

FINAL REPORT¹

Amendments to Rules 1201 through 1211 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

EMERGENCY RELIEF UNDER THE PROTECTION FROM ABUSE ACT

On November 2, 2001, effective February 1, 2002, upon the recommendation of the Minor Court Rules Committee, the Supreme Court of Pennsylvania amended Rules 1201 through 1211 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.

I. Background

In response to an inquiry regarding an inconsistency between the Protection From Abuse Act, 23 Pa.C.S. § 6101 et seq., and the Rules of Civil Procedure Governing Actions and Proceedings Before District Justices, the Minor Court Rules Committee undertook a review of Chapter 1200 of the Rules, relating to Emergency Relief Under the Protection From Abuse Act. The Committee recommended amendments to these rules to make both substantive changes and clarifications and related technical or “housekeeping” amendments to bring the rules into conformity with the Protection From Abuse Act and the correlative Rules of Civil Procedure.

II. Discussion Of Rule Changes

A. *Substantive Changes – Rules 1204, 1206, 1208, 1209, 1210, and 1211*

1. Rule 1204 – Venue

After review of the Act and the Rules of Civil Procedure, the Committee recommended that Rule 1204 relating to venue be amended to make it more closely conform with Pa.R.C.P. No. 1901.1. Specifically, the Committee determined that the options for appropriate venue in emergency PFA actions should be expanded to provide the necessary flexibility to a plaintiff who may have to flee the county of permanent residence to escape further abuse. As noted in the revised Comment, this rule is intended to provide maximum flexibility to a plaintiff to use a convenient forum to seek an emergency protective order. However, where practicable, the Committee believes that plaintiffs should give preference to filing in the magisterial district in which the plaintiff resides, either temporarily or permanently, or in the magisterial district in which the abuse occurred.

2. Rule 1206 – Commencement of Proceedings

¹ The Committee’s Final Report should not be confused with the official Committee Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee’s Notes or the contents of the Committee’s explanatory Final Reports.

After review of the Protection From Abuse Act, the Committee recommended that Rule 1206 be amended to more closely conform with the requirements and language of Section 6110(d) of the Act, 23 Pa.C.S. § 6110(d). Section 6110(d) requires that the hearing officer provide specific information to the plaintiff that formerly was not expressly stated in Rule 1206. Also, with regard to commencement of proceedings in the court of common pleas, the Committee felt it important to recognize differences in local practice. As such, the Committee recommended that Rule 1206 be amended and its Note revised to make clear that hearing officers should explain the procedures for continuing actions in the court of common pleas. This concern is also reflected in the amendments to Rules 1210 and 1211.

Further, the Committee recommended a new subsection C, to require that petitions for emergency protection orders be filed and service be made without prepayment of costs. This subsection is derived from Section 6106(b) of the Act, 23 Pa.C.S. § 6106(b), and reflects the practice when a temporary order is issued in the court of common pleas. In making this recommendation, the Committee recognized that petitioners for emergency protection orders are often in a crisis situation and are unable or unprepared to pay the associated costs at the time an order is sought. The Committee anticipates that the court of common pleas can make a determination regarding the payment of costs of the emergency order after the order is certified to the court of common pleas pursuant to Rule 1211.

3. Rule 1208 – Findings and Protection Orders

After review of the Protection From Abuse Act, the Committee recommended that Rule 1208 be amended to more closely conform with the language of Section 6110(a) of the Act, 23 Pa.C.S. § 6110(a). The Committee noted that the authority for hearing officers to grant emergency relief is actually found in Section 6110(a) of the Act, not Section 6108(a) of the Act as was suggested by the former language of the Rule. The Committee felt that the reference to the specific forms of relief that can be granted by hearing officers (that is, relief under Sections 6108(a)(1), (2), and (6) or (1) and (6)) more appropriately belongs in the Note to Rule 1208.

4. Rule 1209 – Service and Execution of Emergency Protection Orders

After review of the Act and considerable discussion, the Committee recommended that substantial changes be made to Rule 1209 related to service. First, the amended rule specifies that *certified* constables may be used to make service to conform with Section 2942(a) of the Judicial Code, 42 Pa.C.S. § 2942(a), relating to certification of constables.

Secondly, the Committee struggled with the very practical and common problem of the inability of an executing officer to make service upon the defendant. This is common where an incident of abuse occurs, the police are called, and the abuser flees to avoid arrest or service of process. It is also common, however, for an abuser to return later, placing the victim in danger of further abuse. The former language of Rule

1209 required that when an executing officer is unable to make service, the officer should leave the service copy of the order with the plaintiff for service upon the defendant. The Committee felt that a plaintiff making service upon an abusive defendant was at best ill advised and at worst extremely dangerous. The Committee desired to remove from the Rule any suggestion that a plaintiff should be required to make service upon a defendant. Accordingly, the amended Rule requires that the executing officer, after making reasonable effort to serve the order, leave a service copy of the order with the police department having jurisdiction over the area in which the plaintiff resides. Further, the executing officer is required to advise the police department that the order could not be served. By requiring this, the Committee hopes that in cases where the defendant could not be served by the executing officer and the defendant returns to the plaintiff's residence, the plaintiff could call the police who would respond and serve the order upon the defendant.

Also, the Committee felt it necessary to revise the Note to Rule 1209 to make clear that a plaintiff may need more than one copy of a protection order where a plaintiff may want to provide copies of the order to more than one police department. This is common, for example, where a plaintiff lives and works in different police jurisdictions.

Finally, the Committee recommended that a statement be added to the Note to Rule 1209 as a cross reference to Rule 1206 making it absolutely clear that service is to be made without prepayment of costs.

5. Rule 1210 – Duration of Emergency Protection Orders

After review of the Protection From Abuse Act, the Committee recognized the need for a simple yet important change to Rule 1210 to bring the Rule into conformity with Section 6110(b) of the Act, 23 Pa.C.S. § 6110(b). Specifically, the amended Rule makes clear that emergency protection orders expire at the *end* of the next business day that the court of common pleas deems itself available. Also, the Committee recommended that the Note to Rule 1210 be amended to include an important cross reference to Rules 1206 and 1211 relating to commencement of actions in the court of common pleas.

6. Rule 1211 – Certification to Court of Common Pleas

After considerable discussion, it became clear to the Committee that practice varies greatly among the judicial districts as to how emergency protection orders are certified to the court of common pleas and how proceedings in the court of common pleas are commenced upon expiration of emergency protection orders. For example, some judicial districts may require that the plaintiff appear in person to continue an action in the court of common pleas. Others may automatically commence an action in the court of common pleas upon receipt of the certified copy of the emergency order from the hearing officer. The Committee felt it important, therefore, to revise the Note to Rule 1211 to address these differences in local procedure with regard to commencement of actions in the court of common pleas. The Committee would

anticipate that the courts of common pleas would provide clear instructions to the district justices or hearing officers in the judicial district as to the local procedures for continuing an action in the court of common pleas.

B. Technical or “Housekeeping” Amendments – Rules 1201, 1202, 1203, 1205, and 1207

The Committee felt it necessary to propose minor technical or “housekeeping” amendments to Rules 1201, 1202, 1203, 1205, and 1207 to use consistent and proper citation form and to correct minor references to statutory provisions, including the Protection From Abuse Act. The Committee also felt it appropriate to delete the outdated and unnecessary “Explanatory Comment – 1992” following Rule 1201 and the outdated and unnecessary Note to Rule 1202.