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**ARIZONA SUPREME COURT**

In the matter of: )  
)  
PETITION TO AMEND RULE 26.11 OF ) Supreme Court No. 22-0039  
RULES OF CRIMINAL PROCEDURE )  
AND RULES 1, 3, 4, AND 42 OF THE ) REPLY  
RULES OF PROTECTIVE ORDER )  
PROCEDURE 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 replies pursuant to Rule 28(e)(5), Rules of the Supreme Court of Arizona, and this Court’s Order dated December 8, 2022.

**I. Procedural History**

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 the legislature’s enactment of A.R.S. § 13-719 through Senate Bill (SB) 1653 during the 2022 Second Regular

Session of the Fifty-fifth Legislature related to the issuance of lifetime no-contact injunctions.

SB 1653 became effective on September 24, 2022. Accordingly, Petitioner requested expedited consideration of the petition with an initial public comment period until October 31, 2022, and emergency adoption of the proposed rule amendments at this Court's December 2022 Rules Agenda with a second comment period to follow.

On October 6, 2022, this Court granted Petitioner's request to consider this petition on an expedited basis and opened the petition for an initial comment period until October 31, 2022. On December 8, 2022, this Court entered an Order adopting Petitioner's proposed amendments, with modification based on stakeholder comments, on an emergency basis. This Court reopened the public comment period until May 1, 2023, with any reply due by June 1, 2023. Petitioner files this Reply to address the comments received during the second comment period.

## **II. Discussion**

This petition received two comments during the second comment period. The first comment was from the Clerk of Court for the Superior Court of Arizona in Maricopa County. The second comment was from the Honorable Jennifer Green, Criminal Presiding Judge for the Superior Court of Arizona in Maricopa County. Petitioner will reply to each comment in turn.

### **A. Clerk of Court for the Superior Court of Arizona in Maricopa County**

In Petitioner's initial petition filed on October 3, 2022, proposed Rule 43(i), ARPOP (re-lettered to 43(j) in this Court's December 8, 2022 Order), establishes procedures for a victim to request dismissal of a lifetime no-contact injunction by filing a written motion and requires that court staff verify the victim's identity when the motion is filed. The comment raises concerns about who bears the responsibility of verifying the victim's identity at the time of filing.

The requirement to verify the victim's identity upon the filing of a request for dismissal as set forth in Rule 43(j), ARPOP, is based on and mirrors Rule 41(b), ARPOP, related to the dismissal of other protective orders. Petitioner sees no reason to establish different procedures through statewide rule adoption for verifying the identity of a person filing a motion to dismiss a lifetime no-contact injunction and a person filing a motion to dismiss any other protective order.

The comment also raises concerns that if clerks are tasked with verifying the identity of the filer for the dismissal of a lifetime no-contact injunction, the verification requirement may be missed due to not recognizing the filing as a motion to dismiss a lifetime no-contact injunction. However, a form Motion to Dismiss Order for Lifetime No-Contact Injunction has been adopted and made available to the public through Administrative Directive 2022-11. Accordingly, most, if not all,

dismissals filed should be recognizable by the clerk receiving the motion, similar to requests to dismiss other protective orders under Rule 41(b), ARPOP.

The comment also proposes mandating that the court set a hearing to verify the victim's identity. However, this would require the court to set a hearing for every motion to dismiss a lifetime no-contact injunction, for no other reason than to verify that the victim is the person actually filing the dismissal. Some courts may opt to schedule a hearing for every motion to dismiss filed, but Petitioner does not take the position that setting a hearing solely for identity verification should be a statewide mandate since this task can be accomplished through other means, such as having court staff verify the victim's identity upon filing. Moreover, requiring a hearing in every case does not align with the dismissal procedures for other protective orders.

Whether a hearing should be set and which court personnel will verify the victim's identity when a motion to dismiss a lifetime no-contact injunction is filed are procedural decisions that are better left to the presiding judge of the superior court in each county rather than through adoption of a statewide rule. Accordingly, it is Petitioner's recommendation that this Court retain Rule 43(j), ARPOP, as adopted in its December 8, 2022 Order.

