

# DIVORCE AND EQUITABLE DISTRIBUTION PRACTICE IN YORK COUNTY PENNSYLVANIA

## A. Introduction

Divorce proceedings are heard by the Divorce Masters Office, which is located on the 4<sup>th</sup> floor of the Judicial Center. Masters may be appointed to establish grounds for divorce or to resolve disputes involving discovery or economic issues. The Divorce Masters Office maintains a website at

<http://yorkcountypa.gov/courts-criminal-justice/court-courtrelated-offices/divorce-hearing-masters.html>

The website contains forms, instructions, schedules, and other useful information (including a “bookmarked” version of the [York County Rules of Court](#)). To make life easier for you, we plan to post a copy of this section of the course materials on the “Attorney” page of the website with embedded links to the forms referenced below.

Divorce hearing masters are all full-time employees of the court. Once a master is appointed to hear some aspect of a case, the same master will be appointed to hear subsequent proceedings in that case.

## B. Commencement of Action

### 1. Notice to Defend

The Notice to Defend must be in English **and** Spanish. The [Notice to Defend in English and Spanish](#) is available on the Divorce Masters website.

### 2. Fees

Effective January 2, 2012, the Prothonotary collects a filing fee of \$263.25 at the time the Divorce Complaint is filed. The Prothonotary will collect an additional \$23.50 for each additional count except custody. The additional fee for a custody count is \$31. The fee schedule may well change effective January 2 of each calendar year, so check the [Prothonotary’s website](#). See the Additional Contact Information at the end of this Section for the website address.

### 3. Contents of complaint

Form. The prescribed form for a “no fault” divorce complaint is at Pa.R.C.P. 1920.72.

Statutory references. Make sure that your Complaint contains a specific reference to the section of the Divorce Code under which the Divorce is to be granted. If you anticipate a divorce by mutual consent, ask for a divorce pursuant to Section 3301(c) of the Divorce Code. You can also request a divorce under Section 3301(b) or (d) or any of the subsections of Section 3301(a) in the alternative.

Dates. Pa.R.C.P. 1920.72 requires you to plead a date of marriage in all cases. If you anticipate seeking a divorce under Section 3301(d), you might want to also plead a date of separation.

→ **PRACTICE TIP:** You can find simple no-fault divorce forms on the Divorce Masters website at

<http://yorkcountypa.gov/courts-criminal-justice/court-courtrelated-offices/divorce-hearing-masters/party-to-a-divorce-action-faq/simple-no-fault-divorce.html>

(Yes, we know that the address is complex. Take your complaints to the York County Commissioners. They control the website.) You can also go to [www.yorkcountypa.gov](http://www.yorkcountypa.gov) and click on “Divorce Hearing Masters” on the drop-down menu under “Departments” at the top of the page.

→ **PRACTICE TIP:** York County has a somewhat Byzantine numbering system for family law cases. All family law cases have the identifying letters “FC” in the docket number. The same docket number (except for the two-digit suffix) will apply to all cases involving the same parties. Pleadings and other documents related to the entry of the decree are given a docket number with the suffix “02.” Pleadings and other documents related to custody are given a docket number with the suffix “03.” Pleadings and other documents related to economic claims related to the divorce (alimony, APL, equitable distribution, counsel fees, costs, and expenses) are given a docket number with the suffix “15.” (PFA cases have the suffix “12”). Please put the right number on your pleadings and other documents so that they end up in the right file. Failure to do so can delay entry of the decree at the end of the case.

### C. Master System

The master system in York County is governed by Pa.R.C.P. 1922.55-1 et seq. and YCCiv. 1920.31 through 1920.55-2, inclusive. See the copies of the [York County Rules of Court](#) on the Divorce Masters website.

#### 1. Three masters

There are three (3) full time masters. At present, these positions are filled by William G. Baughman, Esq., Heather L. Dorion, Esq., and Cindy S. Conley, Esq. They have over seventy years of experience (in the aggregate) in the practice of family law in Pennsylvania.

#### 2. Issues

The masters are authorized to address all issues concerning irretrievable breakdown of the marriage, length of separation, fault, equitable distribution, alimony, alimony pendente lite, counsel fees, costs, and interim counsel fees. Alimony pendente lite claims are normally referred to the Domestic Relations Section for resolution in order to save time, but may be retained by the Divorce

Masters Office where there are complex issues or where the other economic claims are in a position to proceed in tandem with A.P.L. and no separate hearing is necessary. The York County Rules of Court specifically authorize masters to hear claims for interim relief and discovery issues.

### 3. Motions to appoint

**Completing discovery.** When you appoint a master to hear substantive claims for divorce or related economic matters, you will be required to certify that discovery is substantially complete. This means that you have discussed this matter with opposing counsel (or the opposing pro se party) and you have determined that **both sides** have all of the documents and other discovery materials that they need to go to trial.

