

Rule 1206. Commencement of Proceedings.

[A.](a) Petition.

- (1)** A proceeding for emergency relief ~~[(1)]~~ from abuse[,] or ~~[(2)]~~ in connection with claims of sexual violence or intimidation shall be commenced by the filing of a petition by the plaintiff with the hearing officer on a form that shall be prescribed by the State Court Administrator.
- (2)** The petition shall be signed by the plaintiff and shall set forth the names and addresses of the plaintiff and the defendant and the names, addresses, and ages of any person on whose behalf the plaintiff is seeking relief.
- (3)** The plaintiff shall **[also]** allege in the petition, in general terms, the cause for seeking emergency relief.

[B.](b)[Upon issuance of an emergency order, the hearing officer shall provide the plaintiff with instructions regarding the commencement of proceedings in the court of common pleas and regarding the procedures for initiating a contempt charge should the defendant violate the emergency order. The hearing officer shall also advise the plaintiff of the existence of rape crisis centers in the county or in nearby counties in the case of sexual violence, as well as programs for victims of domestic or sexual violence in the county or in nearby counties and inform the plaintiff of the availability of legal assistance without cost if the plaintiff is unable to pay therefor.] Rescinded.

[C.](c)Costs. The petition shall be filed and service shall be made without prepayment of costs.

[Official Note: Paragraph B is added to assure compliance with the requirement of Section 6110(d) of the Protection From Abuse Act, 23 Pa.C.S. § 6110(d), as well as 42 Pa.C.S. § 62A09(d). 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 1210 and Note and Rule 1211 and Note.]
Comment: Former subdivision (b), pertaining to instructions that the hearing officer must provide the plaintiff if a petition is granted, was rescinded and relocated to Pa.R.Civ.P.M.D.J. 1208(a)(3). [Paragraph C] Subdivision (c) is derived

from **[Section 6106(b) of the Protection From Abuse Act,] 23 Pa.C.S. § 6106(b)[, as well as] and 42 Pa.C.S. § 62A05(b)[, and reflects the practice when a temporary order is issued at the common pleas level]. Compare Pa.R.Civ.P. 1901.3(c) and 1953(c) (petitions for protective relief filed with the court of common pleas).**

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See **[Rule 217] Pa.R.Civ.P.M.D.J. 217.**

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

EXPLANATORY COMMENT--1992

The responsibilities of Hearing Officers to the plaintiff have been increased as a result of the amendments to the Protection from Abuse Act, 23 Pa.C.S.A., Section 6110(d). When issuing an emergency order, Hearing Officers must advise the plaintiff of the existence of programs for victims of domestic violence in the county or in nearby counties and they must inform the plaintiff of the availability of legal assistance without cost if the plaintiff is unable to pay for them. Rule 1206, through the inclusion of Subdivision B, conforms the Rule to this particular statutory provision; and the amendment to the Note simply provides the justification for Subdivision B, *i.e.*, to assure compliance with the Title 23 provisions of the Protection from Abuse Act.

Rule 1208. [Findings and Protection Orders] Protection Orders; Findings; Instructions to Plaintiff; Denial of Petition.

[A.](a) Petition Granted.

(1) Order Issued.

(i) Emergency Protection from Abuse. 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]. **The hearing officer shall issue** 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)](ii)~~Emergency Protection from Sexual Violence or Intimidation. 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]. **The hearing officer shall issue** 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](2) Findings. The hearing officer shall enter on the petition form the findings and any protection order issued or other action taken.

(3) Instructions. The hearing officer shall instruct the plaintiff regarding:

(i) commencing proceedings in the court of common pleas;

(ii) initiating a contempt charge if the defendant violates the emergency order;

(iii) programs for victims of domestic or sexual violence in the county or in nearby counties, as well as the existence of rape crisis centers in the county or nearby counties in the case of sexual violence; and

- (iv) the availability of legal assistance without cost if the plaintiff is without resources to pay.

[B.](b)Petition Denied.

