

**COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

RECOMMENDATION 58

**RULE 1905. FORMS FOR USE IN PFA ACTIONS. NOTICE AND HEARING.
PETITION. TEMPORARY PROTECTION ORDER. FINAL
PROTECTION ORDER.**

* * *

(e) The Final Order of Court entered pursuant to the Act shall be substantially in the following form:

(Caption)

FINAL ORDER OF COURT

Defendant's Name: _____

Defendant's Date of Birth: _____

Defendant's Social Security Number: _____

Names and Dates of Birth of All Protected Persons, including Plaintiff and minor children:

<u>Names</u>	<u>Dates of Birth</u>
_____	_____
_____	_____
_____	_____

CHECK ALL THAT APPLY:

Plaintiff or Protected Person(s) is/are:

- spouse or former spouse of Defendant
- parent of a common child with Defendant
- current or former sexual or intimate partner with Defendant
- child of Plaintiff
- child of Defendant
- family member related by blood (consanguinity) to Defendant
- family member related by marriage or affinity to Defendant
- sibling (person who shares biological parenthood) of Defendant
- current or former cohabitant (person who lives with) Defendant

Defendant was served in accordance with Pa. R.C.P. 1930.4 and provided notice of the time, date and location of the hearing scheduled in this matter.

AND NOW, this day of , [19]20 , the court having jurisdiction over the parties and the subject-matter, it is ORDERED, ADJUDGED AND DECREED as follows:

Note: Space is provided to allow for 1) the court's general findings of abuse; 2) inclusion of the terms under which the order was entered (e.g., that the order was entered with the consent of the parties, or that the defendant, though properly served, failed to appear for the hearing, or the reasons why plaintiff's request for a final PFA order was denied); and/or 3) information that may be helpful to law enforcement (e.g., whether a weapon was involved in the incident of abuse and/or whether the defendant is believed to be armed and dangerous).

Plaintiff's request for a final protection order is denied.

OR

Plaintiff's request for a final protection order is granted.

1. Defendant shall not abuse, stalk, harass, threaten or attempt to use physical force that would reasonably be expected to cause bodily injury to the Plaintiff or any other protected person in any place where they might be found.

2. Defendant is completely evicted and excluded from the residence at **(NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EXCLUDED)** or any other residence where Plaintiff or any other person protected under this Order may live. Exclusive possession of the residence is granted to Plaintiff. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this Order.

On [insert date and time], Defendant may enter the residence to retrieve his/her clothing and other personal effects, provided that Defendant is in the company of a law enforcement officer when such retrieval is made and [insert any other conditions] _____

3. Except as provided in Paragraph 5 of this Order, Defendant is prohibited from having **ANY CONTACT** with the Plaintiff, or any other person protected under this Order, at any location, including but not limited to any contact at the Plaintiff's school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this Order: _____

[] 4. Except as provided in Paragraph 5 of this Order, Defendant shall not contact the Plaintiff, or any other person protected under this Order, by telephone or by any other means, including through third persons.

[] 5. Custody of the minor children, [NAMES OF THE CHILDREN SUBJECT TO THE PROVISION OF THIS PARAGRAPH] **shall be as follows:** (STATE TO WHOM PRIMARY PHYSICAL CUSTODY AWARDED; STATE TERMS OF PARTIAL CUSTODY OR VISITATION, IF ANY.)

[] 6. Defendant shall immediately turn over to the Sheriff's Office, or to a local law enforcement agency for delivery to the Sheriff's Office, the following weapons used or threatened to be used by Defendant in an act of abuse against Plaintiff and/or the minor child/ren: _____

[] 7. Defendant is prohibited from possessing, transferring or acquiring any other weapons for the duration of this **[o]Order**. Any weapons delivered to the sheriff under Paragraph 6 of this Order or under Paragraph 6 of the Temporary Order shall not be returned until further order of court.

