

FINALIZING A DIVORCE IN YORK COUNTY

HOW TO DO IT RIGHT THE FIRST TIME

WHY WE'RE HERE

- From January 1 to September 30, 2016:
 - We were appointed to deal with discovery issues in 42 cases. 52% of the discovery checklists that we received were incomplete. More than half of these were submitted by the MOVING PARTY.
 - We have reviewed over 1,100 divorce files. Of these, 418 divorce filings rejected because of defects in procedure.
 - More problems with (c) divorces than (d) divorces.

DISCOVERY CONFERENCE CHECKLIST

Use the right form!

DISCOVERY STATUS CONFERENCE INFORMATION SHEET SUBMITTED BY PLAINTIFF/DEFENDANT

(Pick One!)

DISCOVERY CONFERENCE CHECKLIST

“List assets in categories and note Discovery requests for each asset”
(What Do You Want?)

BAD

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

██████████ Plaintiff, NO. 2013-FC-██████-15 RECEIVED
vs. CIVIL ACTION - LAW FEB 18 2016
██████████ Defendant. ACTION IN DIVORCE YORK COUNTY
DIVORCE MASTERS

DISCOVERY STATUS CONFERENCE INFORMATION SHEET SUBMITTED BY PLAINTIFF

If you are appointing the master to address discovery, please fill in this sheet to the best of your ability using the information in your possession and file it with your Motion to Appoint the Master.

Parties

Plaintiff: Name: ██████████
Address: ██████████ York County, Pennsylvania 17329
Counsel: ██████████
Year of Birth: 1961
Employment: ██████████ Hired: ██████████
Salary: ██████████ Benefits: Medical ██████████
Education: Associates ██████████
Number of marriage: First
Health: Good

List assets in categories and note Discovery requests for each asset:

1. Real Estate.
Marital Residence - ██████████ Pennsylvania 17331
Business Property - ██████████ Pennsylvania 17331
Rental Property - ██████████ Pennsylvania 17331
Strip of land adjacent to ██████████ Pennsylvania 17331

2. Vehicles.
██████████ Chrysler ██████████
██████████ GMC ██████████
██████████ Honda ██████████
██████████ Ford ██████████
██████████ Austin Healey ██████████
██████████ Austin Healy ██████████
██████████ Chevrolet S10 ██████████
██████████ Amalia ██████████
██████████ Saab ██████████
██████████ Toyota ██████████
██████████ International Trailer ██████████
██████████ Pontiac ██████████

i. A list of all assets and their book value owned by the ██████████ business as of:
October 22, 2013; and,
Current date.

j. All documentation regarding any outstanding loans of the business known as ██████████, including mortgages, notes and bonds, and indicate the following:
To whom payable;
The terms of the loan;
The date incurred;

k. Leases for vehicles, equipment, furniture and fixtures currently leased or rented by the business, known as ██████████

l. Insurance appraisals or independent appraisal reports performed of any assets of the business, known as ██████████ for the years of 2013, 2014 and 2015.

m. Cash receipt and disbursement journals for the ██████████ business for 2013, 2014 and 2015.

GOOD

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

[REDACTED] : No. 2015-FC-[REDACTED] 15
 Plaintiff :
 vs. : ACTION IN DIVORCE
 [REDACTED] :
 Defendant : CIVIL ACTION - LAW

DISCOVERY STATUS CONFERENCE INFORMATION SHEET
SUBMITTED BY DEFENDANT

If you are appointing the master to address discovery, please fill in this sheet to the best of your ability using the information in your possession and file it with your Motion to Appoint the Master.

Parties

Plaintiff Name: [REDACTED]
 Address: [REDACTED] PA 17011, since February 2015,
 with sons [REDACTED]
 Counsel: [REDACTED]
 Year of Birth: 1976
 Employment: [REDACTED]
 Education: [REDACTED]
 Number of marriage: 1
 Health: Good [REDACTED]

List assets in categories and note Discovery requests for each asset:

- Real estate. A) Marital home, [REDACTED] PA 17019. B) Plaintiff's home, [REDACTED]. Request value as of 2/2015, mortgage statement as of 2/2015 and current. C) [REDACTED] timeshare. Request contract statement from date of purchase. Request statements of payments of maintenance fees.
- Vehicles. A) 2012 Lexus. Request model, mileage, and any loan statements as of 2/2015 and current. B) Honda VTX motorcycle. Request year, mileage, and any loan statements as of 2/2015 and current. C) 2007 Ford Freestyle. D) 2005 Mazda 3.
- Stocks, bonds, securities, options. A) [REDACTED] Account. Request statements as of 2/2015 and current. B) [REDACTED]. Request statements as of 2/2015 and current.
- Certificates of Deposit. None.

BE SPECIFIC

- BAD:**
 - Information about the car
- GOOD:**
 - Plaintiff/Defendant (pick one) requests a copy of the title and registration for the Honda Civic that you kept when you separated, mileage at date of separation, and statement showing balance owed on the purchase-money loan.

DON'T GO FISHING

- The master is not a substitute for general discovery, but a referee of an existing dispute.
- The checklist is not your request for production of documents.
- The checklist is not your first set of interrogatories.
- The checklist is a list of things that you have already tried to get but couldn't.

INVENTORIES

Discovery is already complete.

