

# The Distinction Between Abuse of Process and Wrongful Use of Civil Proceedings

*The Legal Intelligencer*

Posted on March 16, 2026

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Attorneys and Pennsylvania courts have often conflated actions for abuse of process and wrongful use of civil proceedings (the Dragonetti Act). “The torts of malicious prosecution and abuse of process are separate and distinct but often confused.” See *Werner v. Plater-Zyberk*, 2002PA Super 42, ¶ 15, 799 A.2d 776, 785 (2002). The two torts are very different claims, with different requirements, and should be considered separately. Some recent opinions have highlighted one of the key differences between the two types of claims, the distinction between a “proceeding” and “process.”

## 'Proceedings' for Wrongful Use of Civil Proceedings

One obvious key distinction between these types of claims is seen in their titles. Fundamentally, a wrongful use of civil proceedings relates to a “proceeding.” Wrongful use of civil proceedings is a tort arising when a person institutes civil proceedings with a malicious motive and lacking probable cause. In order to prevail on a claim of wrongful use of civil proceedings, a plaintiff must show that the defendant maliciously instituted proceedings against it, that the defendant lacked probable cause to institute the

proceedings, and that the proceedings terminated in favor of the plaintiff. The law regarding what constitutes a “proceeding” for purposes of a wrongful use of civil proceedings claim has been fleshed out to some degree in the last several years. In 2020, the Pennsylvania Supreme Court examined the meaning of the term “civil proceeding” for purposes of a Dragonetti Act claim in *Raynor v. D’Annunzio*. At issue was whether a Dragonetti Act claim could be based upon post-trial sanction/contempt proceedings. The plaintiff argued in the trial court that the post-trial contempt proceedings had “all, or many, of the normal indicia of a civil lawsuit” and therefore was tantamount to a civil action. The trial court disagreed, sustained preliminary objections and dismissed the wrongful use of civil proceedings claim with prejudice, finding that the contempt proceedings were not a “proceeding” for purposes of the Dragonetti Act. The Superior Court disagreed with the trial court, finding the contempt proceedings were “civil proceedings” as defined by the Act. The Pennsylvania Supreme Court then overturned the Superior Court and affirmed the trial court’s dismissal. The Supreme Court held that “intra-case filings, such as the subject post-trial motion for contempt and sanctions—do not constitute the ‘procurement, initiation or continuation of

civil proceedings’ as contemplated under the Dragonetti Act.”

This concept was further explored in *Pendergrass v. Pendergrass*, 518 F. Supp. 3d 839, 847 (E.D.Pa. 2021), where the court determined that the presentation of a will and a subsequent will contest “had all ‘the normal indicia of a civil lawsuit,’” but they were ‘intra-case’ filings within the overarching estate litigation,” and thus could not be “proceedings” for purposes of a Dragonetti Act claim. The court stated that while it appeared the matter fell within the “purpose” of the Dragonetti Act, it was bound by the Supreme Court’s “significantly narrowed definition of a civil proceeding.”

### **'Process' for Abuse of Process**

As the name suggests, in contrast to the Dragonetti Act, a claim for abuse of process arises from the use of “process,” rather than the implementation and/or continuance of a proceeding. Abuse of process occurs when the legal process is utilized for some unlawful purpose, not one for which it was intended. “The gist of an action for abuse of process is the improper use of process after it has been issued, that is, a perversion of it.” See *Hart v. O’Malley*, 436 Pa. Super. 151, 647 A.2d 542,546 (1994). A cause of action for abuse of process exists to provide a remedy for those cases in which legal process has been set in motion in proper form, with probable cause and even with ultimate success, but nevertheless has been perverted to accomplish an ulterior purpose for which it was not designed. Abuse of process is defined as the use of legal process against another primarily to accomplish a purpose for which it is not designed; it is the use of

legal process as a tactical weapon to coerce a desired result that is not the legitimate object of the process.

However, what constitutes “process” has been a subject of more than a little confusion. Courts note that Pennsylvania law defines “legal process” broadly and it “encompasses the entire range of procedures incident to the litigation process,” including discovery proceedings, notices of depositions, and issuing subpoenas. See *Rosen v. American Bank of Rolla*, 627 A.2d 190, 192 (Pa.Super. 1993). However, what constitutes “process” has not frequently been the subject of discussions in Pennsylvania courts.

In 2024, U.S. District Court Judge Julia Munley of the Middle District of Pennsylvania issued an opinion in which the meaning of “process” was discussed in some detail. See *McCarthy v. Jauregui*, No. 3:21 CV 1759, 2024 WL 1313868, at \*5 (M.D. Pa. 2024). Munley dismissed an abuse of process claim brought by a female college student against a male student and his lawyer. The female student alleged the male student assaulted her and brought a Title IX claim against him. The male student admitted to the conduct, however, his attorney asserted a counterclaim against female student claiming she assaulted him. The female student alleged the male student and his attorney asserted the counterclaim knowing it to be untrue.

In dismissing a subsequent claim of abuse of process, Munley concluded the female student did not allege “legal process” to support a claim for abuse of process because the alleged “process “was the counterclaim in the Title IX proceeding. Munley relying on the Restatement (Third)

of Torts, explained, “process ... does not refer to the legal process generally. It refers to process in the more specific sense of the word familiar to lawyers: the instruments by which courts assert their jurisdiction and command others to appear, act, or desist. In short, ‘process’ generally means orders that are issued by courts at the behest of one of the parties, or that are otherwise backed by judicial authority.” Munley concluded a counterclaim is “not an order issued by the court at the behest of one of the parties or backed by judicial powers such as a subpoena and it is not a noticing of a deposition or other discovery proceeding” and could not be a basis for a claim for abuse of process.

More recently, U.S. District Court Judge Mark Kearney in the Eastern District of Pennsylvania cited to Munley’s decision in dismissing an abuse of process claim based upon the filing of a lawsuit. See *3 Step Sports v. Vanguard Elite Volleyball Academy*, No. CV 25-2853, 2025 WL 3284468, at \*5 (E.D. Pa. 2025). While not cited by Munley or Kearney, the definition of “process” in the Restatement is consistent with the definition of “process”

in 42 Pa. Stat. and Cons. Stat. Ann. Section 102 that defines “process” as: “A document evidencing a command of court or of a magisterial district judge.” We can anticipate that refining the definition of what constitutes “process” will be litigated in the Pennsylvania courts moving forward based upon these recent opinions applying Pennsylvania law.



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