

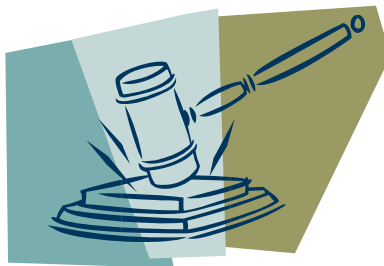
***ARIZONA RULES OF PROTECTIVE ORDER
PROCEDURE (ARPOP)***

Current Committee DRAFT

10/04/06



DOMESTIC VIOLENCE RULES COMMITTEE



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10/04/2006 Committee DRAFT
ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE

Rule 1. General Administration

A. Applicability of Rules

1. *Scope of these Rules.* These rules govern the procedures in any Arizona court in all cases related to the issuance of an Order of Protection *See* A.R.S. § 13-3602, an Emergency Order of Protection *See* A.R.S. § 13-3624(C), an Injunction Against Harassment *See* A.R.S. § 12-1809, and an Injunction Against Workplace Harassment *See* A.R.S. § 12-1810.

2. *Applicability of Other Rules.* To the extent not inconsistent with these rules, the *Arizona Rules of Family Law Procedure* (ARFLP) shall apply to protective order matters heard in conjunction with pending family law cases. In all other cases, the *Arizona Rules of Civil Procedure* shall apply when not inconsistent with these rules.

B. Definitions

1. *Parties*

a. *Defendant.* The defendant is the person against whom the plaintiff or other appropriate party is seeking protection.

b. *Plaintiff and Other Appropriate Requesting Parties.*

1) *Plaintiff.* The plaintiff is the person or other appropriate requesting party who files the petition for a protective order.

2) *Other Appropriate Requesting Parties.*

a) *Parent, Legal Guardian, or Legal Custodian of Minor.* If the person in need of protection is a minor, then the parent, legal guardian or person who has legal custody of the minor shall file the petition unless the court determines otherwise. The petition shall name the parent, guardian, or custodian as the plaintiff, and the minor as a specifically designated person.

b) *Third Party on Behalf of a Person Unable to Request an Order.* If a person is either temporarily or permanently unable to request an order, a third party may request an order of protection on behalf of the plaintiff. After the request, the judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff. - *See* A.R.S. § 13-3602(A).

c. *Protected Persons.* Protected persons are other specifically designated persons who the court has determined should be included in the Order.

d. *Victim.* As used in these rules, the term “victim” is used interchangeably with “plaintiff.”

2. *Protective Orders.* As used in these rules, “Protective Orders” include the following:

a. *Emergency Order of Protection.* An Emergency Order of Protection is governed by A.R.S. § 13-3624(C) and may be requested by a peace officer on an emergency or *ex parte* basis when a person's life or health is in imminent danger; it is limited to parties with specified relationships between them.

b. *Injunction Against Harassment.* An Injunction Against Harassment is governed by A.R.S. § 12-1809 and may be granted to prevent a person from committing acts of harassment against another. There is no relationship requirement.

c. *Injunction Against Workplace Harassment.* An Injunction Against Workplace Harassment is governed by A.R.S. § 12-1810 and authorizes an employer to seek a court order preventing a person from being on the premises of the employer and from committing acts of harassment against the employer, the workplace, the employer's employees or any other person who is on or at the employer's property or place of business or who is performing official work duties.

d. *Order of Protection.* An Order of Protection is governed by A.R.S. §13-3602 and may be granted at the request of a person to prevent another person from engaging in certain activity; it is limited to parties with specified relationships between them.

C. Access to the Courts

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.

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. Court personnel shall advise plaintiffs or their representatives of their right to obtain protective relief in any court. All courts shall be prepared to issue protective orders during normal operating hours. For emergency orders of protection after normal operating hours see rule 6(D). 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.

D. Court Security. The court shall ensure that the parties are treated with fairness, respect and dignity and are free from intimidation, harassment or abuse during the court process.

1. At all stages of proceedings involving protective orders, the court shall maintain appropriate security for the parties and court personnel.

2. Before, during and immediately after any court proceeding, the court shall provide appropriate safeguards to minimize the contact that occurs between the parties, their immediate families and witnesses.

