you to serve on the opposing party. If filing by mail, provide an SASE for the court to return time-stamped documents to you. If there is any confidential information in the complaint such as a minor's name and address, you will need to prepare an additional copy for the court with that information redacted. See the end of this manual for information on the Public Access Policy of the Pennsylvania Court.

Here is a checklist for what should be filed along with a complaint for divorce:

- ☐ Notice to Defend
- ☐ Counseling Notice
- ☐ Complaint
- ☐ Original Client Verification (signed and dated--last page of complaint).
- ☐ Domestic Relations Information Sheet (you only need one copy of this, it is for the court only. **Do not serve on the opposing party**).
- ☐ If the parties have been separated for the requisite period at the time of filing, your client should sign and file a §3301 (d) Affidavit with the complaint. *If the necessary period of separation has not yet passed, the client must wait until it has passed to file and serve the §3301(d) Affidavit*
- ☐ If you are including the §3301(d) affidavit, it is also a good time to include an affidavit of non-military service.
- ☐ A blank §3301(d) counter-affidavit form must be served with the §3301(d) Affidavit. The Defendant may or may not sign and file the form.
- ☐ A Certification of Compliance with the Public Access Policy
- ☐ Praeceptum to Proceed In Forma Pauperis (IFP)

A. Notice to Defend

Pennsylvania Rule of Civil Procedure 1920.12(c) requires that every complaint be accompanied by a notice to Defend. This form, printed in both English and Spanish, warns the Defendant that they may need an attorney and directs them to resources for finding an attorney. The picture below shows you what the Notice should look like, and the complete form is available [here](#).

Sample Notice to Defend

NOTICE TO DEFEND AND CLAIM RIGHTS

You have been sued in court for

- | | |
|----------------------------------|------------------------------------------------|
| <input type="checkbox"/> Divorce | <input type="checkbox"/> Annulment of Marriage |
| <input type="checkbox"/> Support | <input type="checkbox"/> Division of Property |
| <input type="checkbox"/> Alimony | <input type="checkbox"/> Custody & Visitation |
| <input type="checkbox"/> Costs | <input type="checkbox"/> Temporary Alimony |
| | <input type="checkbox"/> Attorney Fees |

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take prompt action. You are warned that if you fail to do so, the case may proceed without you and a decree of divorce or annulment may be entered against you by the court. A judgment may also be entered against you for any other claim or relief requested in these papers by the plaintiff. You may lose money or property or other rights important to you, including custody of your children.

When the ground for the divorce is indignities or irretrievable breakdown of the marriage, you may request marriage counseling. A list of marriage counselors is available in the Office of the Clerk of Family Court at 1501 Arch Street, Philadelphia, PA 19102.

IF YOU DO NOT FILE A CLAIM FOR ALIMONY, DIVISION OF PROPERTY, LAWYER'S FEES OR EXPENSES BEFORE A DIVORCE OR ANNULMENT IS GRANTED, YOU MAY LOSE THE RIGHT TO CLAIM ANY OF THEM.

YOU SHOULD TAKE THIS PAPER TO A LAWYER AT ONCE.

IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, 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.

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL AND INFORMATION SERVICE
1101 Market St., 11th Floor
Philadelphia, Pennsylvania 19107
Telephone: 215/238-6333

ADVERTENCIA SOBRE COMO DEFENDERSE Y RECLAMAR DERECHOS

Usted ha sido demandado en corte para

- | | |
|-----------------------------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> Divorcio | <input type="checkbox"/> Anulación de Matrimonio |
| <input type="checkbox"/> Pensión Alimenticia
(Mantenimiento) | <input type="checkbox"/> División de Propiedad |
| <input type="checkbox"/> Pensión Alimenticia | <input type="checkbox"/> Custodia y Visitación |
| <input type="checkbox"/> Costos | <input type="checkbox"/> Pensión Alimenticia
Temporal |
| | <input type="checkbox"/> Costos de Abogado |

Usted ha sido demandado en corte. Si usted desea defender el reclamo puesto en contra suya en las siguientes paginas, tiene que tomar accion inmediatamente. Se le advierte que si falla en hacerlo, el caso puede ser procesado sin su de usted por la corte. Un juicio tambien puede ser registrado en su contra de usted por la corte. Un juicio tambien puede ser registrado en su contra por cualquier otro reclamo o petición requerida en estos papeles por el querellante. Usted puede perder dinero, propiedad u otros derechos importantes para usted, incluyendo custodia para sus hijos.

Cuando la causa del divorcio es maltrato o trastorno irreparable en el matrimonio, usted debe solicitar consejeria matrimonial. Una lista de consejeros matrimoniales esta disponible en las oficinas del protonotario, Edificio de la Corte Familiar 1501 Calle Arch, Filadelfia, PA 19102 (1501 Arch Street, Philadelphia, PA 19102)

SI USTED NO REGISTRA UN RECLAMO PARA LA PENCION ALIMENTICIA, LA REPARTICION DE PROPIEDADES, EL HONORARIO DEL ABOGADO O GASTOS DE QUE EL UN DIVORCIO O ANULACION SEA OTORGADO, USTED PUEDE PERDER EL DERECHO DE RECLAMAR CUALQUIERA DE ESTOS.

USTED DEBE LLEVAR ESTE PAPEL A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, ESTA OFICINA PUEDE PROPORCIONARLE INFORMACION ACERCA DE LA CONTRATACION DE UN ABOGADO.

SI USTED NO CUENTA CON LOS RECURSOS NECESARIOS PARA CONTRATAR UN ABOGADO, ESTA OFICINA PODRA BRINDARLE INFORMACION ACERCA DE OTRAS AGENCIAS QUE PUDIERAN OFRECER SERVICIOS LEGALES PARA PERSONAS ELEGIBLES A UN PRECIO REDUCIDO O EN FORMA GRATUITA.

ASOCIACIÓN DE LICENCIADOS FILADELFA
SERVICIO DE REFERENCIA E INFORMACIÓN LEGAL
1101 Market St., 11th Floor
Filadelfia, Pennsylvania 19107
Tel fono: 215/238-6333

Former Domestic Relations Proceedings: [] Yes [] No
If child support is claimed, is such child
or children receiving Public Assistance: [] Yes [] No.

