

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.C.P.M.D.J. Nos. 1208, 1209, 1210, and 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. Nos. 1208, 1209, 1210, and 1211 governing denials of petitions for emergency protection from abuse and 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 **May 28, 2019**. 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 Workgroup will acknowledge receipt of all submissions.

By the Minor Court Rules Committee,

Honorable David M. Howells, Jr.
Chair

Rule 1208. Findings and Protection 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 it necessary to protect the plaintiff or another individual from abuse or in connection with claims of sexual violence or intimidation, 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 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 A(2) of this rule permits the hearing officer to grant limited relief to plaintiffs in accordance with 42 Pa.C.S. § 62A07(b). **Paragraph B provides for the issuance of an order denying the petition for emergency relief.**

Rule 1209. Service and Execution of **[Emergency Protection]** Orders

A. **(1)** The hearing officer shall provide to the plaintiff a copy of a protection order made under Rule 1208**A granting the requested emergency relief in whole or in part**. The hearing officer or, when necessary, the plaintiff shall immediately deliver a service copy of any protection order made under Rule 1208**A** 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 protection order is issued under Rule 1208**A(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) The hearing officer shall give the plaintiff a copy of the order denying the requested emergency relief issued under Rule 1208B.

(2) The hearing officer shall serve a copy of the order denying the requested emergency relief issued under Rule 1208B upon the defendant. Service upon the defendant shall be made by first class mail to the defendant's address listed on the petition for emergency relief. The order denying the requested emergency relief shall not be mailed to the defendant sooner than 48 hours after issuance of the order by the hearing officer.

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.

Paragraph B provides for the service of an order denying the requested emergency relief on the defendant. Delaying mailing of the denial order for 48 hours after issuance will enable the plaintiff to develop a safety plan or seek a temporary order at the court of common pleas if necessary.

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.

Official Note: This rule is derived from Section 6110(b) of the Protection From Abuse Act, 23 Pa.C.S. § 6110(b), as well as 42 Pa.C.S. § 62A09(b). Practice varies among the judicial districts as to what procedures the plaintiff must follow to continue in effect a protection order in the court of common pleas upon the certification of an emergency protection order to the court of common pleas. The hearing officer should provide clear instructions to the plaintiff as to what must be done to continue in effect the protection order in the court of common pleas. See Rule 1206 and Note, and Rule 1211 and Note.

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.

B. Certification under **[subdivision] paragraph** A of this Rule shall be accomplished by sending to the prothonotary of the court by first class mail or messenger a certified copy of the petition form containing the order, with any supporting documentation attached.

Official Note: Certification under **[subdivision] paragraph** A of this rule is required by Section 6110(c) of the Protection From Abuse Act, 23 Pa.C.S. § 6110(c), as well as 42 Pa.C.S. § 62A09(c). This rule is also consistent with Pa.R.C.P. Nos. 1901.3(b) and 1953(b), which permit commencement of an action by filing with the prothonotary a certified copy of an emergency protection order. However, practice varies among the judicial districts as to how the protection order is continued in effect after it is certified to the court of common pleas. For example, some judicial districts may require that the plaintiff appear in person to continue the action in the court of common pleas. Others may automatically commence an action in the court of common pleas upon receipt of a certified copy of the emergency order from the hearing officer. See Rule 1206 and Note, and Rule 1210 and Note.

Depending on local practice, the plaintiff or the plaintiff's representative may act as a messenger under **[subdivision] paragraph** B of this rule.

SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee

PUBLICATION REPORT

Proposed Amendment of Pa.R.C.P.M.D.J. Nos. 1208, 1209, 1210, and 1211

The Minor Court Rules Committee (“Committee”) is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P.M.D.J. Nos. 1208, 1209, 1210, and 1211. These rules will govern denials of petitions for emergency protection from abuse and sexual violence or intimidation as well as address the service of such denial orders.

The Committee was forwarded an inquiry from a magisterial district court that asked how a defendant’s copy of an order denying a petition for emergency protection from abuse should be handled. Court staff asked about serving the denial order on the defendant in an emergency protection from abuse case. A concern was raised that sending the denial order to the defendant could aggravate existing 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 on the defendant. This void has resulted in divergent local practices at the magisterial district courts with regard to the handling of a denial order—some courts send it to the defendant, while others place it in the court’s file or forward it to the court of common pleas without sending a copy to the defendant. The Committee believes it would be preferable to have a standardized statewide practice for these situations.

Existing rules address the service of an emergency protection order but not a denial order. See Pa.R.C.P.M.D.J. No. 1209. The Committee found no legal authority suggesting that a defendant should not receive a copy of a denial order in an emergency protection case filed against him or her. Moreover, there is no legal authority preventing the public access of a denial order in an emergency protection action, although there is authority for a plaintiff to have his or her location safeguarded. See 23 Pa.C.S. § 6112, 42 Pa.C.S. § 62A11; Pa.R.C.P.M.D.J. No. 1207. When the plaintiff wants to withhold the location of his or her whereabouts, the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* (“*Policy*”) provides “mechanism[s] whereby victims of domestic violence and sexual violence can shield their physical address[es] even in court documents and hence protect their ability to remain free from abuse.” *Policy*, Explanatory Report, Section 7. While the plaintiff’s location may be treated as Confidential Information under the *Policy*, the *Policy* does not provide general confidentiality for petitions and orders in emergency protection actions.

The Committee also reviewed federal law prohibiting internet publication of information regarding the registration, filing of a petition for, or issuance of a protection from abuse order if such publication would be likely to publically reveal the identity or location of a party protected under the order. See 18 U.S.C. § 2265(d)(3). While the federal law prohibits internet publication of information relative to protective actions, it is silent on the dissemination of paper records relative to such actions.

Because records relating to emergency protection actions are generally available to the public (subject to the limitations above), the Committee considered the fairness of not sending a denial order in an adversarial (albeit *ex parte*) proceeding to a defendant when the denial order and underlying petition could be accessed by the public or press. 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 will 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. The Committee recognized the need to balance the presumption of access to court records and due process rights of a defendant with the need to help ensure the safety of plaintiffs seeking emergency protection (even if the sought after emergency relief is denied).

Therefore, the Committee is considering proposing the amendment of Rule 1208 to require hearing officers in emergency protection actions to issue an order denying the requested relief when the hearing officer has not found it necessary to protect the plaintiff or another individual. The proposed amendments to Rule 1209 would require the hearing officer to then serve the denial order on the defendant by first class mail no sooner than 48 hours after issuance of the denial order. It is intended that this 48-hour delay in the mailing of the denial order to the defendant will provide the plaintiff with time to implement a safety plan or move forward with seeking a temporary protection order from a court of common pleas, if the plaintiff determines such action is necessary.

The Committee is also considering proposing minor stylistic and grammatical changes throughout the amendments.

The Committee invites all comments, suggestions, and concerns with these proposed amendments.