The Greene Reports

Official Legal Publication for Greene County, Pennsylvania
Owned and operated by Greene County Bar Association
Greene County Courthouse, Waynesburg, PA 15370

Vol. XXXVIIII, No. 27 **January 26, 2023**

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Since October 1982

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THE GREENE REPORTS
Owned and published by the GREENE COUNTY BAR ASSOCIATION
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EDITORIAL POLICY

All articles published in The Greene Reports are intended to inform, educate or amuse. Any article deemed by the editorial staff to be reasonably interpreted as offensive, demeaning or insulting to any individual or group will not be published.

The views expressed in the articles represent the views of the author and are not necessarily the views of The Greene Reports or the Greene County Bar Association.

The Greene Reports welcomes letters to the Editor both for publication and otherwise. All letters should be addressed to: Editor, The Greene Reports, Greene County Courthouse, 10 East High Street, Waynesburg, PA 15370. Letters must include signature, address and telephone number. Anonymous correspondence will not be published. All letters for publication are subject to editing and, upon submission, become the property of The Greene Reports.

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THE GREENE COUNTY BAR ASSOCIATION
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Timothy M. Ross, Vice-President
Allen J. Koslovsky, Secretary
Lukas B. Gatten, Treasurer
Jessica L. Phillips, Ex-Officio

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DEED TRANSFERS

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The following property transfers have been recorded in the Greene County Recorder of Deeds office.

CENTER AND WAYNE TOWNSHIPS
Tug Hill Minerals I LLC to Breck Minerals LP, Tracts, Minerals, $5,000,000.00 (1-23-23)

CUMBERLAND TOWNSHIP
Linda K. Simpson to Robert E. Baker, et ux., 12 Acres, $36,000.00 (1-20-23)

FREEPORT TOWNSHIP
Jane Lee Schneider to Foss Minerals LLC, 368 Acres, O&G, $6,272.73 (1-23-23)

GILMORE TOWNSHIP
Wendy Elizabeth Capenter to Foss Minerals LLC, 130.671 Acres, O&G, $1,187.92 (1-23-23)

JACKSON TOWNSHIP
Harry Inghram to Joseph Straight, .8177 Acre, $70,000.00 (1-23-23)

JEFFERSON TOWNSHIP
CNX Land LLC to Janice Lee Cooper, et ux., Tracts, $155,000.00 (1-19-23)

MORRIS TOWNSHIP
Misty L. Hohing, et ux., to Charles W. Anderson, 1.611 Acres, $190,000.00 (1-18-23)
Preston K. Hayes to CNX Gas Company LLC, 26.175 Acres, O&G, $400.00 (1-20-23)

RICHHILL TOWNSHIP
Consol Pennsylvania Coal Co LLC, et ux., to Bradley J. Bledsoe, et ux., 48.75 Acres, $125,000.00 (1-23-23)

WAYNESBURG BOROUGH
Richard Alton Gibson, III, et ux., to Brian K. Garrison, .0063 Acres, $1,370.00 (1-23-23)

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ESTATE NOTICES

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NOTICE is hereby given of the grant of letters by the Register of Wills to the Estates of the following named decedents. All persons having claims are requested to make known the same and all persons indebted to the decedent are requested to make payment to the personal representative or his attorney without delay.

FIRST PUBLICATION

SELLERS, ROBERT MILLARD
Late of Morgan Township, Greene County, Pennsylvania
Administrator: Michael R. Sellers, C/O Timothy N. Logan, Esquire, Logan & Gatten Law Offices, 54 N. Richhill Street, Waynesburg, PA 15370
Attorney: Timothy N. Logan, Esquire, Logan & Gatten Law Offices, 54 N. Richhill Street, Waynesburg, PA 15370

SECOND PUBLICATION

GASTON, CLARA LEA
Late of Waynesburg, Greene County, Pennsylvania
Administrator, c.t.a.: Russel C. Hall, 1201 Sycamore Street, Waynesburg, PA 15370
Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370

