

MINOR COURT PROCEDURAL RULES COMMITTEE ADOPTION REPORT

Amendment of Pa.R.Civ.P.M.D.J. 1206, 1208, 1209, 1210, and 1211

On January 8, 2025, the Supreme Court amended Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges 1206, 1208, 1209, 1210, and 1211. These rule changes relate to orders denying petitions for emergency protective relief. The Minor Court Procedural Rules Committee (“Committee”) has prepared this Adoption Report describing the rulemaking process as it relates to these Rules. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

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 endanger the plaintiff. The Committee identified no legal authority addressing the issue. This void resulted in divergent local practices in magisterial district courts for processing a denial order—some courts send it to the defendant, others place it in the court's file, while others forward 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. 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. See 49 Pa.B. 1772 (April 13, 2019). 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 proceeded to develop an alternative approach.

The Committee next considered that there may be no optimal period to serve the denial order on the defendant such that the plaintiff's safety is not compromised. A defendant receiving a denial order 10, 30, or 60 days after its issuance may be as provoked as a defendant receiving the order 48 hours later. The Committee had no way of knowing if delayed service on the defendant could put the petitioner at risk despite being temporally removed from the incident that precipitated the petition filing. The Committee, therefore, recommended that the denial order not be served on the defendant and that the denial order be deemed a non-public record pursuant to the *Policy*. However, because a plaintiff would have access to a denial order as a named party, there was a possibility that the order could be used by the plaintiff in a subsequent proceeding without the defendant having even been aware of it. Thus, this approach did not reliably protect the defendant's due process interests. Thereafter, the Committee considered developing a procedure similar to Pa.R.Crim.P. 212(B), pertaining to unexecuted search warrants, whereby the emergency protective petition and denial order are expunged, sealed, or never entered on the docket in the first instance. The Committee considered the impact of proposed revisions on the defendant's rights, the safety of the plaintiff, and the public's interest in access to judicial records.

Discussion

The Committee began its review by weighing the important and competing interests of the plaintiff, the defendant, and the public. The amount of process that is due in any circumstance must be determined by application of the three-part balancing test first established in *Mathews v. Eldridge*, 424 U.S. 319 (1976). See *In re Fortieth Statewide Investigating Grand Jury*, 197 A.3d 712, 717 (Pa. 2018). This balancing test considers three factors: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation together with the value of additional or substitute safeguards; and (3) the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state. *Id.*

The Committee identified competing interests of the parties relating to a denied petition. The plaintiff has a personal safety interest, which could be threatened if the defendant learns of the petition but the plaintiff is not covered by a protective order. The object of the Protection from Abuse Act is self-evident – to protect plaintiffs from abuse. *Commonwealth v. Stevenson*, 283 A.3d 196, 205 (Pa. 2022). A similar statutory scheme exists for victims of sexual violence and intimidation. See 42 Pa.C.S. §§ 62A01 – 62A20. If a plaintiff seeks an emergency protective order, then the hearing officer conducts ex

parte proceedings and may enter an order protecting the plaintiff from immediate and present danger of abuse. 23 Pa.C.S. § 6110(a); 42 Pa.C.S. § 62A09(a).

Superficially, a plaintiff's interest would seem to end when an order denying emergency relief is entered. However, the basis for a denial may not be indicative of the absence of danger of abuse. A plaintiff may not be entitled to relief for other reasons, e.g., a lack of immediacy. A denial does not mean the plaintiff is safe and without the potential of threat. In the view of the Committee, the risk of retaliation for seeking protective relief gives the plaintiff a significant interest in the denial process.

The defendant has a reputational interest that could be adversely impacted if the existence of a petition and denial order is made public. The Court has acknowledged a defendant's right to protect his or her reputation as it relates to expungement of protective orders. See *Carlacci v. Mazaleski*, 798 A.2d 186 (Pa. 2002). The Court noted that "there exists a right to petition for expungement of a protection from abuse record where the petitioner seeks to protect his reputation. This right is an adjunct of due process and Article I, Section 1 of the Pennsylvania Constitution and is not dependent upon express statutory authority." *Id.* at 190 (relying on *P.E.S. v. K.L.*, 720 A.2d 487 (Pa. Super. 1998)). In *P.E.S. v. K.L.*, the Superior Court recognized that a dismissed protection from abuse petition could have a negative impact on a defendant: "Although [defendant's] record here is not an arrest record, it, nonetheless, carries with it the potential stigmas associated with such a record. The negative social connotations that attach to the protection from abuse are too great to allow the [defendant's] record to remain intact." 720 A.2d at 492. While case law is silent regarding the expungement of *emergency* protective orders, the Committee observes there may be an opportunity for reputational harm if the public can access an emergency petition for protective relief that the defendant may not know was filed against him or her. Relatedly, a defendant cannot avail himself or herself of these remedies without notice of the petition or denial order. For these reasons, the Committee believes the defendant has a substantial interest.