**B. Honorable Jennifer Green, Criminal Presiding Judge for the Superior Court of Arizona in Maricopa County**

Judge Green's comment raises concerns regarding this Court's adoption of Rule 43(g), ARPOP, regarding notice to the defendant of and an opportunity to respond to a petition for lifetime no-contact injunction. The adoption of this provision was based on the October 31, 2022 joint comment of the Directors of the Maricopa Indigent Defense Agencies. Petitioner took no position on this specific recommendation in his November 4, 2022 Reply and continues to take no position.

Judge Green, however, points out that the requirements of Rule 43(g) create a conflict with respect to the confidentiality provisions of Rule 43(k). Petitioner agrees. Accordingly, if this Court opts to retain Rule 43(g), Petitioner makes the following recommendations:

- Strike Rule 43(k), ARPOP, re-letter current subsection (l) to (k), and make the corresponding subsection change to Criminal Rule 26.11(c)(6).
- Relocate the verbiage in Rule 43(k)(2) to Rule 43(e)(4) since both subsections pertain to the Confidential Victim Information Sheet and add verbiage to clarify that the confidentiality provisions apply to an Updated Confidential Victim Information Sheet filed under Rule 43(f).
- Add clarification to Supreme Court Rule 123(d)(3) to indicate that its provisions apply only to orders of protection, emergency orders of

protection, injunctions against harassment, and injunctions against workplace harassment.

The proposed revisions to Rule 43, ARPOP and Supreme Court Rule 123(d)(3) are set forth in the Appendix.

### **III. Request**

Petitioner appreciates the comments stakeholders submitted during the second comment period and deems it important to file this Reply to address the concerns reflected in those comments. Based on the foregoing responses, Petitioner respectfully requests that this Court adopt on a permanent basis the rules as set forth in its December 8, 2022 Order except as set forth in the Appendix.

Respectfully submitted this 30<sup>th</sup> day of May, 2023.

By /s/David K. Byers  
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## Appendix

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

### Arizona Rules of Protective Order Procedure

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

(a) through (d) [No change]

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

(1) through (3) [No change]

(4) *Confidential Victim Information Sheet*. The filer must attach a completed Confidential Victim Information Sheet to the petition. The Confidential Victim Information Sheet or Updated Confidential Victim Information Sheet may be provided to DPS under (i)(4) but cannot otherwise be made available to the public or the defendant to inspect, obtain copies of, or otherwise have access.

(5) [No change]

(f) through (j) [No change]

**~~(k) Public Access to Petition or Injunction Information.~~**

~~(1) The court must not make publicly available any information regarding the filing of or contents of a petition for or issuance of an Order for Lifetime No-Contact Injunction issued under this rule until proof of service of the Order for Lifetime No-Contact Injunction has been filed with the court. The court may share information about the Order for Lifetime No-Contact Injunction with the victim, the victim's attorney, the victim's legal guardian, or, if the victim is a minor, the parent, legal guardian, or person who has statutorily defined legal custody of the minor victim, and with prosecutors or law enforcement if necessary to carry out their official responsibilities.~~

~~(2) The Confidential Victim Information Sheet filed under (e)(4) may be provided to DPS under (i)(4) but cannot otherwise be made available to the public or the defendant to inspect, obtain copies of, or otherwise have access.~~

**~~(k)~~ (k) Forms.** Courts must provide, without charge, lifetime no-contact injunction forms. To assist law enforcement with recognizing an Order for Lifetime No-Contact Injunction 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.

## Rules of Criminal Procedure

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

(a) and (b) [No change]

(c) [No change to text]

(1) through (5) [No change]

(6) *Forms*. For purposes of assisting law enforcement and other agencies with recognizing an Order for Lifetime No-Contact Injunction, courts and parties must use the forms approved under Rule 43~~(l)~~(k) of the Arizona Rules of Protective Order Procedure. Courts may make margin and caption changes.

## Rules of the Supreme Court of Arizona

### Rule 123. Access to Judicial Records of the State of Arizona

(a) through (c) [No change]

(d) Access to Case Records

(1) and (2) [No change]

(3) *Protective Orders*. Unless otherwise ordered by the court, the custodian shall not make publicly available any information regarding the filing of or contents of a petition for or issuance of a protective order until proof of service of the protective order has been filed with the court. The custodian may permit law enforcement agencies to access these records when necessary to carry out their official responsibilities. “Protective order” as used in this section means an order of protection, an emergency order of protection, an injunction against harassment, or an injunction against workplace harassment.

(4) through (6) [No change]

(e) through (j) [No change]