Domestic Relations No.

B. Counselling Notice

The Pennsylvania divorce code provides that the court will require up to three counselling sessions when one of the parties to a divorce requests it. 23 Pa.C.S. §3302. The law further requires that parties be notified of the availability of counselling, and that the court, upon request provide a list of qualified counselling professionals. 23 Pa. C.S. §3302(d); Pa.R.C.P. 1920.45(a). This screenshot shows you what the notice looks like, and the complete form is available [here](#).

Sample Counseling Notice

THE DIVORCE CODE OF PENNSYLVANIA REQUIRES THAT YOU BE NOTIFIED OF THE AVAILABILITY OF COUNSELING WHERE A DIVORCE IS SOUGHT UNDER ANY OF THE FOLLOWING GROUNDS:

Section 3301(a)(6)	-	Indignities
Section 3301(c)	-	Irretrievable breakdown - mutual consent
Section 3301(d)	-	Irretrievable breakdown - two/three year separation where the Court determines that there is a reasonable prospect of reconciliation

A list of qualified professionals is available for inspection in the office of the Clerk of the Family Court, Family Court Building, 1501 Arch Street, 11th Floor, Philadelphia, PA, 19102.

Counsel for (PLAINTIFF) (DEFENDANT)

C. Complaint

As with most civil actions, divorce is commenced with the filing of a complaint. The complaint must set forth *inter alia* the grounds for divorce, whether one of the parties has lived in Pennsylvania for at least six months, and a prayer for relief. Because it is best to demonstrate what a complaint should contain by example, we have included a sample complaint here in its entirety. This template is also available [here](#). **You would, of course delete anything that doesn't fit your case, such as counts in equitable distribution and renumber the counts and paragraphs.**

1. Some key points:

- A complaint must include a verification that is signed and dated by your client.
- We recommend that you plead *both* §3301(c) and §3301(d) as grounds for divorce in your complaint. This gives you flexibility if unforeseen circumstances arise (e.g. an opposing party said they would consent, but changes their mind).
- Although this is a manual on no-asset divorces, anytime you have a count for equitable distribution, you should include a request that any property settlement agreement be “incorporated but not merged” into the divorce decree the court will ultimately issue. This preserves the client’s right to contract remedies to enforce the agreement.

Sample Complaint

[NAME OF ATTORNEY], ESQUIRE

Attorney ID No. [ID Number]

[Attorney Address]

[Attorney Phone Number]

Attorney for Plaintiff

NAME OF PLAINTIFF	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
	:	FAMILY DIVISION
vs.	:	_____TERM, 20
NAME OF DEFENDANT	:	NO.

COMPLAINT IN DIVORCE

COUNT I

Dissolution of Marriage

1. Plaintiff, [plaintiff name], is an adult individual who currently resides at [address of plaintiff].
2. Defendant, [defendant name], is an adult individual who currently resides at [address of defendant].
3. Plaintiff and defendant are sui juris, and both have been residents of the Commonwealth of Pennsylvania for a period of more than six (6) months immediately preceding the filing of this Complaint.
4. The parties were married on [date of marriage], in [place of marriage].
5. Neither plaintiff nor defendant is in the military or naval service of the United States or its allies within the provisions of the Servicemembers Civil Relief Act of 2003 and its amendments.
6. There have been no prior actions of divorce or for annulment between the parties.
7. The parties [have/have not] entered into a written agreement as to equitable distribution of marital property, alimony, or counsel fees and costs.
8. Plaintiff acknowledges that [he/she/they] has been advised of the availability of counseling between the parties and that [he/she/they] may have the right to request that the court require the parties to participate in such counseling in certain instances.

9. Plaintiff alleges the following grounds for the dissolution of the marriage:

a. Section 3301(c) of the divorce code as the marriage is irretrievably broken and after ninety (90) days have elapsed from the date of service of the divorce complaint, Plaintiff intends to file an affidavit consenting to a divorce. Plaintiff believes that Defendant may also file such an affidavit.

b. Section 3301(d) of the divorce code as the marriage is irretrievably broken, and the parties have lived separate and apart since [date of separation], plaintiff may file an affidavit alleging that the parties have lived separate and apart for at least one (1) year. [CHANGE TO TWO YEARS IF SEPARATION WAS BEFORE DECEMBER 5, 2016]

WHEREFORE, Plaintiff requests your Honorable Court to enter a decree in divorce pursuant to Sections 3301(c) and 3301(d) of the divorce code.

COUNT II
Equitable Distribution

10. The prior paragraphs of this Complaint are incorporated herein by reference as though set forth in full.

11. The parties have legally and beneficially acquired property, both real and personal, during the marriage from the date of marriage, [date of marriage], to [date of separation], the date of separation.

12. The parties have been unable to agree as to an equitable division of said property.

WHEREFORE, Plaintiff requests the Court to equitably divide all marital property pursuant to Section 3502 of the Divorce Code.

COUNT III
Alimony

13. The prior paragraphs of this Complaint are incorporated herein by reference as though set forth in full.

14. Plaintiff lacks sufficient property to provide for [his/her/their] reasonable needs and is unable to support [himself/herself/themselves] through appropriate employment.

15. Plaintiff requires reasonable support to adequately maintain [himself/herself/ themselves] in accordance with the standard of living established during the marriage.

WHEREFORE Plaintiff requests this Honorable Court to enter an award of alimony pursuant to Section 3701 of the Divorce Code.

COUNT IV
Request for Counsel Fees, Costs and Expenses under Sections 3104(a)(1)

and 3702 of the Divorce Code

16. The prior paragraphs of this Complaint are incorporated herein by reference as though set forth in full.

17. Plaintiff has employed counsel, but is unable to pay the necessary and reasonable attorney's fees for said counsel.

WHEREFORE Plaintiff requests this Honorable Court to enter an award of interim counsel fees, costs and expenses, until final hearing and thereupon to award such additional counsel fees, costs and expenses as is deemed appropriate pursuant to Sections 3104 and 3323(b) of the Divorce Code.