→ **PRACTICE TIP:** If opposing counsel (party) won't return your calls or answer your letters (and we all know that this **never** happens), then write a letter to opposing counsel (party) asking him/her to send you a specific written list of any outstanding or unsatisfied discovery requests that they may have within the next ten days. Tell him/her in your letter that you will file your Motion to Appoint if you don't receive a response by the deadline. Then if opposing counsel (party) shows up at the first conference with the master and tries to assert that discovery is not complete, you have a very good argument that the "incomplete" discovery has been waived.

**Establishing grounds for divorce.** The master will not move forward on economic claims unless grounds for divorce have been established. This does NOT mean that a bifurcation is necessary. It **does** mean that if you are moving forward under section 3301(c), each party has already signed and filed his/her Affidavits of Consent. If you are moving forward under section 3301(d), the 3301(d) Affidavit needs to have been filed and either a Counter Affidavit has been filed or the time in which to do so has passed. Please refer to 23 Pa.C.S.A. 3323(g), which tells you how to establish grounds for divorce. If you cannot establish grounds under Section 3301(c) or (d)(1)(i), then you can appoint a master to hear claims for divorce under Section 3301(a), (b), or (d)(1)(ii).

→ **PRACTICE TIP:** Discuss this issue with opposing counsel **before** you file your Motion to Appoint. Nothing makes the master more frustrated than to spend the time and effort to schedule a conference at which nothing can occur because the Defendant refuses to sign an Affidavit of Consent and the Plaintiff either hasn't pleaded alternative grounds for divorce or has not done the requisite paperwork to proceed under Section 3301(d). If this happens, the case cannot move forward and you may lose the \$300 fee you paid to appoint the master. If you are pursuing a Section 3301(d) divorce, make sure you satisfied the requirements of Pa.R.C.P. 1920.42 and 1920.72

**Forms.** The [forms to appoint a master](#), with instructions, are available on the Divorce Masters website. These forms are interactive, so you can fill them in on your computer and then print them out.

York County has adopted forms that differ slightly from the standard forms prescribed by Pa.R.C.P. 1920.74. The York County forms ask for additional information. Standard forms will be accepted, but processing the Motion will be delayed while the Divorce Masters Office contacts you to get the additional information that you would have provided if you had used the York County forms. Please note that the forms to appoint a master will be revised from time to time, so get in the habit of checking the website for changes. There are different forms, depending on what you need to accomplish. The specific forms are:

[Motion to Appoint for Interim Relief](#)

[Motion to Appoint to Establish Grounds for Divorce](#)

[Motion to Appoint for Alimony Pendente Lite](#) (new claim OR modification)

[Motion to Appoint for all Economic Claims](#)

[Motion to Appoint to Amend an Existing Alimony Order](#)

Each form comes with instructions. Read the instructions to make sure you are using the right form and that you are ready to appoint the master.

**Fees.** The current fee structure (effective January 2, 2013) is set forth below. You can find the current fee schedule at

<http://yorkcountypa.gov/courts-criminal-justice/court-courtrelated-offices/prothonotary/fees.html>.

Fault Divorce, Equitable Distribution or Alimony (first 12 hours)	\$350.00
Modification of Alimony (first 8 hours)	\$250.00
Interim Relief (first 4 hours)	\$150.00
Additional Proceedings (each block up to 6 hours)	\$250.00
Separate Claim for Alimony Pendent Lite (new claim or modification)	\$50.00

**Costs.** The master may assess costs against either party pursuant to [YCCiv. 1920.55-2\(a\)\(2\)\(iii\)](#). Normally, the master does not assess the costs of the Motion to Appoint. The master normally requires the parties to split the costs of transcripts filed before the master writes his/her report (but see the section on Exceptions, below). If there are extraordinary costs or there is a specific reason

to reassess the costs, be sure to provide the master with specific evidence of the extraordinary cost or the reason to reassess.

**Paying the fee.** After you prepare the Motion for Appointment, take the original motion to the Prothonotary's Office and pay the appointment fee. The Prothonotary's Office will note payment of the fee on the original Motion and give you a receipt. Then take the original Motion to the Divorce Masters Office. (See the instructions that are packaged with the forms. The instructions include a list of the additional documents that must be presented with the motion and the number of copies you will need for each document.)

→ **PRACTICE TIP:** The Prothonotary **will not** forward the motion for you. If you mail the motion to the Prothonotary, include a self-addressed stamped envelope so that it can be returned to you. You can then mail the motion to the Divorce Masters Office, or have it delivered in person.

**Scheduling Order.** The Divorce Masters Office will issue a scheduling order when the Motion to Appoint is received. For appointments dealing with economic claims, the scheduling order will contain a directive to the non-moving party to provide copies of filed Inventory and Income and Expense forms (as may be applicable) to the Divorce Masters Office within a certain time frame. Sanctions will be imposed if one or more of these documents was required to be filed but was not filed prior to the deadline imposed by the Divorce Masters Office. The purpose of this procedure is to avoid the need for the moving party to present a Motion in Current Business Court to compel filing. Normally, the masters **do not** obtain the official court file from the Prothonotary, but work off copies of documents provided by counsel.

