

FINAL REPORT¹

Revision to the Official Note to Rule 1201 and Amendment of Rule 1202 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

CROSS REFERENCE TO THE OLDER ADULT PROTECTIVE SERVICES ACT AND AMENDED DEFINITION OF “HEARING OFFICER”

On July 7th, 2006, effective immediately, upon recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania approved a revision to the Official Note to Rule 1201 and amended Rule 1202 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.³

I. Background

A. Cross-Reference to the Older Adult Protective Services Act

The Minor Court Rules Committee (the Committee), on its own initiative, undertook a review of the Older Adult Protective Services Act⁴ (the Act) to consider what, if any, procedures may be needed to guide magisterial district judges in carrying out their duties under the Act. Specifically, the Committee noted that the Act provides that

[t]he courts of common pleas of each judicial district shall ensure that a judge or district justice⁵ is available on a 24-hour-a-day, 365-day-a-year basis to accept and decide on petitions for an emergency court order under this section whenever the

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

² Recommendation No. 1 Minor Court Rules 2006.

³ Supreme Court of Pennsylvania Order No. [REDACTED], Magisterial Docket No. 1 (July 7th, 2006).

⁴ Act of Nov. 6, 1987, P.L. 381, No. 79 as amended (35 P.S. §§ 10225.101-10225.5102).

⁵ The title “district justice” was changed to “magisterial district judge” effective January 29, 2005, in accordance with the Act of Nov. 30, 2004, P.L. 1618, No. 207 and Supreme Court of Pennsylvania Order No. 269, Judicial Administration Docket No. 1 (January 6, 2005). The Committee notes that SB 273 PN 280, introduced in the Pennsylvania State Senate February 15, 2005 and pending as of this writing, would amend the Older Adult Protective Services Act to, among other things, change “district justice” to “magisterial district judge” in this section.

agency⁶ determines that a delay until normal court hours would significantly increase the danger the older adult faces.⁷

In addition, the Committee noted that the Act defines “Court” as “[a] court of common pleas or a district magistrate court, where applicable.”⁸

Because the Act expressly gives authority to magisterial district judges to enter emergency orders and the definition of “court” in the Act includes “district magistrate court[s],” the Committee discussed the possible need for procedural rules to guide magisterial district judges in these cases. Based upon the experiences of the Committee members, as well as informal discussions with magisterial district judges, court administrators, and area agency on aging officials from throughout the Commonwealth, the Committee made the following findings:

- After-hours, emergency petitions under the Act are filed relatively rarely, but in some judicial districts on-call magisterial district judges are occasionally asked to review emergency petitions and enter orders.
- Most judicial districts have no formal procedures or local rules in place governing the filing and consideration of emergency petitions under the Act, and many judicial districts have no formal administrative order or local rule designating a common pleas judge or magisterial district judge to hear after-hours emergency petitions.
- Although there is an “Abuse of the Elderly Emergency Relief Order” form produced by the Magisterial District Judge System (MDJS)⁹, emergency orders under the Act are often entered using the petition and order forms prepared and presented by the area agency on aging or its designee.
- Despite the lack of formal procedures or local rules governing the filing and consideration of emergency petitions under the Act, and the relative rarity of

⁶ The Act defines “Agency” as “[t]he local provider of protective services, which is the area agency on aging or the agency designated by the area agency on aging to provide protective services in the area agency’s planning and service area.” Act of Nov. 6, 1987, P.L. 381, No. 79, § 3 as amended (35 P.S. § 10225.103). The Committee learned that it is usually the area agency on aging, through its caseworker staff, solicitor, or other designee, that presents emergency petitions to the courts.

⁷ Act of Nov. 6, 1987, P.L. 381, No. 79, § 10 as amended (35 P.S. § 10225.307).

⁸ *Id.* § 3 as amended (35 P.S. § 10225.103).

⁹ The MDJS is the statewide judicial computer system that automates all case processing and accounting functions of the magisterial district courts. The MDJS-generated “Abuse of the Elderly Emergency Relief Order” is designated as form AOPC 635-05.

these matters coming before the magisterial district judges, when a magisterial district judge is asked to consider an emergency petition the agency representative is usually able to provide sufficient legal and factual background information to enable the judge to consider the petition and order relief if appropriate.

