

Hon. Jeff Fine  
Clerk of the Superior Court for Maricopa County  
620 West Jackson Street, Suite 3052  
Phoenix, AZ 85023  
[Jessica.Fotinos@Maricopa.Gov](mailto:Jessica.Fotinos@Maricopa.Gov)  
602-506-2309

IN THE SUPREME COURT STATE OF ARIZONA

IN THE MATTER TO AMEND )  
RULE 26.11 AND RULES 1, 3, 4 )  
AND 42 OF THE RULES OF ) Supreme Court Rule No. R-22-0039  
PROTECTIVE ORDER )  
PROCEDURE AND ADOPT RULE 43 )  
OF THE RULES OF PROTECTIVE )  
ORDER PROCEDURE )

**BACKGROUND**

On October 3, 2022, David K. Byers, Administrative Director of the Administrative Office of the Courts (“AOC”), filed a rule petition on AOC’s behalf. The petition proposes to amend Rule 26.11 of the Arizona Rules of Criminal Procedure and Rules 1, 3, 4 and 42 of the Arizona Rules of Protective Procedure and adopt a new Rule 43 of the Arizona Rules of Protective Order Procedure. The proposed amendments are prompted by the enactment of Senate Bill 1653, signed into law on June 7, 2022, with an effective date of September 24, 2022.

Senate Bill 1653 allows victims of certain crimes to obtain a lifetime no-contact injunction against a defendant convicted of, whether preparatory or completed, a dangerous offense as defined in A.R.S. § 13-105 that is also a felony, a serious offense or violent and aggravated felony as defined in A.R.S. § 13-706, or a felony as defined in Chapter 14 or 35.1 of Title 13. A lifetime no-contact injunctions is to be obtained by the victim at the time of sentencing of the defendant, or if the defendant was sentenced prior to the effective date of the legislation, September 24, 2022, subsequent to sentencing, through a petition-based process.

Because of the short time frame given to courts and clerks to implement SB1653, less than four (4) months, the Supreme Court issued Administrative Order No. 2022-117 on September 21, 2022, as well as Administrative Directive No. 2022-11, on September 23, 2022, to provide procedural guidance and direction, in lieu of applicable procedural rules.

As set forth by Mr. Byers in his petition, its purpose is to incorporate the procedures set forth in Administrative Order No. 2022-117 in the Arizona Rules of Court and to establish procedures for requests for lifetime no-contact injunctions made at the time of sentencing. Mr. Byers further requested that the petition be given expedited consideration under Supreme Court Rule 28(h)(1) and be adopted on an emergency basis during the December 2022 Rules Agenda under Supreme Court Rule 28(h)(2).

On October 6, 2022, the Supreme Court issued an order granting the request to consider the petition on an expedited basis, providing that the Supreme Court would consider whether to adopt the proposed rule changes on an emergency basis at its December 2022 Rules Agenda, and if it did, the Court would consider whether to adopt them on a permanent basis at its August 2023 Rules Agenda.

The Supreme Court further ordered that the petition be opened for public comment under Supreme Court Rule 28(c), with comments due no later than October 31, 2022, for its emergency consideration, and that the Supreme Court would reopen the public comment period, with all comments due no later than May 1, 2023, before consideration of adoption of rules on a permanent basis.

The Clerk of the Superior Court for Maricopa County (“the Clerk’s Office”) does not fundamentally object to the proposed rule amendments, but recommends that some changes be made to the proposed rules, and clarification provided, so as to ensure that the Clerk’s Office is

able to fulfill its obligations as custodian of record and as the entity who provides notice to the parties as well as the Department of Public Safety (“DPS”), on behalf of the Maricopa County Superior Court.