→ **PRACTICE TIP:** Include the Divorce Master's name and address on the Certificate of Service of all pleadings filed after the Motion to Appoint.

→ **PRACTICE TIP:** The Divorce Masters Office will contact both attorneys to try to schedule a mutually convenient date. If you're not available when we call, we will leave a callback message. If you don't get back to us in three business days, we will go ahead and schedule. If you have a conflict, you will need to present a [Continuance Request Form](#) to the master. If the master denies the request, you will need to go to Current Business court to get the date changed.

#### D. Proceedings before the master

Normally, a case will proceed before the master in three steps. The first step is the preliminary conference, which is an information-gathering process for the master. The second step is the Settlement Conference, where the master will attempt to get resolutions of factual issues and focus on the true issues of the case. The third step is the evidentiary hearing. If counsel are not properly prepared, multiple conferences may be necessary in a given case, and your client may be required to pay additional fees.

Status conferences, preliminary conferences and hearings are normally held in Hearing Room 6 on the 4<sup>th</sup> floor of the Judicial Center. Settlement Conferences may be held in Conference Room 4009, which is directly across the hall from Hearing Room 6. The masters may meet with counsel (no parties) in the conference room in the Divorce Masters Office (Suite 4400). [Conference and hearing locations](#) are posted on the Divorce Masters website approximately one week in advance.

→ **PRACTICE TIP:** Numerous cases have been settled as a result of extensive discussion between counsel, facilitated by the master. Nonetheless, it is not a vehicle that will be effective in every case. Although the master is not to use comments made during conferences in his or her findings of fact, it is difficult for the master to forget impressions or comments that may have been made during such conferences. This is one of the reasons why *you* should be doing the talking, not your client.

#### E. Continuances

The “Forms” section of the course materials includes a [Continuance Request Form](#) that is specific to Divorce Masters proceedings. This form is also available on the Divorce Masters website, or you can use the multi-part form available from the District Court Administrator. The Divorce Masters Office will accept faxed copies of the continuance request form.

→ **PRACTICE TIP:** Make sure that opposing counsel (or pro se party) has signed the continuance request and has indicated whether he/she opposes the request. Wait three business days after the request has been delivered for opposing counsel (or pro se party) to sign the request. If he/she refuses to do so after three business days have passed, you can forward the request to the DMO with a written statement that you waited three business days for the signature.

→ **PRACTICE TIP:** The Divorce Masters Office has taken the position that you are only **entitled** to a continuance in the case of a conflict with a Judge of the Court of Common Pleas of York County or a scheduled appellate argument. Everything else is discretionary with the individual master. The masters will try to work with you in the event of a real emergency, but they do not look kindly on requests based on a “previously scheduled vacation” or similar excuses. Also, you will increase the likelihood of approval if your staff does the legwork to find an acceptable alternative time/date for the conference or hearing.

#### → **Excuses that won’t fly:**

“The parties are working on an agreement.” Response: “We already have the room reserved and the date is on everyone’s calendar. Bring the parties in and we will conclude the negotiations.”

“We have an agreement but it isn’t signed yet.” Response: “We already have the room reserved and the date is on everyone’s calendar. Bring the parties in and will get the agreement signed here. I’ll even make photocopies for you.”

“We didn’t get all of our discovery materials.” Response: “Come on in and we’ll work it out. It will be faster and cheaper than exchanging letters and playing phone tag.”

“I have a pre-planned vacation on my calendar.” Response: “You should have known about it when you agreed to the time for the conference on {fill in date}.”

“I have to appear in Motions Court (only works for things scheduled to start at 9:30).” Response: “Just tell the tipstaff that you have a 9:30 appointment here and the judge will try to get you in and out early. We’ll wait if you’re a few minutes late.”

→ **Excuses that might fly:**

“I have a conflicting hearing (conference) with Judge \_\_\_\_\_.” Response: “Fax us a copy of the scheduling order and we will reschedule.”

“My client was at the emergency room yesterday and the doctor said that he/she shouldn’t attend the hearing (conference).” Response: “Fax us a copy of the discharge summary from the emergency room and we’ll set up a phone conference to discuss it.”

“We have a signed agreement so we don’t need the hearing (conference).” Response: Fax us a copy of the signed agreement (or at least the first page and signature page) and we will cancel the hearing (conference).”

#### F. Status Conference

If the master is unsure why he or she has been appointed, the master may schedule a status conference. This can occur for a variety of reasons. First, it can occur when one of the parties has filed a motion to establish grounds for divorce but has not filed a 3301(d) affidavit and neither party has raised claims under 3301(a) or (b). Second, it can occur when one of the parties has filed a motion on economic claims, and is not clear that grounds for divorce have been established. It may also occur if we receive a Motion to Appoint on substantive issues but it appears that discovery may not be complete, or if the case isn’t moving along as quickly as it should.