COUNT V

Approval and Incorporation of Possible
Property Settlement Agreement into Divorce Decree

18. The prior paragraphs of this Complaint are incorporated herein by reference as though set forth in full.

19. The public policy of the Commonwealth of Pennsylvania encourages parties to a marital dispute to negotiate a settlement of their differences.

20. While no settlement has been reached as of the date of filing of this complaint, plaintiff is and has always been willing to negotiate a fair and reasonable settlement of all matters with defendant.

21. In the event that a written settlement agreement is entered into between the parties prior to the time of hearing on this complaint, plaintiff desires that such written agreement be approved by the Court and incorporated, but not merged, in any divorce decree which may be entered dissolving the marriage between the parties.

WHEREFORE, if a written settlement agreement is reached Plaintiff respectfully requests that the Court approve and incorporate, but not merge, such agreement in the final divorce decree, pursuant to sections 3104(a)(1) and (4) and section 3323(b) of the Divorce Code.

NAME OF ATTORNEY, Esquire
Attorney for Plaintiff

VERIFICATION

Plaintiff verifies that the statements made in this Complaint in Divorce are true and correct. Plaintiff understands that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

JOHN DOE, Plaintiff

Date: _____

D. §3301(d) Affidavit

The divorce code empowers the court to grant divorce where a complaint has been filed alleging that the marriage is irretrievably broken and an affidavit has been filed alleging that the parties have lived separate and apart for a period of at least one year and that the marriage is irretrievably broken. 23 Pa.C.S. §3301(d).

Thus, in addition to the averments in the complaint, at least one party must sign a §3301(d) affidavit. Only one party needs to sign a §3301(d) affidavit; it can be signed and filed by either party, but must be served on the opposing party, just like the original complaint (by original process). You must simultaneously send a counter-affidavit for the opposing party to use if they choose to respond.

IMPORTANT: This form must be filed within 30 days of signing.

Because of the need to serve this with the same formality as the complaint, it is usually best to include it as part of the complaint package. *However, this form may only be filed simultaneously with the divorce complaint if the requisite time of separation has passed by the time you are filing the complaint.* Parties who have separated since December 5, 2016 must be separated for *one year* before filing the affidavit. Those who separated before December 5, 2016 must plead that they have been separated for at least two years.

A complete form is available [here](#). Below is a quick look at a §3301(d) affidavit.

Sample §3301(d) Affidavit

1. The parties to this action separated on _____.
2. Check (a) or (b):
 - ☐ (a) The date of separation was prior to December 5, 2016, and the parties have continued to live separate and apart for a period of at least two years.
 - ☐ (b) The date of separation was on or after December 5, 2016, and the parties have continued to live separate and apart for a period of at least one year.
3. The marriage is irretrievably broken.
4. I understand that I may lose rights concerning alimony, division of property, lawyer's fees, costs and expenses, or other important rights if I do not claim them before a divorce is granted.

E. Blank §3301 (d) Counter-Affidavit

The Rules of Civil Procedure require that a blank §3301(d) counter-affidavit must be sent to the opposing party along with the §3301(d) affidavit. Pa.R.C.P. 1920.42(c)(iii). This form gives a defendant a chance to object to the entry of a decree in divorce because they dispute the date of separation alleged by the plaintiff, or they wish to raise economic claims. If they wish to raise economic claims, they must also follow the counter-affidavit with an answer and counterclaim. The full form is available [here](#).

Sample §3301(d) Counter-Affidavit

1. Check either (a) or (b):

- ☐ (a) I do not oppose the entry of a divorce decree.
- ☐ (b) I oppose the entry of a divorce decree because:

Check (i), (ii), (iii) or all:

- ☐ (i) The parties to this action have not lived separate and apart for the required separation period: two years for parties that separated prior to December 5, 2016, and one year for parties that separated on or after December 5, 2016.
- ☐ (ii) The marriage is not irretrievably broken.
- ☐ (iii) There are economic claims pending.

2. Check (a), (b) or (c):

- ☐ (a) I do not wish to make any claims for economic relief. I understand that I may lose rights concerning alimony, division of property, lawyer's fees, costs and expenses, or other important rights if I do not claim them before a divorce is granted.
- ☐ (b) I wish to claim economic relief, which may include alimony, division of property, lawyer's fees, costs and expenses, or other important rights.

I UNDERSTAND THAT IN ADDITION TO CHECKING (2)(b), I MUST ALSO FILE ALL OF MY ECONOMIC CLAIMS IN WRITING AND SERVE THEM ON THE OTHER

PARTY. IF I FAIL TO DO SO BEFORE THE DATE SET FORTH ON THE NOTICE OF INTENTION TO FILE THE PRAECIPE TO TRANSMIT RECORD, THE DIVORCE DECREE OR ORDER APPROVING GROUNDS FOR DIVORCE MAY BE ENTERED WITHOUT FURTHER NOTICE TO ME, AND I MAY BE UNABLE THEREAFTER TO FILE ANY ECONOMIC CLAIMS.

☐ (c) Economic claims have been raised and are not resolved.

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: _____
(PLAINTIFF) (DEFENDANT)

NOTICE: IF YOU DO NOT WISH TO OPPOSE THE ENTRY OF A DIVORCE DECREE OR ORDER APPROVING GROUNDS FOR DIVORCE AND YOU DO NOT WISH TO MAKE ANY CLAIM FOR ECONOMIC RELIEF, YOU SHOULD NOT FILE THIS COUNTER-AFFIDAVIT.

F. Domestic Relations Information Sheet (Do Not Serve on Opposing Party).

The Philadelphia Family Court requires a Domestic Relations Information with every filing. Litigants should fill it out as completely as they are able leaving blank that which does not apply or is unknown to them. [Here is a fillable form.](#)

G. Certification of Compliance with Public Access Policy.

This is a simple certification signed by an attorney stating that they have complied with the Public Access Policy of Pennsylvania Courts. Generally, there will not be any confidential information in a no-asset divorce case from VIP. So it is easy to comply. See the end of this manual for more information on the policy. A sample of such a certification can be found [here](#).

