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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:	)	
	)	Supreme Court No. R-
PETITION TO AMEND	)	
RULE 25(e), RULES OF PROTECTIVE	)	**Petition to Amend Rule 25(e),**
ORDER PROCEDURE	)	**Rules of Protective Order**
	)	**Procedure**
	)	
	)	
	)	

Pursuant to Rule 28, Rules of the Supreme Court, Aaron Fellmeth respectfully petitions this Court to adopt amendments to Rule 25(e), Rules of Protective Order Procedure, governing procedures for obtaining an injunction against harassment, as proposed below.

I. Background and Purpose of the Proposed Rule Amendments

Title 12, Section 1809 of the Arizona Revised Statutes sets forth the conditions under which Arizona courts may grant injunctions against harassment. Section 12-1809(T)(1)(a) defines the "harassment" for which an injunction may be granted as:

> A series of acts *over any period of time* that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person and serves no legitimate purpose.[1]

[1] Emphasis added.

Section 12-1809(E) provides that, in reviewing the petition, the court must find *inter alia* "reasonable evidence of harassment of the plaintiff by the defendant during the year preceding the filing of the petition."

Rule 3 of the Rules of Protective Order Procedure defines "harassment" using the statutory language of A.R.S. § 12-1809(T): "over any period of time." However, Rule 25(e) of the Rules as currently drafted misstates the provisions of A.R.S. § 12-1809(E). It provides in relevant part:

> (1) The judicial officer must issue an Injunction Against Harassment upon finding:
>
> > (A) reasonable evidence that the defendant has committed a series of acts of harassment . . . , against the plaintiff during the year preceding the filing;

Rule 25 incorrectly interprets Section 12-1809(E) as requiring, not that any act of harassment occurred in the preceding year, but rather than a "series" of two or more acts of harassment occurred in the preceding year.

This choice of interpretation seems to rely on the statutory definition of "harassment" as a series of acts, and the requirement of a judicial finding of "evidence of harassment . . . during the year preceding the filing of the petition." However, the statute actually uses the term "harassment" in two senses. One is the definition (requiring a "series of acts") in Section 12-1809(T). The other is the use of the term to mean any act, including a single act, that "seriously alarms, annoys, or harasses" the petitioner, and that would do so to any reasonable person. Thus, the statute treats a single alarming, annoying, or harrassing act as a "harassment" while also defining "harassment" as a series of such acts.

Rule 25(e) confuses these two uses of the term, and thereby misconstrues the statute fundamentally. It renders nugatory the "over any period of time" language A.R.S. § 12-1809(T) and revises it to mean "over the preceding year." The "over any period of time" language is

deprived of meaning if a series of harassing acts must occur in the preceding year (or, indeed, in any specific time frame). This interpretation violates the surplusage canon, which provides that legislation should not be interpreted to render any language superfluous. *State v. Furlong*, 249 Ariz. 578, ¶ 15 (App. 2020); *State v. Carter*, 249 Ariz. 312, ¶ 26 (2020). The language "over any period of time" thus cannot be interpreted to permit any limitation on when the incidents of harassment occurred in the series of harassing acts as a condition for giving relief, with the exception set forth in Section 12-1809(E).

With respect to Section 12-1809(E), although the legislative history is bereft of any explanation for the addition of the "preceding year" language, *see* Committee Rep. on H.B. 2309, 40th legis., 1st reg. sess. (Mar. 7, 1991), given the "over any period of time" language in the definition of harassment, the most likely purpose of is requiring the petition to be filed within one year of *the most recent act* of harassment. This interpretation is consistent with the purpose of ensuring the timely filing of the petition for injunction against harassment. Such a purpose makes particular sense in the context of an *in personam* injunction; the legislature likely believed there is no need for the plaintiff to obtain an injunction when *the most recent* act of harassment occurred in the distant past (i.e., more than one year ago).