GIBSON, JUDITH ANN
Late of Nemacolin, Greene County, Pennsylvania
Administrator: Robert Wayne Gibson, PO Box 251, Nemacolin, PA 15359
Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370

WINN, GARY LEE A/K/A GARY L. WINN
Late of Prosperity, Greene County, Pennsylvania
Executrix: Ava Lynn Caudill Winn, 1026 Dunn Station Road, Prosperity, PA 15329
Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370

YANNIELLO, CHARLES GERARD, JR., A/K/A CHARLES G. YANNIELLO, JR.
Late of Whiteley Township, Greene County, Pennsylvania
Executor: Charles G. Yanniello, III, 5715 Prosperity Pike, West Finley, PA 15377
Attorney: Mark S. Riethmuller, Esquire, Speakman, Riethmuller & Allison, 6 South Main Street, Suite 614, Washington Trust Building, Washington, PA 15301

THIRD PUBLICATION

CLINE, FERN P.
Late of Whiteley Township, Greene County, Pennsylvania
Co-Administrator: Mary Sielski, 144 Rinehart Lane, Waynesburg, PA 15370
Co-Administrator: James D. Cline, 1154 Garards Fort Road, Waynesburg, PA 15370
Attorney: Christopher Michael Simms, Esquire, Pollock Morris Belletti & Simms, LLC, 54 South Washington Street, Waynesburg, PA 15370

RICHARD, LLOYD ARTHUR, JR. A/K/A LLOYD A. RICHARDS
Late of Cumberland Township, Greene County, Pennsylvania
Administrator: Michael A. Richards, 223 East High Street, Waynesburg, PA 15370
Attorney: None

TENNANT, ELIZABETH ANN
Late of Franklin Township, Greene County, Pennsylvania
Executrix: Marsha E. Crawford, 1320 Toms Run Road, Holbrook, PA 15341
Attorney: Christopher Michael Simms, Esquire, Pollock Morris Belletti & Simms, LLC, 54 South Washington Street, Waynesburg, PA 15370

WALTERS, JOHN C.
Late of Rogersville, Greene County, Pennsylvania
Administrator: John P. Walters, 3309 W. Roy Furman Hwy., Rogersville, PA 15359
Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370

WOLFE, ELIZABETH M. A/K/A ELIZABETH MARLENE WOLFE A/K/A E. MARLENE WOLFE
Late of Perry Township, Greene County, Pennsylvania
Co-Executor: George F. Wolfe, II, PO Box 73, Mt. Morris, PA 15349
Co-Executor: Elizabeth Ashley Wolfe, PO Box 73, Mt. Morris, PA 15349
Attorney: Phillip C. Hook, Attorney, 430 East Oakview Drive, Suite 101, Waynesburg, PA 15370

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FIRST AND FINAL ACCOUNT

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LIST OF FIRST AND FINAL ACCOUNTS TO BE PRESENTED TO THE COURT BY SHERRY L. WISE, CLERK OF COMMON PLEAS COURT, ORPHANS' COURT DIVISION ON February 6, 2023 FOR NISI CONFIRMATION AND ON February 16, 2023 FOR FINAL CONFIRMATION.

The First and Final Account of Scott R. Cole, Executor of the Estate of John R Clark, late of Waynesburg, Franklin Township, Greene County, Pennsylvania

Attorney: Kimberly J Simon-Pratt
223 East High Street
Waynesburg PA 15370

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SHERIFF'S SALE

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By Virtue of a Writ of Execution (Mortgage Foreclosure)
No. ED-35-2022 AD-181-2022

Issued out of the Court of Common Pleas of Greene County, Pennsylvania and to me directed, I will expose the following described property at public sale at the Greene County Courthouse in the City of Waynesburg, County of Greene, Commonwealth of Pennsylvania on:

FRIDAY, FEBRUARY 10, 2023
AT 10:00 O'CLOCK A.M.