H. Praeipie to Proceed *In Forma Pauperis* (a.k.a. Certification of Free Legal Services)

Philadelphia VIP only serves clients who are at or below 200% of the federal poverty level. When you file, your VIP client should not have to pay filing fees. Rather, use the Family Court form linked [here](#) to certify that you are providing free legal services through VIP so that your client may proceed *in forma pauperis* (IFP).

Sample In Forma Pauperis – Praeipie

PRAECIPE TO PROCEED IN FORMA PAUPERIS

TO THE PROTHONOTARY:

Kindly allow [PETITIONER], Petitioner, to proceed *in forma pauperis*. I, [ATTORNEY’S NAME], Attorney for the Petitioner, hereby certify that I believe the Petitioner is unable to pay the costs and that I am providing free legal services to the Petitioner through Philadelphia VIP.

Pursuant to the amendment to Pennsylvania Rule of Civil Procedure 240, an Affidavit from the Petitioner is no longer required.

Sample In Forma Pauperis – Order

ORDER

AND NOW, this _____ day of _____, 2010, upon consideration of Petitioner’s Petition to Proceed In Forma Pauperis, it is hereby ORDERED that the Petitioner be excused from payment of the filing fee in this matter in consideration of [ATTORNEY]’s representation to the Court that Petitioner meets the income eligibility requirement and counsel is serving pro bono.

III. The Vicissitudes of Service of Process

A. The Basics of Service

Service in divorce is governed by Pa. R.C.P 1920.4 and 1930.4. A complaint must be served in Pennsylvania within 30 days of filing (90 days if the service location is outside the Commonwealth). There are four methods of service of original process:

1. First Class U.S. Mail with an Acceptance of Service Form.

This is best used in congenial divorces or in combination with method 2. An acceptance of service form is found [here](#). It is exactly what it sounds like. It lists all the items that were sent (don't forget to list the §3301(d) affidavit and counter-affidavit if you sent those with the complaint), and it states that the defendant accepts service. If this version of the form doesn't include all the items you are serving, you should add items as needed.

Sample Acceptance of Service

I accept service of the:

___ **Divorce:** Divorce Complaint, Notice to Defend and Claim Rights, and Notice of Availability of Counseling.

___ **Divorce:** 3301(d) Affidavit and Blank 3301(d) Counter-Affidavit.
(Only required in 3301(d) Divorce cases)

- You can send the acceptance of service form with a polite cover letter asking the opposing party to sign it and return it to you. [Here is an example of such a cover letter](#).

Sample Cover Letter Language

Mary Jane has asked me to represent her in a divorce action which both she and I hope can be resolved quickly and amicably. To that end I have filed a simple divorce complaint in the Court of Common Pleas of Philadelphia County, a time-stamped copy of which is enclosed.

Since I must ultimately demonstrate to the Court that you received a copy of this complaint, I have also enclosed an Acceptance of Service form which I ask you to sign and return to me. I have enclosed a self-addressed, stamped envelope for your convenience.

- When you file the acceptance of service as proof of service, it must be accompanied by an *affidavit of signature* whereby your client avers that they are familiar with the opposing party's signature, and it is the very same signature that appears on the acceptance of service form. As luck would have it, we have a fillable version from the court's website [here](#).

Sample Verification of Signature

(a) Jane Smith Doe, plaintiff in the above case, verifies that (b) she is fully familiar with the signature and handwriting of (c) John Doe, the defendant; and that the signature appearing on the (d) Acceptance of Service OR return receipt card attached here as Exhibit "A", is in the handwriting of the defendant and is (e) his signature. Plaintiff understands that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

2. Certified Mail Refused / Simultaneous First Class Mail

Here we have a clever innovation in service just for domestic relations matters that is set forth at Pa. R.C.P. 1930.4 (c). You simultaneously send your documents by certified mail choosing the options for restricted delivery and return receipt requested *and* send them by regular first class mail.

- If you get the return receipt (a green card) back with the mail, and it is marked "refused," *but* the first class mail was not returned within 15 days, **you have good service**. In such a case you would file a copy of the refused notation, and an affidavit of service based on the form available [here](#) and pictured below. Make sure you list everything that has been served on the affidavit and ask VIP staff for an editable template if necessary.

Sample Affidavit of Service – Service Refused

I, _____, attorney for _____, state that on or about _____, 2015, I did serve the [List all documents served] upon defendant [Name] by sending it via **regular mail, and certified mail, return receipt requested**. I hereby depose and state that the documents sent by regular mail have not been returned and that more than fifteen days have passed since mailing.

The returned envelope from the certified mail bearing the notation that delivery was refused is attached as Exhibit A.

Pursuant to Pa.R.C.P. 1930.4 (c)(1)(ii) Service is deemed complete.

3. Service by Certified Mail

When a certified mail green card is returned to you with the opposing party's signature **this is good service** under Pa. R.C. P. 1930 (c). Simply submit the green card as an exhibit with an affidavit such as the one that is found [here](#) and an affidavit of signature.

Sample Affidavit of Service – Signature Received

I [Attorney Name], Esquire, being duly sworn according to law, deposes and says that I mailed a true and correct copy of the [list all documents filed], filed in this matter, by certified mail, return receipt requested, delivery restricted to addressee, to [Name of Party Served] on [Date of Mailing] The return receipt signed by the Defendant and evidencing delivery to him/her is attached hereto as Exhibit A. An affidavit of signature by my client is further attached hereto.

- When you file a signed green card and the affidavit above as proof of service, it must be accompanied by an *affidavit of signature* whereby your client avers that they are familiar with the opposing party's signature and it is the very same signature that appears on the green card. There is a fillable version of the form [here](#).

4. Personal Service

Personal service can be made by a sheriff's department, process server, or other competent adult. The person making personal service must be an adult who is neither a relative, nor an employee, of a party in the case. When this form of service is used, the individual delivering the filings completes an affidavit as proof of service. This is generally a last resort in our cases due to cost.

B. When 30 Days Is Not Enough

If you are unable to obtain and file proof of service within 30 days of filing the complaint, you should file a praecipe to reinstate the complaint. Pa. R.C.P 1930.4(g). This can be done at any time, any number of times. Pa.R.C.P 1930.4(g). Find the praecipe [here](#).