In considering alternative procedures or safeguards to accommodate both parties' interests, the Committee considered Pa.R.Crim.P. 212 (Dissemination of Search Warrant Information) as a potential model for the handling of denied protective orders. That rule provides in part: "Unexecuted warrants and the associated affidavits of probable cause are not public records and upon return to the issuing authority the unexecuted warrants and affidavit(s) shall be destroyed by the issuing authority." Pa.R.Crim.P. 212(B). The Committee considered whether Pa.R.Crim.P. 212 would provide a workable framework for denied emergency protective relief. To prevent recording the defendant's identifiable information, a denied petition for emergency protective relief would not be entered on the docket. Likewise, a denial order would not be issued to the plaintiff and the underlying petition destroyed. In this manner, both the plaintiff's safety interest and the defendant's reputational due process interests are secured.

The Committee acknowledges this approach may have ramifications involving other interests, including the public right of access, secondary uses, and data collection. First, the petition and order are part of the record of the case and relied upon by the court in rendering a decision, thereby rendering those documents as a public judicial record. See *Commonwealth v. Fenstermaker*, 530 A.2d 414, 419 (Pa. 1987). Second, an emergency PFA proceeding is not closed to the public or required to be held *in camera* even though the public is rarely, if ever, present during these proceedings. Third, the documents are currently publicly available pursuant to the *Policy*. The contemplated approach would limit the transparency of denied petitions for emergency relief. There would no longer be a record of a denied petition or the order denying relief, which impacts the public's interest.

The parties have a contingent or secondary interest if the record of a denied petition and order are destroyed. Those documents, including any verified statements, may have evidentiary weight in subsequent or future court proceedings, e.g., custody. See also Pa.R.E. 803.1(3) (Recorded Recollection of Declarant-Witness); see also 23 Pa.C.S. § 6117(b) (Remedies for Bad Faith). Moreover, the documents may be relevant to the prosecution or defense of any criminal proceedings as a consequence of, or related to, an allegation of abuse.

Concerning data collection, this approach would impact the data retained in the Magisterial District Justice System ("MDJS") relating to emergency protective relief. To the extent this data may be used in the decennial reestablishment of the magisterial district courts, omitting denied emergency petitions from the MDJS will result in a lower reported case load, thus creating an inaccurate picture of court workloads. See 42 Pa.C.S. § 1503 (pertaining to decennial reestablishment of magisterial district courts). Further, it may be in the public interest to know how many emergency petitions are denied to identify outliers in deciding such petitions. The Committee also believes that funding for domestic violence programs may be tied, in part, to case numbers.

The Committee attempted to address this issue by adding a new requirement that the hearing officer enter on the MDJS docket certain non-identifying information relating to the petition, including the date of filing, the municipality and zip code of the plaintiff, and the relief sought by the plaintiff using a "Jane Doe" docket. See Pa.R.Civ.P.M.D.J. 1208(b)(3)(iii). This is a new concept intended to address data integrity concerns that represents an administrative burden in the due process analysis.

Rule Changes

The Committee published a revised proposal at 53 Pa.B. 707 (February 4, 2023). Pa.R.Civ.P.M.D.J. 1208 was amended to address the denial of a petition for emergency protective relief. The amendment is modeled after Pa.R.Crim.P. 212(B) and provides: (1) a denied petition for emergency relief is not available to the public; (2) the hearing officer

shall orally inform the plaintiff that the petition is denied; (3) no identifying information relating to the case is retained in court files; (4) non-identifying information is entered on the docket, *i.e.*, “Jane Doe” docket entries; and (5) the petition is destroyed. See Pa.R.Civ.P.M.D.J. 1208(b)(3). For the reasons previously discussed, the Committee believes these proposed changes are consistent with protecting the parties’ interest.

The Committee also identified other salutary changes to the rules that are being made at this time. First, Pa.R.Civ.P.M.D.J. 1206B, pertaining to commencement of proceedings, included provisions and instructions following the issuance of the order that appeared misplaced within the rules. Therefore, that subdivision was rescinded and its provisions were relocated to Pa.R.Civ.P.M.D.J. 1208(a)(3). Amendments to Pa.R.Civ.P.M.D.J. 1209 are intended to clarify service and execution procedures when a petition has been granted in whole or in part. Additional stylistic, organizational, and grammatical changes were made throughout proposed Pa.R.Civ.P.M.D.J. 1206 and 1208 – 1211.

These changes are effective July 1, 2025.