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Chair, Committee on the Impact
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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)
)
PETITION FOR ADOPTION) Supreme Court No. _____
OF AMENDMENTS TO THE)
ARIZONA RULES OF PROTECTIVE)
ORDER PROCEDURE AND)
THE ARIZONA RULES OF)
FAMILY LAW PROCEDURE)
_____)

**PETITION FOR ADOPTION OF AMENDMENT TO THE
ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE AND
*THE ARIZONA RULES OF FAMILY LAW PROCEDURE***

Pursuant to Rule 28, Rules of the Supreme Court, the Honorable Emmet J. Ronan, judge of the Superior Court in Maricopa County, and chair of the Committee on the Impact of Domestic Violence and the Courts (CIDVC), petitions the court to amend the *Arizona Rules of Protective Order Procedure* (ARPOP) as reflected in the accompanying Appendix A and a related amendment to the *Arizona Rules of Family Law Procedure* (ARFLP) in Appendix B.

Background. The Domestic Violence Rules Committee (DVRC) was established by Administrative Order 2005-85 to “research other statewide domestic violence rules, study the issues relevant to domestic violence procedural matters in Arizona, and consider alternatives to Rule 96, Domestic Violence Benchbooks in the *Arizona Rules of Family Law Procedure* which

may include statewide domestic violence rules.” The DVRC convened in 2005 and during the next year developed a stand-alone set of procedural rules for protective order cases. In June 2007, the Hon. William J. O’Neil, DRVC chair, submitted a Rule 28 petition, asking the Supreme Court to adopt the Arizona Rules of Protective Order Procedure (ARPOP). The Supreme Court adopted the ARPOP in September 2007, making the rules effective on January 1, 2008. The DVRC, having fulfilled its purpose, was disbanded by AO 2008-08 in 2008.

The Committee on the Impact of Domestic Violence and the Courts (CIDVC), realizing that no formal committee remained to address ARPOP modifications, established the ARPOP Workgroup in 2009. The workgroup met in November 2011 to discuss the petition and draft language referenced herein and submitted its proposal to CIDVC on November 8, 2011. CIDVC members authorized preparation of a Rule 28 petition to amend the ARPOP. CIDVC members attended a special meeting on January 4, 2012, to review the petition. By unanimous agreement, members who were present authorized the undersigned, the Honorable Emmet J. Ronan, CIDVC chair, to file this petition, amending both ARPOP and ARFLP, on the committee’s behalf.

Summary of the Proposed Amendments. In September 2011, CIDVC members were asked to consider whether cases involving unserved protective orders¹ should be publicly accessible. Under Arizona law, a protective order is not valid until served; however, a plaintiff may hold the order for up to one year before delivering it to law enforcement for service. Upon service, the order becomes valid and enforceable for one year from the date of service.

Consensus was that rather than recommending amendment of Rule 123, *Rules of the Supreme Court*, which governs access to court records, the preferred option would be to amend the *Arizona Rules of Protective Order Procedure*. There were concerns that the public may be

¹ For purposes of this petition, “protective order” means an Order of Protection, an Injunction Against Harassment, or an Injunction Against Workplace Harassment, all of which are governed by the ARPOP.

unaware of the existence of Rule 123 or the *Rules of the Supreme Court*. A person with an interest in protection orders might be more likely to locate needed information in the ARPOP rules. Furthermore, while the family law rules offer some protection to case records through ARFLP Rules 13(D) and 43(D)(6), the majority of protective orders are issued by limited jurisdiction courts.² As the ARFLP rules do not apply in limited jurisdiction courts, the ARPOP rules, applicable in all Arizona courts, are the more appropriate body of rules for this amendment.

In weighing the need for a rule change, CIDVC members had concerns that public disclosure of a protective order between the time it is issued and the time it is served could compromise victim safety. A victim may not yet have a plan in place to allow for a safe exit from the relationship and may choose to hold the order for service for up to one calendar year from date of issuance. Disclosure that the protective order exists, prior to the time that the plaintiff has decided to have it served, could endanger the plaintiff.

For example, a plaintiff may be granted exclusive use of the parties' residence, meaning that upon service of the order, the defendant would have to vacate the home for as long as the order is in effect. If the defendant becomes aware, prior to service and before the order is enforceable, that he or she could be excluded from home, the plaintiff may be placed in a dangerous situation. A defendant who knows of the existence of a protective order may also intentionally avoid service so the order remains unenforceable.

