

## PROPOSED RULES

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

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#### SUPREME COURT OF PENNSYLVANIA DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

#### RECOMMENDATION 98

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 **Wednesday, February 10, 2010** directed to:

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

*By the Domestic Relations Procedural Rules Committee*

Carol A. Behers, Esquire  
*Chair*

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

**RECOMMENDATION 98**

**Rule 1901.8. Return of Relinquished Firearms, Other Weapons and Ammunition.**

(a) Petition. Within one year of the date of the dismissal or expiration of a temporary or final protection from abuse order that required the defendant to relinquish firearms, other weapons or ammunition, or the dismissal of a petition for a protection from abuse order, the defendant may seek the return of the relinquished items by filing a petition with the prothonotary, or other designated office, of the court in which the protection from abuse action was filed. The petition, rule to show cause and proposed order shall be substantially in the form set forth in Rules 1905(f), (g) and (h) and the petition shall be verified. Pursuant to 23 Pa.C.S.A. §6108.1(a), the defendant shall not be required to pay any fees, costs or charges associated with the return of relinquished firearms, other weapons or ammunition.

Note: "Sheriff" is defined at 23 Pa.C.S.A. §6101(a) as the sheriff of the county or, in a city of the first class, the chief or head of the police department.

(b) Rule to Show Cause. Hearing. A rule to show cause scheduling a hearing shall be issued as of course. The petition, rule to show cause and proposed order shall be served upon the plaintiff and the sheriff. The court shall serve the plaintiff by first class mail at the plaintiff's last known address. Upon receipt of the rule to show cause, the sheriff shall conduct a background check on the defendant, including clearance from the Pennsylvania State Police Instant Check System ("PICS"), to determine whether the defendant is lawfully eligible to possess firearms, other weapons or ammunition. If the plaintiff or the sheriff does not object to the return of the relinquished items, that person need not appear at the hearing and the court shall issue an order for the return of relinquished firearms, other weapons or ammunition. The plaintiff or the sheriff must attend the hearing to object to the return of the relinquished items.

Explanatory Comment 2009

The Protection From Abuse Act, 23 Pa.C.S.A. §6108.1, provides that any order requiring the relinquishment of firearms, other weapons or ammunition must provide for the return of the relinquished items upon the expiration of the order or the dismissal of a petition for a protection from abuse order. The statute also requires that the defendant be lawfully eligible to possess the relinquished items. New Rule 1901.8, and the accompanying new forms at Rule 1905(f), (g) and (h), set forth a uniform procedure by which defendants may seek the return of relinquished firearms, other weapons and ammunition. The process for the return of items relinquished to a third party for safekeeping is set forth at 23 Pa.C.S.A. §6108.3(d).

**Rule 1905. Forms for Use in PFA Actions. Notice and Hearing. Petition. Temporary Protection Order. Final Protection Order.**

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(c) The Temporary Order of Court, or any continued, amended or modified Temporary Order of Court, entered pursuant to the Act shall be substantially in the following form, but the first page must be exactly as set forth in this rule:

\* \* \*

6.FIREARMS, OTHER WEAPONS AND AMMUNITION RESTRICTIONS.

Check all that apply:

Defendant is prohibited from possessing, transferring or acquiring any firearms for the duration of this order.

Defendant shall relinquish to the sheriff the following firearms licenses owned or possessed by Defendant:

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Defendant is directed to relinquish to the sheriff any firearm, other weapon or ammunition listed in Attachment A to Temporary Order, which is incorporated herein by reference.

Defendant may relinquish any firearms, other weapons or ammunition to the sheriff. As an alternative, Defendant may relinquish firearms, other weapons and ammunition to a third party provided Defendant and the third party first comply with all the requirements to obtain a safekeeping permit. Defendant must relinquish any firearm, other weapon, ammunition or firearm license ordered to be relinquished no later than 24 hours after service of this order. If, due to their current location, firearms, other weapons, or ammunition cannot reasonably be retrieved within the time for relinquishment, Defendant shall provide to the sheriff an affidavit listing the firearms, other weapons or ammunition and their current location no later than 24 hours after service of this order. Failure to timely relinquish any firearm, other weapon, ammunition or any firearm license shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 Pa.C.S.A. §6105.

The procedure for the return of relinquished firearms, other weapons or ammunition upon the dismissal or expiration of this order, or the dismissal of the petition for protection from abuse, shall be pursuant to Pa.R.C.P. 1901.8.

\* \* \*

(e) The Final Order of Court, or any amended, modified or extended Final Order of Court, entered pursuant to the Act shall be substantially in the following form, but the first page must be exactly as set forth in this rule:

\* \* \*

6. FIREARMS, OTHER WEAPONS AND AMMUNITION RESTRICTIONS.

Check all that apply:

Defendant is prohibited from possessing, transferring or acquiring any firearms for the duration of this order.

Defendant shall relinquish to the sheriff the following firearm licenses owned or possessed by Defendant:

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Defendant is directed to relinquish to the sheriff any firearm, other weapon or ammunition listed in Attachment A to Final Order, which is incorporated herein by reference.

Defendant may relinquish any firearms, other weapons or ammunition to the sheriff. As an alternative, Defendant may either relinquish firearms, other weapons and ammunition to a third party provided Defendant and the third party first comply with all the requirements to obtain a safekeeping permit, or relinquish firearms, other weapons and ammunition to a licensed firearms dealer for consignment sale, lawful transfer or safekeeping pursuant to 23 Pa.C.S.A. § 6108.2(e). Defendant must relinquish any firearm, other weapon, ammunition or firearms license ordered to be relinquished no later than 24 hours after service of this order. Failure to timely relinquish any firearm, other weapon, ammunition or any firearm license ordered to be relinquished shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 Pa.C.S.A. §6105.