It is therefore very difficult to escape the conclusion that Section 12-1809(E) is properly interpreted to mean only that *the most recent incident* of harassment must have occurred in the year preceding the filing of the petition, not that all incidents of harassment or two incidents of harassment occurred in the preceding year. The terms of Section 12-1809(E) confirm this interpretation by requiring the court to find "reasonable evidence" of harassment. Reasonable evidence of harassment "over any period of time" would include a single act in the recent past that is sufficiently alarming, annoying, or harassing.

It should also be observed that the interpretation currently given to A.R.S. § 12-1809 in Rule 25(e) leads to results that are internally inconsistent and contrary to the policy of protecting persons in Arizona from potentially dangerous conduct. Although Section 12-1809(T) defines "harassment" as a series of acts "over any period of time," Rule 25(e) as currently written would deny the victim relief for conduct satisfying this definition even if the plaintiff promptly filed the petition for an injunction. For example, if D threatened the life of P on January 1, 2020; then D stalked P throughout the day on January 2, 2021, Rule 25(e) requires the court to deny an injunction to protect P even if P files a petition for the injunction on January 3, 2021, despite the fact that D's conduct toward P clearly satisfies the definition of harassment in A.R.S. § 12-1809(T) and occurred recently.

Similarly, suppose D committed a series of seven unprovoked assaults on P throughout the month of December 2019, and P obtained an injunction against harassment against D on January 5, 2020. Under Rule 25(e), if D committed a fresh assault on P on January 6, 2021, P would have to wait until D committed *yet another* assault on P before obtaining a protective order, despite D's established history of assaulting P. For that matter, if D were to threaten, assault, stalk, or otherwise harass P once every 366 days for the rest of P's life, P would have no possibility of obtaining an injunction under Rule 25(e), as currently written.

This is very unlikely to have been the Arizona legislature's intent. As noted, it is more credible to interpret the purpose of the "preceding year" language of Section 12-1809(E) as having been added to ensure the timely filing of the petition, not to contradict the language in paragraph (T). Rule 25(e)'s interpretation of A.R.S. § 12-1809(T) fails to protect victims of harassment in the above and similar situations from repeated harassment over a prolonged period of time, which can be an especially alarming form of harassment, because it indicates that the harasser has a

potentially dangerous obsession with his or her victim. Yet, the current interpretation of A.R.S. § 12-1809(E) found in Rule 25(e) would leave the victim at the defendant's mercy.

Finally, note that the language "during the year preceding the filing" is ambiguous, because "year preceding" could signify either that only acts of harrassment that occur in a calendar year *prior to* the year in which the petition is filed may be considered (for example, if a petition is filed in April 2022, only acts of harassment in the year 2021 are considered), or it can mean during the twelve-month period that precedes the filing, which is undoubtedly the intended meaning. To forestall any misunderstanding of the time period intended, this language should be clarified.

II. Contents of the Proposed Rule Amendment

In light of the foregoing, I hereby petition the Court to amend Rule 25(e)(1)(A) of the Rule of Protective Order Procedure to read as follows in relevant part:

(e) Findings Required.
(1) The judicial officer must issue an Injunction Against Harassment upon finding:
(A) reasonable evidence that the defendant has committed ~~a series of acts of~~ harassment as defined in Rule 3(c), against the plaintiff, and the defendant committed the most recent act of harassment against the plaintiff within one year of the filing, or that the defendant has committed at least one act of sexual violence as defined in A.R.S. § 23-371, against the plaintiff ~~during the year preceding~~ within one year of the filing; or

This amendment would effectuate the legislative intent of providing relief for harassment occurring "over any period of time" while ensuring that petitions are filed after no more than twelve months following the most recent incident of harassment. It would further eliminate an ambiguity regarding the time frame during which the most recent act of harassment or sexual violence must have occurred.

RESPECTFULLY SUBMITTED this 27th day of May, 2022.

By _____

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