

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) 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.

(G) Final order; stay of appeal. Notwithstanding the provisions of any other rule, an order entered by the court under division (F)(3)(c) of this rule, with or without the subsequent filing of objections, is a final, appealable order that can be appealed upon issuance of the order.

The timely filing of objections under division (F)(3)(d) of this rule shall stay the running of the time for appeal until the filing of the court's ruling on the objections.

[Effective: July 1, 2012.]

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.