

Robert M. Brutinel
On behalf of the Arizona Steering Committee on
Artificial Intelligence and the Courts
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, AZ 85007-3327
Phone: (602) 452-3325
jalbright@courts.az.gov

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the matter of:)
)
PETITION TO AMEND ARIZONA) Supreme Court No. 25-_____
RULE OF PROTECTIVE ORDER)
PROCEDURE 36; RULE OF)
PROCEDURE FOR THE JUVENILE)
COURT 315; AND RULE OF)
EVIDENCE 901)
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court of Arizona, Robert M. Brutinel files this petition on behalf of the Arizona Steering Committee on Artificial Intelligence and the Courts (“Committee”), to respectfully petition this Court to amend Rule 36, Arizona Rules of Protective Order Procedure (ARPOP); Rule 315, Arizona Rules of Procedure for the Juvenile Court; and Rule 901, Arizona Rules of Evidence relating to authenticating and identifying evidence, to add a 2025 comment to address evidence digitally forged by artificial intelligence.

I. Background

Recognizing the transformative impact that Artificial Intelligence (AI) technologies will likely have on the justice system, this Court established the Committee on January 24, 2024, by Administrative Order [2024-33](#). Among other tasks, the Committee is charged with making recommendations, including rule changes, related to AI technologies and their impact on judicial proceedings. The Committee recommends the following proposed changes to the rule sets.

II. Discussion of Proposed Rule Changes

For decades, courts have addressed allegations of materially altered or improperly generated text messages, documents, photographs, audio files, or videos. Today, however, the growing popularity and prevalence of deepfake technology creates a new risk and a challenge for courts. Using readily available generative artificial intelligence tools, individuals can generate realistic audio files of statements that never occurred, and litigants can create convincing photographs or videos that depict or delete injuries and events.

Many existing court rules assist litigants and the court with detecting and excluding deepfake evidence. For example, robust discovery tools can help litigants uncover fraudulent deepfake evidence. Other rules allow the court to sanction or punish individuals who attempt to deceive the trier of fact. Additionally, the Rules

of Professional Conduct place limitations on a lawyer's ability to argue, without any factual basis, that authentic evidence has been digitally forged.

The Committee proposes the rule amendments set forth in this petition after having considered the existing structure across court rule sets in Arizona. The proposed rule amendments are intended to create consistent and sufficient methods for litigants and courts to address AI-generated or substantially altered evidence across case types. The rationale for each proposed change is articulated in detail below.

A. Rules of Protective Order Procedure

Rule 37 of the Rules of Protective Order Procedure (“Protective Order Rules”) states that the disclosure requirements of Rule 26.1 of the Arizona Rules of Civil Procedure (“Civil Rules”) and Rules 49 and 50 of the Arizona Rules of Family Law Procedure (“Family Law Rules”) do not apply to contested hearings on Orders of Protection, Injunctions Against Harassment, and Injunctions Against Workplace Harassment unless otherwise specifically ordered by the court. *See* Ariz. R. Protect. Ord. Proc. 37. Therefore, parties have no meaningful ability to gather pretrial information regarding potential evidence and assess its authenticity. Of course, this limitation is largely due to the compressed timeframe for a court to issue a protective order and hold a contested evidentiary hearing.

The Protective Order Rules do not expressly provide that the court may impose sanctions against a party who has offered false evidence to the court. The existing Protective Order Rules also do not expressly provide that the court can sanction parties for offering digitally forged evidence. The Committee therefore recommends an amendment to Rule 36 of the Rules of Protective Order Procedure to add a new subsection (c) as set forth in Appendix A to expressly provide that the court may impose sanctions, which may include granting a continuance, awarding monetary expenses, including attorney fees, or dismissing an action if the court finds that the party or attorney presented the court with false evidence. This proposed revision is appropriately placed in Rule 36 because subpart (a) of this rule addresses evidence admissibility.

