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ARIZONA SUPREME COURT

In the matter of:)
)
TO AMEND RULE 26.11 OF RULES OF) Supreme Court No. 22-0039
CRIMINAL PROCEDURE AND RULES)
1, 3, 4, AND 42 OF THE RULES OF) Request to Amend Petition
PROTECTIVE ORDER PROCEDURE) and Amended Petition
AND ADOPT RULE 43 OF THE RULES)
OF PROTECTIVE ORDER PROCEDURE)
)
_____)

David K. Byers, Administrative Director, Administrative Office of the Courts, and Petitioner in this matter, hereby files this Request to Amend Petition and Amended Petition in the above-entitled matter to implement legislative amendments to A.R.S. § 13-719 in Laws 2023 (1st Reg. Sess.) Ch. 70, Senate Bill (SB) 1582 as more particularly described below. SB 1582 was signed on April 18, 2023 and is attached as Appendix B.

I. Background

SB 1653 was enacted during the 2022 Second Regular Session of the 55th Legislature and became effective on September 24, 2022. SB 1653 created A.R.S. §

13-719 to allow victims to obtain a lifetime no-contact injunction (“lifetime injunction”) against a defendant convicted of certain felony offenses by making a request at sentencing. A.R.S. § 13-719(D) provides that if a defendant was sentenced before September 24, 2022, victims may obtain a lifetime injunction by filing a petition with the court.

On October 3, 2022, Petitioner filed petition R-22-0039 to amend Rule 26.11 of the Arizona Rules of Criminal Procedure and several rules in the Arizona Rules of Protective Order Procedure (ARPOP) to implement SB 1653. Petitioner requested expedited consideration of the petition and emergency adoption of the proposed rule amendments at the Court’s December 2022 Rules Agenda with a comment period to follow. This Court granted Petitioner’s request to consider this petition on an expedited basis, and on December 8, 2022, entered an Order adopting Petitioner’s proposed amendments, with modification based on stakeholder comments, on an emergency basis. This Court will consider permanent adoption of these rules at its August 2023 Rules Agenda.

Petitioner files this Request to Amend Petition and Amended Petition so that legislative changes made by SB 1582 can be considered for incorporation in the final rules adopted by this Court.

II. Purpose and Contents of Proposed Amendments

Although SB 1653 provided a mechanism for a victim to obtain a lifetime injunction at the time of sentencing and against a defendant sentenced *before* September 24, 2022, SB 1653 made no provisions for a victim to obtain a lifetime injunction against a defendant sentenced *after* September 24, 2022 if the request was not made at the time of sentencing. SB 1582 fills this gap by authorizing a victim who does not request a lifetime injunction at the time of sentencing to file a petition requesting a lifetime injunction. SB 1582 also clarifies that courts cannot charge a filing fee for a petition and that a conviction that is set aside under A.R.S. § 13-905 or sealed under A.R.S. § 13-911 does not affect the validity of or a victim's eligibility for a lifetime injunction.

This amended petition therefore proposes amendments, which are set forth in Appendix A, to the rules this Court adopted in its December 8, 2022 Order as follows:

- Remove “before September 24, 2022” from Rules 4(e) and 43(a), ARPOP;
- Add into Rule 43(d), ARPOP, that a court cannot charge a filing fee for a petition; and
- Correct cross-references in Criminal Rule 26.11(c)(3) and ARPOP Rule 43(j)(3) and (4).

III. Request

Petitioner respectfully requests that this Court grant Petitioner's request to amend the petition in this matter and permanently adopt the rules as set forth in its December 8, 2022 Order, but with the modifications as set forth in Appendix A.

Respectfully submitted this 1st day of May, 2023.

By /s/David K. Byers
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APPENDIX A

(deletions shown with ~~striketrough~~, new language is underlined)

Arizona Rules of Criminal Procedure

Rule 26.11. A Court's Duty After Pronouncing Sentence

(a) and (b) [No Changes]

(c) [No change in text]

(1) and (2) [No change]

(3) *Serving the Defendant*. The Order for Lifetime No-Contact Injunction must be served on the defendant if present at sentencing. The court must indicate on the Order for Lifetime No-Contact Injunction that the defendant was served with the order at sentencing. If the defendant is not present at the time of sentencing, Rule 43(~~h-i~~) of the Arizona Rules of Protective Procedure governs service of process.

(4) through (6) [No change]

Arizona Rules of Protective Order Procedure

Rule 4. Protective Orders Governed By These Rules

(a) through (d) [No Changes]

(e) **Order for Lifetime No-Contact Injunction Under A.R.S. § 13-719(D)**. An Order for 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 43. Order for Lifetime No-Contact Injunction

(a) **Applicability**. This rule governs petitions that are filed under A.R.S. § 13-719(D) for the issuance of an Order for 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) and (c) [No change]

(d) **Place of Filing; No Filing Fee**. The petition must be filed in the court in which the defendant was sentenced. A court cannot charge a filing fee for a petition.

(e) through (i) [No change]

(j) [No change in text]

(1) and (2) [No change]

(3) *Granting the Defendant's Request to Dismiss.* The court must grant the defendant's request for dismissal upon a showing that one of the circumstances in (i-j)(2) exists.

(4) *Notification; Response.* Before granting a defendant's request to dismiss an Order for Lifetime No-Contact Injunction based on (i-j)(2)(B) or (C), the court must notify the victim of the request and give the victim an opportunity to file a written response.

(k) and (l) [No change]