Given these findings, the Committee determined that statewide rules of procedure governing these actions before magisterial district judges are unnecessary. Rather, the Committee believed that these matters are better governed by the Act itself and by local procedures.

The Committee did, however, believe that president judges of the courts of common pleas and magisterial district judges need to be put on notice of their responsibilities and authority with regard to the handling of after-hours emergency petitions under the Act. To this end, the Committee has done or recommended the following:

- The Committee requested that the Court Administrator of Pennsylvania write to all president judges of the courts of common pleas to advise them of their responsibilities under the Act, particularly relating to after-hours coverage by a judge or magisterial district judge. In response to this request, Court Administrator Pines wrote to all common pleas court president judges on May 24, 2005. In his letter, Court Administrator Pines advised the president judges that “[b]ecause this law is infrequently used and after-hours court operations sometimes are not uniform from county to county, we have determined that it would be helpful to suggest that you reevaluate your county’s resources in this area.”¹⁰
- In addition to the reminder letter from the Court Administrator, the Committee recommended that a cross-reference to the Act be inserted in the Official Note to Rule 1201 (Applicability). The Committee recommended that the cross-reference to the Act be included in the Chapter 1200 rules, relating to emergency relief under the Protection From Abuse (PFA) Act, because emergency petitions under the Act are somewhat analogous to PFA actions. The Committee wished to make clear to a user of the rules who may be searching for procedures relating to the Act that emergency petitions under the Act are not governed by the emergency PFA rules, but rather by statute and local procedures.¹¹

¹⁰ Letter from Zygmunt A. Pines, Esq., Court Administrator of Pennsylvania, to all president judges of the Pennsylvania courts of common pleas (May 24, 2005) (on file with the Minor Court Rules Committee).

¹¹ In addition to the cross-reference in the Official Note to Rule 1201, the Committee will recommend a similar cross-reference in the Official Note to Rule 112 (Temporary Assignments of Magisterial District Judges). This proposed cross-reference, however, (continued...)

B. Amended Definition of “Hearing Officer” in Rule 1202

In addition to the cross-reference to the Older Adult Protective Services Act discussed above, the Committee recommended that the definition of “hearing officer” in Rule 1202 (Definitions) be amended in response to recent legislative amendments to the Protection from Abuse Act (the PFA Act).¹² Act 66 of 2005¹³ amended section 6110 of the PFA Act to provide for emergency relief under the PFA Act by a “master for emergency relief.”¹⁴ The definition of “hearing officer” in section 6102 of the PFA Act was amended to include master for emergency relief, and a definition of master for emergency relief (“[a] member of the bar of the Commonwealth appointed under section 6110(e) (relating to emergency relief by minor judiciary)”) was added.¹⁵ Accordingly, the Committee recommended that the corresponding definition of “hearing officer” in Rule 1202 be amended to include a master for emergency relief.

II. Approved Rule Changes

A. Rule 1201

To address the issues discussed above relating to the Older Adult Protective Services Act, the Committee recommended that the Official Note to Rule 1201 be revised to include the following cross-reference to the Act:

The court of common pleas of each judicial district is responsible to ensure that a judge or magisterial district judge “is available on a 24-hour-a-day, 365-day-a-year basis to accept and decide on petitions for an emergency court order under” the Older Adult Protective Services Act. 35 P.S. § 10225.307. Actions commenced under the Older Adult Protective Services Act are governed by statute and local procedures, not by these rules.

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will be included in a separate proposal to amend Rule 112 that is beyond the scope of this recommendation.

¹² 23 Pa.C.S. §§ 6101-6118.

¹³ Act of Nov. 10, 2005, P.L. 335, No. 66.

¹⁴ Id. § 10.

¹⁵ Id. § 5.

B. Rule 1202

To implement the amendments to the PFA Act discussed above, the Committee recommended that the definition of “hearing officer” in Rule 1202 be amended to include a “master for emergency relief appointed under 23 Pa.C.S. § 6110(e) (relating to master for emergency relief).”

Finally, in addition to the substantive changes discussed above, the Committee recommended other minor editorial revisions to both rules to conform to modern drafting style and to enhance readability.