C. When the Defendant is Hard to Find

1. Engage the Client

The best way to locate a defendant is to ask your client, who may be able to locate their spouse through friends, relatives, co-workers, etc. Urge the client to become involved by trying to track down a last known address.

2. LexisNexis People Search

When your client has no idea where the defendant may reside, search this database

and look for people who match the opposing party's birthdate etc. You may be able to see where they last resided.

3. Postal Records

The USPS will search for change of address information when needed for service of process. The required form is found [here](#) on the US Postal Service website. The Post Office calls this form "Exhibit 5-2b," after you fill it out, it must be mailed to the Postmaster in the Zip Code of the defendant's last known address.

N.B. It can take a very long time for the USPS to respond, however, you need to do this before seeking a court order authorizing special service.

4. Dockets

You can also check Philadelphia County civil dockets at <https://fjdefile.phila.gov/dockets> or Pennsylvania's criminal dockets at <http://ujportal.pacourts.us/docketsheets/cp.aspx>.

5. Voter Registration Information

You can request information from the City Commissioners' Office about what address the missing party used when they last registered to vote. You must do this if you are seeking special service as described below. The office's policy, which includes the necessary form, is [here](#) on the Commissioners' website. You must submit a standard Right to Know Law records request form to the Commissioners' Right to Know Officer:

Nick Custodio,
Deputy Commissioner
Office of Commissioner Deeley
City Hall, Rm 130,
Philadelphia, PA. 19107
(215)-686-3460
Nick.Custodia@phila.gov

D. Serving Incarcerated Parties

In many ways it is easier to serve incarcerated parties because they are relatively easy to find. There are, however some important things to know.

1. Inmate Locator

You can use the [Pa. Inmate Locator](#) to learn where a person is incarcerated (<http://inmatelocator.cor.pa.gov/#/>).

2. Commitment ("Commit") Name vs. True Name

Incarcerated parties sometimes have a commitment name (the name in which they have been arrested and/or prosecuted and committed into the prison system) which differs

from their true name (the name which is reflected on the marriage license). A party's commit name is the name that is used to identify the party in the prison system for the purpose of service. If you know that the opposing party is incarcerated, you should include the commit name on the divorce caption as mail will need to be addressed to that name and the certificate of service, provided by the prison, may use that name.

- You can find a party's commit name by using the Pa. Inmate Locator. If you search using the party's inmate number, the party's commit name and true name will be displayed. If you only know the party's true name, you may search using that name with their date of birth, but be aware the results will be listed by commit name only (so if you are searching William Jones and Christopher Smith comes up, it is worth reviewing Mr. Smith's profile as he may actually be Mr. Jones). After you click on the Inmate Number in the search results, both a true name and a commit name will be displayed.

3. **Serving the Pleadings**

You must serve inmates by personal service, **you cannot use certified mail**. Different prisons handle service differently. Some will use the warden who is located at the prison to effectuate service while others make use of their local sheriff's department. Call the prison where the party is incarcerated to learn which method they use. We recommend enclosing two cover letters when sending anything that needs to be served. Enclose a cover letter to the Sheriff or Warden explaining what you are asking them to serve (i.e., a divorce complaint, 3301(d) affidavit and 3301(d) counter-affidavit) and enclose a cover letter to the party explaining the contents of what is being served on them.

- **Sheriff's Service:**

Generally, you present the filing to the Philadelphia Sheriff's Department and they will transfer it to the sheriff in the county where the person is incarcerated. If you need to obtain sheriff's service, please contact VIP staff. You will need to obtain an IFP order signed by a judge from the Family Court Clerk's Office. The VIP Family Law staff attorney can help you prepare to go to the Sheriff's Department.

- **Serving through the Warden:**

Enclose, along with your documents, an Affidavit of Service to be filled out by the Warden and a self-addressed, stamped envelope so that it may be returned to you.

E. Seeking Alternative Service

When all else fails you may need to petition the court to allow for special service in the matter. The judge may allow you to serve by first class mail at a last known address or by publication. If a court orders that service may be affected by publication, the client will have to pay the newspapers for this. Please consult VIP after you get such an order to find the most affordable

publishing options.

1. Petition for Special Service

Pennsylvania Rule of Civil Procedure 430 authorizes the court to direct the manner of service when it cannot be accomplished by the methods prescribed elsewhere in the rules. Moreover, Phila D.R.R. 1920.4 authorizes the Family Court to order service by first class mail at a last known address upon good cause shown. This requires filing a petition that includes:

- The time and place where the parties last resided together as spouses;
- the defendant's address and phone number when the parties last had contact with each other;
- the name and address of the defendant's last known employer;
- names and addresses of the defendant's known relatives;
- proof of inquiry of voter's registration records to ascertain defendant's address;
- proof of inquiry into postal information on defendant's address.
- other information which could furnish a fruitful basis to learn the present whereabouts of the defendant; and
- an affidavit from the client detailing the efforts made to ascertain the defendant's address.

2. Filing the Petition

This petition is filed like any other petition or motion in Family Court, i.e. with a [Motion Cover Sheet](#) and proposed order. There would be a filing fee, so please be sure to file an IFP praecipe if one was not filed when the divorce complaint was filed. Under the local rule, this petition is not going to be scheduled for a hearing unless the court directs otherwise. Instead, it is sent to a judge for review and the entry of an order. A sample petition, including the required affidavit and proposed order, is available [here](#) and is partially pictured below.

Sample Petition for Special Service

WHEREFORE, Plaintiff, [PLAINTIFF'S NAME], respectfully requests an Order allowing service of Notice to Defend, Complaint in Divorce and any and all other correspondence; legal filings, court notices and orders; and any and all other documentation and/or communication of whatever nature relating to the underlying divorce proceeding to be made by [METHOD OF SPECIAL SERVICE].

IV. Responding to a Divorce Complaint

A. Counter-affidavits

As previously discussed a divorce defendant may respond to a complaint by filing a either a §3301(d) counter-affidavit, or a §3301(c)(2) counter-affidavit. This manual primarily imagines that you are representing a VIP plaintiff, but please be aware of the procedures available to the defendant.