→ **PRACTICE TIP:** If you file a Motion to Appoint and the master schedules a status conference instead of a preliminary conference (see below), this usually means that you goofed. Expect to hear about it at the conference.

#### G. Preliminary Conference(s)

##### 1. Time

The Preliminary Conference is usually the first time you will meet with the master. It will be scheduled as soon as practical after the Motion to Appoint is presented. Both attorneys will be contacted to make sure they are available at the scheduled time (remember the three-day rule). The Preliminary Conference normally lasts one hour.

If you are appointing the master for interim relief, then you must also file a petition outlining the specific relief you are requesting. If you want help with discovery, outline the steps you have already taken and the problems that you want the master to solve. If you want interim counsel fees or costs, specify how much money you want and what you need it for. See Sections L and M, below, for more information on interim relief petitions.

If you are appointing the master to establish grounds for divorce, then expect to tell the master the specific issues involved and identify the witnesses you will call to present evidence on those issues. You may be asked to file a Bill of Particulars if the essential facts have not been included in your Complaint. The master will then schedule a trial date.

If you are appointing the master to hear substantive economic claims, then you are required to file your client's Inventory, Income Statement, and Expense Statement before presenting the motion to appoint. If the responding party has also filed his/her Inventory, Income Statement, and Expense Statement, then the Preliminary Conference on economic issues can be scheduled as soon as possible. If not, the conference will be scheduled between 30 and 60 days after the Motion to Appoint is presented to give the responding party time to complete and file the documents that should have been filed months ago but weren't. (If equitable distribution was raised for the first time in a Petition for Related Claims filed less than ninety days before the Motion to Appoint, then the preliminary conference will be delayed until both parties have had at least ninety days to file an Inventory.) We expect counsel to use the time between the appointment and the Preliminary Conference to obtain updated account statements (mortgage balance, retirement plan balance or benefit statement, etc.) and provide copies to the other side.

→ **PRACTICE TIP:** You can find a "[Preliminary Conference Checklist](#)" on the "[Forms and Instructions](#)" page of our website. This checklist provides a road map for the issues that will come up at the Preliminary Conference. Use the checklist to prepare for the conference so you will be able to answer the master's questions about the case. Your client will be impressed.

## 2. Attendance

Counsel **and** parties are **required** to attend the preliminary conference. See Section J on participation by telephone, below. The attorney who is going to try the case is **required** to be present. No substitutions, please.

→ **PRACTICE TIP:** Remember to tell your clients what to expect, how to dress, and how to behave. The first impression he or she makes with the master will be a lasting one. You do not want your clients to become belligerent or otherwise act inappropriately in front of the master. The "[Party to a Divorce Action](#)" page on the Divorce Masters website contains more tips on how to dress and how to act.

→ **PRACTICE TIP:** Conferences with the master are formal court proceedings. It is not appropriate for parties to attempt to engage the master in conversation, even about such mundane subjects as the weather. Parties should speak through counsel unless asked a direct question. Parties (and counsel, for that matter) should not address the master on a “first name” basis during conferences or hearings. The appropriate form of address is “Mr. Baughman” or “Ms. Dorion” or “Ms. Conley.” The use of the term “Master” as a form of address is also acceptable. The use of the term “Attorney” is not, because it implies a role that the master is not permitted to play in these proceedings. “Your Honor” (while flattering) is definitely inappropriate.

→ **PRACTICE TIP:** The hearing room is small and it is easy for the master and opposing parties to overhear conversations between a party and his/her counsel. Provide your client with a pad and paper **before** the conference and instruct her/him to write down any comments or questions or to request a recess to confer privately. **Do not** permit your client to speak directly to the opposing party during the conference if such communication could be seen as threatening or belittling. The masters don’t like bullies.

### 3. Purpose

The master will review background information with counsel and the parties. Remember, discovery must be substantially complete **before** the preliminary conference on divorce or substantive economic issues. The master will attempt to clean up any loose ends from discovery, but if there is a serious dispute, then the master may simply convert the appointment to Interim Relief or the master may terminate the appointment sua sponte. The master may also terminate an appointment for economic claims if you have not established grounds for divorce.

### 4. Scheduling

The master will schedule the next proceeding before the conclusions of the preliminary conference. If you are trying to establish grounds for divorce, the next proceeding may well be the trial date. If you are seeking interim relief, the next proceeding will likely be a status conference. If you have appointed the master to resolve substantive economic claims, then the next proceeding should be a Settlement Conference. In any event, **bring your calendar** or be prepared to call your office. (Yes, you can bring your cell-phone into the Judicial Center **if** you have a valid attorney ID card.)

In cases where you have appointed the master to resolve substantive economic claims, the master will also set the time for the Rule 1920.33(b) Statement (also referred to as the Pretrial Statement) to be filed. The Pretrial Statement should contain a complete road map to your case, including accurate values for all assets and liabilities, a specific list of witnesses and their expected testimony, and a specific list of the Exhibits you will offer at the hearing.