[] 8. The following additional relief is granted as authorized by § 6108 of the Act:

[] 9. Defendant is directed to pay temporary support for:(INSERT THE NAMES OF THE PERSONS FOR WHOM SUPPORT IS TO BE PAID) as follows: (INSERT AMOUNT, FREQUENCY AND OTHER TERMS AND CONDITIONS OF THE SUPPORT ORDER). This order for support shall remain in effect until a final order is entered by this Court. However, this order shall lapse automatically if the Plaintiff does not file a complaint for support with the Domestic Relations Section of the court within two weeks of the date of this order. The amount of this temporary order does not necessarily reflect the Defendant's correct support obligation, which shall be determined in accordance with the guidelines at the support hearing. Any

adjustments in the final amount of support shall be credited, retroactive to this date, to the appropriate party.

10. The costs of this action are waived as to the Plaintiff and imposed on Defendant.

11. Defendant shall pay \$ _____ to Plaintiff as compensation for plaintiff's out-of-pocket losses, which are as follows:

OR

Plaintiff is granted leave to present a petition, with appropriate notice to Defendant, to [INSERT THE NAME OF THE JUDGE OR COURT TO WHICH THE PETITION SHOULD BE PRESENTED] requesting recovery of out-of-pocket losses. The petition shall include an exhibit itemizing all claimed out-of-pocket losses, copies of all bills and estimates of repair, and an order scheduling a hearing. No fee shall be required by the Prothonotary's Office for the filing of this petition.

12. BRADY INDICATOR.

- 1. The Plaintiff or protected person(s) is a spouse, former spouse, a person who cohabitates or has cohabited with the Defendant, a parent of a common child, a child of that person, or a child of the Defendant.**
- 2. This order is being entered after a hearing of which the Defendant received actual notice and had an opportunity to be heard.**
- 3. Paragraph 1 of this Order has been checked to restrain the Defendant from harassing, stalking, or threatening Plaintiff or protected person(s).**
- 4. Defendant represents a credible threat to the physical safety of the Plaintiff or other protected person(s).**

OR

The terms of this order prohibit Defendant from using, attempting to use, or threatening to use physical force against the Plaintiff or protected person that would reasonably be expected to cause bodily injury.]

[13]12. THIS ORDER SUPERCEDES []ANY PRIOR PFA ORDER AND []ANY PRIOR ORDER RELATING TO CHILD CUSTODY.

[14]13. All provisions of this order shall expire in [one year]eighteen months, on (INSERT EXPIRATION DATE)

NOTICE TO THE DEFENDANT

VIOLATION OF THIS ORDER MAY RESULT IN YOUR ARREST ON THE CHARGE OF INDIRECT CRIMINAL CONTEMPT WHICH IS PUNISHABLE BY A FINE OF UP TO \$1,000 AND/OR A JAIL SENTENCE OF UP TO SIX MONTHS. 23 PA.C.S. §6114. VIOLATION MAY ALSO SUBJECT YOU TO PROSECUTION AND CRIMINAL PENALTIES UNDER THE PENNSYLVANIA CRIMES CODE.

THIS ORDER IS ENFORCEABLE IN ALL FIFTY (50) STATES, THE DISTRICT OF COLUMBIA, TRIBAL LANDS, U.S. TERRITORIES AND THE COMMONWEALTH OF PUERTO RICO UNDER THE VIOLENCE AGAINST WOMEN ACT, 18 U.S.C. §2265. IF YOU TRAVEL OUTSIDE OF THE STATE AND INTENTIONALLY VIOLATE THIS ORDER, YOU MAY BE SUBJECT TO FEDERAL CRIMINAL PROCEEDINGS UNDER THAT ACT, 18 U.S.C. §§2261-2262. [IF PARAGRAPH 12 OF THIS ORDER HAS BEEN CHECKED, YOU MAY BE SUBJECT TO FEDERAL PROSECUTION AND PENALTIES UNDER THE "BRADY" PROVISIONS OF THE GUN CONTROL ACT, 18 U.S.C. §922(g), FOR POSSESSION, TRANSPORT OR RECEIPT OF FIREARMS OR AMMUNITION.] IF YOU POSSESS A FIREARM OR ANY AMMUNITION WHILE THIS ORDER IS IN EFFECT, YOU MAY BE CHARGED WITH A FEDERAL OFFENSE EVEN IF THIS PENNSYLVANIA ORDER DOES NOT EXPRESSLY PROHIBIT YOU FROM POSSESSING FIREARMS OR AMMUNITION. 18 U.S.C. §922(g)(8).

