

PROPOSED RULES

AMENDMENTS TO THE RULES OF CIVIL PROCEDURE RELATING TO DOMESTIC RELATIONS MATTERS

SUPREME COURT OF PENNSYLVANIA DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

RECOMMENDATION 120 REPUBLICATION

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than **Friday, February 1, 2013** directed to:

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Deleted material is **bold** and **[bracketed]**. New material is **bold** and underlined.

By the Domestic Relations Procedural Rules Committee

Carol S. Mills McCarthy, *Chair*

SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

RECOMMENDATION 120

REPUBLICATION

Rule 1901.8 Modification or Discontinuance.

(a) In cases in which a temporary protection order has not yet been granted or has been denied, a plaintiff in a protection from abuse action who wishes to discontinue the action may file a praecipe to discontinue, pursuant to Pa.R.C.P. 229, prior to the final order hearing. The party may also request the discontinuance by oral motion at a hearing.

(b) In cases in which a temporary protection order has been granted, a plaintiff in a protection from abuse action who wishes to vacate the temporary order and discontinue the action shall either file a petition with the court prior to the final order hearing or make the request by oral motion at the final order hearing.

(c) If either party seeks a modification after a final judgment has been entered in a protection from abuse action, the party shall petition the court to modify the final order. The court shall enter an order granting or denying the petition following an appearance by the petitioner before the court.

Explanatory Comment—2013

Jurisdictions across the commonwealth have adopted varying procedures and processes for the withdrawal, discontinuance and modification of protection from abuse actions. This rule provides a uniform process that comports with the requirements of 23 Pa.C.S. §§6107(b)(2) (related to hearings), 6117 (related to procedure and other remedies) and *Commonwealth v. Charnik*, 921 A.2d 1214 (Pa. Super. 2007). These requirements, when read together, require a different procedure for withdrawal, discontinuance and modification at various stages in a protection from abuse proceeding.

After a final protection order is entered, the court no longer retains jurisdiction to vacate that order. *Charnik*, 921 A.2d at 1217. The court does, however, have jurisdiction to modify a protection from abuse order at any time after the filing of a petition for modification, service of the petition and a hearing on the petition. 23 Pa.C.S. §6117. Thus, a party may request that the court modify the order to expire at an earlier date if the party does not want the order to remain in effect.