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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 BY AMENDING  
13 RULE 1(M)

Supreme Court No. R-11-0043

**Reply in Support of and Amending  
the State Bar's Petition to Amend  
Rule 1(M), Arizona Rules of  
Protective Order Procedure**

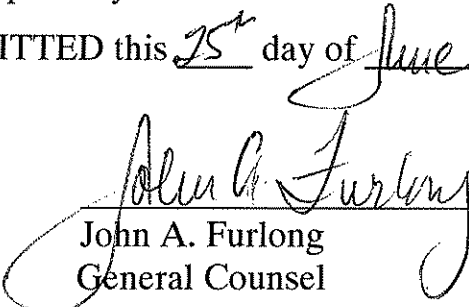
14 The State Bar of Arizona has petitioned the Court to amend Rule 1(M) of the  
15 Arizona Rules of Protective Order Procedure to provide that when a court which  
16 issues a protective order receives proof that the order has been served on a  
17 defendant, the issuing court would provide a copy of the proof of service to the  
18 plaintiff.

19 The petition was filed on December 22, 2011, and inadvertently neglected to  
20 provide an electronic means of transmitting the information. It was the State Bar's  
21 intent in the original petition to include an alternative electronic means of  
22 transmitting information (in addition to mailing) by simply utilizing the word  
23 "send." An amendment to Rule 1(M)(5) requiring the clerk to send to the plaintiff a  
24 copy of the proof of service upon the filing of that proof would ensure that plaintiffs  
25 receive notice that the protective order was served and would eliminate the  
26 uncertainty that currently exists.

1 Attached hereto as Appendix A is a redlined version of the proposed  
2 amendment to Rule 1(M) of the Arizona Rules of Protective Order Procedure that  
3 would add the necessary language to allow for both mailing and electronically  
4 sending proof of service to the plaintiff at the most recent mailing or electronic  
5 address provided to the issuing court by the plaintiff.

6 Petitioner appreciates the resource concerns expressed in the comments filed  
7 by the Arizona Association of Superior Court Clerks (AASCC) and the Committee  
8 on the Impact of Domestic Violence and the Courts (CIDVC). However, the  
9 proposed rule amendment is propelled by the need to protect crime victims, which is  
10 the paramount concern of the amendment. Because there is no uniform process for  
11 notifying plaintiffs when a protective order has been served, the proposed  
12 amendment would greatly enhance safety concerns while improving the availability  
13 of legal services offered to the public. The AASCC's additional concerns about  
14 confusion by plaintiffs and the sheriff's repository are minimal. Emergency orders  
15 of protection by their very nature expire at the close of the next judicial day  
16 following the date of their issuance, A.R.S. § 13-3624(E); and providing a copy of  
17 the proof of service to a plaintiff will not impact in any way the Sheriff's Law  
18 Enforcement Protective Order Repository.

19 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of June, 2012.

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John A. Furlong  
General Counsel

23 Electronic copy filed with the Clerk  
24 of the Supreme Court of Arizona  
25 this 25<sup>th</sup> day of June, 2012.

26 By: Kathleen Lundgren

# **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 proposed to 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 or electronically send proof of service to the plaintiff at the most recent mailing or electronic 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].