

## **RULE 65.1. Civil Protection Orders**

**(A) Applicability; construction; other rules.** The provisions of this rule apply to special statutory proceedings under R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214 providing for domestic violence, stalking, and sexually oriented offense civil protection orders, shall be interpreted and applied in a manner consistent with the intent and purposes of those protection order statutes, and supersede and make inapplicable in such proceedings the provisions of any other rules of civil procedure to the extent that such application is inconsistent with the provisions of this rule.

**(B) Definitions.** Any terms used in this rule which are also specifically defined in R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214 shall have the same definition in applying the provisions of this rule in those special statutory proceedings.

### **(C) Service.**

**(1) Service by clerk.** The clerk shall cause service to be made of a copy of the petition, and all other documents required by the applicable protection order statute to be served on the Respondent and, if applicable, on the parent, guardian, or legal custodian of the Respondent.

**(2) Initial service.** Initial service, and service of any ex parte protection order that is entered, shall be made in accordance with the provisions for personal service of process within the state under Civ. R. 4.1(B) or outside the state under Civ. R. 4.3(B)(2). Upon failure of such personal service, or in addition to such personal service, service may be made in accordance with any applicable provision of Civ. R. 4 through Civ. R. 4.6.

**(3) Subsequent service.** After service has been made in accordance with division (C)(2) of this rule, any additional service required to be made during the course of the proceedings on Respondent and, if applicable, on the parent, guardian, or legal custodian of Respondent, shall be made in accordance with the provisions of Civ.R. 5(B).

### **(4) Modification; contempt; renewal; termination.**

(a) Service of a motion for modification, contempt, renewal, or termination of a civil protection order issued after a full hearing or an approved consent agreement shall be made in the manner provided for service of process under Civ. R. 4 through Civ. R. 4.6.

(b) After service has been made in accordance with division (C)(4)(a) of this rule, any additional service required to be made on the Respondent and, if applicable, on the parent, guardian, or legal custodian of the Respondent, shall be made in accordance with provisions of Civ. R. 5(B).

**(5) Confidentiality.** Upon request of the Petitioner, any method of service provided by Civ. R. 4 through 4.6 or by Civ. R. 5(B) may be limited or modified by the court to protect the confidentiality of the Petitioner's address in making service under this division.

**(D) Discovery.**

**(1) Time.** Discovery under this rule shall be completed prior to the time set for the full hearing.

**(2) Discovery Order.** Discovery may be had only upon the entry of an order containing all of the following to the extent applicable:

(a) The time and place of the discovery;

(b) The identities of the persons permitted to be present, which shall include any victim advocate; and

(c) Such terms and conditions deemed by the court to be necessary to assure the safety of the Petitioner, including if applicable, maintaining the confidentiality of the Petitioner's address.

**(E) Appointed counsel for minor at full hearing.** In a special statutory proceeding under R.C. 2151.34, the court, in its discretion, may determine if the Respondent is entitled to court-appointed counsel at the full hearing.

**(F) Proceedings in matters referred to magistrates.**

**(1) Reference by court.** A court may refer the proceedings under these special statutory proceedings to a magistrate.

**(2) Ex parte proceedings.** The following shall apply when these special statutory proceedings are referred to a magistrate for determination of a petitioner's request for an ex parte protection order:

**(a) Authority.** The magistrate shall conduct the ex parte hearing and, upon conclusion of the hearing, deny or grant an ex parte protection order.

**(b) Nature of order.**

(i) A magistrate's denial or granting of an ex parte protection order does not require judicial approval, shall otherwise comply with the statutory requirements relating to an ex parte protection order, shall be effective when signed by the magistrate and filed with the clerk, and shall have the same effect as an ex parte protection order entered by the court without reference to a magistrate.

(ii) A magistrate's denial or granting of an ex parte protection order without judicial approval under this division does not constitute a magistrate's order or a magistrate's decision under Civ.R. 53(D)(2) or (3) and is not subject to the requirements of those rules.

(iii) The court's approval and signing of a magistrate's denial or granting of an ex parte protection order entered under this division does not constitute a judgment or interim order under Civ.R. 53(D)(4)(e) and is not subject to the requirements of that rule.

**(3) Full hearing proceedings.** The following shall apply when these special statutory proceedings are referred to a magistrate for full hearing and determination:

**(a) Authority.** The magistrate shall conduct the full hearing and, upon conclusion of the hearing, deny or grant a protection order.

**(b) Nature of order.** A magistrate's denial or granting of a protection order after full hearing under this division does not constitute a magistrate's order or a magistrate's decision under Civ.R. 53(D)(2) or (3) and is not subject to the requirements of those rules.

**(c) Court adoption; modification; rejection.**

(i) A magistrate's denial or granting of a protection order after a full hearing shall comply with the statutory requirements relating to such orders and is not effective unless adopted by the court.

(ii) When a magistrate has denied or granted a protection order after a full hearing, the court may adopt the magistrate's denial or granting of the protection order upon review of the order and a determination that there is no error of law or other defect evident on the face of the order.