3. The court may request that a law enforcement officer, if available, be present in the courtroom during the hearing or to escort a party to or from the courtroom.

4. Following a hearing, the court may direct the defendant to remain in the courtroom for a period of time after the plaintiff is excused.

E. Alternative Dispute Resolution

1. The parties in a proceeding for an Order of Protection shall not be referred to mediate that Order of Protection.

2. If the court determines alternative dispute resolution (ADR) is appropriate in a protective order case that is not an order of protection, the court may refer the case to ADR. The court shall assure policies are in place to protect the parties from harm, harassment or intimidation during ADR.

3. Prior to the commencement of ADR, every party shall be notified in writing or orally in open court of the ability to request to opt-out of ADR or to request that reasonable procedures for protection of the parties are in place during ADR, as determined by the court. Neither party shall be required to appear for ADR pending determination of this matter.

4. An ADR provider shall reject or terminate ADR whenever the provider determines ADR is inappropriate because of domestic violence or harassment.

F. Children as Protected Persons. No judicial officer has the authority to include a child of the defendant in a protective order unless there is reasonable cause to believe:

1. Physical harm has resulted or may result to the child, or
2. The alleged acts of domestic violence involved the child.

G. Mutual Protective Orders Prohibited. The issuance of mutual protective orders within the same cause number is prohibited. A judicial officer shall not grant a mutual protective order. A judicial officer shall not issue a protective order that restricts the conduct of the plaintiff based on the plaintiff's own petition. Where each party has separately petitioned the court for a protective order, a judicial officer may grant separate protective orders based upon findings that each petitioning party is entitled to protection and makes findings of fact indicating that the respondents in each of those actions acted primarily as aggressors and not in self-defense.

H. Cross Petitions. Any defendant in an Order of Protection or Injunction Against Harassment case may file a petition for an Order of Protection or Injunction Against Harassment against the plaintiff.

1. The cross petition shall be regarded as a separate action. The cross petition may be assigned a new case number or a case number associated with a pending family law case in superior court.

2. The cross petition shall request the appropriate relief.

3. When a cross petition is filed, the judicial officer shall apply the same statutory standards for issuing an Order of Protection or Injunction Against Harassment. See A.R.S. §§ 13-3602(H) or 12-1809(G).

4. If opposing parties file separate petitions for an Order of Protection or Injunction Against Harassment, after consultation, the judicial officers involved may consolidate the petitions of the opposing parties for hearing. This does not prohibit the judicial officer from issuing cross Orders of Protection or Injunctions Against Harassment.

5. A judicial officer shall not issue an Order of Protection or Injunction Against Harassment that restricts the conduct of the plaintiff.

I. Multiple Orders, Cross Orders and Conflicting Orders

1. When parties have sought and obtained conflicting protective orders, both orders are to be given full force and effect, without regard to whether the orders were issued by courts of limited or general jurisdiction.

- a. Prior to the issuance of a protective order, the judicial officer shall examine all available records and question the plaintiff to determine whether any other protective order affecting the parties has been issued or served.

- b. If an earlier order exists, the judicial officer shall schedule a pre-issuance hearing with notice to both parties, unless the judicial officer determines after reviewing all available records and questioning the plaintiff, that failure to issue the *ex parte* protective order would likely result in imminent danger to the plaintiff or protected party(ies). See ARS §§ 13-3602(E) and 12-1809(E)

- c. If different judicial officers issue protective orders that grant conflicting relief involving the same parties, these orders shall be set for hearing within five

days after the judicial officers discover the conflict. The judicial officers who issued the conflicting orders shall consult with each other and combine the cases in one jurisdiction to resolve the orders that conflict. In the event of conflicting limited jurisdiction orders, there shall be a presumption that the hearing to resolve the conflicting orders shall be conducted in the court where the first petition was filed. In all other cases, the conflicting orders shall be heard in superior court. See A.R.S. § 13-3602 (H).

2. When issuing a protective order, either in an *ex parte* proceeding or contested hearing, the judicial officer shall inquire about the existence of any custody order or parenting plan to avoid entering a protective order that conflicts with the current parenting plan.

J. Transfer of Protective Orders. The originating court transferring a protective order shall within 24 hours notify its Sheriff's Office in writing of the transfer and update information in that court's protective order repository.

