

1 Honorable Barbara Rodriguez Mundell
2 Presiding Judge
3 Superior Court of Arizona, Maricopa County
4 125 W. Washington St.
Phoenix, AZ 85003
(602) 506-6130

5 IN THE SUPREME COURT OF THE STATE OF ARIZONA

6
7 In the Matter of:

} Supreme Court No. R-10-0017

8 ARIZONA RULES OF
9 PROTECTIVE ORDER
10 PROCEDURE, RULE 4(B)(5)(b)

} COMMENT OF THE SUPERIOR
} COURT OF ARIZONA, MARICOPA
} COUNTY TO PETITION TO
} AMEND RULE 4(B)(5)(b) OF THE
} ARIZONA RULES OF
} PROTECTIVE ORDER
} PROCEDURE

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15 The Presiding Judge of the Superior Court in Maricopa County files the
16 following comment pursuant to Rule 28, Arizona Rules of the Supreme Court,
17 regarding the petition to amend Rule 4(B)(5)(b) of the Rules of Protective Order
18 Procedure. The Superior Court in Maricopa County opposes the petition to
19 amend Rule 4(B)(5)(b) of the Rules of Protective Order Procedure because the
20 current rule correctly allows limited jurisdiction courts to conduct the hearing for
21 a protective order when no family law action is pending, which is consistent with
22 statute, the proposed change would result in a process contrary to the original
23 intent of the legislation, limited jurisdiction courts have jurisdiction to conduct
24 these hearings, and the proposed amendment would essentially shift the hearings
25 to other courts, overburdening family departments of Superior Courts.

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1 **I. The Current Rule Correctly Reflects the Law and No**
2 **Amendment is Necessary.**

3 The petition proposes mandating transfer of all protective orders in which a
4 child of the defendant or a protected person is subject to an active custody or
5 visitation order. However, the petition fails to identify any problem with the
6 current version of the rule. The petition merely states that “it is in the interests of
7 all the parties to have any contested hearing in the superior court.” This is simply
8 not the case. The party seeking a protective order has an interest in a quick
9 proceeding. Likewise, the party against whom a protective order has been
10 obtained has an interest in a quick hearing – one that is held within the ten-day
11 time period in A.R.S. §13-3602(I). If the hearing is transferred to Superior
12 Court, the hearing will likely be held later than if the hearing is conducted in the
13 limited jurisdiction court. The documents and docket will have to be transferred
14 to the Superior Court and the hearing will need to be scheduled on the calendar
15 of a judicial officer assigned to a family court calendar. This will result in
16 needless delay for the parties, and therefore is contrary to the interests of the
17 parties.¹

18 The current rule has been in effect for more than two years and in that
19 time, no concerns have been raised about the current process. Moreover, the
20 current version of Rule 4 is consistent with the statute, A.R.S. §13-3602. The
21 statute was amended in 2000 to specifically allow “a municipal or justice court
22 to hear all matters relating to ex parte orders of protection as long as the court
23 has no notice that another related action is *pending* in superior court.” Final
24 Revised Fact Sheet for H.B. 2126 from the Forty-Fourth Legislature, Second
25 Regular Session (2000) (emphasis added). Amending the rule as requested

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27 ¹ To the extent, the petitioner believes transfer before the hearing would be in the best interests of the
28 parties because only one hearing would need to take place in the Superior Court, the petitioner is mistaken. The
Superior Court would have to hold the hearing on the Protective Order, and then hold a second hearing if the
Protective Order affects a custody order. The second hearing would involve different parties, address different
interests, and use different standards than the Protective Order hearing.

1 would be contrary to both the plain language of the statute and the intent of the
2 statute.

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4 **II. The Proposed Amendment is Contrary to the Original Intent of
Protective Order Legislation.**

5 In 1980, Arizona enacted the statute authorizing courts to issue protective
6 orders, similar to the statutes enacted in other states. Statutes authorizing
7 protective orders were intended “to provide an easily accessible, free-standing
8 civil cause of action for a victim to obtain immediate, temporary, injunctive
9 relief from physical violence. These statutes aspire to provide victims with
10 safety, space, time and the wherewithal to escape and to establish themselves
11 independently and safely.” Jeffrey R. Baker, *Enjoining Coercion: Squaring Civil
12 Protection Orders with the Reality of Domestic Abuse*, 11 J. L. & Fam. Stud. 35,
13 38-39 (2008) (footnotes omitted). As previously stated, the proposed amendment
14 will delay the proceedings. The protective order process will no longer be a
15 quick, convenient process. Under the current rule, a protective order can be
16 obtained, and a hearing on a protective order, when no family court case is
17 pending, in any Municipal or Justice of the Peace Court in the county. In
18 Maricopa County, this gives the parties 23 Municipal Court locations and 12
19 Justice Court locations to obtain protective orders. The varied locations
20 throughout the valley make the procedure more easily accessible, in terms of
21 location and time. Mandating that all hearings on protective orders when a child
22 of the defendant or a protected person is subject to an active custody or visitation
23 order be transferred to Superior Court reduces the locations for such hearings to
24 downtown and three regional court centers in Maricopa County. This is contrary
25 to the intent of the legislation.