B. Rules of Procedure for the Juvenile Court

The Rules of Procedure for the Juvenile Court (“Juvenile Rules”) have limited rules regarding sanctions. Juvenile Rule 315(g) allows the court to impose sanctions on a party who fails to disclose information in a timely manner. Such sanctions may include granting a continuance, precluding evidence, or entering any order the court deems appropriate. The Rule also states that any sanction should accord with the intent of the Juvenile Rules as set forth in Rule 301 and should not exclude any “competent and potentially significant evidence that bears on the child's best interests.” *See* Ariz. R. Juv. P. 315(g). Nonetheless, sanctions permitted in

dependency, in-home intervention, extended foster care, Title 8 guardianship, and termination proceedings are limited to the imposition of sanctions against “a party who fails to disclose information in a timely manner.” *See id.*

Petitioner therefore proposes an amendment to Juvenile Rule 315(g) as set forth in Appendix B. The proposed amendment tracks Family Law Rule 65(b)(1) relating to the types of sanctions that can be imposed and would additionally permit the imposition of sanctions.

C. Rules of Evidence

The Committee considered a standard revision to each existing rule set to require parties to alert the court of accusations of digital forgeries in pretrial motions, but concluded this solution was not feasible due to inconsistent procedures across case types, including compressed timeframes for protective orders, the implausibility and the potential for delay caused by multiple pretrial hearings in family court to address issues regarding authenticity, and the detrimental outcome of mandating the admission of unreliable evidence merely because a party failed to bring the issue to the court’s attention in a pretrial motion. Instead, the Committee proposes a Comment to the Arizona Rules of Evidence to urge timely pretrial consideration of issues regarding authenticity. The Committee acknowledges the variety of proceedings where the full reach of the Arizona Rules of Evidence does not apply (e.g., contested protective order proceedings (ARPOP 36), small tax

claims cases (Ariz. R. Tax Ct. Prac. 26)) or does not apply unless invoked (Ariz. R. Fam. L. P. 2) but finds that this might militate even more in favor of a guidance-based comment, rather than strict rule amendment.

Relatedly, in 2018, the Arizona Supreme Court amended Arizona Rule of Evidence 902—adding sections (13), “Certified Records Generated by an Electronic Process or System,” and (14) “Certified Data Copied from an Electronic Device, Storage Medium, or File,” in response to technological advances—and added corresponding comments to that Rule as well. Those comments were based in part on comments added then to the companion Federal Rules of Evidence, though much of the language is unique to Arizona. The Committee borrowed from the comment language used in Federal Rule 902(13) and (14) and drafted that into the comment proposed herein. The comments to Rule 902 are already somewhat lengthy on their own, and certainly not all evidence involving generative AI will be self-authenticating. Thus, the Committee instead proposes a 2025 comment to subsection (b) “Examples” of Arizona Rule of Evidence 901, “Authenticating and Identifying Evidence,” as set forth in Appendix C.

It is worth noting here that the federal Advisory Committee on Evidence Rules continues to consider these issues, including at its most recent November 8, 2024 meeting. That committee discussed proposals regarding additions to Rule 901—to add specific foundational requirements for evidence generated by AI or for evidence

that had been challenged as being altered or fabricated by AI—and/or for a new Rule 707 on Machine-generated Evidence. The public meeting documents, however, indicate that no action was to be taken on any of the proposals at that meeting. That committee is expected to next meet in April 2025.

III. Request

The Committee respectfully requests that this Court open this petition for public comment, consider the petition and comments in the regular course provided by Supreme Court Rule 28, and adopt the proposed amendments as set forth in the Appendices.

Respectfully submitted this 10th day of January 2025.

/s/ Robert M. Brutinel

Robert M. Brutinel

On behalf of the Arizona Steering Committee on
Artificial Intelligence and the Courts

APPENDIX A
(new language is underlined)

Arizona Rules of Protective Order Procedure

Rule 36. Admissible Evidence

(a) and (b) [No Change]

(c) Sanctions. The court may impose sanctions, which may include granting a continuance, awarding monetary expenses, including attorney fees, or dismissing an action if the court finds that a party or attorney presented the court false evidence.