NOTICE TO LAW ENFORCEMENT OFFICIALS

The police who have jurisdiction over the plaintiff's residence OR any location where a violation of this order occurs OR where the defendant may be located, shall enforce this order. An arrest for violation of Paragraphs 1 through 7 of this order may be without warrant, based solely on probable cause, whether or not the violation is committed in the presence of the police. 23 Pa.C.S. §6113.

Subsequent to an arrest, the police officer shall seize all weapons used or threatened to be used during the violation of the protection order or during prior incidents of abuse. The [INSERT THE APPROPRIATE NAME OR TITLE] shall maintain possession of the weapons until further order of this Court.

When the defendant is placed under arrest for violation of the order, the defendant shall be taken to the appropriate authority or authorities before whom defendant is to be arraigned. A "Complaint for Indirect Criminal Contempt" shall then be completed and signed by the police officer OR the plaintiff. Plaintiff's presence and signature are not required to file this complaint.

If sufficient grounds for violation of this order are alleged, the defendant shall be arraigned, bond set and both parties given notice of the date of hearing.

BY THE COURT:

Judge

Date

If entered pursuant to the consent of plaintiff and defendant:

(Plaintiff's signature)

(Defendant's signature)

Explanatory Comment-Rule 1905 Forms-1997

The use of standardized forms provides uniformity and is also critical to the enforcement of protection orders both inside and outside of the Commonwealth. These forms are substantially based on those proposed by members of the Pennsylvania Coalition Against Domestic Violence and have been further refined to accommodate the litigants need for simplicity, the court's need for flexibility and law enforcement's need for certain identifying information necessary to enforce the protection order.

The forms must be used so that all protection orders can be properly registered with the statewide PFA Registry and the federal Protection Order File (POF) established by the National Crime Information Center (NCIC) for the collection of information that is necessary for nationwide enforcement of protection orders. Entering a protection order into the Registry and NCIC file enables law enforcement to immediately verify the existence and terms of the order. It is important, therefore, that all protection orders be registered with these two files. To this end, the forms capture all of the information that is required for data entry and the form orders are further structured to present that information in the order and sequence that is most helpful to the various law enforcement agencies responsible for entering the information into the files. Once the information reaches the Registry and is accepted by the NCIC file, it becomes immediately accessible to law enforcement agencies, dispatchers and courts throughout the country.

[I. GENERAL USE OF FORMS]

The provisions in the form petition and orders reflect the most common forms of relief available under the Protection from Abuse Act. Plenty of space, however, is provided for plaintiff to request additional relief, and for courts to fashion appropriate relief, based on the individual circumstances of the litigants. Since all of the provisions will not necessarily apply in every case, the forms adopt a checkbox method that requires the user to affirmatively check only those provisions which are applicable to his or her situation.

In cases where a provision is generally applicable but its terms do not correspond precisely to the relief being requested or granted, the user should not check the standard provision but instead should use the blank spaces provided in the forms to specify the relief. For example, while the final order contains a standard provision permitting the defendant to retrieve personal belongings only in the company of a police officer, there may be more suitable methods of retrieval available in some cases. If so, then the plaintiff or court should use the blank spaces provided in the form petition or order (rather than the standard provision) to specify the alternative manner of retrieval.

[II. THE BRADY LAW]

Paragraph 12 of the final protection order reflects what are known as the "Brady" provisions of the federal Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322), codified at 18 U.S.C. §922(g). These provisions amend the Gun Control Act of 1968 to extend the prohibitions relating to the possession, receipt and purchase of firearms and ammunition to persons who are subject to a final protection order, if the order meets the following four criteria: 1) the order must have been entered after a hearing of which the defendant received actual notice and had the opportunity to participate; 2) the plaintiff or protected person is an "intimate partner" within the meaning of 18 U.S.C. §921(a)(32), or a child of an intimate partner, or a child of the defendant; 3) the terms of the order restrain the defendant from harassing, stalking, or threatening the plaintiff or protected person; and 4) the order includes a finding that the defendant represents a credible threat to the physical safety of the intimate partner or child or by its terms explicitly prohibits the use, attempted use or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" is defined as a spouse, former spouse, a person who cohabitates or has cohabited with the defendant, or a parent of a child who is protected under the order, 18 U.S.C. §921(a)(32).