All parties in interest and claimants are further notified that a proposed schedule of distribution will be on file in the Sheriff's Office no later than twenty (20) days after the date of the sale of any property sold hereunder, and distribution of the proceeds will be made in accordance with the schedule ten (10) days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

Pennsylvania Housing Finance Agency
Vs
Victor

Situate in the Boro of Waynesburg, City of Greene Commonwealth of Pennsylvania HET a d/w/g located at 147 W Elm Street, Waynesburg, PA 15370.

Parcel #27-05-166

PROPERTY ADDRESS: 147 W. ELM STREET, WAYNESBURG, PA 15370

UPI/TAX PARCEL NUMBER: 27/05/166/ /

Seized and taken into execution to be sold as the property of RONALD F VICTOR, JENNIFER J VICTOR in suit of PENNSYLVANIA HOUSING FINANCE AGENCY.

Attorney for the Plaintiff:
VITTI LAW GROUP, INC
OAKMONT, PA 412-281-1725

MARCUS N. SIMMS, Sheriff
Greene County, Pennsylvania

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SUPREME COURT NOTICE

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SUPREME COURT OF PENNSYLVANIA
MINOR COURT RULES COMMITTEE

NOTICE OF PROPOSED RULEMAKING

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

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P.M.D.J. 1206, 1208, 1209, 1210, and 1211, relating to the denial of petitions for emergency protective relief, for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

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 April 12, 2023. 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,
Hon. Charles Hayden
Chair

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.**

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 denial order;

(ii) verbally 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

(iv) 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 Rule 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.

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 Rule 1208(a)(1)**.

(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 Rule 1208(a)(1)** 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 Rule 1208(a)(2).

(2) Defendant.

(i) The hearing officer or, when necessary, the plaintiff shall immediately deliver a service copy of the protection order issued pursuant to Rule 1208(a)(1) 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 Rule 1208(a)(2)** 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 Rule 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**.

Rule 1211. Certification to Court of Common Pleas.

[A.](a) **[Any]** **A** protection order issued **[under Rule 1208]** **pursuant to Rule 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(c)(3)(i), 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)**.

SUPREME COURT OF PENNSYLVANIA
MINOR COURT RULES COMMITTEE

RE-PUBLICATION REPORT

Proposed Amendment of Pa.R.Civ.P.M.D.J. 1206, 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.Civ.P.M.D.J. 1206, 1208, 1209, 1210, and 1211. The proposal relates to orders denying petitions for emergency protection from abuse and petitions for emergency protection from sexual violence or intimidation. The proposal was first published for public comment at 49 Pa.B. 1772 (April 13, 2019) and later republished at 51 Pa.B. 3339 (June 19, 2021). The Committee modified the proposal in response to comments received following the 2019 and 2021 publications.

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* ("*Public Access 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 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 endeavored to develop a proposal that would balance the safety of plaintiffs seeking emergency protection with the due process rights of defendants.

In 2019, the Committee published for public comment proposed amendments to rules governing emergency protective actions. *See* 49 Pa.B. 1772 (April 13, 2019). 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 developed an alternative approach. It ultimately concluded there was no optimal period to serve the denial order on the defendant such that the plaintiff's safety not compromised. 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 after issuance. Since the Committee was not satisfied that the denial order could be served on the defendant without risk of harm to the plaintiff, the Committee considered 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.

After concluding that the defendant should not be served the denial order, the Committee further agreed the public should also be precluded from accessing 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 could not 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 it believed the 2021 proposal provided a better balancing of plaintiff safety and defendant due process.