## 5. More about Pretrial Statements

The master will require your Pretrial Statement to contain a simple chart of the marital assets and liabilities. Excel spreadsheets work very well for this purpose. List the assets and liabilities in the same order as they appear in the checklist at the beginning of the Inventory form and the same order that the master has listed them in his/her Preliminary Conference Memorandum. This makes it easier to compare the two charts to find the differences. **Do not** include any detailed explanations in this chart. There is plenty of room for that in the body of your Pretrial Statement. The chart is simply a summary of the position you are going to take at trial.

## 6. More about trial exhibits

Normally, you will be told **not** to file copies of your exhibits with the Prothonotary at this time, since it just wastes resources. It is likely that many of the exhibits you identify in your Pretrial Statement will be rendered irrelevant through stipulations. Others will duplicate exhibits offered by the other side. If the case goes to trial, the actual exhibits will be filed at the end of the hearing. You **WILL** be asked to assemble your exhibits in a loose-leaf three-ring binder and provide duplicate binders to opposing counsel and the master (the master will give your binder back to you when the case is over). Exhibits are to be numbered consecutively using whole Arabic numbers with the convention P-1, P-2, P-3, etc. for the Plaintiff and D-1, D-2, D-3, etc. for the Defendant. Each exhibit is to be labeled (preferably using colored exhibit labels) and separated from the previous exhibit by a tabbed, numbered divider. Use dividers with tabs at the bottom. Tabs along the side interfere with the master's optical scanning equipment. (The tabbed dividers are for the convenience of the witnesses, the attorneys, and the master at trial. The master will remove the tabbed dividers before filing the exhibits with the Prothonotary.) Please **do not** put adhesive tabs on the original exhibits. The Prothonotary does not like tabs on documents to be filed, since they interfere with the optical scanning equipment. If you must put tabs on documents to be filed, put them on the bottom of the page, not the side.

→ **PRACTICE TIP:** If you really want to score brownie points with the master, scan your trial exhibits in PDF format, with each exhibit in a separate PDF document named "P-1," "P-2," "P-3," etc., save them to a CD, or DVD and give the CD, or DVD to the master instead of a three-ring binder. **Do not** try to e-mail them to the master. Our e-mail server will reject large file attachments.

## H. Settlement Conference(s)

### 1. Time

The master will normally set aside two hours for a settlement conference.

## 2. Attendance

Counsel **and** parties are **required** to attend the Settlement Conference. See the section on participation by telephone, below. The attorney who is going to try the case is **required** to be present. No substitutions, please.

## 3. Purpose

The purpose of the Settlement Conference is to resolve issues. By now you have exchanged bank statements, appraisals, etc. You should have reviewed your documents and those received from opposing counsel so that many factual issues will have been resolved, such as the balance in the checking account, the value of the vehicles, etc. The master will then lead a discussion of the remaining issues, with an eye toward either resolving them or simplifying them to cut down on the length of the hearing. You will be expected to have identified your witnesses and exhibits and to have reviewed the witness and exhibit lists of opposing counsel. Court Reporters are available to take down an agreement between the parties.

→ **PRACTICE TIP:** Review your opponent's Rule 1920.33(b) statement and the documents referenced therein **before** the Settlement Conference. Then you can intelligently discuss the real issues in the case without wasting a lot of time. Also, your client is less likely to dispute your fee if you show up in court acting like you know what's going on.

## 4. Scheduling

At the conclusion of the Settlement Conference, the master will schedule the evidentiary hearing (if necessary). In complicated cases, the master may also schedule a work session with the Attorneys to deal with objections to witnesses and exhibits a few days prior to the hearing date.

→**PRACTICE TIP:** If you can't try your case in a single day, the master will try to schedule back-to-back days for the hearing. This is not always possible because of the lack of hearing rooms and Court Reporters. If the hearing is scheduled for multiple dates with lapses of time in between, dictate portions of your proposed Findings and Conclusions at the end of each day's testimony, summarizing the testimony, evidence, and exhibits. This kills two birds with one stone. You are working on the proposed findings and conclusions, and you are preparing for the next day of the hearing.

### I. Evidentiary Hearing

#### 1. Time

Hearings are scheduled in blocks of three hours (morning and afternoon). It is to your benefit to focus testimony on the real issues of the case because more than one day of testimony will normally require an additional fee of at least \$150 for each day or part thereof.

## 2. Attendance

Attendance at this point is optional. The hearing will proceed as long as one of the parties or his/her attorney shows up. Of course, the non-appearing party has waived his/her right to present evidence. Also, see the section on participation by telephone, below.

## 3. Purpose

The purpose of the evidentiary hearing is to make a record for the court. This is the only chance you get to make a record, so make sure you introduce the evidence necessary to support your position. **There is no hearing *de novo* in proceedings before the divorce masters.**

→ **PRACTICE TIP:** The Court Reporters have the capacity to provide a computer disk to the master with an unedited “real time” version of the notes of testimony. These disks are not available to counsel. Generally, the master will request a transcript or disk at the conclusion of the hearing and ask the parties to share the costs. Disks are cheaper than edited transcripts. If you already know that you will want an edited transcript, however, order it now and have the Court Reporter provide a copy to the master. This will normally be cheaper than paying for a disk at the end of the hearing and a full transcript later. If the master requests a transcript or disk, she/he will not start working on her/his Report and Recommendation until the transcript or disk has been supplied. The Court Reporter won’t supply the transcript or disk until the costs have been paid.

