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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)
PETITION TO AMEND RULES 3,) Supreme Court No. R-21-_____
14, 23, 24, 25, 26, 30, 31, 32, AND 42)
OF THE ARIZONA RULES OF)
PROTECTIVE ORDER PROCEDURE)
_____)

Pursuant to Arizona Supreme Court Rule 28, Wendy A. Million, chair of the Committee on the Impact of Domestic Violence and the Courts (CIDVC), respectfully petitions this Court to amend the Arizona Rules of Protective Order Procedure (ARPOP), as reflected in the accompanying Appendix A, on an emergency basis to bring them into conformity with recent amendments to several Arizona statutes related to protective orders.

I. Background and Purpose of the Proposed Rule Amendment. House Bill 2604 and Senate Bills 1633 and 1653 were passed in the Second Regular Session of the Fifty-fifth Legislature (2022). The effective date for these bills is September 24, 2022.

II. Contents of the Proposed Rule Amendment.

Amendments to Rules 23, 24, 25, 26, 31, and 32 are proposed to add clarity and conformity with the statutory changes brought about by HB2604. HB2604 amends ARS § 13-3602 by extending the duration of any Order of Protection (OP) served on or after the general effective date of September 24, 2022, from one year to two years. This bill also amends ARS § 13-3624 and increases the duration of any Emergency Order of Protection (EOP) issued on or after the general effective date to seven calendar days. Currently, an EOP expires either 72 hours from issuance or on the next judicial business day, whichever is longer.

A modification to Rule 3 is proposed to conform the definition of “harassment” with ARS § 13-2921(E) as amended by SB1633. The definition has been expanded to include conduct that humiliates or mentally distresses the person toward whom the harassment is directed.

Modifications to Rules 3 and 14 are proposed to conform them with the Injunction Against Harassment statute (ARS §12-1809) as amended by SB1653. SB1653 removes an outdated reference to “dating relationship.” In 2009, ARS § 13-3602 was amended to allow a person in a romantic or sexual relationship to petition for an Order of Protection; however, the reference to “dating relationship” remained in ARS § 12-1809.

Technical corrections to Rules 30 and 42 are included in this petition.

III. Pre-Petition Comments. The petition has not been circulated for pre-petition comments.

IV. Proposed Post-Petition Public Comment Period. Petitioner respectfully recommends a public comment period for the proposed rule ending October 1, 2022.

IV. Effective Date of the Proposed Rule Amendment. The rights granted by the underlying statutory amendments will take effect on September 24, 2022, and the effective date of the proposed rule amendments must be consistent with that date. Accordingly, petitioner respectfully requests that the proposed amendments be made effective on and after September 24, 2022.

RESPECTFULLY SUBMITTED this 29th day of June, 2022.

/s/
Honorable Wendy A. Million
Magistrate, Tucson City Court

APPENDIX A

3. Definitions

(a) - (b) [no changes]

(c) “**Harassment**,” when applicable to an Injunction Against Harassment, means either of the following:

(1) a series of acts over any period of time that are 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. *See* A.R.S. § 12-1809(S); or

~~(2) one or more acts of sexual violence as defined in A.R.S. § 23-371; or~~

~~(3) any contact if the person is the victim of a crime that was committed by the defendant. For purposes of this rule, “crime” means a conviction for an offense, whether completed or preparatory, that is a dangerous offense as defined in A.R.S. § 13-105, a serious offense or violent or aggravated felony as defined in A.R.S. § 13-706, or any offense in A.R.S. title 13, chapter 14 or 35.1.~~

(d) [no change]

(e) “**Harassment**,” when applicable to an Order of Protection or an Emergency Order of Protection, means conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed, humiliated, or ~~harassed~~ mentally distressed, and the conduct in fact seriously alarms, annoys, humiliates or ~~harasses~~ mentally distresses the person. *See* A.R.S. §§ 13-2921, 13-3601(A), and 13-3624(C).

(f) - (g) [no changes]

14. Filing and service fees

(a) - (b) [no changes]

(c) **Service Fees.**

(1) A service fee cannot be charged for:

(A) an Order of Protection that is served by any court-contracted or law enforcement agency. *See* A.R.S. § 13-3602(D).

(B) an Injunction Against Harassment—~~between parties in a dating relationship or~~ where the harassment is sexual violence as defined in A.R.S. § 23-371—that is served by any court-contracted or law enforcement agency. *See* A.R.S. § 12-1809(D).

