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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the matter of:) Supreme Court No. R-26-0004
)
PETITION TO AMEND RULES) COMMENT IN OPPOSITION TO
12, 23, 25, 26 AND 38 OF THE) THE PORTION OF PETITION NO.
ARIZONA RULES OF PROTECTIVE) R-26-0004 RE LIMITING
ORDER PROCEDURE) AMENDMENTS OF ORDERS OF
_____) PROTECTION UNDER ARPOP
) RULE 38(d)

Pursuant to Rule 28(D), Rules of the Supreme Court, Patricia Madsen, as an individual and on behalf of Community Legal Services, Inc., respectfully submits this Comment for the Court’s consideration. Patricia Madsen is the Managing Attorney of the Family Law Unit of Community Legal Services (CLS) and has been employed by CLS as a family law practitioner serving victims of domestic violence since 2001. This Comment is joined by Kristin Fitzharris, Director of

Litigation and Advocacy for Southern Arizona Legal Aid, Inc. (SALA), on behalf of SALA. Both CLS and SALA have a long history of providing legal assistance, including assistance regarding protective orders, to victims of domestic violence in Arizona. The undersigned do not object to any other portion of Rule Change Petition No. R-26-0004 and in fact support all other proposals contained therein.

I. The Portion of Rule Change Petition No. R-26-0004 Pertaining to Arizona Rules of Protective Order Procedure (ARPOP) Rule 38(d) Should Not Be Adopted As Written.

Rule Change Petition No. R-26-0004 indicates that the ARPOP Workgroup of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) intended to address both the “inconsistent interpretation of current Rule 38 across the state” and “conflicts between the language of Rule 38(d) and the forms approved by the AOC.” Specifically, Rule Petition R-21-0010, which created the option for a plaintiff to amend their Order of Protection (OOP) petition at a contested hearing, did not limit domestic violence allegations that could be added by amendment, based on their date of occurrence. The “Supplement to Petition” form created by the AOC for use by plaintiffs to amend their petitions, however, contains this directive: “Any events you add must have occurred before you applied for the protective order.” As such, the “Supplement to Petition” form limits which allegations of domestic violence may be added to the OOP petition by

amendment and exceeds the parameters of the underlying rule, as Rule 38(d) itself includes no such limitation. The undersigned respectfully note that while the original Rule Petition R-21-0010 went through the formal rule change and comment process, the “Supplement to Petition” form did not.

The current proposal to clarify the conflict between ARPOP Rule 38(d) and the “Supplement to Petition” form, by restricting a plaintiff’s ability to amend their petition based solely on when alleged domestic violence incidents occurred, does not serve victims of domestic violence who seek protection from the court.

Limiting a plaintiff’s ability to amend their OOP petition to include only those allegations that occurred prior to service of the OOP is unnecessary, as allegations that can constitute the basis of an OOP petition are already limited by statute, rule, and case law. Under A.R.S. § 13-3602(E), to obtain an *ex parte* OOP, a plaintiff must prove that the defendant either may commit an act of domestic violence or “has committed an act of domestic violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.” ARPOP Rule 23(b)(1) further requires a plaintiff to “allege each specific act of domestic violence that will be relied on at hearing,” and Rule 23(e)(1) reiterates the statutory requirement that a plaintiff prove the defendant either may commit domestic violence or has committed domestic violence within the past year or a longer period if good cause is shown. In the *Savord v. Morton*

case, 235 Ariz. 256 (2014), the Arizona Court of Appeals, Division One underscored the limitations placed on the plaintiff, finding that it deprives the defendant of due process for the plaintiff at a contested hearing to testify to matters outside of the OOP petition and, accordingly, prohibiting such testimony.

Regardless of whether alleged domestic violence acts occurred prior to service of the *ex parte* OOP or at any time before the contested hearing, the defendant receives the same adequate remedy to ensure due process. Under ARPOP Rule 38(d), “the court must immediately provide to the defendant” a copy of the proposed amendment at the contested hearing, and “the court must...offer the defendant” the opportunity to continue the hearing or proceed with the hearing as scheduled.