The Brady indicator is a mandatory field for entry of a protection order into the national NCIC file, i.e., federal data entry agencies are required to indicate by a "Yes" or "No" response whether a final protection order meets these criteria for disqualifying a defendant from possessing or purchasing firearms or ammunition. Thus, if all four provisions of Paragraph 12 are affirmatively checked, the order will be entered into a statewide Registry and the NCIC file as a "Yes" response indicating that the defendant may

be subject to prosecution by the appropriate authorities under federal law if he or she possesses, receives or purchases firearms at any time while the order is in effect. If all four provisions have not been checked, then the order is entered as a "No" response indicating that the order is not Brady-eligible.

It is important to distinguish the Brady disqualifier in Paragraph 12 of the final order from the scope of relief contemplated by Paragraphs 6 and 7 of the temporary and final orders. Under the Protection from Abuse Act, 23 Pa.C.S. §6108(a)(7), a court may order the defendant to relinquish to the sheriff any weapons which were used or threatened to be used in an incident of abuse and to prohibit the defendant from acquiring or possessing any other weapons for the duration of the order. The "weapon" used in an incident of abuse may or may not be a firearm. If the weapon used is not a firearm, the defendant may still be disqualified from possessing or purchasing a firearm under Brady if the order otherwise meets the criteria under federal law.]

* * *

RULE 1910.2. VENUE. TRANSFER OF ACTION

(a) An action may be brought in

(1) the county in which the defendant resides, or

(2) the county in which the defendant is regularly employed, or

(3) the county in which the plaintiff resides and that county is the county in which the last marital domicile was located and in which the plaintiff has continued to reside, or

(4) the county in which the child resides if the relief sought includes child support.

(b) Where jurisdiction is acquired over the defendant pursuant to the long arm statute, 23 Pa.C.S. §4342(c), the action may be brought in the county where the plaintiff resides.

Note

23 Pa.C.S. §7201 sets forth the specific bases for long arm jurisdiction over a non-resident defendant.

(c) If, at the time of the filing of the action, there is a divorce or custody action pending between the parties in an appropriate court in another county, the court upon good cause shown may transfer the support action to that county.

(d) For the convenience of the parties and witnesses the court may transfer an action to the appropriate court of any other county where the action could have been brought at the time of transfer.

Note

The standards for transfer of an action for the convenience of parties and witnesses are the same as the standards under Rule 1006(d).

[(e) If neither party to an action presently resides in the county where the action is pending or a support order is in effect, and the defendant-obligor is not employed in that county, the court may transfer the action or order or both to any county where either party resides or where the defendant-obligor is regularly employed.]

(f) It shall be the duty of the domestic relations section of the court in which the action is pending to forward to the domestic relations section of the court to which the action is transferred all papers filed in the action and a certified copy of the docket entries.

(g) (e) A support order may be enforced in accordance with the Uniform Interstate Family Support Act, 23 Pa.C.S. §7101 et seq., if the defendant resides outside the Commonwealth, or in accordance with the Intrastate Family Support Act, 23 Pa.C.S. §8101 et seq., if the defendant resides in another county within the Commonwealth.

* * *

Explanatory Comment-1999

[The amendments to this Rule are intended to implement the Uniform Interstate Family Support Act (UIFSA) and the Intrastate Family Support Act (IFSA) to facilitate the fair and prompt establishment of child support by means of encouraging the support litigation to take place as a local action in one forum only.] Under the former rule, venue in support matters was in the county where the defendant lived or worked, or in the county where the plaintiff lived if that county was the last family domicile. The amended Rule expands the circumstances under which venue lies in the county in which plaintiff resides. If the action is one for spousal and child support or child support only, plaintiff may bring the action in the county in which the child resides regardless of whether that county was the last family domicile. **[The defendant will be required to defend the action there unless he or she can establish**

sufficient grounds for transfer of the action pursuant to subdivisions (c) through (e) of the proposed rule.] It is important to note, however, that the court may always permit a party or witness to testify by telephone, audiovisual or other electronic means at specially designated locations. 23 Pa.C.S. §4342(j).