→ **PRACTICE TIP:** Make sure you mark your hearing exhibits in advance. (You should have done this prior to the settlement conference, but we all know how that works.) It is not the job of the master or the court reporter to mark your exhibits for you.

→ **PRACTICE TIP:** Don’t clutter up the record with unnecessary exhibits. You don’t need an exhibit to support a stipulated value. You don’t need to introduce a forty-page tax return if all you want to show is the number on line 26 of Form 1040. Focus on the important documents that relate to the real issues in the case. The more documents that the master needs to review, the more likely the master is to get lost in the trivia.

→ **PRACTICE TIP:** Hearing exhibits are part of the public record. The documents in the Prothonotary’s files (including hearing exhibits) are available on the Internet. That means that identity thieves can read your exhibits. It is **imperative** that you comply with [YCCiv. 205.1\(d\)](#), which requires you to redact personal identifiers from documents filed with the court. This rule, along with all of the other York County Rules of Court, is available on the Divorce Masters website. The master will file the exhibit as offered into evidence if it contains personal identifiers related to your client. The master **will not** redact personal identifiers for you. If you offer an exhibit containing personal identifiers, then you run the risk of being sued.

#### 4. Proposed findings and conclusions

In almost all cases, you will be directed to file proposed findings of fact and conclusions of law. This is your chance to summarize the evidence and your legal arguments. **Be concise and specific**, and make sure that the record supports your proposed findings and conclusions.

→ **PRACTICE TIP:** Prepare a rough draft of your proposed findings and conclusions **before** the hearing. This will give you a checklist to use during the presentation of testimony, and help you organize your presentation in a logical fashion. It is very important to know in advance what you want the master to “find” as the facts of the case, since these findings will drive the result. Keep your proposed findings concise and focused. Ideally, a finding of fact is one sentence long. If a certain finding is complex, break it down into its constituent parts. **Avoid rambling narratives.** Once you have outlined your proposed findings and conclusions, you must make certain that the record contains testimony or a stipulation that supports each finding and conclusion that you have proposed.

#### J. Participation by telephone

Parties may participate in Preliminary Conferences, Settlement Conferences, and Hearings by speakerphone (or other electronic means), either by agreement of counsel (and the master) or by Order of Court per Pa.R.C.P. 1930.3. If you wish to have your client participate in a Divorce Masters proceeding by electronic means and you have obtained an appropriate order of court, **make sure to advise the master in advance.** This is very important for Preliminary Conferences so that the master can review the file to see if there are any loose ends (like unsigned consents, etc.) that you will need to clear up before the conference. Also, be aware that you cannot place long distance calls from the master’s hearing rooms unless you have a calling card, call collect, or bill to a third party. If you plan to use Skype or a similar computer service, discuss this with the master in advance to make sure that the necessary equipment is in place.

#### K. Alimony Pendente Lite

If you elect to proceed with alimony pendente lite apart from equitable distribution, you must pay your Fifty Dollar (\$50) filing fee to get a DRS conference or a hearing with the master. The forms, with instructions, are available on the Internet on the Divorce Masters website. You **must** pay an additional \$50 fee if you are seeking a modification (amendment, suspension, termination, etc.) of an existing APL order or to convert an existing spouse support order to APL.

Follow the instructions to file the Motion to Appoint. Also note that it is NOT necessary to submit an Income Form or Expense Form with a Motion to Appoint on “APL Only” that will be referred to the Domestic Relations Section. The DRS will send the parties the necessary forms to complete. The Divorce Masters Office refers all “APL Only” Motions to the DRS unless counsel expressly requests a hearing. The Domestic Relations Section will apply the Support Guidelines to determine the monetary amount of the

award. Alimony Pendente Lite claims that go through the Domestic Relations Section may be appealed, in which case a hearing *de novo* will be scheduled.

→ **PRACTICE TIP:** In almost all cases, you will get a faster resolution of the APL claim by having it heard in the Domestic Relations Section. The only possible exception is an extremely complex case where you will require a hearing *de novo* regardless of what the Conference Officer recommends.

#### L. Interim Counsel Fees and Costs

Claims for interim counsel fees must be pled with specificity. File a Petition for Interim Counsel Fees, in which you tell the court exactly how much money you want and exactly what you want it for. These requests are **not** presented in Current Business Court, but are presented directly to the master. Upon receipt of the pleading and the Motion to Appoint for Interim Relief, the master will normally conduct one “preliminary conference” to discuss the request and then schedule an evidentiary hearing on the issue. Remember that a hearing on interim counsel fees will result in the master filing an Interim Report and Recommendation that is subject to the Exceptions process. This will likely slow the case down significantly. On the other hand, if opposing counsel knows exactly what you want and why you want it, you will most likely be able to negotiate some sort of “advance” that will not require a hearing by the master. The master will try to help the parties with the negotiations.