(iii) Upon review of a magistrate's denial or granting of a protection order after a full hearing, the court may modify or reject the magistrate's order.

(iv) A court's adoption, modification, or rejection of a magistrate's denial or granting of a protection order after a full hearing under this division does not constitute a judgment or interim order under Civ.R. 53(D)(4)(e) and is not subject to the requirements of that rule.

(v) A court's adoption, modification, or rejection of a magistrate's denial or granting of a protection order after a full hearing shall be effective when signed by the court and filed with the clerk.

**(d) Objections.**

(i) A party may file written objections to a court's adoption, modification, or rejection of a magistrate's denial or granting of a protection order after a full hearing, or any terms of such an order, within fourteen days of the court's filing of the order. If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed.

(ii) The timely filing of objections under this division shall not stay the execution of the order.

(iii) A party filing objections under this division has the burden of showing that an error of law or other defect is evident on the face of the order, or that the credible evidence of record is insufficient to support the granting or denial of the protection order, or that the magistrate abused the magistrate's discretion in including or failing to include specific terms in the protection order.

(iv) Objections based upon evidence of record shall be supported by a transcript of all the evidence submitted to the magistrate or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

**(e) Motions for modification, contempt, renewal, or termination of civil protection orders.** When a motion for modification, contempt, renewal, or termination of a civil protection order is referred to a magistrate for determination, the provisions of this division (F)(3) of this rule relating to full hearing proceedings shall apply unless such provisions would by their nature be clearly inapplicable.

**(G) Final order; objections prior to appeal; stay of appeal.** Notwithstanding the provisions of any other rule, an order entered by the court under division (F)(3)(c) or division (F)(3)(e) of this rule is a final, appealable order. However, a party must timely file objections to such an order under division (F)(3)(d) of this rule prior to filing an appeal, and the timely filing of such objections shall stay the running of the time for appeal until the filing of the court's ruling on the objections.

[Effective: July 1, 2012; amended effective July 1, 2016.]

#### **Staff Note (July 1, 2012 Amendment)**

The special statutory proceedings established by R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214 provide regulations and requirements for the entry of civil protection orders against adults and juveniles for the protection of victims of domestic violence, stalking, and sexually oriented offenses. Each of those statutes provides that the proceedings, which customarily proceed pro se, "shall be conducted in accordance with the Rules of Civil Procedure." Rule 65.1 is adopted to provide a set of provisions uniquely applicable to those statutory proceedings because application of the existing rules, particularly with respect to service, discovery, and reference to magistrates, interferes with the statutory process and is inconsistent with its purposes.

#### **Division (A): Applicability; construction; other rules**

Division (A) provides that the rule applies to protection order proceedings under the three specified statutes, and specifies that the provisions of the rule are to be interpreted and applied

consistently with the intent and purpose of those statutes and supersede any inconsistent Rules of Civil Procedure.

### **Division (B): Definitions**

The statutes contain defined terms. Division (B) incorporates those definitions in construing any of the same terms included in the rule.

### **Division (C): Service**

The statutes each provide for obtaining an ex parte protection order, followed by service on the Respondent of the petition, any ex parte order that has been entered, and notice of the date scheduled for the full hearing.

Division (C) provides that it is the responsibility of the clerk to cause service to be made of all documents required to be served on the Respondent. Initial service, and service of any ex parte order that is entered, is to be made in the same manner as personal service of process. In addition to personal service, or upon failure of that service, service may be made by other methods of service of process. The relevant statutes require that a Respondent be served with a protection order on the same day the order is entered, and therefore, an initial attempt by personal service is necessary. Although other methods of service are permitted in the event of failure of personal service, until the Respondent has actual notice of a protection order, the order could not be enforced against that Respondent, nor could the Respondent be prosecuted for violations occurring prior to such actual notice.

Once initial service has been made, further service during the course of the proceedings is to be made in accordance with Civ.R. 5(B).

### **Division (D): Discovery**

The statutes do not address discovery. Division (D) provides for discovery only upon a court order containing accommodations and protections deemed necessary for the protection of the Petitioner.

Division (D)(1) states that discovery shall be completed prior to the date set for the full hearing. Since the statutes provide for a relatively short period of time between the entry of an ex parte order and the date of the full hearing, there may not be sufficient time for meaningful discovery in such cases, and a statutory request for a continuance of the full hearing would be appropriate.

### **Division (E): Appointed counsel for minor at full hearing**

The entry of a protection order against a minor is addressed by R.C. 2151.34. That statute provides that "the court, in its discretion, may determine if the respondent is entitled to court-appointed counsel at the full hearing." Division (E) restates that provision.