1. §3301 (d) Counter-affidavit

The purpose of a §3301(d) counter-affidavit is to dispute the time of separation alleged by the plaintiff and to state an intention to raise economic claims. The timing of separation is much more relevant to cases where there is property to divide. It is not particularly advantageous to challenge date of separation if there are no economic issues. It is also possible for the defendant to indicate an intention to raise economic claims in the counter-affidavit. They must follow up with an answer and counterclaim to do this.

2. §3301(c)(2) Counter-affidavit

The purpose of a §3301(c)(2) counter-affidavit is for a party to dispute whether they are convicted of a personal injury crime against the other party. A hearing can be requested on this issue, but the criminal record will likely be determinative.

B. Answer and Counterclaim

A defendant raises issues of their own through an answer and counterclaim. Generally, this happens when the plaintiff did not request an equitable distribution of property, but the defendant wants to do so.

1. Answer

Under 1920.14(a) all averments in a divorce complaint not expressly admitted are deemed denied. Therefore, an answer can consist of one line noting that all paragraphs of the plaintiff's complaint are deemed denied.

2. Counterclaim

- A defendant may raise an action for divorce or annulment under the heading “counterclaim” and may raise *inter alia* counts for equitable distribution and alimony.
- As with a complaint, it is always best to include a count requesting that any property settlement agreement be incorporated, but not merged, into the decree when equitable distribution is raised. VIP makes every effort to ensure that no-asset cases do not involve economic claims, but this section is included to help you recognize the types of pleadings a defendant may file. A sample Answer and Counterclaim can be found [here](#).
- Follow this link for an entry of appearance [template](#). An entry of appearance should be filed when an attorney files an Answer and Counterclaim.

V. Alimony Pendente Lite (APL)

A. Relevance to No-Asset Cases

Sometimes VIP posts divorce case that are marked as “economic relief only.” This is our way of saying that there is either no property owned by the parties, or that we are fairly certain that neither party is interested in dividing property through equitable distribution; however, our client is interested in seeking spousal support during the pendency of a divorce. If you accept a case like this, you may need to file for APL.

B. What is APL?

APL stands for *Alimony Pendente Lite*, which is a form of spousal support that may be available to the income inferior spouse from the time a divorce is filed until the date the divorce decree is entered. It is distinct from alimony in that it ends when the divorce is final. A client can also file for ordinary spousal support whenever the income superior spouse fails to provide support without filing for divorce. However, there are defenses to that kind of support that do not exist with APL. In short, if a client is prepared to file a divorce complaint, APL is the better form of spousal support for them to seek.

C. Petition for APL

A petition for APL is filed with the Family Court Clerk’s Office (currently by mail or email due to COVID-19 as described above). The petition is available [here](#).

Here is a checklist for filing an APL petition:

- ☐ Petition for APL (includes cover sheet, rule to show cause, proposed orders)
- ☐ Exhibits: Expense Statement, Pay Stub(s), Federal Income Tax Return
- ☐ Praecipe to Proceed IFP

Sample APL Petition

AND NOW, the Petitioner, _____, respectfully represents the following:

1. Petitioner is _____, Defendant in the above referenced divorce matter, hereinafter referred to as “Wife”.
2. Respondent is _____, Plaintiff in the above referenced divorce matter, hereinafter referred to as “Husband”.
3. A divorce proceeding filed by Husband on _____ and served on Wife on _____.
4. Wife is unable to sustain herself during the course of this litigation.
5. Wife lacks sufficient property to provide for her reasonable needs and expenses and is unable to sustain herself through appropriate employment.

D. Expense Statement

Either at the time of filing or before the support hearing, your client must complete an expense statement. Please find an example of an [expense statement](#) on our website.

E. Hearing

The matter will be scheduled before a support master and treated as a support matter by the court.

VI. Approaching the Finish Line

A. Obtaining a Divorce Decree Under §3301(c)

1. §3301(c) Affidavit (Affidavit of Consent)

- 90 days after the service of a complaint that pleads mutual consent under §3301(c) as grounds for divorce, the parties may each execute and file §3301(c) affidavits. Follow these links to find an example of an affidavit of consent from [Plaintiff](#) and [Defendant](#) respectively. An example is partially pictured here.

Sample Affidavit – Plaintiff

1. A complaint in divorce under § 3301(c) of the Divorce Code was filed on _____ (Date).

2. The marriage of Plaintiff and Defendant is irretrievably broken and ninety days have elapsed from the date of filing and service of the Complaint.

3. I consent to the entry of a final decree of divorce after service of notice of intention to request entry of the decree.

- Additionally, an *affidavit of non-military service* must be filed and served at the time you file the 3301(c)(1) affidavit if the opposing party does not appear in the action. This affidavit is available [here](#).
- If you filed and served a §3301(c)(2) affidavit because the opposing party is convicted of a personal injury crime against your client, you now proceed in the same manner -- you may file your client's affidavit of consent 90 days after service of the complaint.

2. Waiver of the Notice of Intent

In a congenial, consent-based divorce, it makes sense for the parties to sign waivers of the notice of intent to file a praecipe to transmit the record to enter a decree in divorce. A notice of intent waiver can be found [here](#). Each party must sign and a waiver. You can file them with your praecipe to enter a decree.

3. Notice of Intent for §3301(c)(1) Divorce

If the parties will not both execute waivers you must send out a notice of intent warning the other party of your intention to file a "Praecipe to Transmit the Record for Entry of a

Decree in Divorce.” The form for a §3301(c)(1) divorce is [here](#). This version is required if the opposing party is unrepresented because it contains language warning them to take the notice to their attorney or to obtain an attorney. A version appropriate to send to opposing counsel is available [here](#). Enclose a cover letter to the opposing party or counsel detailing what is being served and listing the enclosures described below. *A Notice of intent must be served 20 days before you file the praecipe for a decree.*

Sample §3301(c)(1) Unrepresented Notice of Intent

You have signed an Affidavit of Consent under Section 3301(c) of the Divorce Code consenting to the entry of a divorce decree. Therefore, on or after _____, 20____, the other party can request the court to enter a final decree in divorce or, if there are unresolved ancillary claims, an order approving grounds for divorce as indicated on the proposed Praecipe to Transmit Record, which is attached.