→ **PRACTICE TIP:** Remember to treat the request for counsel fees as seriously as you treat the other evidentiary issues in your case. Introduce an Affidavit stating the reason for the amount of your fees, particularly if there was delay on the part of the other side; or if you prepared or obtained the bulk of the documentation; or if the other side did not cooperate, requiring you to seek court intervention on more than one occasion.

→ **PRACTICE TIP:** The master will encourage counsel to resolve claims for interim costs, particularly where the money is needed to pay an expert. In most cases, the master will attempt to devise a property distribution or alimony award that will permit your client to pay your fees at the end of the case. The masters tend to view an award of counsel fees as a disincentive to inappropriate conduct.

→ **PRACTICE TIP:** The practitioner who simply supplies a copy of his/her invoice to the master is not likely to get an award of counsel fees. The master won’t sort through your invoice for services to try to figure out how much time you spent going to court to enforce a discovery order. Tell the master why you had to do “extra” or “unusual” work, what that work was, and how much it cost your client to do it. **Be specific.**

**EDITORIAL COMMENT:** The practitioner who does quality work is rewarded by obtaining a better result for his/her client. The practitioner who engages in obdurate behavior or delaying tactics should be sanctioned. The problem arises when one attorney engages in obdurate behavior and the other attorney retaliates by engaging in similar behavior. Just as a party seeking a fault divorce must do, the attorney seeking counsel fees must demonstrate that he/she is “innocent and injured.”

## M. Other Interim Relief

Petitions for special relief (exclusive possession, freezing assets, stopping foreclosure actions, etc.) are first presented in Current Business Court. Current business sessions for Divorce are held at 9:00 A.M. on Monday and Wednesday of each week before Judges Thomas H. Kelly, VI, and Harry M. Ness. Motions/Petitions must be filed with the Prothonotary and clocked-in copies must be delivered to Court Administration and the opposing party/counsel no less than five business days in advance. Please see the Section on Motions Practice in these materials.

The [York County Rules of Court](#) permit the masters to hear claims for interim relief, including interim distributions of property. These requests should be presented in Current Business Court and it is within the court's discretion whether to hear them or refer them to the master. The master will hear these issues in the same way as requests for interim counsel fees are heard, with the same potential pitfalls. In addition, be aware that you will still need to identify all of the marital assets and their values in order to qualify for interim distribution. There may be an extra fee involved if the matter is referred to the master.

## N. Filing of Report

### 1. Timing

The masters will try to file a Report within sixty days after the record is closed. The masters interpret this to mean that all evidence has been submitted, the master has received the transcript or disk (if requested), and both parties have provided proposed findings and conclusions (if requested) to the master. Complex cases can take longer. Good organization of your case and references to the record in your Proposed Findings and Conclusions will help speed up the process.

→ **PRACTICE TIP:** If you haven't received a Report within sixty days after you think the record has been closed, consider asking for a phone conference with opposing counsel and the master to make sure that the master has received everything he/she needs to complete the report. It is not unusual for the DMO to receive a call from an attorney inquiring about a report where that attorney or her/his client has failed to provide a transcript or proposed findings and conclusions. Written complaints are counter-productive. Consider making one only after you have tried to resolve the problem informally with the master involved. **DO NOT** have your client attempt to contact the master concerning the status of the case. Your client will be told to direct his/her inquiries to you.

### 2. Contents

When the Divorce Master files a Report, it will contain a specific section titled "Recommendation" that summarizes what the master thinks should happen in the case. There will also be a separate list of the Exhibits introduced and admitted into the record. Review this list to make sure that it includes all of the exhibits you thought had been entered into the record.

## O. Exception Process

### 1. Procedure

The initiating party **MUST** file his/her Exceptions within twenty (20) days of the master's Report and Recommendation having been **mailed**. This deadline **cannot** be extended by leave of court or agreement of counsel. The Exceptions are filed with the Prothonotary with copies provided to opposing counsel and the Divorce Masters Office.

The initiating party **must** contact the Court Reporter to order a transcript (if one hasn't already been filed). As a matter of course, the party first filing Exceptions is required to pay the costs of the transcript.

The responding party then has an additional twenty (20) days after the initial Exceptions were served to file additional Exceptions. Again, the Exceptions are filed with the Prothonotary and a copy provided to opposing counsel and the Divorce Masters Office.

The contents of briefs, number of copies to be filed, and the method and timing for filing and serving briefs are all contained in the local rules of court. Sanctions can be imposed for failure to file a brief on time. Unfortunately, failure to file a brief does not result in the exceptions being dismissed.

The local rules provide that oral argument is optional with the judge. If you don't expressly request oral argument, you probably won't get it. You should make the request if you need to address any doubts or questions that the Judge may have about your case. The Judge will have read the Exceptions and the Briefs, and will probably have questions for counsel.