**A. RECOMMENDED CHANGES TO RULE 26.11, RULES OF CRIMINAL PROCEDURE<sup>1</sup>**

*1. Rule 26.11(c)*

The Clerk’s Office maintains that the clerk is better suited to provide a copy of the order for lifetime no-contact injunction to the victim, rather than provide such to the prosecutor to provide to the victim. The prosecutor in a criminal case does not represent the victim, but its office may provide victim advocate services. However, just because a prosecutorial agency provides victim advocate services, does not mean that a victim will utilize those services. The victim could very well be adverse to the prosecutorial agency and its position in a case. The prosecutor may not necessarily be the victim’s representative, as the victim may have retained counsel, or be utilizing alternative victims’ services not provided by the prosecutorial agency. Further, the prosecutor will not have ready access to the confidential victim information sheet, which will contain the information as to where the order or injunction is to be mailed, if the victim is not present at sentencing.<sup>2</sup> The clerk will have immediate access to the confidential victim information sheet

---

<sup>1</sup> The Clerk’s Office notes inconsistencies within the proposed amendments to the Rules of Protective Order Procedure as to how the lifetime no-contact injunction is referenced. Sometimes the use of the word “order” precedes the words “lifetime no-contact injunction,” but not consistently. And capitalization is not consistent between the terminology used in proposed Rule 26.11, Arizona Rules of Criminal Procedure, and the proposed amendments to the Rules of Protective Order Procedure.

<sup>2</sup> Rule 26.11 (c)(1) and (3), as proposed, do not contemplate the situation where a defendant is not present at sentencing. While the lack of presence of a defendant at sentencing may be rare, it can happen. As such, the Clerk’s Office maintains that the Supreme Court should consider how service is to be effectuated in instances where the defendant is not present at sentencing. Because the Clerk’s Office is not responsible for service of process, such is not within our purview of duties and responsibilities under the Rule, but the Clerk’s Office felt obligated to bring the issue to the Supreme Court’s attention. The Clerk’s Office will provide recommended language in Appendix A.

and routinely has responsibility for transmitting orders in cases.

2. *Rule 26.11(c)(2)*

Rule 26.11(c)(2) currently provides that the clerk must promptly forward a copy of the order of lifetime no-contact injunction and confidential victim information sheet to the Department of Public Safety (“DPS”), and while the Clerk’s Office does not object to it doing that, there may be jurisdictions outside of Maricopa County or instances where the court, rather than the clerk, fulfills that role. As a result, the Clerk’s Office proposes the use of language, in the alternative, which allows either the clerk or the court to forward the information to DPS.

**B. RECOMMENDED CHANGES TO RULE 43, RULES OF PROTECTIVE ORDER PROCEDURE<sup>3</sup>**

1. *Rule 43(c)*

The Clerk’s Office requests that the term “victim representative” be defined in Rule 43. Rule provides that “victim” has the same meaning as set forth in A.R.S. § 13-4401, but there is no statutory reference or definition provided as to who/what constitutes a victim representative.

---

<sup>3</sup> Based upon a review of the petition, it appears that the AOC maintains that if a defendant is sentenced subsequent to September 24, 2022, a victim may not avail itself of filing a petition in accordance with proposed Rule 43 of the Rules of Protective Order Procedure. SB 1653 amended A.R.S. § 12-809 and struck Subsection (T)(1)(c) which included in the definition of harassment “any contact if the person is the victim of a crime that was committed by the defendant, with crime defined as a conviction for an offense, whether completed or preparatory, that is a dangerous offense as defined in § 13-105, a serious offense or violent or aggravated felony as defined in § 13-706 or any offense in title 13, chapter 14 or 35.1.” It appears that if a victim does not obtain a lifetime no-contact injunction at the time of sentencing, when sentencing is subsequent to September 24, 2022, the victim has no opportunity to obtain a lifetime injunction through the petition process. Nor may the victim obtain an injunction against harassment, unless the victim is able to establish harassment as defined under § 12-809(T)(1)(a) or (b), and if obtained, such would need to be renewed annually.

In addition, the Clerk’s Office notes inconsistencies within the proposed amendments to the Rules of Protective Order Procedure as to how the lifetime no-contact injunction is referenced. Sometimes the use of the word “order” follows the word “injunction,” but not consistently. And capitalization is not consistent between the terminology used in proposed Rule 26.11, Arizona Rules of Criminal Procedure, and the proposed amendments to the Rules of Protective Order Procedure.

Notably, A.R.S. § 13-719(D) provides that the *only* the victim may submit a petition with the court requesting an injunction, and does not mirror the language used in A.R.S. § 13-719(A), which provides that the victim or the prosecutor may request an injunction at the time of sentencing. The Clerk's Office does not maintain that § 13-719(D) must be limited to only the victim, or legal counsel for the victim, filing the petition, nor does it intend to reject any petitions based upon who files them, but respectfully requests that the Supreme Court provide guidance as to who can serve as a victim representative.