Unless you have already filed with the court a written claim for economic relief, you must do so by the date in the paragraph above, or the court may grant the divorce or, if there are unresolved ancillary claims, an order approving grounds for divorce and you may lose forever the right to ask for economic relief. The filing of the form counter-affidavit alone does not protect your economic claims.

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.

- The following items must be attached to a notice of intent:
 - a. A copy of the praecipe you plan to file;
 - b. A copy of the proposed decree.
 - A divorce decree for a no-asset case can be found [here](#).

N.B.: The Family Court no longer requires the decree to have a red seal. We have linked to the form that the court posts on its own website.

4. Notice of Intent for a §3301(c)(2) Divorce

If the grounds for divorce are the opposing party’s conviction of a personal injury crime against the plaintiff, the version of the notice of intent [linked here](#) is required if the opposing party is unrepresented. It is the same form you would send to an unrepresented party in a §3301(d) divorce. If there is opposing counsel,

you can use the less detailed version found [here](#). If the parties did not execute waivers, *a Notice of intent must be served 20 days before you file the praecipe for a decree*. A Notice is only partially pictured here.

Sample Notice of Intent

_____ (PLAINTIFF)(DEFENDANT) intends to file with the Court the attached Praecipe to Transmit Record on or after _____, 20__ requesting a final decree in divorce be entered.

- As above, the following items must be attached to the notice of intent:
 - a. A copy of the praecipe you plan to file;
 - b. [A copy of the proposed decree.](#)

5. Praecepte to Transmit the Record for a Decree in Divorce

Happily, this was updated in 2019 to allow for one form to apply to any type of divorce. It is simply a matter of checking the boxes that apply to your case, and providing the requested information. The form is available [here](#).

Partial Sample Praecepte

Transmit the record, together with the following information, to the court for entry of (check one of the following):

- ☐ a divorce decree;
- ☐ a divorce decree with marital settlement agreement attached;
- ☐ a bifurcated divorce decree with the Court retaining jurisdiction over unresolved ancillary claims; or
- ☐ an order approving grounds for divorce with the Court retaining jurisdiction over unresolved ancillary claims.

- Among other things, the praecipe form asks you to indicate:
 - a. The date and manner of service of the complaint.
 - b. The dates the affidavits of consent were signed, or when the relevant party was convicted of a personal injury crime in the case of a §3301(c)(2) divorce.
 - c. The date and manner of service of a notice of intent, or the date waivers were signed.
- Include three copies of your praecipe and the following items:
 - a. A [decree form](#) with your caption etc. filled in. Leave the date and the judge's signature line blank for the court to complete; and
 - b. A certification of service of any required notice of intent. A template for this is found [here](#); and
 - c. A copy of the cover letter you sent to opposing counsel or the opposing party with the notice of intent; and
 - d. A self-addressed stamped envelopes so that time-stamped copies can be returned to you and the opposing party or counsel.
 - e. A copy of any required notice of intent (which you would have sent 20 days prior); *or*
 - f. Copies of the waiver of the notice of intent executed by both parties. The court will want original signatures, but electronic signatures such as those provided by Adobe or DocuSign etc. are acceptable.
- You will also need to file a praecipe to proceed IFP with this if one hasn't been filed previously.

Approximately four to six weeks after you submit the praecipe, the court will likely enter a decree. It is a good practice to calendar a reminder to check on your decree about a month after you have filed it.

B. Obtaining a Divorce Decree Under §3301(d)

1. Waiver of the Notice of Intent

You should have previously filed and served a §3301(d) affidavit and blank counter affidavit. 20 days after serving the affidavit, you may ask the opposing side to sign a waiver of the notice of intent that would otherwise be required. A notice of intent waiver can be found [here](#). Each party must sign and file a waiver. You can file them with your praecipe for a decree.

2. Notice of Intent for a §3301(d) Divorce

If your grounds are based on §3301(d) (time of separation) the version of the notice of intent [linked here](#) is required if the opposing party is unrepresented. If there is opposing counsel, you can use the less detailed version found [here](#). If the parties did not execute waivers, *a notice of intent must be served 20 days before you file the praecipe for a decree.*

- As above, the following items must be attached to the notice of intent:
 - a. A copy of the praecipe you plan to file;
 - b. [A copy of the proposed decree.](#)

3. Praecipe to Transmit the Record for a Decree in Divorce

This stage is the same as that described above for a §3301 (c) divorce. The praecipe form asks you to check the boxes that apply to your case, and provide certain information. The form is available [here](#).

- Among other things, the praecipe form asks you to indicate:
 - a. The date and manner of service of the complaint.
 - b. The date and manner of service of a §3301(d) affidavit.
 - c. The date and manner of service of a notice of intent, or the date waivers were signed.
- Include three copies of your praecipe and the following items with the praecipe:
 - a. A [decree form](#) with your caption etc. filled in. Leave the date and the judge's signature line blank for the court to complete; and
 - b. A certification of service of any required notice of intent. A template for this is found [here](#); and
 - c. A copy of the cover letter you sent to opposing counsel, or the opposing party, with the notice of intent.
 - d. A copy of any required notice of intent (which you would have sent 20 days

prior); *or*

- e. Copies of the waiver of the notice of intent executed by both parties. The court will want original signatures, but electronic signatures such as those provided by Adobe or DocuSign etc. are acceptable.
 - f. Self-addressed stamped envelopes so that time stamped copies can be returned to you and the opposing party or counsel.
- You will also need to file a praecipe to proceed IFP with this if one hasn't been filed previously.

Approximately Four to Six weeks after you submit the Praecipe, the court will likely enter a decree. It is a good practice to calendar a reminder to check in your decree about a month after you have filed it.

VII. Miscellaneous Final Thoughts

A. Retaking Prior Name

There are details that a client may ask about along the way. Always ask VIP staff, or a VIP mentor for information as these items arise. One frequent question is about a client retaking the name they used before marriage.

In Pennsylvania, any party to a divorce action may elect to retake their prior surname after a divorce complaint is filed. See 54 Pa.C.S. 704. This is accomplished by a simple notice that is be notarized and filed with the court. The client will want to obtain multiple time-stamped copies from Family Court to show to their bank and other institutions that will want proof of their surname. The form is available [here](#).