At present, a plaintiff's address can be protected under law and rule, regardless of whether the order is served or unserved. Courts have procedures in place to maintain confidentiality of a protected address. Federal law prevents publication of information on the

² In FY2010, all Arizona courts issued a total of 44,226 Orders of Protection and Injunctions Against Harassment. The limited jurisdiction courts issued 71 percent of those orders.

internet that would lead to the plaintiff's identify or location, regardless of whether the order has been served. AOC policy prevents information about the plaintiff from being publicly available on the Judicial Branch website. This rule change would extend that policy by preventing disclosure of information via the court's paper record until the order has been served.

Additionally, CIDVC proposes that the Rule 13, ARFLP, be amended to educate readers about the ARPOP rule regarding access to information about unserved protective orders.

Pre-Petition Comments. The petition has not been circulated for pre-petition comments. However, the Committee on Superior Court (COSC) was advised of CIDVC's intent to file this petition, and at its November 4, 2011, COSC members unanimously endorsed the concept. The presiding judges of the superior court were advised of the petition at their December 14, 2011, meeting. After discussing the proposal, the consensus was that additional work was needed, and no vote was taken. The petition was presented to the Arizona Judicial Council on December 15, 2011. After further discussion and clarification of issues raised by the presiding judges, the AJC members, with one dissenting vote, supported filing of the petition.

Proposed Post-Petition Public Comment Period and Effective Date. Petitioner respectfully requests that the Court consider this petition and proposed rule changes at its earliest convenience. Petitioner additionally requests that the petition be circulated for public comment until May 20, 2012, and that the Court adopt the proposed rules as they currently appear or as modified in light of comments received from the public, with an effective date of January 1, 2013.

DATED this 10th day of January, 2012.

Honorable Emmet J. Ronan
Superior Court in Maricopa County

APPENDIX A

(new language is underlined)

Arizona Rules of Protective Order Procedure

Rule 1. General Administration

A. – B. [no change]

C. Access to the Courts and Protective Order Case Information

1. All limited and general jurisdiction courts shall be available during normal operating hours to issue and enforce protective orders, regardless of the residence of the parties. *See* A.R.S. §§ 13-3602, 12-1809 and 12-1810. For emergency orders of protection after normal operating hours, see Rule 6(D).

2. A plaintiff may file a petition for a protective order with any municipal, justice or superior court judicial officer. However, courts located within one mile proximity may enter into agreements designating a principal court for issuance of protective orders. If such courts enter into an agreement, the referring court shall provide written or verbal information and directions regarding the designated court and, prior to referral, shall ensure that the designated court is open to issue an order that day. If the court designated in the agreement is not available to issue orders, the referring court shall conduct the individual hearing with the plaintiff.

3. A court having only a part-time judicial officer shall provide coverage for the court, or court staff should direct a person requesting a protective order to the appropriate court location, after ensuring a judicial officer is available.

4. No limited or general jurisdiction court shall refuse a person's request to file a petition for a protective order even if that particular court does not normally issue protective orders.

5. No protective order shall be denied on the basis of immigration status. *See* 18 USC §§ 2261 and 2262.

6. For as long as a plaintiff has the ability by law to have a protective order served or unless otherwise ordered by the court, the court shall not make publicly available any information regarding the filing of or contents of a petition for or issuance of a protective order until proof of service of the protective order has been filed with the court. The court may share information about the protective order with the plaintiff, prosecutors, or with law enforcement.

D. – R. [no change]

APPENDIX B
(new language is underlined)

Arizona Rules of Family Law Procedure

Rule 13. Public Access to Proceedings and Records

A. – C. [no change]

D. Access to Records. Records of family court proceedings shall be maintained and disclosed in accordance with Rule 123, *Rules of the Supreme Court*, Rule 1(C)(6), *Arizona Rules of Protective Order Procedure*, and Rule 43 of these rules. Unless otherwise provided in Rule 123, *Rules of the Supreme Court*, or Rule 1(C)(6), *Arizona Rules of Protective Order Procedure*, the court may, upon a finding that the confidentiality or privacy interests of the parties, their minor children, or other person whose information appears of record outweighs the public interest in disclosure, make any record of a family court matter closed or confidential or otherwise limit access to such records.