

Rule 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 master, prior to a trial by the court, or with the plaintiff's affidavit required by Rule 1920.42(a)(2).

Note. The **[Soldier's and Sailor's] Servicemembers Civil Relief Act [of 1940]**, 50 App. U.S.C.A. **[App.] §[520] 521**, requires that in cases **[of default in appearance by]** in which the defendant does not make an appearance, the plaintiff must file an affidavit of non-military service before **[entering] 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, no judgment may be entered until the court appoints an attorney to represent the defendant and protect his or her interest.

Rule 1920.42(a)(2) governs an action for divorce under Section 3301(d)(1)(i) of the Divorce Code.

[Explanatory Comment--1994

Section 602 of the Act of June 29, 1953, P.L. 304, 35 P.S. § 450.602, requires a certificate of each divorce and annulment of marriage decreed in the Commonwealth to be transmitted to the Department of Health.]

Explanatory Comment—2003

35 P.S. § 450.602 previously required a certificate of each divorce or annulment decreed in the commonwealth to be transmitted to the Vital Statistics Division of the Commonwealth of Pennsylvania Department of Health. The statute was amended October 30, 2001, P.L. 826, No. 82, § 1, effective in 60 days, to require that the prothonotary submit a monthly statistical summary of divorces and annulments, rather than individual forms for each decree. Thus, subdivision (a) of Rule 1920.46, requiring the filing of the vital statistics form, is no longer necessary. Former subdivision (b) now comprises the entirety of the rule and the title has been amended to reflect that the rule applies only to the affidavit regarding military service.