7. Any firearm delivered to the sheriff or transferred to a licensed firearm dealer, or a qualified third party who satisfies the procedural and substantive requirements to obtain a safekeeping permit issued under 23 Pa.C.S.A. §6108.3 pursuant to this order or the temporary order shall not be returned to Defendant until further order of court or as otherwise provided by law.

The procedure for the return of relinquished firearms, other weapons or ammunition upon the dismissal or expiration of this order, or the dismissal of the petition for protection from abuse, shall be pursuant to Pa.R.C.P. 1901.8.

\* \* \*

(f) The petition for return of relinquished firearms, other weapons or ammunition shall be substantially in the following form:

(CAPTION)

PETITION FOR RETURN OF RELINQUISHED FIREARMS, OTHER WEAPONS,  
AMMUNITION AND FIREARMS LICENSES

1. Γ Petitioner is (name) \_\_\_\_\_, defendant in the above-captioned protection from abuse action.

OR

Γ Petitioner is (name) \_\_\_\_\_, not the defendant, but is an adult whose firearms, other weapons or ammunition was confiscated as a result of the above-captioned protection from abuse action.

2. Petitioner's address is \_\_\_\_\_.

3. Petitioner's Social Security number is \_\_\_\_\_ . (Provision of the Social Security number is voluntary. However, failure to provide the number may result in delay or incompleteness of the background check.)

4. Petitioner's date of birth is \_\_\_\_\_.

5. Petitioner's driver's operating license number is \_\_\_\_\_.

6. A protection from abuse order was entered on (date) \_\_\_\_\_ . Pursuant to that order, Petitioner relinquished to (provide name of individual person or entity, i.e. sheriff) \_\_\_\_\_

the following firearms, other weapons, ammunition and firearms licenses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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7. Check the appropriate box(es) and file with this petition a certified copy of any dismissal order or expired protection from abuse order:

The petition for protection from abuse was dismissed.

A temporary protection from abuse order was dismissed on \_\_\_\_\_ (date) \_\_\_\_\_.

The final protection from abuse order was dismissed or expired on (date) \_\_\_\_\_.

There have been no extensions of the final protection from abuse order.

8. Petitioner is eligible under all applicable federal and state laws to possess firearms, other weapons and ammunition: Check all that apply:

Petitioner is not subject to the prohibitions set forth in 18 Pa.C.S §6105(a)-(c).

Petitioner is not prohibited by federal law from possessing firearms, other weapons or ammunition.

Petitioner has not been charged with, or convicted of, a crime punishable by imprisonment for a term exceeding one year.

Petitioner never has been involuntarily committed for a mental health condition or been adjudicated incompetent/incapacitated.

Petitioner is not addicted to drugs or alcohol.

Petitioner is a United States citizen. OR  Petitioner's Immigration Identification Number is \_\_\_\_\_.

Petitioner never has received a dishonorable discharge from the United States Armed Forces.

Petitioner is not subject to a current protection from abuse order in this or any other case and no petition for a protection from abuse order filed by this or any other plaintiff is pending against Petitioner.

Γ Petitioner is in compliance with all federal, state and local firearm licensing laws regarding possessing, carrying or owning firearms, other weapons or ammunition.

Γ Petitioner is not currently subject to probation, parole and is not the subject of any court order or bond in any jurisdiction that would prohibit Petitioner from possessing, carrying or owning firearms, other weapons or ammunition.

Wherefore, Petitioner requests the return of all relinquished firearms, other weapons, ammunition and firearms licenses.

### VERIFICATION

I verify that I am the petitioner in the above captioned action and that the facts and statements in the above petition are true and correct to the best of my knowledge, information and belief. I understand that any false statements are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

(g) The rule to show cause issued upon the filing of a petition for return of relinquished firearms, other weapons or ammunition shall be substantially in the following form:

### (CAPTION)

#### RULE TO SHOW CAUSE

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the foregoing petition, it is hereby ordered that

1. A rule is issued upon the plaintiff in the above captioned protection from abuse action and the sheriff to show cause why the petitioner is not entitled to the relief requested.

2. The sheriff is directed to conduct a background check, including approval from the Pennsylvania State Police Instant Check System ("PICS"), to determine if the petitioner is lawfully eligible to possess firearms, other weapons and ammunition.

3. A hearing is scheduled on a rule returnable on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m./p.m. in Courtroom \_\_\_\_\_, of the \_\_\_\_\_ County Courthouse.

4. To object to the relief requested in the petition, the plaintiff or the sheriff must attend the hearing. If either the plaintiff or the sheriff do not oppose the return of relinquished items, that person need not attend the hearing.

5. If neither the plaintiff nor the sheriff appears at the hearing to oppose the return of the relinquished items, the court shall issue an order granting the petitioner the requested relief.

6. Copies of this rule to show cause shall be served on the plaintiff and the sheriff by the court.

BY THE COURT

\_\_\_\_\_  
J.

(h) The proposed order filed with a petition for return of relinquished firearms, other weapons, ammunition and firearms licenses shall be substantially in the following form:

(CAPTION)

ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_,

Upon the petition of \_\_\_\_\_,

after hearing at which  
petitioner  $\Gamma$  appeared  $\Gamma$  did not appear,  
plaintiff  $\Gamma$  appeared  $\Gamma$  did not appear,  
and the sheriff  $\Gamma$  appeared  $\Gamma$  did not appear,

it is hereby ORDERED, ADJUDGED and DECREED as follows:

$\Gamma$  The relief requested is granted and the rule is made absolute. The petitioner shall provide a certified copy of this order to the sheriff after which the sheriff shall return the relinquished items to the petitioner.

$\Gamma$  The relief requested is denied and the rule is dismissed.

BY THE COURT

\_\_\_\_\_  
J.