(2) For an Injunction Against Harassment—~~between parties not in a dating relationship~~—or an Injunction Against Workplace Harassment, the fee is determined by the serving agency. *See* A.R.S. §§ 12-1809(D) and 12-284(A).

(d)[no change]
COMMENT [no change]

23. Order of Protection

(a)- (i) [no changes]

(j) **Effectiveness.** An Order of Protection takes effect when ~~it~~ the defendant is served with a copy of the order and the petition. An Order of Protection that is served on or after September 24, 2022, is in effect for two years from date of service. An Order of Protection served before September 24, 2022, is in effect for one year from date of service. A modified Order of Protection takes effect upon service and expires the same date as the initial order upon which it is based. See A.R.S. § 13-3602~~(K)~~(N).

(k)[no change]
COMMENTS [no changes]

24. Emergency Order of Protection

(a) **Authority to Issue an Emergency Order of Protection.**

(1) In a county having a population of 150,000 or more, the presiding judge of the superior court in that county must make available on a rotating basis a judge, a justice of the peace, a magistrate, or a commissioner to issue an Emergency Order of Protection by telephone during hours that the courts are closed. See A.R.S. § 13-3624(A).

(2) In a county having a population of less than 150,000, a any judge, a justice of the peace, a magistrate, or a commissioner may issue an Emergency Order of Protection by telephone during hours that the courts are closed. See A.R.S. § 13-3624~~(B)~~(A).

(b) – (d) [no changes]

(e) **Duration.** An emergency order expires ~~at the close of the next judicial business day following the day of issuance or within 72 hours of issuance, whichever is longer~~ seven calendar days after issuance. See A.R.S. § 13-3624(E). The plaintiff may file a petition for an Order of Protection on the next judicial business day.

(f) [no change]
COMMENT [no change]

25. Injunction Against Harassment

(a)- (h) [no changes]

(i) **Effectiveness.** An Injunction Against Harassment takes effect when ~~it is served~~ the defendant is served with a copy of the order and the petition, and it expires one year from the date it is served. A modified Injunction Against

Harassment takes effect upon service but expires one year after service of the initial order. See A.R.S. § 12-1809(J).

COMMENT [no change]

26. Injunction Against Workplace Harassment

(a)- (g) [no changes]

(h) **Effectiveness.** An Injunction Against Workplace Harassment takes effect ~~when it is served~~ the defendant is served with a copy of the order and the petition, and it expires on year from the date it is served. A modified Injunction Against Workplace Harassment takes effect upon service but expires on year after service of the initial order. See A.R.S. § 12-1810(I).

COMMENT [no change]

30. Offender treatment programs

(a) [no change]

(b) **Noncompliance with Offender Treatment.** If a judicial officer becomes aware that a defendant has failed to comply with an order to complete a domestic violence offender treatment program, the judicial officer may refer the matter to an appropriate law enforcement agency. A superior court judicial officer may also set the matter for an Order to Show Cause hearing. See A.R.S. § 13-3602(N)(R).

31. Service of protective orders

(a)- (i) [no changes]

~~(j) **Effective Date.** An initial protective order takes effect when the defendant is served with a copy of the order and the petition, and it expires one year from the date it is served. A modified order takes effect upon service but expires one year after service of the initial order.~~

COMMENT [no change]

32. Registration of protective order and proof of service

(a) **Registration; Central Repository.** The supreme court will maintain a central repository for Orders of Protection, Injunctions Against Harassment, and Injunctions Against Workplace Harassment. Within 24 hours of return of service, every Order of Protection, Injunction Against Harassment, and Injunction Against Workplace Harassment must be entered by the issuing court into the supreme court's central repository for protective orders. The supreme court must register the served protective order with the National Crime Information Center.

(b) Validity Registration. The effectiveness of a protective order does not depend on its registration. A protective order, whether or not registered, is a valid court order for ~~one year from the date of service~~ its applicable term.

42. Appeals

(a) – (b) [No changes]

COMMENT

A protective order entered by a limited jurisdiction court after a hearing at which both parties had an opportunity to appear may be appealed to the superior court. See A.R.S. §§ 13-3602(~~S~~)(T), 12-1809(P), and 12-1810(P). The procedures to be followed are set forth in A.R.S. § 22-261 for justice courts, are made applicable to municipal courts by A.R.S. § 22-425, and are governed by the *Superior Court Rules on Appellate Procedure-Civil*.