### **Division (F): Proceedings in matters referred to magistrates**

The statutes provide expedited processes for obtaining an ex parte protection order and for obtaining a protection order after a full hearing. When the proceedings are referred to a magistrate, several of the provisions of Civ.R. 53 are incompatible with those processes, particularly with respect to temporary magistrate "orders" to regulate the proceedings, independent review by the court of magistrate "decisions" rendered after hearing, and the filing and consideration of objections to those magistrate "decisions"

Divisions (F)(2)(b)(ii) and (F)(3)(b) exempt these protection order proceedings from the Civ.R. 53 requirements for magistrate temporary "orders" to regulate the proceedings and magistrate "decisions" rendered after hearing. Divisions (F)(2)(b)(iii) and (F)(3)(c)(iv) exempt the proceedings from the requirements applicable to orders entered by the court after referral to magistrates.

Division (F)(2)(b)(1) provides that a magistrate may enter an ex parte protection order without judicial approval, and that the ex parte order is effective when signed by the magistrate and filed with the clerk.

Division (F)(3)(c) provides that a magistrate's ruling after a full hearing is not effective until adopted by the court, permits adoption upon a determination that "there is no error of law or other defect evident on the face of the order," and also permits the court to modify or reject the magistrate's ruling. Adoption, modification, or rejection is effective when signed by the court and filed with the clerk.

Division (F)(3)(d)(i) is intended to encourage the parties, as an alternative to immediate appeal, to allow the trial court to review a court's adoption, modification, or rejection of a magistrate's protection order ruling based on the record, by filing objections in the trial court. Pursuant to division (F)(3)(d)(ii) the filing of objections does not stay execution of the protection order (but pursuant to division (G) the filing of objections does stay the time for appeal). Division (F)(3)(d)(iii) provides that the objecting party has the burden of showing either "that an error of law or other defect is evident on the face of the order, or that the credible evidence of record is insufficient to support the granting or denial of the protection order or that the magistrate abused the magistrate's discretion in including or failing to include specific terms in the protection order.

### **Division G: Final order; stay of appeal**

Each statute provides that the granting or denial of a protection order, other than an ex parte order, is a final appealable order. Consistent with that provision, division (G) states that such rulings are final and appealable, notwithstanding the provisions of any other rule, such as Civ.R. 60(B). However, division (G) also provides that the timely filing of objections to the court's adoption or modification of a magistrate's protection order ruling stays the running of the time for appeal until the filing of the court's ruling on the objections.

### **Staff Notes (July 1, 2016 Amendment)**

#### **Division (C): Service**

It is well-established that all proceedings under R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214 must follow the Rules of Civil Procedure. See, e.g., *State v. Smith*, 136 Ohio St. 3d 1, 2013-Ohio-1698 at ¶21. Accordingly, division (C) of this rule provides clear direction regarding the methods of service in civil protection order proceedings. Division (C)(2) of this rule directs the clerk of court to cause the first attempt at initial service in these proceedings, including service of a copy of the petition and an ex parte order, by personal service of process. This method of service provides the respondent expeditious notice consistent with the urgent nature of these proceedings. Notwithstanding, division (C)(2) of this rule also recognizes, only upon failure of personal service, the other methods of service of process in the Rules of Civil Procedure, i.e., Civ. R. 4 through 4.6, provide similar reliable form of notice for the initial service.

The plain language of division (C)(3) of this rule indicates that subsequent service in civil protection order proceedings after the petition and ex parte order has been served, including service of a protection order entered after full hearing, must follow Civ.R. 5(B). In following the authority of Civ.R. 5(B), division (C)(3) of this rule fosters consistency regarding service subsequent to the original complaint, provides a clear direction and discretion regarding the methods of service appropriate for subsequent service in civil protection order proceedings under Civ.R. 5(B), and ensures the Respondent receives reliable notice of full hearing civil protection orders. Additionally, Civ.R. 5(B)(3) requires a proof of service record be created, which includes the date and specific manner by which the service was made under Civ.R. 5(B)(2).

Consistent with R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214, division (C)(4)(a) of this rule recognizes that the statutory urgency of adjudicating a civil protection order petition is not part of a motion for renewal, contempt, modification, or termination of a full hearing civil protection order or an approved consent agreement. Accordingly, an initial attempt by personal service is not required and any of the methods of service under Civ.R. 4 through Civ.R. 4.6 is appropriate for such a motion.

Division (C)(4)(b) aligns with division (C)(3) of this rule and clarifies that subsequent service in proceedings for renewal, contempt, modification, or termination of a full hearing civil protection order or an approved consent agreement is to be made in accordance with Civ.R. 5(B).

**Division (F): Proceedings in matters referred to magistrates.**

A new division (F)(3)(e) of this rule is also added to address issues discussed in *Schneider v. Razek*, 2015-Ohio-410 (8th Dist.) relating to proceedings on motions for renewal, contempt, modification, or termination of civil protection orders.

**Division (G): Final order; objections prior to appeal; stay of appeal.**

Division (G) of this rule is amended to require that a party must file objections prior to filing an appeal from a trial court's otherwise appealable adoption, modification, or rejection of a magistrate's ruling. This amendment is grounded on two key principles. First, it promotes the fair administration of justice, including affording the trial court an opportunity to review the transcript and address any insufficiency of evidence or abuse of discretion that would render the order or a term of the order unjust. Second, it creates a more robust record upon which the appeal may proceed.