

The Honorable Jeff Fine
Clerk of the Superior Court in and for Maricopa County
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Phoenix, AZ 85003
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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of:

)	Supreme Court No. R-24-0031
PETITION TO AMEND RULE 43 OF)	
THE RULES OF PROTECTIVE)	COMMENT
ORDER PROCEDURE)	
_____)	

The Clerk of the Superior Court of Arizona in and for Maricopa County (“Clerk” or Clerk’s Office”) files the following comment pursuant to Rule 28, Arizona Rules of the Supreme Court, in support of the Petition to Amend Rule 43 of Rules of Protective Order Procedure filed by the Honorable Jennifer Green, Presiding Criminal Judge, for the Superior Court of Arizona in and for Maricopa County, with additional recommended amendments as set forth below.

The Clerk agrees with Judge Green that it is highly unusual for a court rule to require the court itself to send out notice to a party when another party has filed a petition, complaint, or motion seeking some sort of relief against a party or from the Court. And the Clerk routinely mails court-generated documents and notices to parties to a case. As noted by Judge Green in the petition, the Clerk’s Office has no objection to taking on the responsibility to provide the required notice to the defendant.

However, if it is the intent of Rule 43(g) to provide actual notice to the defendant of the filing of a petition for an order for a lifetime no-contact injunction, when the petition is not filed at sentencing, but the petition is filed after sentencing, it is the Clerk’s position that providing defendant’s sentencing counsel with notice of the victim’s petition may not always be the correct

person to notify to effectuate actual notice to the defendant. The defendant may have obtained substitute or alternative counsel post-sentencing. There is no time limit on when a victim may file a petition pursuant to A.R.S. § 13-719 (amended by laws 2023, Ch. 70, § 1), so a victim could file a petition several years after the defendant is sentenced and sentencing counsel may have withdrawn from representation of the defendant, and/or the defendant may have obtained new counsel.¹

Therefore, as set forth in Attachment A to this comment, the Clerk’s Office respectfully requests that Rule 43(g) of the Rules of Protective Order Procedure be amended to require that the Clerk’s Office provide notice of the victim’s petition to the defendant’s sentencing counsel, or current counsel of record.²

DATED this 1st day of May, 2024.

/s/ Jeff Fine
Hon. Jeff Fine, Clerk
Superior Court in and for Maricopa County

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¹ A.R.S. § 13-719(D) currently provides the following:

If the victim did not request an injunction at the time of sentencing pursuant to subsection A of this section or the sentencing occurred before September 24, 2022, the victim may submit a petition to the court requesting an injunction against a defendant who was sentenced for an offense listed in subsection A of this section, and the court may not charge a fee for filing the petition. A law enforcement agency shall serve an injunction issued pursuant to this subsection at no charge to the victim.

² Presumably, depending on how much time has passed between the date of sentencing and the date the petition is filed, it may be that neither counsel nor the defendant have maintained a current address of record with the Court. This may very well be the case if counsel filed a notice of withdrawal and/or the defendant completed his or her sentence and has no additional business before the Court.

This Comment has been filed via electronic filing of in accordance with deadlines set forth in the Supreme Court's January 17, 2024 Order.

A copy of this Comment has been sent via e-mail to the Petitioner at the following:

Honorable Jennifer Green
Superior Court of Arizona, Maricopa County
175 West Madison Street
Phoenix, AZ 85003
Jennifer.Green@JBAZMC.Maricopa.Gov

ATTACHMENT A

Modifications to the text are shown by *underscoring* in red font and deletions are shown by *strike through* in red font.

Rules of Protective Order Procedure

Rule 43. Order for Lifetime No-Contact Injunction

(a) through (f) [no changes]

(g) **Notice to the Defendant.** The ~~court~~ Clerk of the Superior Court must provide the defendant's sentencing counsel or current counsel of record notice of the victim's petition, which must include the information provided in the victim's petition under Rule 43(e)(1)-(3) and (5), by mailing the notice to counsel's last known address. Upon receipt, counsel must forward the notice to the defendant's last known address. If the defendant was unrepresented by counsel at sentencing or does not have current counsel of record, the ~~court~~ Clerk of the Superior Court must provide notice of the petition to the defendant, which must include the information provided in the victim's petition under Rule 43(e)(1)-(3) and (5), by mailing the notice to the defendant's last known address. The defendant may file a written response, but it must be filed with the court no later than 21 days after the ~~court~~ Clerk of the Superior Court mails the notice to counsel or the defendant.

(h) through (k) [no changes]