COMMENT

[No change]

APPENDIX B
(new language is underlined)

Rules of Procedure for the Juvenile Court

Rule 315. Disclosure and Discovery

(a) through (f) [No Change]

(g) Sanctions. Upon a party's motion or on its own, the court may impose sanctions on a party who fails to disclose information in a timely manner. The court may also impose sanctions on a party who submits evidence that has been materially altered or generated with the intent to deceive the court. Sanctions may include granting a continuance, precluding evidence, directing that designated facts be taken as established for purposes of the action, prohibiting the disobedient party from supporting or opposing designated arguments or from introducing designated matters in evidence, striking pleadings in whole or in part, staying further proceedings until the order is obeyed, dismissing the action or proceeding in whole or in part unless dismissal would negatively bear on the child's best interest, scheduling a proceeding to treat the violation as contempt of court, or entering any order the court deems appropriate. Any sanction should accord with the intent of these rules as set forth in Rule 301 and should not exclude competent and potentially significant evidence that bears on the child's best interests.

APPENDIX C
(new language is underlined)

Arizona Rules of Evidence

Rule 901. Authenticating and Identifying Evidence

(a) [No change]

(b) [No change to text]

2025 Comment to Rule 901(b)

This comment addresses the proliferation of possibilities for artificial intelligence-generated evidence (“AI-generated evidence”) to be proffered in court and the proceedings that may be necessary when it is.

Existing rules and the trial court’s inherent powers to control the presentation of evidence to “make those procedures effective for determining the truth” address the vast majority of scenarios that could arise. See Ariz. R. Evid. 611(a). And AI-generated evidence can be viewed as akin to any other evidence generated by a process or system or even the type of evidence typically proffered through an expert witness—many of whom will necessarily use AI-generated material in their fields.

Thus, the answer lies not in blanket exclusion based on mere notions of unreliability, but instead in consideration by the court and parties at the earliest opportunity of any reliability questions posed by AI-generated material or material alleged to be AI-generated.

Rule 706 of these rules also provides a solution “if a judge believes there is a substantial possibility that a jury might be misled or fooled by plausible but very untrustworthy” AI-generated material. Cf. *Logerquist v. McVey*, 196 Ariz. 470, 490 ¶ 60 (2000). Under that rule’s procedures, a judge in such an extraordinary situation may appoint an expert, “subject to the availability of funds or the agreement of the parties concerning compensation.” Ariz. R. Evid. 706(c). Similarly, Ariz. R. Civ. P. 53(a) allows pretrial appointment of a special master when warranted by “some exceptional condition” or, for instance, AI-generated matters in a case that tax beyond the time and efficiency

allowed by a trial court’s docket. See Ariz. R. Civ. P. 53(a)(1)(B)(i), (C).

While extraordinary and exceptional cases may warrant court-appointed experts or special masters, many questions of the type addressed in this Comment will be answered by the trial court’s inherent, broad discretion to determine the reliability of evidence. See *State v. Favela*, 234 Ariz. 433, 436 ¶ 11 (App. 2014). Absent the most novel of circumstances, the existing rules and normal procedures are determinative. See *id.*

In the purpose of joining these issues at the earliest possible time, however, the thrust of this Comment is to emphasize action akin to mandatory initial disclosure rules in litigated cases. Further, to provide the adverse party with an opportunity to properly analyze the issue of authenticity of AI-generated evidence, the “record” provided by the proponent of the evidence must include the metadata for the material in question if reasonably necessary to assess the material’s authenticity. In addition, a challenge to the authenticity of AI-generated evidence may require technical information about the system or process at issue, including possibly retaining a forensic technical expert; such factors will affect whether the opponent has a fair opportunity to challenge the AI-generated evidence given the notice provided.

Comment to 2012 Amendment

[No change]

Comment to Original 1977 Rule

[No change]