- Provide Social Security Statement
- What specific value do you want us to use?
- Bad: Balance in 401(k) plan "to be determined" or "to be provided."
- Good: Current marital balance in 401(k) plan is \$196,352 as of October 15, 2016.

GET ORGANIZED

Do not submit an incomplete form

If you don't have the information you need, ask yourself "Why?"

1. You didn't plan ahead?
2. Client not cooperating?
3. Staff didn't follow up?

GET ORGANIZED

- Any way you look at it, it's your fault.
- What changes are you going to make in your office so that it doesn't happen again?

QUESTIONS AND ANSWERS

- Checklists
- Inventories
- Income and Expense Statements

****Practice Pointer****

The Complaint

- REQUIRED: "Plaintiff requests the court to enter a decree of divorce."
- Suggest that you add "under Section 3301(c) or 3301(d) of the Divorce Code."
- Suggest that you add "the parties separated on mm/dd/yyyy."
- Make sure that the Complaint is **verified**.

SERVICE BY MAIL

- Rules 403 & 1930.4(c) apply to service of the Complaint by mail.
- Certified Mail, Restricted Delivery, Return Receipt Requested.
- Request a “Green Card” receipt, not electronic receipt.
- Must be signed by Defendant or Authorized Agent.

ELECTRONIC RETURN RECEIPT

If you do not have a green card and submit an electronically generated return receipt print-out, from USPS.com, the print-out **MUST** contain:

- Verification by a USPS employee (original signature),
- Original USPS stamp, **and**
- Printed name, legible signature, and title of the employee.

If you submit the electronically generated return receipt print-out as proof of service **without** verification by USPS, the request for a decree **will** be kicked back to you.

ACCEPTANCE OF SERVICE

- Acceptance of service by a party **must** state “I accept service of the complaint.”
- Acceptance of service by an attorney **must** state “I accept service of the complaint on behalf of the defendant **and I am authorized to do so.**”

QUESTIONS AND ANSWERS

- Service by Mail
- Acceptance of Service

General Divorce Requirements

- Affidavits under 3301(c) and 3301(d) **must** be filed with the Prothonotary.

3301(c) Divorce Requirements

- Affidavits of Consent **must** contain accurate date for filing of the complaint. Not the amended complaint, not the reinstated complaint, but the original filing.

3301(c) Divorce Requirements

- Rule 1020.42(b) says that 3301(c) Affidavits **must** be **executed** 90 days or more **after** both filing and **service** of the complaint.
- The word “**Executed**” means “**signed**” not “**filed.**”
- 3301(c) Affidavits **must** be filed within 30 days after signature.

3301(d) Divorce Requirements

- Rule 1920.42(d)(2) requires that a blank Counter-Affidavit must be served with the 3301(d) Affidavit.
- If the parties have been separated for two years or longer, and you’re filing for a “d” divorce, then the Divorce Complaint and the 3301(d) Affidavit can be filed and served together.

3301(d) Divorce Requirements

- You CANNOT serve the Notice of Intent with the Divorce Complaint.
- Notice of Intent MUST be served at least 20 days AFTER the date of service of the 3301(d) affidavit and form counter-affidavit.
- File a CERTIFICATE OF SERVICE

3301(d) Divorce Requirements

- Certificate states that you served 3301(d) affidavit AND blank counter affidavit. Rule 1920.42(d)(2)
- Certificate states that you served Notice of Intent along with blank counter affidavit AND proposed Praecepte to Transmit. Rule 1920.42(d)(1).

General Divorce Requirements

Withdrawing Economic Claims

Rule 1920.17(b):

- Written consent by both parties; **or**
- File and serve a written Notice of Intention (Rule 1920.17(c)) to withdraw economic claims twenty days after service of the Notice, **and**
- File Certificate of service of the notice, **and**
- File Praecepte to withdraw economic claims twenty days or more **after service** of the notice.

QUESTIONS AND ANSWERS

- Affidavits of Consent/Counter Affidavits
- Notice of Intent
- Withdrawing Economic Claims

PRAECIPE TO TRANSMIT

- Grounds for divorce must be correctly stated.
(Pick one!)

PRAECIPE TO TRANSMIT

- The purpose of the Praecipe is to make sure that all the "T"s are crossed and all the "I"s are dotted correctly.
- Method of service incorrect.
- Date of service incorrect.
- Date of service missing.

PRAECIPE TO TRANSMIT

- Date that the affidavit(s) were executed (that means *signed*) must be correct.
- Under 3301(d), date of filing and service of affidavit and form counter affidavit must be correct.

PRAECIPE TO TRANSMIT

Economic claims pending:

- **BAD:** None
- **GOOD:** No economic claims were raised
- **BAD :** Resolved by the parties
- **GOOD :** Resolved by written agreement dated mm/dd/yyyy and filed with the Prothonotary.

PRAECIPE TO TRANSMIT

Agreement to be incorporated but not merged in the Divorce Decree:

- Parties must have agreed in writing.
- Written agreement must say "incorporated but not merged."
- If agreement only says "incorporated," then it will also be merged by default.
- Requires a "special decree"

SPECIAL DECREES

- You must prepare the special decree and submit it with the Praecepto to Transmit.
- Special decree must reference page and paragraph number of the provision calling for agreement to be incorporated but not merged.
- If you don't submit a special decree, you will get a standard decree with no reference to the agreement.

QUESTIONS AND ANSWERS

- Praecipes to Transmit
- The meaning of Life
