

The Honorable Jeff Fine  
Clerk of the Superior Court in and for Maricopa County  
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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of:

	)	Supreme Court No. R-22-0039
PETITION TO AMEND RULE 26.11	)	
OF RULES OF CRIMINAL PROCEDURE	)	COMMENT
AND RULES 1, 3, 4 AND 42 OF THE	)	
RULES OF PROTECTIVE ORDER	)	
PROCEDURE AND ADOPT RULE 43	)	
OF THE RULES OF PROTECTIVE	)	
ORDER PROCEDURE	)	
_____	)	

The Clerk of the Superior Court in and for Maricopa County (“Clerk of the Maricopa County Superior Court” or “the Clerk”) files the following Comment pursuant to Rule 28, Arizona Rules of the Supreme Court, and the Arizona Supreme Court’s December 8, 2022 Order, in support of the Petition to Amend Rule 26.11 of the Rules of Criminal Procedure and Rules 1, 3, 4 and 42 of the Rules of Protective Order Procedure and Adopt Rule 43 of the Rules of Protective Order Procedure, but with a recommended change to Rule 43(j), *Validity; Dismissal*, as discussed below.<sup>1</sup>

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<sup>1</sup> On April 18, 2023, Governor Hobbs signed into law SB1582, *Lifetime Injunction; Petition; Procedures*, which amends A.R.S. § 13-719 to allow for a victim who did not request an injunction at the time of sentencing, irrespective to whether the sentencing occurred before or after September 24, 2022, to submit a petition to the court requesting an injunction against a defendant. SB1582 further amends A.R.S. § 13-719 to provide that if a conviction is set aside pursuant to A.R.S. § 13-905 or sealed pursuant to A.R.S. § 13-911, such does not affect the validity of an already obtained injunction nor does it prohibit a victim from submitting a petition to the court requesting a lifetime injunction. Modifications may need to be made to the rules to incorporate these statutory changes, and the Clerk defers to the Supreme Court to incorporate any necessary modifications.

On October 31, 2022, the Clerk filed a Comment to the Emergency Rule Petition filed by Petitioner on October 3, 2022, and Petitioner addressed the Clerk's concerns in its Reply filed on November 4, 2022. However, in reviewing Rule 43, Rules of Protective Order Procedure, again, and specifically Rule 43(j)(1), and conferring with General Counsel for the Superior Court in and for Maricopa County, the Clerk is concerned with the provision in Rule 43(j)(i) that provides the following: **Court personnel must verify the victim's identity when the motion is filed.**

While the rule uses the words "court personnel," it is not necessarily clear who bears the burden of the verification responsibility. The Rule states that the verification of the victim's identity is to occur upon the filing of the motion, so it is assumed that it would be the responsibility of Clerk staff to conduct this verification, as it is Clerk staff who receive motions for filing.

The requirement of the verification of the victim's identify at the time of filing, assumes that only the victim may file the motion to dismiss, and does not consider filing by another person on behalf of the victim, i.e., an attorney, prosecutor, etc. It also assumes that the filing would be made in person only, and not via eFile, U.S. Mail or another method of filing, and that the victim would present photo identification to a member of Clerk staff for verification.

The Rule, as written, currently does not require in person filing, nor does it prohibit individuals, other than the actual victim, from filing the motion.

In addition, the victim would clearly have to identify the filing as "Victim's Motion to Dismiss an Order for Lifetime Non-Contact Injunction" for Clerk staff to identify the filing as one that requires verification because when taking in a filing, Clerk staff do not read the body of the document to determine what the document or filing pertains to. So, if the filing is not properly captioned, Clerk staff could easily miss the verification requirement, and file in the document, absent performing any verification.

Because this provision of the Rule appears directed towards ensuring that it is the victim who is actually filing the motion, and it is not someone posing as the victim filing the motion, or that the victim is filing the motion under duress or coercion, the Clerk maintains that the responsibility of verification of the victim is best left to the Court and should be done at a hearing, where the victim would appear before a judicial officer.

The Clerk sets forth its recommended revision to Rule 43(j) in the Attachment to this Comment.

DATED this 1<sup>st</sup> day of May, 2023.

/s/ Jeff Fine  
Hon. Jeff Fine, Clerk  
Superior Court in and for Maricopa County

This Comment has been filed via electronic filing of in accordance with deadlines set forth in the Supreme Court's December 8, 2022 Order.

A copy of this Comment has been sent via e-mail to the Petitioner at the following:

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

# ATTACHMENT

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

## **Rule 43. Order for Lifetime No-Contact Injunction**

**(j) Validity; Dismissal.** An Order for Lifetime No-Contact Injunction issued under 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 Order for 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~~ **shall** schedule a hearing to verify the victim's **request identity** and that the victim is not making the request under duress or coercion. The court must grant the victim's request upon verification, 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 an Order for Lifetime No-Contact Injunction only if:

(A) the victim has died;

(B) the conviction on which the Order for 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 Order for Lifetime No-Contact Injunction is based is not a qualifying conviction.