



**LEGAL SERVICES
FOR MAINE ELDERS**

LD 1129 – An Act to Clarify Standards for Defendants' Post-judgment Motions for Relief
from Protection from Abuse Orders

Testimony of John Brautigam, Esq. for Legal Services for Maine Elders
Joint Standing Committee on Judiciary

March 31, 2025

Senator Carney, Representative Kuhn, and members of the Joint Standing Committee on
Judiciary.

My name is John Brautigam, and I am here today on behalf of Legal Services for Maine
Elders. LSE provides free legal help for Mainers aged 60 and older when their basic human
needs are at stake.

This bill adds a subsection to 19-A MRS § 4111 addressing the types of motions a defendant
may – and may not – file after entry of an order in a PFA case.

The starting point for analyzing what motions should be allowed is recognizing the purpose
behind Maine's PFA statute. PFA proceedings are exclusively for the protection of the
plaintiff. They are not intended to protect defendants or imbue defendants with any rights or
privileges. This purpose must inform any decision regarding motions that may be filed in a
PFA case.

Since PFA proceedings do not exist to constrain the plaintiff, a defendant should not be
permitted to file any motion predicated on the obligation of a plaintiff. This includes
motions to enforce an order against the plaintiff and motions to hold the plaintiff in
contempt for violation of an order. Both types of motion assume that the PFA order imposes
an obligation on the part of the plaintiff, and since that is not correct, neither motion is
appropriate.

LD 1129 is necessary because current rules do not provide enough protection. Rule 411 only
protects the plaintiff from criminal sanctions. ("[C]riminal sanctions may not be imposed
upon the plaintiff for violation of a provision of the plaintiff's order for protection.") But
experience shows that more is required. Plaintiffs should also be shielded from harassing

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motions practice. LD 1129 would go a step further than Rule 4111 and prohibit any motion against the plaintiff based on the final order.

This is an appropriate way to strengthen current law. A defendant in a PFA proceeding should not be permitted to file motions for purposes that are not consistent with the nature of a PFA case. An improper motion wastes the time of the court and parties and causes stress and aggravation. Worse, some defendants have filed motions with little purpose other than to harass the plaintiff. Such motions violate Rule 11 which binds both attorneys and pro-se parties. But proving a Rule 11 violation takes time and resources. To deter this practice, the court should be empowered to swiftly dispose of unwarranted motions, and clerks should be instructed not to accept them for filing.

Not only does LD 1129 cover post-judgment motions against the plaintiff, it also addresses motions by a defendant to extinguish a final order. LD 1129 says that such post-judgment motions must accord with the Rules of Civil Procedure. We believe that this is consistent with current Rule 120 regarding post-judgment review. If clarifying language is necessary, we support this part of LD 1299.

We have two caveats regarding LD 1129. First, there is a risk of unintended consequences from the phrase in LD 1129 suggesting that “extraordinary circumstances” may justify departing from the rules governing post-judgment motions. The Civil Rules do not include an express “extraordinary circumstances” exception. Codifying this exception might open the door to the very problem that the bill aims to foreclose. It is impossible to say how this undefined term would be applied in practice and whether a particularly aggressive defendant might use it to circumvent the purpose of the provision requiring at least some response from the plaintiff and expenditure of judicial resources.

Second, when negotiating a PFA order, plaintiff or their counsel may find it useful to offer to agree to certain things requested by the defendant. For example, a plaintiff may agree to the return of property or to allow limited access to premises under specific terms. Such terms may help the parties conclude a negotiated agreement. Such terms may – or may not – be incorporated directly into a PFA order. It is reasonable to ask whether prohibiting a defendant from filing a motion to enforce such terms would chill this kind of negotiation. Whether this is a significant concern depends on the sophistication of the defendant and the presence of legal counsel. This is not an obstacle to enactment of LD 1129, but we wanted the committee to have a full understanding of the context.

Thank you.