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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	Supreme Court No. R-24-0039
)	
Petition to Repeal Rule 38(d),)	Comment to Petition to Repeal
Arizona Rules of)	Rule 38(d), Arizona Rules
Protective Order Procedure)	of Protective Order Procedure
_____)	

The Committee on the Impact of Domestic Violence and the Courts (CIDVC) has authorized the Honorable Wendy A. Million, CIDVC chair, to file this comment to Petition No. R-24-0039 on the committee's behalf.

DISCUSSION

Mike Palmer's petition to repeal Rule 38(d) of the Arizona Rules of Protection Orders contends that Rule 38(d) lacks statutory authority and violates defendants' due process rights in Injunctions Against Harassment (IAHs). While Mr. Palmer raises valid concerns about the origin and implications of Rule 38(d), it is essential to recognize that this rule was specifically developed to address the issues highlighted in the case of Savord v. Morton.

In *Savord v. Morton*¹, the plaintiff testified in a contested hearing to allegations that were not included in the petition. The court then affirmed the order of protection against the defendant without providing him with adequate notice or an opportunity to defend himself against the new allegations. In permitting the plaintiff to testify as to matters outside of the Petition, the court deprived the defendant of due process.

Victims of domestic violence often struggle to recall events chronologically due to the trauma they endure. *Savord v. Morton* brings attention to this challenge, showcasing how such trauma responses can impact the process of obtaining protection orders. The case also sheds light on the potential pitfalls that arise during contested hearings, emphasizing the risk of violating due process.

The Court of Appeals in reviewing *Savord v Morton* concluded that the best practice would have been to allow the plaintiff to amend her petition and reschedule the hearing, providing the defendant the opportunity to prepare for the new allegations. Rule 38(d) was developed to align with the Court of Appeals guidance stating:

“At a contested hearing, if a plaintiff seeks to testify or present evidence about relevant allegations that were not included in the petition, the court must:

¹ *Savord v. Morton* 235 Ariz. 256, 330 P.3d 1013, 1017 (Ct.App.2014)

- (1) allow the plaintiff to amend the petition in writing on a form provided by the court, a copy of which the court must immediately provide to the defendant; and
- (2) offer the defendant each of the following options:
 - (A) a continuance of the hearing, within the timeframes specified by Rule 38(b), to allow the defendant the opportunity to prepare for the additional allegations; or
 - (B) a brief recess to allow the defendant the opportunity to review the amended petition and prepare for the additional allegations; or
 - (C) an explanation of the options above and an opportunity to waive them. If the defendant waives both the opportunity for a continuance or a brief recess, then the court must proceed with the contested hearing on the amended petition that includes the additional allegations.”

Rule 38(d) affords plaintiffs the opportunity to amend their petitions during contested hearings while ensuring defendants have a fair chance to defend themselves against any additional allegations. Defendants are empowered to choose whether to proceed with the hearing as scheduled, request a continuance to prepare a defense against the new allegations on another day or take a recess to review and prepare a defense.

CONCLUSION

For the reasons stated above, CIDVC respectfully asks the Court to deny Petition R-24-0039.

Respectfully submitted this 23rd day of April, 2024.

/s/
Honorable Wendy A. Million
Magistrate, Tucson City Court

