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8 **IN THE SUPREME COURT**
9 **STATE OF ARIZONA**

10 PETITION TO AMEND ARIZONA
11 RULES OF PROTECTIVE ORDER
12 PROCEDURE RULE 1(M)

Supreme Court No. _____

**Petition to Amend Arizona
Rules of Protective Order
Procedure Rule 1(M)**

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14 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar
15 of Arizona hereby petitions the Court to amend Rule 1(M) of the Arizona Rules of
16 Protective Order Procedure to provide that when a court issuing a protective order
17 receives proof that the order has been served on a defendant, that court shall mail a
18 copy of the proof of service to the plaintiff.

19 A redlined version of the proposed amendment to Arizona Rule of Protective
20 Order Procedure 1(M) is attached hereto as Appendix A.

21 **Rationale Supporting Adoption of the Proposed Amendment**

22 Plaintiffs seeking protective orders in Arizona courts are frequently victims
23 of domestic violence. Currently, there is nothing in the Arizona rules or statutes
24 requiring that a plaintiff obtaining a court-issued protective order be notified when
25 the order is served on a defendant. While some courts may attempt to contact a
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1 plaintiff (for example, by telephone), Arizona has no uniform process or procedure
2 for notifying a plaintiff when proof of service has been filed with the court.

3 Rule 1(O) of the Arizona Rules of Protective Order Procedure provides that
4 when a protective order is served on a defendant, the issuing court must send a copy
5 of the order and proof of service to the sheriff's office within twenty-four hours of
6 receipt of the proof of service. Although Rule 1(M)(5) currently provides that
7 "[t]he original affidavit of service, acceptance of service or return of service shall
8 be promptly filed with the clerk of the issuing court," the clerk is not required to
9 notify the plaintiff when that proof of service has been filed.

10 The State Bar believes an amendment to Rule 1(M)(5) requiring the clerk to
11 mail the plaintiff a copy of the proof of service upon its filing would provide crime
12 victims, including domestic violence victims, with information relevant to their
13 personal protection and safety. In so doing, it would improve the quality and
14 availability of legal services being offered to members of the public who are alleged
15 to be victims of crime. Furthermore, when a violation of a protective order is
16 alleged, law enforcement must obtain proof that the defendant was served with the
17 order. If adopted, the proposed amendment would improve the Arizona system of
18 justice by increasing the information received by those law enforcement officers on
19 service directly from the victim without having to seek, oftentimes at night and on
20 weekends, information on service through the court or sheriff's office.

21 The State Bar believes that modifying Rule 1(M)(5) of the Arizona Rules of
22 Protective Order Procedure would greatly enhance the safety of plaintiffs obtaining
23 orders of protection, and the functioning of the Arizona justice system would
24 thereby be improved.

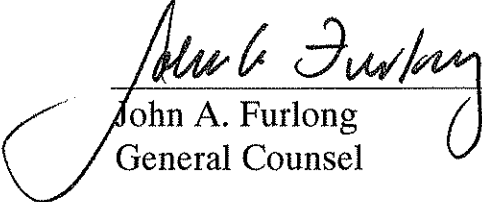
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Conclusion

The State Bar of Arizona respectfully requests that the Court amend Arizona Rules of Protective Order Procedure Rule 1(M)(5) as shown in Appendix A.

RESPECTFULLY SUBMITTED this 22nd day of December, 2011.



John A. Furlong
General Counsel

Electronic copy filed with the Clerk of the Supreme Court of Arizona this 22nd day of December, 2011.

By: Kathleen A. Lundgren

APPENDIX A

APPENDIX A

Proposed Rule Changes

(Petitioner's proposed changes shown with additions identified by underscoring and deletions identified by "strike-through").

ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE

Rule 1

[No change in text of subsections A – L; N – R].

M. Service of Protective Orders. A protective order shall be served by a person authorized by Rule 4(d), Ariz. R. Civ. P., A.R.S. §§ 13-3602(R), 12-1809(Q) or 12-1810(Q) or as otherwise provided in this rule. A protective order expires if it is not served upon the defendant, together with a copy of the petition, within one year from the date that the judicial officer signs the protective order. *See* A.R.S. §§ 13-3602(L), 12-1809(J) and 12-1810(I).

1. There is no requirement that the copy of the order served on the defendant be certified.

2. An initial or modified protective order is effective upon serving the defendant with a copy of the order and the petition; such order expires one year after service of the initial order.

3. A defendant may sign an acceptance of service form, which has the same effect as service. If the defendant refuses to sign an acceptance of service form, the judicial officer may have the defendant served in open court. Any modified order must be served by a person authorized to serve process or the defendant must sign the acceptance of service for the modified order to be in effect. In superior court, the minute entry shall reflect what method of service was utilized. *See* A.R.S. § 13-3602(R).

4. If the defendant is present in court and refuses to sign an acceptance of service form, the judicial officer shall have the defendant served in open court by a person specially appointed by the court. Such a judicial appointment to effectuate service may be granted freely, is valid only for the service of the protective order or modification entered in the cause and does not constitute an appointment as a registered private process server. A specially appointed person directed to serve such process shall be a court employee who is not less than twenty-one (21) years of age and shall not be a party, an attorney, or the employee of an attorney in the action whose process is being served. If such an appointment is entered on the record, no signed order shall be required provided a minute entry issues that reflects the special appointment and the nature of service.

5. The original affidavit of service, acceptance of service or return of service shall be promptly filed with the clerk of the issuing court. If mailed, such proof of service must be postmarked no later than the end of the seventh court business day after the date of service. Such proof of service may be submitted by facsimile, provided the original affidavit, acceptance of

service or return of service is promptly filed with the court. *See* A.R.S. §§ 13-3602(M), 12-1809(K) and 12-1810(J). The clerk of the issuing court shall within 24 hours of receipt mail proof of service to the plaintiff at the most recent address provided to the issuing court by the plaintiff.

6. If a defendant is physically present with the plaintiff and has not yet been served, a peace officer may be summoned to the scene and may use the plaintiff's copy of the protective order to effect service on the defendant.

7. Any modified order must be served by a person authorized to serve process or the defendant must sign the acceptance of service or be otherwise served as provided in subdivision 4 for the modified order to be in effect.

COMMITTEE COMMENTS

[No change in text proposed].

Rules 7 – 10.

[No change in text proposed].