

1 **Elizabeth Burton Ortiz**  
State Bar No. 012838  
2 ARIZONA PROSECUTING ATTORNEYS'  
ADVISORY COUNCIL  
3 3838 N. Central Avenue, Suite 850  
Phoenix, Arizona 85012  
4 Tel. (602) 542-7222  
Fax. (602) 274-4215

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6 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

7 In the Matter of:

In Re: R-24-0039

8 PETITION TO ABROGATE RULE  
38(d) OF THE ARIZONA RULES OF  
9 PROTECTIVE ORDER PROCEDURE

**ARIZONA PROSECUTING  
ATTORNEYS' ADVISORY  
COUNCIL COMMENT IN  
OPPOSITION**

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12 The Arizona Prosecuting Attorneys' Advisory Council ("APAAC")  
13 respectfully submits the following comment opposing Petition R-24-0039, which  
14 proposes to abrogate Rule 38(d), of the Arizona Rules of Protective Order Procedure  
15 ("ARPOP"). Although unclear, the Petition appears to primarily allege that ARPOP  
16 38(d), permitting amendments to a petition for a protective order, violates an  
17 unspecified "due process" right.

18 Generally, amendments to petitions are liberally granted in a variety of  
19 contexts, underscoring the law's preference for resolving all claims in one petition  
20 to further finality and judicial economy. *See State v. Shrum*, 220 Ariz. 115, ¶¶ 11-12

1 (2009) (noting Rule 32’s policy of consolidating all claims in one petition serves  
2 interest of finality and justice and prevents “nearly endless reviews of the same case  
3 in the same trial court”). For example, pursuant to Rule 15 of the Arizona Rules of  
4 Civil Procedure, leave to amend a petition is to be granted liberally, unless “the court  
5 finds undue delay in the request, bad faith, undue prejudice, or futility.” *MacCollum*  
6 *v. Perkinson*, 185 Ariz. 179, 185 (App. 1997).

7       Here, Rule 38(d) does not offend due process, nor does the Petition provide a  
8 legal basis for its assertion. “Due process requires ‘notice reasonably calculated,  
9 under all the circumstances, to apprise interested parties of the pendency of the  
10 action and to afford them an opportunity to present their objections.’” *Maricopa*  
11 *Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 355 (App. 1994) (quoting *Maricopa*  
12 *Cnty. Juv. Action No. JS-734*, 25 Ariz. App. 333, 339 (1975)). The text of ARPOP  
13 38(d) provides that the plaintiff may amend his or her petition for a protective order  
14 at a contested hearing, based upon testimony or evidence relevant to the allegations  
15 but not included in the original petition. The defendant is then provided several  
16 options to respond to those new allegations or evidence, including a continuance or  
17 a brief recess. ARPOP 38(d)(2). Thus, the defendant is specifically given the  
18 opportunity to address any new charges in an amended petition, providing him all  
19 due process rights.

1 To the extent any individual has been aggrieved by an injunction against  
2 harassment, and any untimely amendments to a petition, that individual can appeal  
3 the constitutionality of the Rule, the court’s order permitting the amendments, or  
4 those very amendments. *LaFaro v. Cahill*, 203 Ariz. 482, 485, ¶ 8 (App. 2002).  
5 (holding that an “injunction against harassment is an appealable order, and [the  
6 Court of Appeals has] jurisdiction over this case pursuant to A.R.S. §§ 12-120.21  
7 (1992) and 12-2101(F)(2)”). It is therefore not appropriate to abrogate a portion of  
8 the rule, through an amendment process, based on one petition’s claim that it is  
9 unconstitutional, rather than challenge the rule and any substantive amendments in  
10 the proper legal forum.

11 Accordingly, for the reasons stated herein, APAAC respectfully requests that  
12 the Petition be denied in its entirety.

13 Respectfully submitted this 1<sup>st</sup> day of May, 2024.

14  
15 */s/ Elizabeth Burton Ortiz*

Elizabeth Burton Ortiz