

Lehigh County Law Library Pathfinder

This PATHFINDER is not intended to be legal advice. If you need legal advice or assistance drafting legal documents, you must hire a private attorney.
Law Library staff **cannot** assist you in drafting legal documents.

PENNSYLVANIA MILITARY DIVORCE

For information about Military Divorce, see:

- *The Military Divorce Handbook, A Practical Guide to Representing Military Personnel and Their Families* (KF 535. S85 2019)
- 17 West's Pa. Practice, Family Law § 12:17 (7th ed.) § 12:17. Military service

Military Divorces in Pennsylvania may include:

- **Special Waiver Affidavit Forms:** If the defendant is in full-time military service, both the plaintiff and defendant will have to sign a waiver affidavit form. The Lehigh County Divorce Self-Help system does not provide that waiver affidavit. You may be able to get the required waiver affidavit from an attorney familiar with this process. **If you need such a waiver, consult an attorney.**

PLEASE NOTE:

- Getting a divorce in Pennsylvania when one or both parties is a member of the United States military creates several unique issues. While it is possible to get a divorce from an active duty member, specific state and federal laws and rules will apply. The procedures for a military divorce are different.
- If you want to get a divorce from someone in the Military, you should consult an attorney familiar with divorce proceedings concerning military members. According to court rules, a decree in divorce will not be entered if the military spouse is the defendant and does not make an appearance in the case and does not have an attorney.

What Court Rule Addresses Military Divorce in Pennsylvania?

Pa. R. C. P. 1920.46. Affidavit of Non-military Service

If the defendant fails to appear in the action, the plaintiff shall file an affidavit regarding military service with the motion for appointment of a hearing officer, prior to a trial by the court, or with the plaintiff's affidavit required by Pa.R.C.P. No. 1920.42(b)(1)(ii) and (c)(1)(ii).

Note: The Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901-4043, requires that in cases in which the defendant does not make an appearance, the plaintiff must file an affidavit of nonmilitary service before the court may enter judgment. If the defendant is in the military service and an attorney has not entered an appearance on behalf of the defendant, a judgment shall not be entered until the court appoints an attorney to represent the defendant and protect his or her interest.

Actions for divorce under Section 3301(c)(2) and (d)(1)(i) of the Divorce Code are governed by Pa.R.C.P. No. 1920.42(b) and (c), respectively.

Credits

Adopted Jan. 28, 1983, effective July 1, 1983. Amended July 30, 2003, imd. effective; Aug. 13, 2008, imd. effective; June 3, 2019, effective Oct. 1, 2019; Oct. 19, 2021, effective Jan. 1, 2022.

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If the Defendant is in the Military, Can I use The Lehigh County Self-Help Divorce on www.lccpa.org to?

No. The Self-help system is not designed to address the issues of a military divorce. Issues include, but may not be limited to the following:

1. The active duty military spouse must have an attorney.
2. Both parties must sign the special waiver affidavit.
3. An active duty military spouse must be personally served with the divorce complaint and other documents.
4. There may be an additional waiting period.

Why Do These Extra Steps for Divorcing Military Spouses Exist?

There are laws set up to protect active duty military members against being held in "default" from failing to respond to a divorce action. **These laws were enacted to protect active military from being divorced without knowing it.**

Service persons are protected by the Soldiers' and Sailors' Civil Relief Act, also known as the Servicemembers Civil Relief Act, which allows for the temporary suspension of legal proceedings and transactions in order to ensure that service persons' civil rights are not prejudiced during their terms of service. Under the Soldiers' and Sailors' Civil Relief Act, 50 App UCS section 521 and in the discretion of the local Pennsylvania court, the divorce proceeding may be postponed for the entire time the active service member is on duty and for up to 60 days thereafter (this is typically the case when the active member is serving in a war or overseas). **This right to have the divorce proceedings postponed can be waived by any active duty member should he or she wish to get the divorce.**

How Do You Serve an Active Military Spouse?

The active duty spouse must be personally served with a summons and a copy of the divorce action in order for a Pennsylvania court to have jurisdiction over the active military member. In an uncontested case, the active duty spouse may not have to be served as long as he or she signs and files a waiver affidavit acknowledging the divorce action.

What are the Residency and Filing Requirements to File in Pennsylvania?

The typical military divorce filing requirements are as follows:

- You or your spouse must reside in Pennsylvania.
- You or your spouse must be stationed in Pennsylvania.

Are There Different Grounds for Pennsylvania Military Divorce?

No. The grounds for a military divorce in Pennsylvania are the same as a civilian divorce. see 23 Pa. C.S.A. 3301.

What About Dividing Our Property and Pensions?

Federal principles, rather than state law, may control the construction of federal Uniformed Services Former Spouses' Protection Act, relating to a state court's authority to distribute military retirement pay in a domestic relations action. *Wagner v. Wagner*, 768 A.2d 1112, 564 Pa. 448, Sup.2001

Along with the normal Pennsylvania property division laws, the federal government has enacted the Uniformed Services Former Spouses' Protection Act (USFSPA 10 U.S.C.A. § 1408) that governs how military retirement benefits are calculated and divided upon divorce. The USFSPA is the governing body that authorizes a direct payment of a portion of a military retiree's pay to the former spouse.

The federal laws will not divide and distribute any of the military member's retirement to the spouse unless they have been married 10 years or longer while the member has been on active duty in the military.

What About Child Custody, Support and Spousal Support?

Custody and support issues are often complicated by stationing and relocation. In Pennsylvania, both child support and spousal support/alimony awards may not exceed 60% of a military member's pay and allowances. The normal Pennsylvania child support guidelines, worksheets and schedules are used to determine the proper amount of child support to be paid.