- (1) If the hearing officer does not find good cause pursuant to subdivision (a)(1)(i) or (a)(1)(ii), the hearing officer shall deny the petition.
- (2) A denied petition shall not be available to the public.
- (3) The hearing officer shall:
 - (i) not issue a written denial order;
 - (ii) orally inform the plaintiff that the petition is denied;
 - (iii) confirm that no identifying information relating to the denied petition, such as the name of the plaintiff or defendant, is made public or retained in court files;
 - (iv) enter on the docket non-identifying information relating to the petition, including the date of filing, the municipality and zip code of the plaintiff's residence, and the relief sought by the plaintiff; and
 - (v) destroy the denied petition.

[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] Comment: Subdivision (a)(1)(i) permits the hearing officer to grant limited relief [in accordance with] pursuant to 23 Pa.C.S. § 6108(a)(1), (2), and (6), or (1) and (6), which includes directing the defendant to refrain from abusing the plaintiff or minor children, possession of the residence, and prohibiting contact by the defendant. [Subparagraph A(2) of this rule] Subdivision (a)(1)(ii) permits the hearing officer to grant limited relief [to plaintiffs in accordance with] pursuant to 42 Pa.C.S. § 62A07(b), which includes prohibiting contact by the defendant and any other appropriate relief.

Subdivision (a)(3) is derived from former Pa.R.Civ.P.M.D.J. 1206(b). Practice varies among the judicial districts regarding procedures to maintain a protection

order in the court of common pleas upon the certification of an emergency protection order to that court. See Pa.R.Civ.P. 1210, cmt. and Pa.R.Civ.P. 1211, cmt.

Subdivision (b) provides for denial of a petition for emergency relief. Subdivision (b)(3) is intended to protect the plaintiff's personal safety and the defendant's reputational interest following the denial of a petition for emergency relief.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

EXPLANATORY COMMENT--1992

Hearing Officers' authority to grant relief under the Act has been enlarged under 23 Pa.C.S.A., Section 6108. In accordance with the provisions of the Act, the court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order or agreement may include the following:

- (a)(1) Directing the defendant to refrain from abusing the plaintiff or minor children.
- (a)(2) Granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff when the residence or household is jointly owned or leased by the parties, is owned or leased by the entireties or is owned or leased solely by the plaintiff.
- (a)(3) When the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff or, by consent agreement, allowing the defendant to provide suitable alternate housing.

Therefore, Rule 1208 incorporates the additional relief remedies available to the Hearing Officer.

Rule 1209. Service and Execution of Emergency Protection Orders.

[A.](a) Emergency Protection from Abuse.

(1) Plaintiff. [The] If the hearing officer grants the petition in whole or in part, then the hearing officer shall [provide to] give the plaintiff a copy of [a] the protection order [made under Rule 1208] issued pursuant to Pa.R.Civ.P.M.D.J. 1208(a)(1)(i).

(2) Defendant.

(i) The hearing officer or, when necessary, the plaintiff shall immediately deliver a service copy of [any] the protection order [made under Rule 1208] issued pursuant to Pa.R.Civ.P.M.D.J. 1208(a)(1)(i) to a police officer, police department, sheriff, or certified constable for service upon the defendant and execution.

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

(1) 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) 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) Emergency Protection in Connection with Claims of Sexual Violence or Intimidation.

- (1) Plaintiff. If the hearing officer grants the petition in whole or in part, then the hearing officer shall give the plaintiff the protection order issued pursuant to Pa.R.Civ.P.M.D.J. 1208(a)(1)(ii).
- (2) Defendant.
 - (i) The hearing officer or, when necessary, the plaintiff shall immediately deliver a service copy of the protection order issued pursuant to Pa.R.Civ.P.M.D.J. 1208(a)(1)(ii) to a police officer, police department, sheriff, or certified constable for service upon the defendant and execution.
 - (ii) 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 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.
- (3) Law Enforcement. Within two business days after the protection order is issued, the hearing officer shall serve the order upon the police department, sheriff, and district attorney in the jurisdiction where the order was entered.
- (4) Minor Victims. In the case of a minor victim of sexual violence, the hearing officer shall 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.