If plaintiff seeks spousal support only, then venue continues to lie in plaintiff's county only if that county was also the last marital domicile.

[Subdivisions (c) through (e) identify the circumstances under which a support action may be transferred to another county. New subdivision (c) is designed to avoid multiple claims from being litigated in different counties. Subdivisions (d) through (f) are adopted verbatim from former Rule 1910.8 and were moved to Rule 1910.2 only for the convenience of the practitioner in resolving questions of venue.]

RULE 1910.2-1. PROCEDURES PURSUANT TO THE INTRASTATE FAMILY SUPPORT ACT

(a) The court in the county in which the complaint for support is filed shall retain and process the case for so long as all of the following conditions are met:

(1) there is proper venue pursuant to Rule 1910.2;

(2) the defendant-obligor's mailing address is known;

(3) sufficient information is known about the defendant-obligor's employment to enable the court to issue an earnings subpoena; and

(4) the obligee consents.

Note

A support action should be maintained in the county in which the obligee and/or the child(ren) reside and should not involve a second county unless the county of residence is unable to obtain service on the defendant-obligor or obtain information regarding the defendant-obligor's employment. However, the obligee is permitted to request that the case proceed under the Intrastate Family Support Act (IFSA) in accordance with 23 Pa. C.S. §8103.

If the venue requirements are met, the court in the obligee's county of residence should attempt to retain the case if there already is an order in that county against the same defendant-obligor in this or another child/spousal support case or if the defendant-obligor is incarcerated.

(b) If courts in two or more counties must be involved in the establishment and enforcement of an obligation for support:

(1) the case must proceed pursuant to the Intrastate Family Support Act;
and

(2) venue shall follow the defendant-obligor in order to maintain the availability of statutory enforcement remedies.

Explanatory Comment-2002

Upon receipt of an Intrastate Family Support Act ("IFSA") complaint, the responding court shall accept the complaint and its original filing date.

The obligee in an IFSA action is not required to be physically present in the responding court at any proceedings to establish, enforce or modify a support order, or to make a determination of paternity. 23 Pa.C.S. §8311(f) and (g) permits documentary evidence and testimony to be transmitted or obtained through the use of electronic media. In the event that additional information is required from the obligee, the responding court must notify the obligee as to the information needed and the acceptable means of providing it, and offer the obligee the assistance and use of the initiating court's staff and/or facilities to transmit such information. Telephonic hearings are authorized by Rule 1930.3 to accommodate out-of-county parties in both IFSA and locally-filed cases with the approval of the court upon good cause shown. The responding court must provide legal representation for an out-of-county obligee, where necessary, unless the obligee elects to be represented by private counsel.

(c) A support order shall not be registered in another county unless:

(1) requested by the obligee, or

(2) necessary to maintain an order for support, to obtain payment of the support obligation or to consolidate multiple cases involving the same defendant-obligor.

(d) Only one support order shall be charging against a defendant-obligor for the same spouse and/or child(ren) at one time.

Explanatory Comment-2002

If the obligee no longer resides in the initiating county, the initiating court may close its case after the following steps have been completed: 1) sending a copy of its docket file to the court in the obligee's new county of residence; 2) notifying the obligee and responding court, if applicable, of when and where the case was transferred; and 3) receiving from the court in the new county of residence acknowledgment of its receipt of the docket file and assumption of the initiating role.

If the defendant-obligor no longer resides in Pennsylvania or is employed outside the commonwealth, and the responding court cannot enforce the order or subpoena earnings or income information, the responding court must consider registration of the case under the provisions of the Uniform Interstate Family Support Act (UIFSA).

* * *

RULE 1910.16-6.SUPPORT GUIDELINES. ADJUSTMENTS TO THE BASIC SUPPORT OBLIGATION

* * *

(c) Unreimbursed Medical Expenses. Unreimbursed medical expenses of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes and obligor's share added to his or her basic support obligation.

(1) For purposes of this subdivision, medical expenses are annual unreimbursed medical expenses in excess of \$250 per person which are recurring and can be reasonably predicted by the court at the time of establishment or modification of the support order. Medical expenses include insurance co-payments and deductibles and all expenses incurred for reasonably necessary medical services and supplies, including but not limited to surgical, dental and optical services, and orthodontia. Medical expenses do not include cosmetic, chiropractic, psychiatric or psychological services unless specifically directed in the order of court.

