

1 Judge Jennifer Green  
2 Criminal Department Presiding Judge  
3 Superior Court of Arizona, Maricopa County  
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

} Supreme Court No. R-22-0039

TO AMEND RULE 26.11 OF RULES  
OF CRIMINAL PROEDURE AN  
RULES 1, 3, 4, AND 42 OF THE  
RULES OF PROTECTIVE ORDER  
PROCEDURE AND TO ADOPT  
RULE 43 OF THE RULES OF  
PROTECTIVE ORDER  
PROCEDURE

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} COMMENT ON THE PROPOSED  
} RULE AMENDMENTS

The Presiding Judge of the Criminal Department of the Superior Court in and for Maricopa County files the following comment pursuant to Rule 28, Arizona Rules of the Supreme Court, regarding Rule Petition R-22-0039. The petition is amending and adding procedures to implement A.R.S. §13-719 regarding lifetime no-contact injunctions sought by victims against defendants with certain qualifying convictions.

The comment only concerns the adoption, on an emergency basis, of new Rule 43 of the Arizona Rules of Protective Order Procedure. Rule 43 governs the process when a victim seeks a lifetime no-contact injunction outside of the time of sentencing.<sup>1</sup> Specifically, we are concerned about the following paragraph at Rule

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<sup>1</sup> The rule applies to petitions for injunctions against a defendant sentenced before September 24, 2022; i.e., the date A.R.S. §13-719 went into effect. However, the

1 43(g), which states that after a victim files a petition for a lifetime no-contact  
2 injunction, the following must occur:

3 **The court must provide the defendant’s sentencing counsel notice of the**  
4 **victim’s petition under Rule 43(e)(1)-(3) and (5), by mailing the notice to**  
5 **counsel’s last known address. Upon receipt, counsel must forward the**  
6 **notice to the defendant’s last known address. If the defendant was**  
7 **unrepresented by counsel at sentencing, the court must provide notice of**  
8 **the petition to the defendant, which is to include the information**  
9 **provided in the victim’s petition under Rule 43(e)(1)-(3) and (5), by**  
10 **mailing the notice to the defendant’s last known address. The defendant**  
11 **may file a written response, but it must be filed with the court no later**  
12 **than 21 days after the court mails the notice to counsel or the defendant.**

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14 This language was not in the original rule petition to adopt processes for the  
15 implementation of lifetime injunctions, but was added at some later point and  
16 adopted, on an emergency basis, at the December 2022 Rules meeting. This  
17 provision has no obvious parallel requirement in Rules of Procedure wherein the  
18 burden is placed on the court to distribute a petition filed by a party to the other  
19 affected party. These petitions can be brought against defendants sentenced at any  
20 time in the past and the courts are going to have limited information regarding last  
21 known addresses of former counsel, or in the case of unrepresented defendants, the  
22 defendant. For example, in the Maricopa County Superior Court’s database, often  
23 a defendant’s address is simply the address of the Maricopa County Jail where the  
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25 Governor has recently signed into law SB 1582 which, when it takes effect, will  
26 allow any victim to petition the court for a lifetime injunction at any time after  
27 sentencing rather than only applying to defendants sentenced prior to September  
28 24, 2022.

1 defendant had been held as a pre-trial detainee. If there is a need to inform a  
2 defendant of the fact that a petition has been filed, the burden to provide it to the  
3 defendant should be on the petitioner.

4 This raises a larger issue regarding whether due process would even require  
5 a petition be mailed to previous counsel's last known address or the defendant's last  
6 known address. First, paragraph (g) is not requiring actual service of the document;  
7 rather, the petition is simply being put in the mail and sent out with the hope that it  
8 will eventually reach the defendant. If due process required the defendant receive  
9 notice of the petition, it would require more than a mailing to the last known  
10 address.

11 Second, it is also a deviation from the standard practice regarding petitions  
12 for orders of protection or injunctions against harassment. In the case of ordinary  
13 orders of protection or injunctions against harassment, the petition is *not* forwarded  
14 to the subject of the petition. Instead, it is maintained as a confidential document  
15 until the court has (1) granted the petition and (2) the order or injunction has actually  
16 been served on the subject of the petition. It is after service that the subject can  
17 object to the order or injunction. Likewise, under Rule 43(j), as well as under A.R.S.  
18 §13-719, once a defendant is actually served with a lifetime no-contact injunction,  
19 they can move the court to dismiss the injunction on a variety of grounds.

20 Third, paragraph (k) of Rule 43 appears to follow this same practice for  
21 lifetime no-contact injunctions as for regular orders of protection or injunctions  
22 against harassment—in contradiction to paragraph (g). Paragraph (k) states that  
23 “[t]he court must not make publicly available any information regarding the filing  
24 of or contents of a petition for or issuance of an Order for Lifetime No-Contact  
25 Injunction issued under this rule until proof of service of the Order” has been filed  
26 with the court. Per this paragraph, the petition and accompanying documents may  
27 only be shared with the victim; the victim's attorney; a minor victim's parent, legal  
28 guardian, or person with legal custody; and with prosecutors and law enforcement.

1 The defendant is not included in these exceptions, and this is more consistent with  
2 the way in which these orders and injunctions normally work.

3 The addition of paragraph (g) to Rule 43 is unnecessary, overly burdensome  
4 to the courts, contradicts standard practices that orders of protection and injunctions  
5 against harassment remain confidential until served, and contradicts paragraph (k)  
6 of Rule 43 itself.

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8 Respectfully submitted this 1st day of May, 2023.

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11 /s/ Jennifer Green  
12 Honorable Jennifer Green  
13 Criminal Presiding Judge  
14 Superior Court of Arizona in and for  
15 Maricopa County  
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