

**SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.C.P.M.D.J. No. 1208–1211

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P.M.D.J. No. 1208–1211 relating to orders denying petitions for emergency protection from abuse or petitions for protection from sexual violence or intimidation for the reasons set forth in the accompanying Publication Report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor be officially adopted by the Supreme Court.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Pamela S. Walker, Counsel
Minor Court Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9546
minorrules@pacourts.us**

All communications in reference to the proposal should be received by **August 11, 2021**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Minor Court Rules Committee,

Honorable Margaret A. Hunsicker
Chair

Rule 1208. Findings and Protection Orders; **Denial Orders**

A. (1) If the hearing officer, upon good cause shown, finds it necessary to protect the plaintiff or minor children from abuse, the hearing officer may grant relief in accordance with Section 6110(a) of the Protection From Abuse Act, 23 Pa.C.S. § 6110(a), and make any protection orders necessary to effectuate that relief. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause.

(2) If the hearing officer, upon good cause shown, finds it necessary to protect the plaintiff or another individual in connection with claims of sexual violence or intimidation, the hearing officer may grant relief in accordance with 42 Pa.C.S. § 62A09(a), and make any protection orders necessary to effectuate that relief. Immediate and present danger posed by the defendant to the plaintiff or another individual shall constitute good cause.

B. If the hearing officer does not find good cause pursuant to subdivision A(1) or A(2), the hearing officer shall issue an order denying the petition.

C. The hearing officer shall enter on the petition form the findings and any protection orders made or other action taken.

Official Note: **[Subparagraph] Subdivision** A(1) of this rule permits the hearing officer to grant limited relief in accordance with 23 Pa.C.S. § 6108(a)(1), (2), and (6) or (1) and (6). **[Subparagraph] Subdivision** A(2) of this rule permits the hearing officer to grant limited relief to plaintiffs in accordance with 42 Pa.C.S. § 62A07(b). **Subdivision B provides for the issuance of an order denying the petition for emergency relief.**

Rule 1209. Service and Execution of Emergency Protection Orders; Denial Orders

A. **(1) [The] If the hearing officer grants the requested emergency relief in whole or in part, then the hearing officer** shall provide to the plaintiff a copy of **[a] the** protection order made under Rule 1208. The hearing officer or, when necessary, the plaintiff shall immediately deliver a service copy of any protection order made under Rule 1208A to a police officer, police department, sheriff, or certified constable for service upon the defendant and execution. After making reasonable effort, if the executing officer is unable to serve the protection order upon the defendant in a timely fashion, the executing officer shall leave a service copy of the petition form containing the order with the police department with jurisdiction over the area in which the plaintiff resides for service upon the defendant, and shall advise such police department that the order could not be served.

[B.] (2) [When a] If the protection order is issued under Rule 1208A(2) in accordance with 42 Pa.C.S. § 62A09(a), the hearing officer shall:

[(1)](a) within two business days, serve the order upon the police department, sheriff, and district attorney in the jurisdiction where the order was entered, and

[(2)](b) in the case of a minor victim of sexual violence, serve a copy of the petition and order upon the county agency (as defined by 23 Pa.C.S. § 6303) and the Department of Human Services.

B. (1) If the hearing officer denies the requested emergency relief, the hearing officer shall provide to the plaintiff the order issued under Rule 1208B. The denial order shall not be served upon the defendant.

(2) The denial order and the underlying petition are not public records.

Official Note: The hearing officer **[should] shall** provide the plaintiff with at least one copy of a protection order **granting the requested relief**, but more than one copy may be needed. For example, the plaintiff may wish to serve the order upon multiple police departments when the plaintiff lives and works in different police jurisdictions, etc. If it is necessary for the plaintiff to deliver the protection order to the executing officer, the hearing officer should make sure that the plaintiff fully understands the process and what must be done to have the order served upon the defendant. The hearing officer should make every effort to have the protection order served by a law enforcement officer in a timely fashion. The Rule requires that if the executing officer is unable to serve the protection order in a timely fashion, the executing officer shall leave a service copy of the order with the police department with jurisdiction over the area in which the plaintiff resides. This was thought advisable so that the local police would have a service copy in

case they **[would be] are** called to the plaintiff's residence **[should] if** the defendant returns there. Due to the emergency nature of these protection orders and the fact that to be meaningful they must be served and executed at night or on a weekend, the hearing officer should have the authority to use police officers as well as sheriffs and certified constables to serve and execute these orders. Protection orders issued under Rule 1208**A(2)** in accordance with 42 Pa. []C.S. § 62A09 (providing for protection of victims of sexual violence or intimidation) are subject to additional service requirements. See Section 6109(a) of the Protection From Abuse Act, 23 Pa.C.S. § 6109(a), and 42 Pa.C.S. § 62A05(d).

Service shall be made without prepayment of costs. See Rule 1206(C).

Service of protection orders upon the defendant at the time of execution may not be possible under some circumstances.

The hearing officer will provide the plaintiff with the order denying the petition for emergency relief; the denial order is not served upon the defendant. Neither the denial order nor the underlying petition are public records or accessible to the public given the sensitive nature of their contents. See Case Records Public Access Policy of the Unified Judicial System of Pennsylvania, Section 9.0F.

