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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	Supreme Court No. R-24-0037
)	
Petition to Amend Rule 38(f)(1),(2))	Comment to Petition to Amend
and (3) of the Arizona Rules of)	Rule 38(f)(1), (2) and (3),
Protective Order Procedure)	of The Arizona Rules 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-24-0013 on the committee's behalf.

DISCUSSION

The proposed amendment to Arizona Rules of Protective Order Procedure 38(f)(1), (2), and (3) seeks to restrict a defendant's ability to waive their appearance at a contested hearing, citing concerns about potential abuses of the legal process and victim rights. However, this opposition argues against the necessity and fairness of such an amendment.

The proposed amendment fails to consider the fundamental principle of legal representation. Defendants have the right to legal counsel, and attorneys act as their legal representatives in court proceedings. Especially in a civil proceeding such as a protective order proceeding, restricting a defendant's ability to waive appearance when their attorney is present undermines this right and imposes an unnecessary burden on both the defendant and their legal counsel. It is impractical and unfair to compel a defendant to appear in person when their attorney is fully capable of representing their interests in court.

In civil proceedings, the burden of proof rests squarely on the plaintiff. Regardless of whether the defendant appears in person, the plaintiff must still present sufficient evidence to support their petition for a protective order. The defendant's absence does not shift or alleviate this burden in any way. Therefore, mandating the defendant's presence adds no substantive value to the legal process but merely imposes additional procedural requirements without justification.

The proposed amendment also raises concerns about victims' rights, however, it overlooks existing safeguards within the legal system. Defendants or their legal counsel have the right to cross-examine plaintiffs, regardless of whether the defendant appears in person. This ensures that the plaintiff's allegations are subjected to rigorous scrutiny and examination, safeguarding the integrity of the legal process. A plaintiff also has the ability to subpoena any necessary witnesses,

which would be the correct way to secure a witnesses appearance, without a blanket rule requiring defendants to appear in person. Additionally, since COVID, courts all around Arizona have loosened personal appearance requirements, allowing parties to apply for Protective Orders over the phone, and appear remotely in court if necessary. Requiring that all defendants appear in person imposes an unnecessarily broad burden that would not solve the problem listed by the proposal. A protective order hearing will always involve testimony by the party with the burden of proof, and in some cases, that testimony may be used in another context. But that is the nature of the court system and the requirements of testifying under oath and preserving a record. Simply requiring a defendant to appear in person will not address or cure this issue. Imposing unnecessary restrictions on the defendant's ability to waive appearance does not enhance victims' rights but instead creates procedural hurdles that impede the efficient administration of justice.

The proposed amendment to Arizona Rules of Protective Order Procedure 38(f)(1), (2), and (3) lacks justification and fairness.

CONCLUSION

For the reasons stated above, CIDVC respectfully asks the Court to deny Petition R-24-0013.

Respectfully submitted this 23rd day of April, 2024.

/s/

Honorable Wendy A. Million
Magistrate, Tucson City Court