→ **PRACTICE TIP:** If the master has issued an interim report on a claim to establish grounds for divorce or on a claim for interim costs or counsel fees and nobody filed exceptions, you still need to file the [Praecipe to Transmit Master's Report](#) in order to get a final order adopting the report before you can proceed with the substantive economic claims.

→ **PRACTICE TIP:** It is very likely that the master won't give your client everything she/he wants. It is highly likely that your client will be convinced that "a real Judge" will give her/him a better result. If you file Exceptions, bear in mind that the Judge could end up giving your client even less than the master did. You should always do a "best case/worst case" analysis before filing Exceptions.

→ **PRACTICE TIP:** Focus on the issues that really matter. Don't file exceptions that won't change the outcome of the case. Your valid issues will get lost in all the clutter. You might also want to review the opinion in *Kanter v Epstein*, 866 A.2d 394 (Pa. Super. 2004) to see how some judges respond to clutter.

**EDITORIAL COMMENT:** Remember that the cost of litigation is very high. Carefully analyze each case to ascertain whether it should be settled from a cost/benefit analysis. If the settlement offer on the table is Five Thousand Dollars (\$5,000) shy of what your client wants, but the cost of litigation is Six Thousand Dollars (\$6,000), then it doesn't make sense to go forward. In addition to the cost, carefully weigh the impact that the litigation will have on the parties and their children. As we all know, after derogatory comments are made, it is difficult to retract them and act as if all is normal. Nonetheless, if it is inevitable that you litigate the case, then the most important component is preparation.

→ **PRACTICE TIP:** Remember, the court will not rule on your exceptions until you file a [Praecipe to List Exceptions for One-Judge Disposition](#). We have had numerous calls over the years from parties who are waiting for their divorce decree. In many cases this is because the attorney filed exceptions, but never filed the Praecipe to list the exceptions for disposition.

## 2. Praecipe to transmit

Pa.R.C.P. 1920.42 describes the contents of the [Praecipe to Transmit](#). Forms are available on the Divorce Masters web site. Please note that the court carefully checks all documents submitted with the Praecipe to Transmit.

**General defects.** If there are inaccurate dates, blanks, or uncertainties, the court will “bounce” the file and may either contact counsel directly or return the file to the Prothonotary's Office for correction of the deficiencies. You will need to file a new Praecipe to Transmit once the deficiencies are corrected. IT IS IMPERATIVE to review the Prothonotary's docket and the pleadings before you transmit the file to the court for entry of a Divorce Decree.

**Economic claims.** If economic claims were raised in the Pleadings and there is no Order for Bifurcation, then the court will look for evidence of a signed property settlement agreement or other resolution of the economic claims. It is **not** sufficient to merely state that the related claims were resolved or that none are pending. You **must** make specific reference to the date that the agreement was signed. If the agreement is to be incorporated (whether or not merged) in the Divorce Decree, a copy of the signed agreement **must** be provided to the court.

→ **PRACTICE TIP:** The court uses detailed checklists to make sure that you have crossed every “t” and dotted every “i” in the file. You can find unofficial copies of the checklists on the “Forms and Instructions” page of our website.

## 3. Incorporation and special decrees

The court will incorporate an agreement of the parties into the Divorce Decree, **but only if the parties have agreed to such incorporation.** You may prepare

your own special divorce Decree for submission to the court. If you do not prepare your own Decree, the Judge will use a standard form.

→ **PRACTICE TIP:** We recommend preparing a special decree in each case. The standard form includes language about preserving economic claims “for which a final order has not yet been issued” and converting spouse support to alimony “if any economic claims remain pending.” This language can cause confusion if the economic claims have all been resolved by private agreement or if no economic claims were raised in the pleadings.

→ **PRACTICE TIP:** If your case involves economic claims and those claims have not been bifurcated, then it is very important to transmit both the divorce file (with a docket number ending in “02”) and the economic claim file (with a docket number ending in “15”) to the court at the same time for entry of the decree and the economic order. Failure to do so will delay entry of the decree. You can do this by putting both numbers on the [Praeceptum to Transmit](#) and filing duplicate originals with the Prothonotary.

→ **PRACTICE TIP:** If the economic claims have been bifurcated by stipulation, then you may want to incorporate the terms of the stipulation for bifurcation within the Decree itself, particularly if it contains provisions for QDRO’s, issues addressing the Dead Man’s Rule, dissipation of assets, schedules for appointing a master, etc. By incorporating the terms of the Bifurcation Stipulation, you will add additional “teeth” for enforcement purposes. If the divorce decree has already been issued, and nobody files exceptions to the master’s report on economic issues, then use the [Praeceptum to Transmit Master’s Report](#) to get a final decree resolving the economic claims.

- Additional Contact Information

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<http://yorkcountypa.gov/courts-criminal-justice/court-courtrelated-offices/prothonotary.html>

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