[Official Note] Comment: The hearing officer **[should] shall** provide the plaintiff with at least one copy of **[a] the** protection order, but more than one copy may be needed. For example, the plaintiff may wish to serve the order upon multiple police departments **[when] if** 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]

Service of protection orders upon the defendant at the time of execution may not be possible under some circumstances. The intention of subdivisions (a)(2)(ii) and (b)(2)(ii) is for the local police **[would] to** have a service copy **[in case] if** they **[would be] are** called to the plaintiff's residence should the defendant return there.

The hearing officer should make every effort to have the protection order served by a law enforcement officer in a timely fashion. **[Due to the emergency nature of these] For emergency** protection orders **[and the fact that]** to be meaningful, they must be served and executed at night or on a weekend[.]. **Therefore,** the hearing officer should have the authority to use police officers **[as well as]**, sheriffs, and certified constables to serve and execute **[these] protection** orders.

Protection orders issued **[under Rule 1208] pursuant to Pa.R.Civ.P.M.D.J. 1208(a)(1)(ii)** in accordance with **[42 Pa. C.S. § 62A09] 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,] Compare** 23 Pa.C.S. § 6109(a)[, and] **with** 42 Pa.C.S. § 62A05(d).

Service shall be made without prepayment of costs. See **[Rule 1206(C)] Pa.R.Civ.P.M.D.J. 1206(c)**.

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

Rule 1210. Duration of Emergency Protection Orders.

Protection orders issued **[under Rule 1208] pursuant to Pa.R.Civ.P.M.D.J. 1208(a)** shall expire at the end of the next business day the court deems itself available.

[Official Note] Comment: This rule is derived from **[Section 6110(b) of the Protection From Abuse Act,]** 23 Pa.C.S. § 6110(b)[, **as well as] and** 42 Pa.C.S. § 62A09(b). Practice varies among the judicial districts as to what procedures the plaintiff must follow to **[continue in effect] maintain** 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] instruct** the plaintiff **[as to]** what must be done to **[continue in effect] maintain** the protection order in the court of common pleas. See **[Rule 1206 and Note, and Rule 1211 and Note] Pa.R.Civ.P.M.D.J. 1208(a)(3)(i), cmt. and Pa.R.Civ.P.M.D.J. 1211, cmt.**

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

EXPLANATORY COMMENT--1992

Initially, the Protection from Abuse Act provided that emergency orders issued by Hearing Officers were to expire at the resumption of business of the court at the beginning of the week or within 72 hours, whichever occurs sooner. This language has been simplified under 23 Pa.C.S.A., Section 6110(b) to provide that said orders expire as of the resumption of business of the court at the beginning of the next business day. Rule 1210 incorporates this simplification.

Rule 1211. Certification to Court of Common Pleas.

[A.](a)[Any] A protection order issued **[under Rule 1208] pursuant to Pa.R.Civ.P.M.D.J. 1208(a)**, together with any documentation in support thereof, shall immediately be certified to the court of common pleas by the hearing officer.

[B.](b) Certification **[under subdivision A of this Rule] pursuant to subdivision (a)** 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] Comment: Certification **[under subdivision A of this rule] pursuant to subdivision (a)** is required by **[Section 6110(c) of the Protection From Abuse Act,] 23 Pa.C.S. § 6110(c)[, as well as] and 42 Pa.C.S. § 62A09(c)**. This rule is **[also]** consistent with **[Pa.R.C.P. Nos. 1901.3(b) and 1953(b)] Pa.R.Civ.P. 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] a** protection order is **[continued in effect] maintained** after **[it is certified] certification** 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] Pa.R.Civ.P.M.D.J. 1208(a)(3)(i), cmt. and Pa.R.Civ.P.M.D.J. 1210, cmt.**

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