2. *Rule 43(d)*

The Clerk's Office maintains that not only must the petition be filed in the court where the defendant was sentenced, but also into the criminal case file which resulted in the conviction. It is not necessary to establish a new case number for petitions for lifetime no-contact injunctions because a criminal case will already exist, and to allow for the petition to be filed as a civil matter would cause significant confusion between lifetime no-contact injunctions and protective orders as defined in Rule 3(g) of the Rules of Protective Order Procedure.

3. *Rule 43(f)*

The Clerk's Office agrees that the victim should have a continuing duty to provide the clerk with a current and correct phone number and mailing address where the victim can be notified, but such will need to be provided on a supplemental confidential victim information sheet so as to ensure the confidentiality of the victim's information. If the victim fails to utilize the confidential victim information sheet to provide updated contact information, there is a good chance that the updated information may not be kept confidential. The use of the confidential victim information sheet is what will trigger the Clerk's Office to ensure the appropriate security keyword is applied to the document, so as to limit access to the defendant and the public. It is

critical that victims use the confidential victim information sheet when providing updated contact information to the clerk.

4. *Rule 43(h)(3)*

The Clerk's Office requests that the word facsimile be removed as facsimile is no longer a preferred method of communication, especially in light of the fact that the proof of service can be filed electronically.

DATED this 31<sup>st</sup> day of October 2022.

/s/ Jeff Fine  
Clerk  
Superior Court for Maricopa County<sup>4</sup>

This comment has been filed via electronic filing of in accordance with deadlines set forth in the Supreme Court's October 6<sup>th</sup> Order.

A copy of this comment has been e-mailed to the Petitioner at the following:

David K. Byers  
Administrative Director  
Administrative Office of the Courts  
1501 West Washington, Suite 411  
Phoenix, AZ 85007-3327  
[Projects2@courts.az.gov](mailto:Projects2@courts.az.gov)

---

<sup>4</sup> General Counsel for the Clerk's Office assisted in the drafting of this comment.

## APPENDIX A

Modifications to the text are shown by underscoring in red font and deletions are shown by ~~strike through~~ in red font.

### Arizona Rules of Criminal Procedure

#### Rule 26.11. A Court's Duty After Pronouncing Sentence

(a) and (b) [No Changes]

(c) Lifetime No-Contact Injunction. If the defendant is convicted of an offense listed in A.R.S. § 13-719(A), upon request by the prosecutor or victim at the time of sentencing, the court must issue a written Order for Lifetime No-Contact Injunction to prohibit the defendant from contacting the victim. The court must require that a Confidential Victim Information Sheet be submitted to the court and ~~the clerk~~ must provide a copy of the Order for Lifetime No-Contact Injunction ~~to the prosecutor to provide~~ to the victim.

(1) Service. An order for a lifetime no-contact injunction issued under this rule must be served on the defendant, ~~if present~~, at the time of sentencing. The court must indicate on the Order for Lifetime No-Contact Injunction that the defendant was served with the Order for Lifetime No-Contact Injunction at the time of sentencing. ~~If the defendant is not present at the time of sentencing, Rule 43(h) of the Arizona Rules of Protective Procedure governs service of process.~~

(2) Forwarding the Order to the Department of Public Safety (DPS). The clerk ~~or other court staff~~ must promptly forward a copy of the Order for Lifetime No-Contact Injunction and Confidential Victim Information Sheet to DPS. The Confidential Victim Information Sheet cannot otherwise be made available to the public or the defendant to inspect, obtain copies of, or otherwise have access to.

(3) Effective Date; Validity; Requests for Dismissal. An order for a lifetime no-contact injunction is effective immediately ~~upon service~~ and is valid for the defendant's natural lifetime unless it is dismissed. Rule 43(i) of the Arizona Rules of Protective Order Procedure governs requests for dismissal.

(4) Forms. For purposes of assisting law enforcement and other agencies with recognizing orders for lifetime no-contact injunctions, courts and parties must use the forms approved under Rule 43(k) of the Arizona Rules of Protective Order Procedure. Courts may make margin and caption changes.