The Committee republished the proposal at 51 Pa.B. 3339 (June 19, 2021). While some favorable feedback was received, concerns were raised that not serving the denial order on the defendant offended notions of due process insofar as the record exits, *albeit* sealed. If the defendant is unaware of the existence of an emergency petition or denial order, he or she could be unfairly surprised during subsequent proceedings, such as a custody case, or if applying for required clearances. Alternatively, the defendant may need to establish a case of harassment and knowledge of unsuccessful emergency petitions could be of assistance. In other words, the 2021 proposal did not reliably protect defendants' interests.

Discussion

The amount of process that is due in any particular circumstance must be determined by application of the three-part balancing test first established in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (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 has identified competing interests of the parties relating to a denied petition. The petitioner has a personal safety interest, which could be threatened if the defendant learns of the petition and the plaintiff is not covered by a protective order. The object of the Protection From Abuse ("PFA") Act is self-evident – to protect PFA 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. A plaintiff commences proceedings by filing a petition in a trial court alleging abuse by the named defendant. 23 Pa.C.S. § 6106(a), 42 Pa.C.S. § 62A05(a). 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. Yet, as mentioned, 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 reasons, including 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 denied 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). In *Carlacci*, a father sought the expungement of a dismissed PFA petition. The Court was persuaded by the Superior Court's reasoning in a prior case and adopted its holding, noting that "there exists a right to petition for expungement of a [PFA] 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.E.L.*, the Superior Court recognized that even a dismissed PFA 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 [PFA] are too great to allow the [defendant's] record to remain intact." 720 A.2d 487, 492 (Pa. Super. 1998). While case law does not address the expungement of emergency protective orders, the Committee observes there is an opportunity for reputational harm if the public can access an emergency petition for protective relief that the defendant may not even 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' interest, it was suggested that the Committee look to 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 comment to the rule further provides:

> The rule was amended in 2013 to clarify that unexecuted search warrants are not public records. This change recognizes that often search warrants may be issued that are never executed. This non-execution may arise from many factors, including a discovery that the information that formed the basis of the search warrant was inaccurate. Given the potential harm to the subject of a search warrant as well as potential disruption to public safety and investigations, information related to such expired warrants must remain confidential. *See PG Publishing Co. v. Commonwealth*, 532 Pa. 1, 614 A.2d 1106 (1992) (''The *ex parte* application for the issuance of a search warrant and the issuing authority's consideration of the application are not subject to public scrutiny. The need for secrecy will ordinarily expire once the search warrant has been executed.'').

Pa.R.Crim.P. 212, cmt. at ¶ 3.

The Committee discussed whether Pa.R.Crim.P. 212 would provide a workable framework for denied emergency protective relief. Developing a rule analogous to Pa.R.Crim.P. 212 would require modifications to standard magisterial district court practice. 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 in the court of judicial decision-making, 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. The absence of these factors provided the basis for Criminal Procedural Rules Committee to recommend the destruction of unexecuted search warrants. *See* 43 Pa.B. 6649 (November 9, 2013) (Committee Final Report). Third, the documents are currently publicly available pursuant to the *Public Access Policy*. The contemplated approach would limit 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 Committee specifically seeks comment on this aspect of the proposal.

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, or related to, an allegation of abuse. The Committee specifically seeks comment on this aspect of the proposal.

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 is considered a factor 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 magisterial district court workload. *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 have been 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 including a requirement in the proposal 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* proposed Pa.R.Civ.P.M.D.J. 1208(b)(3)(iii). This is an entirely new concept intended to address data integrity concerns that represents an administrative burden in the due process analysis.

Proposed Rule Changes

The Committee proposes adding provisions to Rule 1208 to explicitly provide for the denial of a petition for emergency protective relief. The rule provides: (1) a denied petition is not available to the public; (2) the denial is issued verbally and no written order is issued; (3) no identifying information relating to the case is retained in court files; (4) non-identifying information is entered on the docket; and (5) the denied petition is destroyed. *See* proposed Pa.R.Civ.P.M.D.J. 1208(b).

Modifications to proposed Rule 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 have been made throughout proposed Rules 1206 and 1208 – 1211.

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