The limitation proposed in CIDVC’s Rule Change Petition is arguably arbitrary. In addition to there being no due process argument for such a limitation, this proposal gives the defendant a new, bad faith basis to dispute a domestic violence claim -- not "I didn't commit the act" but "I didn't commit the act before the petition was served." Such arguments have already been made by defendants stating that the current “Supplement to Petition” form limits amendment to acts alleged to have occurred before issuance of the *ex parte* OOP. Any concern about a defendant having to testify about violations of an OOP at a contested hearing, related to alleged acts occurring after service, ignores the fact that all alleged acts

forming the basis for an OOP are domestic violence crimes under A.R.S. § 13-3601. OOP defendants routinely invoke 5th Amendment protections during contested hearings, whether or not the allegations consist of OOP violations. As an extreme example, limiting the plaintiff in the way the CIDVC Rule Change Petition has proposed could result in the defendant physically assaulting the plaintiff on the courthouse steps on the way to the contested hearing – and the court denying the plaintiff the opportunity to amend the petition to include that new act.

Analogous civil rules, both in the Arizona Rules of Civil Procedure (ARCP) and Arizona Rules of Family Law Procedure (ARFLP), are much less restrictive regarding amendments. Both ARFLP Rule 28 and ARCP Rule 15 permit amendment and filing of supplemental pleadings at least up through trial when the court permits, and both rules indicate that leave to amend should be freely given. Considering that OOPs are intended to provide plaintiffs protection from domestic violence and endeavor to ensure personal and public safety, it makes little sense to impose greater restrictions on OOP amendments than exist in the most routine civil action.

The proposed limitation on OOP amendments is also impractical, either encouraging the waste of judicial resources or severely limiting the remedies available to OOP plaintiffs to protect themselves. Restricting a plaintiff from

amending an OOP petition with alleged acts occurring after service of the petition suggests the plaintiff should instead obtain subsequent OOP(s) to include additional allegations, then have those order(s) served. This would be a waste of judicial resources and creates the additional question of whether and how to combine contested hearings on multiple OOPs involving the same parties. (In addition, it has been suggested that the national law enforcement database that registers protective orders can only register one such order at a time; if true, registration, and possibly enforcement, of subsequent OOPs would be impossible.)

The CIDVC Rule Change Petition suggests that the only remedy available to a plaintiff who experiences abuse post-service should be to report OOP violations to law enforcement, “to be addressed by the criminal process contemplated by A.R.S. § 13-3602(R).” This apparent solution is sorely insufficient for many domestic violence victims and survivors. Many victims are reluctant to contact law enforcement, due to individual safety concerns or negative personal experience, or larger community or cultural concerns about risks inherent in interacting with law enforcement. What’s more, a victim has no control over the criminal process, from initial response or investigation to potential prosecution or conviction – each step of which is less and less likely to result in success for the victim. Removing a victim’s or survivor’s ability to protect themselves through the

protective order process disempowers them and exposes them to potential further abuse.

Finally, the proposed wording of the amendment to ARPOP Rule 38(d) suggests the plaintiff might only be permitted to add a single additional domestic violence act, when amending an OOP at a contested hearing,: “(1) allow the plaintiff one amendment to the petition in writing on a form provided by the court....” The undersigned believe that CIDVC instead intended to permit the plaintiff to amend the petition *one time* at a contested hearing, to avoid multiple disruptions, should the plaintiff wish to add successive amendments during the hearing. This sentence should be modified as suggested in the Alternative Proposal, below.

Undersigned commenter, Patricia Madsen, is a member of both CIDVC and the ARPOP Workgroup and was involved in workgroup and committee discussions regarding the aforementioned proposed change to ARPOP Rule 38(d).

II. Alternative Proposal

While the undersigned disagree with the specific proposal made by CIDVC to limit OOP petition amendments to events occurring prior to service of the *ex parte* OOP and petition, we agree that the conflict between ARPOP Rule 38(d) and the “Supplement to Petition” form should be addressed.

As an alternative proposal, the undersigned suggest the alternative proposal mentioned in the CIDVC rule petition: that the plaintiff be permitted to amend their Petition for OOP to “include incidents that occurred at any time prior to the date of the contested hearing.” Specifically, because the plaintiff should be permitted to amend their petition with incidents that occur on the same date of the contested hearing but prior to the commencement of the hearing, we propose the following language for ARPOP Rule 38(d)(1):

Rule 38(d)(1) allow the plaintiff to amend the petition once in writing, on a form provided by the court, before testimony begins. The amendment may include allegations of events that occurred prior to the commencement of the contested hearing. The court must immediately provide a copy of the form to the defendant; and...

RESPECTFULLY SUBMITTED this 1st day of May, 2026.

By /s/ Patricia A. Madsen
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