Rule 1210. Duration of Emergency Protection Orders

Protection orders issued under Rule 1208A shall expire at the end of the next business day the court deems itself available.

Rule 1211. Certification to Court of Common Pleas

A. Any protection order issued under Rule 1208A, together with any documentation in support thereof, shall immediately be certified to the court of common pleas by the hearing officer.

SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee

PUBLICATION REPORT

Proposed Amendment of Pa.R.C.P.M.D.J. No. 1208–1211

The Minor Court Rules Committee (“Committee”) is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 1208–1211 of the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges (“Rules”). The proposal relates to orders denying petitions for emergency protection from abuse or petitions for protection from sexual violence or intimidation. The proposal was first published for public comment at 49 Pa.B. 1772 (April 13, 2019). The Committee modified the proposal in response to comments received following the 2019 publication.

Background

The Committee received an inquiry from a magisterial district court questioning if a copy of an order denying a petition for emergency protection from abuse should be served on the defendant. The inquirer expressed concern that sending the denial order to the defendant could aggravate tensions between the parties and put the plaintiff in potential danger. The Committee determined that relevant statutes and rules are silent on the matter of service of an emergency denial order. This void resulted in divergent local practices in magisterial district courts for processing a denial order—some courts sent it to the defendant, while others placed it in the court's file or forwarded it to the court of common pleas without sending a copy to the defendant. The Committee believed it would be preferable to have a standardized statewide practice for these cases.

After reviewing relevant statutes and rules, as well as the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* (“Policy”), the Committee considered the fairness of withholding a denial order from a defendant in an adversarial (albeit *ex parte*) proceeding when the denial order and underlying petition could be accessed by the public. The Committee further considered the concern raised in the initial inquiry—the potential harm to a plaintiff if the defendant is notified of the denial order. Notifying the defendant of the court's denial order would inform him or her of the plaintiff's attempt to seek emergency protective relief from the court, while leaving the plaintiff without any court-ordered protection. However, the Committee aimed to balance the safety of plaintiffs seeking emergency protection with the due process rights of defendants.

The Committee published for public comment proposed amendments to rules governing emergency protective actions. The proposed amendments to Rule 1208 would

have required hearing officers in emergency protection actions to issue an order denying the requested relief when the hearing officer did not find it necessary to protect the plaintiff or another individual. The proposed amendments to Rule 1209 would have required the hearing officer to send the denial order to the defendant by first class mail no sooner than 48 hours after issuance of the denial order. The 48-hour delay in the mailing of the denial order to the defendant was intended to provide the plaintiff with time to implement a safety plan or seek a temporary protection order from a court of common pleas. Public comment to the proposal was largely negative and expressed concern for the safety of plaintiffs. The Committee revisited the proposal and is considering recommending an alternative approach to the Court.

Discussion

The Committee continues to seek uniform processing of denial orders and balancing of the safety of the plaintiff with the due process rights of the defendant. While the Committee proposed a 48-hour delay in serving a denial order on a defendant in 2019, it ultimately came to the conclusion that there was no optimal period of time to serve the denial order on the defendant such that the plaintiff's safety is ensured. A defendant receiving a denial order 10, 30, or 60 days after its issuance may be as likely to be provoked as a defendant receiving the order 48 hours later. Since the Committee is not satisfied that the denial order can be served on the defendant without risk of harm to the plaintiff, the Committee is considering proposing to the Court that a denial order not be served on the defendant and that public access to the denial order and underlying petition is prohibited.

Currently, an order denying a petition for emergency protective relief constitutes a public record within the context of the *Policy*, subject to certain content restrictions; a denial order could be issued and made available to the public without the defendant's knowledge. See *Policy*, §§ 1.0B(2), 3.0. If the defendant is not going to be served with a copy of the denial order, it stands to reason that the public should not have access to it. The *Policy* designates information that is not accessible by the public at a court facility, including "[i]nformation to which access is otherwise restricted by federal law, state law, or state court rule." *Id.*, § 9.0F. Because the definition of "public" does not include a party to a case, a defendant would be able to obtain a copy of the petition and denial order in the case because he or she is a named party. See *id.*, § 1.0N. The Committee cannot predict the likelihood of a defendant in an emergency protective matter subsequently becoming aware of the existence of the petition and denial order and seeking access to them, but this proposal provides a better balancing between plaintiff safety and defendant due process.

Proposed Rule Changes

Rule 1208 would be amended to add a new paragraph requiring the hearing officer to issue an order denying the emergency petition if the hearing officer does not find it necessary to protect the plaintiff or another individual from abuse or in connection with claims of sexual violence or intimidation. Rule 1209 would be amended to require the hearing officer to provide the plaintiff with the denial order and clarifies that the denial order is not served on the defendant. The proposed amendments to Rule 1209 also specifies the denial order and underlying petition are not public records or available to the public. Other amendments update cross-references and make minor stylistic and grammatical changes.

The Committee invites all comments, concerns, and suggestions regarding this proposal.