## Arizona Rules of Protective Order Procedure

### Rule 1. Scope and Applicability

~~These~~ Rules 2 through 42 govern procedures in Arizona courts for any case brought under Arizona Revised Statutes (“A.R.S.”) § 13-3602, Order of Protection; A.R.S. § 13-3624, Emergency Order of Protection; A.R.S. § 12-1809, Injunction Against Harassment; or A.R.S. § 12-1810, Injunction Against Workplace Harassment. Rules 3, 4, 42, and 43 govern procedures in Arizona for any petition filed under A.R.S. § 13-719(D) for a Lifetime No-Contact Injunction.

### Rule 3. Definitions

(a) through (f) [No Changes]

(g) **“Protective order,”** as used in ~~these~~ rules 4 through 42, means an Order of Protection, an Emergency Order of Protection, an Injunction Against Harassment, or an Injunction Against Workplace Harassment, except that “protective order” as used in rule 4 also includes a Lifetime No-Contact Injunction issued pursuant to A.R.S. § 13-719(D).

### Rule 4. Protective Orders Governed By These Rules

(a) through (e) [No Changes]

**(e) Lifetime No-Contact Injunction Under A.R.S. § 13-719(D).** A Lifetime No-Contact Injunction prohibits any contact by the defendant in a criminal case against the victim in that case and may be issued under A.R.S. § 13-719(D) if the defendant was convicted of and sentenced for an offense in A.R.S. § 13-719(A) before September 24, 2022.

### Rule 42. Appeals

(a) **Appealable Orders.** The following orders are appealable and are not subject to Rule 54(c), Rules of Civil Procedure, or Rule 78(c), Rules of Family Law Procedure:

- (1) An order denying a petition for an Order of Protection, an Injunction Against Harassment, ~~or an Injunction Against Workplace Harassment,~~ or an order granting or denying a petition for a Lifetime No-Contact Injunction.

(2) and (3) [No Change]

(4) An order granting or denying a request to dismiss a Lifetime No-Contact Injunction.

**(b) [No Change]**

**PART XI. LIFETIME NO-CONTACT INJUNCTIONS UNDER A.R.S. § 13-719(D)**

**Rule 43. Lifetime No-Contact Injunctions**

**(a) Applicability.** This rule governs petitions that are filed pursuant to A.R.S. § 13-719(D) for the issuance of a lifetime no-contact injunction against a defendant sentenced before September 24, 2022 for a conviction of an offense listed in A.R.S. § 13-719(A).

**(b) Qualifying Convictions.** A qualifying conviction for a lifetime no-contact injunction issued pursuant to this rule is a conviction of any of the following offenses, whether completed or preparatory, if the conviction has not been dismissed, expunged, or overturned and the defendant has not been pardoned:

- (1) A dangerous offense as defined in A.R.S. § 13-105 that is also a felony;
- (2) A serious offense or violent or aggravated felony as defined in A.R.S. § 13-706; or
- (3) A felony offense included in Title 13, Chapter 14 or 35.1.

**(c) Who May File.** The victim or victim representative may file the petition, except that if the victim requesting the lifetime no-contact injunction is a minor, then the parent, legal guardian, or person who has statutorily defined legal custody of the minor victim must file the petition unless the court determines otherwise. “Victim” as used in this rule and in Rule 4(e) has the same meaning as set forth in A.R.S. § 13-4401. [DEFINE VICTIM REPRESENTATIVE].

**(d) Place of Filing.** The petition must be filed ~~in~~ with the court where the defendant was sentenced and into the criminal case which resulted in the conviction and sentence.

**(e) Petition; Supporting Documentation.**

(1) Required Information. The petition must include:

- (a) whether the filer is the victim or a victim representative;
- (b) the defendant's name and date of birth;
- (c) the eligible conviction that forms the basis of the request;
- (d) whether the victim and the defendant have an existing parenting time plan in place; and
- (e) the criminal case number for the conviction.

(2) Other Information, if Available. The petition should also include, if available:

- (a) the defendant's address, telephone number, and email address;
- (b) the defendant's whereabouts or information regarding the best location for service;
- (c) the defendant's name at the time of arrest if different than the defendant's current name; and
- (d) a copy of the sentencing order.

