WEST VIRGINIA CODE: §48-27-402

§48-27-402. Proceedings in magistrate court when temporary divorce, annulment, separate maintenance or custody order is in effect.

(a) The provisions of this section apply where a temporary order has been entered by a family court in an action for divorce, annulment, separate maintenance or custody, notwithstanding the provisions of subsection 27-401(c) of this article.

(b) A person who is a party to an action for divorce, annulment, separate maintenance or custody in which a temporary order has been entered pursuant to section 5-501 of this chapter may petition the magistrate court for a temporary emergency protective order pursuant to this section for any violation of the provisions of this article occurring after the date of entry of the temporary order pursuant to section 5-501 of this chapter.

(c) The only relief that a magistrate may award pursuant to this section is a temporary emergency protective order:

(1) Directing the respondent to refrain from abusing the petitioner or minor children, or both;

(2) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household members or family members for the purpose of violating the protective order; and

(3) Ordering the respondent to refrain from contacting, telephoning, communicating with, harassing or verbally abusing the petitioner.

(d) A temporary emergency protective order may modify an award of custody or visitation only upon a showing, by clear and convincing evidence, of the respondent's abuse of a child, as abuse is defined in section 27-202 of this article. An order of modification shall clearly state which party has custody and describe why custody or visitation arrangements were modified.

(e) (1) The magistrate shall forthwith transmit a copy of any temporary emergency protective order, together with a copy of the petition, by mail or by facsimile machine to the family court in which the action is pending and to law-enforcement agencies. The family court shall set a hearing on the matter to be held no later than ten days following the entry of the order by magistrate. The family court shall give notice of the hearing date, time and place to the parties and shall advise them of their opportunity to appear and participate in a hearing to determine whether the order entered by the magistrate should be extended by the family court to a date certain or should be vacated. The notice shall also provide that a party's failure to appear may result in the entry of an order extending the order entered by the magistrate to a date certain or vacating the order of the magistrate. Subsequent to the

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hearing, the family court shall forthwith enter an order and cause the same to be served on the parties and transmitted by mail or by facsimile machine to the issuing magistrate. The magistrate court clerk shall forward a copy of the family court order to law-enforcement agencies.

(2) If no temporary order has been entered in the pending action for divorce, annulment, separate maintenance or custody, the family court shall forthwith return the order with such explanation to the issuing magistrate. The magistrate who issued the order shall vacate the order, noting thereon the reason for termination. The magistrate court clerk shall transmit a copy of the vacated order to the parties and law-enforcement agencies.

(f) Notwithstanding any other provision of this code, if the family court extends the temporary emergency protective order entered by the magistrate or if, pursuant to the provisions of section 5-509, the family court enters a protective order as temporary relief in an action for divorce, the family court order shall be treated and enforced as a protective order issued under the provisions of this article.

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