Note

While cosmetic, chiropractic, psychiatric and psychological expenses are not required to be apportioned between the parties, the court may apportion such expenses that it determines to be reasonable and appropriate under the circumstances.

* * *

RULE 1910.16-7.SUPPORT GUIDELINES. AWARDS OF CHILD SUPPORT WHEN THERE ARE MULTIPLE FAMILIES.

* * *

(d) When an obligor is subject to more than one order for child support, spousal support and/or alimony *pendente lite*, the priority for distribution of payments and/or collections from the obligor, without regard to the source of the funds or method of

collection, are as follows unless the court specifically orders a different distribution priority:

- (1) current child support.
- (2) medical, child care or other court-ordered child support related expenses.
- (3) current spousal support or alimony *pendente lite*.
- (4) child support arrears.
- (5) spousal support or alimony *pendente lite* arrears.
- (6) court costs.

* * *

RULE 1915.3. COMMENCEMENT OF ACTION. COMPLAINT. ORDER.

* * *

(e) A grandparent seeking physical and/or legal custody of a grandchild pursuant to 23 Pa. C.S. §5313(b) must plead, in paragraph 7 of the complaint set forth at Rule 1915.15(a), facts establishing the elements of a cause of action under §§5313(b)(1), (2) and (3).

Explanatory Comment-2002

In *R.M. v. Baxter*, 777 A.2d 446 (Pa. 2001), the Pennsylvania Supreme Court held that 23 Pa. C.S. §5313(b) confers automatic standing on grandparents to seek physical and legal custody of a grandchild. However, establishing a cause of action under the statute requires the existence of the elements set forth at 23 Pa. C.S. §§5313(b)(1), (2) and (3).

* * *

RULE 1920.74. FORM OF MOTION FOR APPOINTMENT OF MASTER. ORDER

(a) The motion for appointment of a master shall be substantially in the following form:

(Caption)

MOTION FOR APPOINTMENT OF MASTER

_____ (Plaintiff)(Defendant), moves the court to appoint a master with respect to the following claims:

- | | |
|--|---|
| <input type="checkbox"/> Divorce | <input type="checkbox"/> Distribution of Property |
| <input type="checkbox"/> Annulment | <input type="checkbox"/> Support |
| <input type="checkbox"/> Alimony | <input type="checkbox"/> Counsel Fees |
| <input type="checkbox"/> Alimony Pendente Lite | <input type="checkbox"/> Costs and Expenses |

and in support of the motion states:

(1) Discovery (is)(is not) complete as to the claim(s) for which the appointment of a master is requested.

(2) The **[defendant]** non-moving party (has)(has not) appeared in the action (personally) (by his attorney, _____, Esquire).

(3) The statutory ground(s) for divorce (is)(are) _____
_____.

(4) Delete the inapplicable paragraph(s):

(a) The action is uncontested.

(b) An agreement has been reached with respect to the following claims: _____.

(c) The action is contested with respect to the following claims: _____.

(5) The action (involves)(does not involve) complex issues of law or fact.

(6) The hearing is expected to take ___ (hours)(days).

(7) Additional information, if any, relevant to the motion: _____.

Date: _____
_____ Attorney for (Plaintiff)(Defendant)

(b) The order appointing a master shall be substantially in the following form:

(Caption)

ORDER APPOINTING MASTER

AND NOW, _____, [19]20_____, _____,
Esquire, is appointed master with respect to the following claims:

BY THE COURT:

MOVING PARTY

Name: _____

Attorney's Name: _____

Attorney's Address: _____

Attorney's Telephone #: _____

Attorney's E-Mail: _____

Party's Address and Telephone # if not
represented by counsel: _____

NON-MOVING PARTY

Name: _____

Attorney's Name: _____

Attorney's Address: _____

Attorney's Telephone #: _____

Attorney's E-Mail: _____

Party's Address and Telephone # if not
represented by counsel: _____

Note

It is within the discretion of the court to determine the point at which a master should be appointed in a case. The court may appoint a master to deal with discovery issues.