(3) Declaration Under Penalty of Perjury. The filer must sign the petition with the following declaration: "I declare under penalty of perjury that the information I have provided in this petition and any attachments is true and correct to the best of my knowledge."

(4) Confidential Victim Information Sheet. The filer must attach a completed Confidential Victim Information Sheet to the petition.

(5) Supporting Documentation. The court may request supporting documentation for purposes of verifying that the offense for which the defendant was convicted is a qualifying offense.

**(f) Continuing Duty to Provide Current Address.** The victim has a continuing duty to provide the clerk of the court with a current and correct phone number and mailing address where the victim can be notified. When updating contact information, the victim must use a Confidential Victim Information Sheet to ensure confidentiality of the information provided.

**(g) Processing the Petition.** If the court determines that the conviction is a qualifying offense, the court must issue the lifetime no-contact injunction and provide a copy to the victim. If the court determines that the conviction is not a qualifying conviction, the court must issue a written order stating the reason for denial and provide a copy of the order to the victim.

**(h) Service.** If the court issues a lifetime no-contact injunction, a copy of the order must be personally served on the defendant. There is no requirement that the copy of the order served on the defendant be certified.

(1) *Who Can Serve.* A lifetime no-contact injunction issued pursuant to A.R.S. § 13-719(D) must be served by the sheriff or other law enforcement officer, or a process server.

(2) *Service by Sheriff or Other Law Enforcement Officer.* The victim or victim representative may initiate service by the sheriff or other law enforcement officer by delivering a copy of the order for the lifetime no-contact injunction to the sheriff of the issuing county or other appropriate law enforcement agency. A fee may not be charged for service by the sheriff or other law enforcement agency.

(3) *Proof of Service.* Proof of service must be promptly filed with the clerk of the issuing court as soon as practicable after service but no later than 72 hours, excluding weekends and holidays. Proof of service may be submitted ~~by facsimile,~~ electronically, or in person.

(4) *Notifying the Department of Public Safety (DPS).* Upon receiving proof of service, the clerk or other court staff must forward a copy of the returned proof of service, order for the lifetime no-contact injunction, and Confidential Victim Information Sheet to DPS to register the lifetime no-contact injunction with the National Crime Information Center.

**(i) Validity; Dismissal.** A lifetime no-contact injunction issued pursuant to A.R.S. § 13-719(D) is effective on service and is valid for the defendant's natural lifetime unless it is dismissed.

(1) *Dismissal on Request of the Victim.* The victim may make a request to the court to dismiss the lifetime no-contact injunction at any time by filing a written motion to dismiss. Court personnel must verify the victim's identity when the motion is filed. The court may schedule a hearing to make a determination on the victim's request for dismissal. If the court grants the victim's request, it must issue a written order and provide a copy to the victim and the defendant.

(2) *Dismissal on Request of the Defendant.* The defendant, by filing a written motion, may request dismissal of a lifetime no-contact injunction only if:

(a) the victim has died;

(b) the conviction on which the lifetime no-contact injunction is based has been dismissed, expunged or overturned, or the defendant has been pardoned; or

(c) the conviction on which the lifetime no-contact injunction is based is not a qualifying conviction.

(3) Notification; Response. Before granting a defendant's request to dismiss a lifetime no-contact injunction based on 2(b) or (c), the court must notify the victim of the request and give the victim an opportunity to file a written response.

**(j) Public Access to Petition or Injunction Information.**

(1) The court must not make publicly available any information regarding the filing for, contents of a petition for, or issuance of a lifetime no-contact injunction issued under this rule until proof of service of the injunction has been filed with the court. The court may share information about the lifetime no-contact injunction with the victim or victim representative and prosecutors or law enforcement when necessary to carry out their official responsibilities.  
(2) The Confidential Victim Information Sheet filed under (e)(4) may be provided to DPS under (g)(4) but cannot otherwise be made available to the public or the defendant to inspect, obtain copies of, or otherwise have access to.

**(k) Forms.** Courts must provide, without charge, lifetime no-contact injunction forms. For purposes of assisting law enforcement with recognizing orders for lifetime no-contact injunctions so that law enforcement can prioritize these orders and not assess a fee for service, courts and parties must use only the forms approved by the Director of the Administrative Office of the Courts. Courts may make margin and caption changes.