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9 **IN THE SUPREME COURT**
10 **STATE OF ARIZONA**

11 **In the Matter of:**

12 **PETITION TO AMEND RULE**
13 **38(f)(1)(2) and (3) OF THE ARIZONA**
14 **RULES OF PROTECTIVE ORDER**
15 **PROCEDURE**

16) Arizona Supreme Court No. R-
17)
18) Petition to Amend Ariz.R.Prot.Order.Proc.
19) 38(f)(1)(2) and (3) of the Arizona Rules of
20) Protective Order Procedure to Expressly
21) Prohibit a Waiver of Personal Appearance
22) at a Contested Order of Protection Hearing

23 Pursuant to Rule 28, Rules of the Supreme Court, undersigned respectfully
24 petitions this Court to adopt amendments to the Body of Rules, governing the
25 defendant's appearance at a contested order of protection hearing.

26 **I. Background and Purpose of the Proposed Rule Amendments**

27 Arizona Rules of Protective Order Procedure 38(f)(1) currently states: If the
28 plaintiff appears for the contested hearing and the defendant fails to appear, and the
defendant received actual notice of the hearing, the protective order will remain in
effect. The rule is silent on a procedure where the defendant hires an attorney and the
attorney waives the presence of the defendant at a contested hearing.

II. Why the Amendment is Necessary

The plain language of Arizona Rules of Protective Order Procedure 38(f)(1) does

1 not allow the presence of the Defendant to be waived, but Courts are allowing it
2 because Arizona Rules of Protective Order Procedure 38(f)(1) is unclear. Allowing a
3 waiver when there is a pending criminal case or investigation gives the Defense
4 Attorney, in the Defendant's criminal matter, an opportunity to use the civil case as
5 means of forcing a defense interview on a victim, which is expressly forbidden under
6 A.R.S. §13-4433(A) and Ariz. R. Crim. P. 39. Allowing a Defendant to waive
7 appearance and not present any evidence controverting the Plaintiff's petition,
8 enables a Defendant to do an end-run around victims' rights and also cause additional
9 trauma to a Plaintiff forced to relive victimization through their testimony.
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13 Additionally, allowing the Defendant to waive appearance prevents the
14 Plaintiff from calling the Defendant as a Witness and would allow a represented
15 defendant to put specific claims in a request for hearing and be able to "testify"
16 through his request for a contested hearing, which goes against the spirit of Arizona
17 Rules of Protective Order Procedure 38(f)(1). To prevent these injustices from
18 occurring, undersigned counsel is petitioning the Court to clarify that a Defendant
19 may not waive appearance at a contested hearing.
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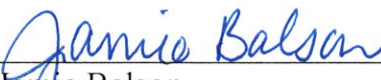
22 **III. Contents of the Proposed Rule Amendment**

23 Arizona Rules of Protective Order Procedure 38(f)(1) be amended to say: If the
24 plaintiff **personally** appears for the contested hearing and the defendant fails to
25 **personally** appear, and the defendant received actual notice of the hearing, the
26 protective order will remain in effect. Under Arizona Rules of Protective Order
27 Procedure 38(f)(2), the Plaintiff is already required to personally appear to present
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1 evidence in support of the Petition. For clarification and balance to both sides, it is
2 requested that the word personally be added to Arizona Rules of Protective Order
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4 Procedure 38(f)(2) and 38(f) (3). For the reasons outlined above, undersigned asks
5 this Court to adopt the changes set forth in the Appendix.

6 RESPECTFULLY SUBMITTED this 09 day of January, 2024.

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11 Gina Godbehere

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14 Jamie Balson

APPENDIX

A

Rule 38. Contested Hearing Procedures

(a) through (e) [No change]

(f) **Appearance at the Contested Hearing.**

(1) *Defendant Fails to Personally Appear.* If the plaintiff personally appears for the contested hearing and the defendant fails to personally appear, and the defendant received actual notice of the hearing, the protective order will remain in effect.

(2) *Plaintiff Fails to Personally Appear.* If the defendant personally appears for the contested hearing and the plaintiff fails to personally appear, and the plaintiff received actual notice of the hearing, the protective order will remain in effect.

(3) *Neither Party Personally Appears.* If neither party personally appears for the contested hearing, and each party received actual notice, the hearing will be vacated, and the protective order will remain in effect.

(g) **Procedure.** [No change]