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1 **III. Limited Jurisdiction Courts Have Jurisdiction to Hold**
2 **Protective Order Hearings.**

3 The Legislature has statutorily authorized limited jurisdiction courts to
4 issue protective orders and hold hearings when no “action for maternity or
5 paternity, annulment, legal separation or dissolution of marriage is pending
6 between the parties.” Section 13-3602 provides in part that a “person may file a
7 verified petition, as in civil actions, with a magistrate, justice of the peace or
8 superior court judge for an order of protection.” A.R.S. § 13-3602(A). In
9 addition, the statute provides that “Notwithstanding any other law and unless
10 prohibited by an order of the superior court, a municipal court or justice court
11 may hold a hearing on all matters relating to its ex parte order of protection if the
12 hearing was requested before receiving written notice of the pending superior
13 court action.” A.R.S. § 13-3602(P). Section 13-3602 includes no prohibition or
14 restriction on a municipal or justice court holding the hearing on a protective
15 order when a child of the defendant or a protected person is subject to an active
16 custody or visitation order. This statute gives municipal and justice courts
17 jurisdiction and authority to hold such hearings.

18 The Arizona Supreme Court lacks the authority to essentially amend
19 A.R.S. § 13-3602 in a court rule. The Arizona Constitution grants the Supreme
20 Court the “[p]ower to make rules relative to all procedural matters in any court.”
21 Ariz. Const. art. 6, § 5(5). As stated in *In re Marriage of Waldren*, 217 Ariz.
22 173, 177, ¶ 20, 171 P.3d 1214, 1218 (2007):

23 Rules promulgated by the court may address only procedural matters.
24 E.g., *State v. Superior Court (Ahrens)*, 154 Ariz. 574, 576, 744 P.2d
25 675, 677 (1987). Court rules may not “abridge, enlarge or modify
26 substantive rights of a litigant.” A.R.S. § 12-109(A) (2003).

27 The Supreme Court “of course, has no power to limit the constitutional
28 jurisdiction of any of the other judicial tribunals established by the Constitution

1 or statutes adopted in pursuance thereof . . .” *Collins v. Superior Court in and for*
2 *Maricopa County*, 48 Ariz. 381, 393, 62 P.2d 131, 137 (1936). The Legislature
3 is vested with the power to dictate jurisdiction. Ariz. Const. art. 6, § 32. Any
4 attempt to prevent the ability of municipal and justice courts from holding
5 hearings on protective orders and issuing rulings on those hearings invades the
6 Legislature’s province to determine the jurisdiction and authority of these courts.

7 **IV. The Proposed Amendment Would Needlessly Overburden Other**
8 **Courts.**

9 As previously stated, no issues or concerns have been raised about the
10 current rule and practice for protective orders. In Maricopa County,
11 approximately 97 municipal court, justice court, full-time municipal court *pro*
12 *tempore* judges, in addition to the 95 Superior Court judges and 58 Superior
13 Court commissioners can issue a protective order and preside over any hearing
14 that is requested. If the proposed amendment is adopted, the number of judicial
15 officers who could preside over a requested hearing for a protective order in
16 which a child of the defendant or a protected person is subject to an active
17 custody or visitation order would be reduced to the 24 judicial officers assigned
18 to family court calendars in the Superior Court in Maricopa County. This will
19 result in delay for hearings on protective orders, delay for other family court
20 proceedings because the judicial officers will have the additional protective
21 order hearings, and significantly overload the family court calendars. This shift
22 may also burden the Court of Appeals. Currently, any appeal from a protective
23 order hearing in a municipal or justice court is filed in, and decided by, the
24 Superior Court. A.R.S. § 13-3602(P). If the Superior Court conducts the hearing,
25 a resulting challenge would be filed in the Court of Appeals. This could result in
26 a significant increase in case filings for the Court of Appeals.

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