B. Public Access Policy

The Pennsylvania court system has promulgated a policy designed to prevent confidential information from becoming available to the public through court filings. In no-asset divorce cases this is rarely an issue because the filings don't tend to contain information as defined as confidential by the policy. This applies to all cases filed in Pennsylvania.

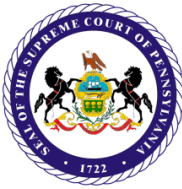
However, if your pleading does contain confidential information. You are required to submit an additional copy to the court wherein that material is visibly redacted. In addition you should always include a [certification of compliance](#) with the public access policy in your filings.

1. Confidential Information

- Confidential Information may include:
 - a. The names and addresses of minors.
 - b. Names and addresses of abuse victims.
 - c. Driver's License Numbers and similar ID numbers.
 - d. Financial account numbers.

2. More Information

Please review the entire public access policy [here](#) to make sure you are in compliance. The policy is available on the website of the Pennsylvania Unified Judicial System [here](#).



Protecting Confidential Information - Here's How

Effective January 6, 2018

A certification shall accompany each filing in accordance with the policy. A court or custodian is not required to review any filed document for compliance with this policy. Failure to comply may lead to imposed sanctions.

Confidential Information

Unless required by applicable authority, the following information shall not be included in any document filed with a court or custodian, except on a "*Confidential Information Form*" filed contemporaneously with the document.

1. **Social Security Numbers**
2. **Financial Account Numbers** except an active financial account number may be identified by the last four digits when the financial account is the subject of the case and cannot otherwise be identified
3. **Driver License Numbers**
4. **State Identification (SID) Numbers**
5. **Minors' Names and Dates of Birth** except when a minor is charged as defendant in a criminal matter (see 42 Pa.C.S. §6355)
6. **Abuse Victim's Address and other Contact Information** including employer's name, address, and work schedule, in family court actions as defined by Pa.R.C.P. No. 1931(a), except for victim's name

Confidential Documents

Unless required by applicable authority, the following documents shall be filed with a court or custodian with the "*Confidential Document Form*."

1. **Financial Source Documents**
2. **Minors' Educational Records**
3. **Medical/Psychological Records**
4. **Children and Youth Services' Records**
5. **Marital Property Inventory and Pre-Trial Statement** as provided in Pa.R.C.P. No. 1920.33
6. **Income and Expense Statement** as provided in Pa.R.C.P. No. 1910.27(c)
7. **Agreements between the Parties** as used in 23 Pa.C.S. §3105

These requirements do not apply to case types (e.g. juvenile, adoption) that are sealed or exempted from public access pursuant to applicable authority.

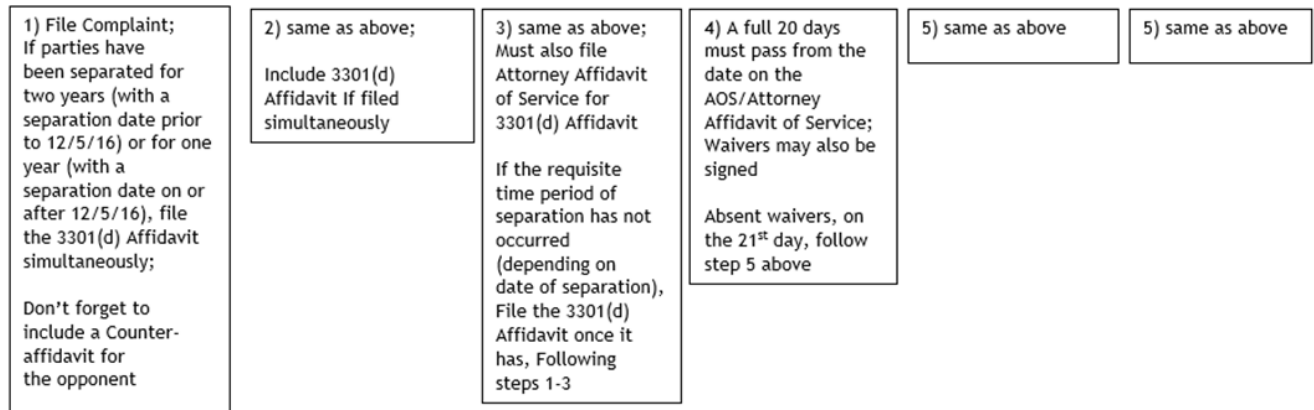
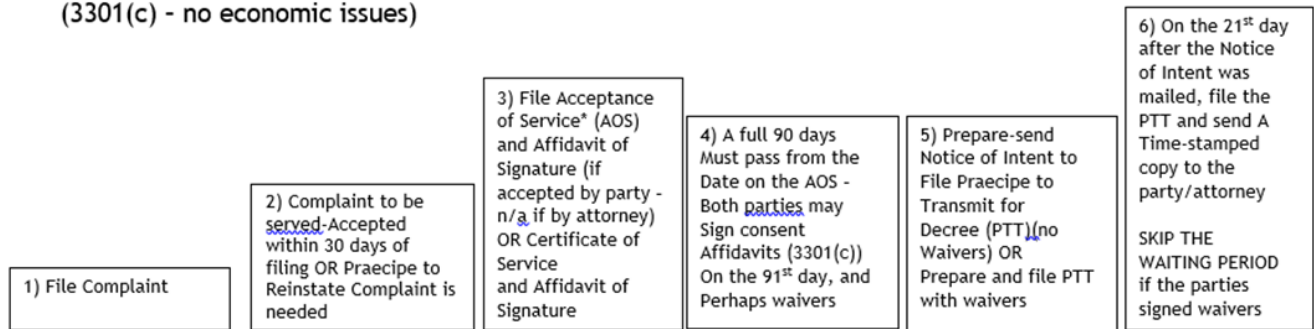
For forms and more information, reference the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts at the website below.

Please visit: <http://www.pacourts.us/public-record-policies>



TIMELINES

(3301(c) - no economic issues)



(3301(d) - no economic issues)

*The date on the Acceptance of Service triggers the 90-day 3301(c) waiting period. Note that Acceptance of Service and Affidavits must be filed within 30 days of the date signed.

Ready to Say YES?