K. No Limit on Number of Protective Orders. There is no limit on the number of times a party may request a protective order.

1. The number of times a protective order has been dismissed does not provide a basis for denying a request for protective relief. Each time a petition for protective relief is filed, the judicial officer must make an independent determination whether there is reasonable cause under the applicable protective order statute. See A.R.S. §§ 13-3602(E), 12-1809(E) and 12-1810.

2. The plaintiff may file a petition for another protective order if protection is still required after the expiration of the current protective order. There is no statutory limit on the number of protective orders that may be granted.

L. Record of Hearings. Judicial officers shall cause all contested protective order hearings and, where practicable, *ex parte* hearings, to be recorded electronically or by court reporter. If a contested hearing is not electronically recorded or otherwise reported, an appeal from such a hearing will result in an automatic new hearing at the original trial court.

M. Service of Protective Orders. A protective order shall be served by a person authorized by A.R.S. §§ 13-3602(Q), 12-1809(Q) or 12-1810(Q). 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(K), 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. 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(Q)

4. The original affidavit, 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(L), 12-1809(K) and 12-1810(J).

5. 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.

N. Information for Parties. This paragraph is intended to provide information to the parties.

1. The plaintiff should provide copies of any protective order to third parties, such as employers, apartment managers, schools, security personnel and law enforcement in other jurisdictions.

2. A protective order does not guarantee personal safety, and the plaintiff or appropriate third party must take any other necessary precautions to ensure safety.

3. Any violation of a protective order should be reported immediately to law enforcement.

4. A protective order is not valid against third parties such as landlords, which means when the plaintiff is granted exclusive use of the apartment where the parties reside; a landlord may not be required to honor the plaintiff's occupancy if the plaintiff is not a leaseholder.

5. Each party should carry a copy of the protective order at all times. Although not required, plaintiff should also consider carrying a copy of proof of service of the protective order.

6. The parties may obtain further information from the *Plaintiff's Guide Sheet for Protective Orders* and *Defendant's Guide Sheet for Protective Orders*.

O. Registration of Protective Order and Affidavit, Acceptance or Return of Service. Each issuing court shall within 24 hours of receipt of the proof of service, forward a copy of the protective order and proof of service to the sheriff's office in the county in which the protective order was issued, for registration by the sheriff. *See* A.R.S. §§ 13-3602(L), 12-1809(K) and 12-1810(J).

1. The sheriff of each county is required to maintain a central repository for Orders of Protection so that the validity of a protective order may easily be verified. *See* A.R.S. §§ 13-3602(L), 12-1809(K) and 12-1810(J).

2. Within 24 hours after entry, notice of modification or dismissal of a protective order shall be sent to the sheriff in the county where the original protective order was registered. The modification or dismissal order shall be in writing and sent electronically via facsimile or e-mail, not by telephone, to the sheriff.

3. A protective order, whether or not registered, is a valid order of the court for a period of one year from the date of service.

P. Offender Treatment Programs

1. The judicial officer may require the defendant to complete a domestic violence offender treatment program, also known as a Batterer Intervention and Prevention Program, only after notice and a hearing at which the defendant has an opportunity to participate. *See* A.R.S. § 13-3602(G)(5).

2. The judicial officer may obtain reports that track enrollment in and offender compliance with program requirements from the domestic violence offender treatment program staff. If the judicial officer does not receive the above mentioned reports, the judicial officer may contact the program to request these reports.

3. Criminal violations of an order issued pursuant to this paragraph shall be referred to an appropriate law enforcement agency.

4. If a superior court judicial officer becomes aware that the defendant has failed to comply with the order to complete a domestic violence offender treatment program, the judicial officer may set the matter for an Order to Show Cause hearing in addition to referring the matter to an appropriate law enforcement agency. *See* A.R.S. § 13-3602(M).

Q. Change of Address. Each party shall report any change of address or telephone number to the court, in order to permit notification of any scheduled hearing. If the plaintiff's address and telephone number are protected, any changes shall also be protected.

R. Telephonic/Video Conference Proceedings

1. Upon request of a party or witness, or on its own motion, and upon finding that no substantial prejudice will be caused to any party by allowing telephonic or video conference testimony, the court may allow a party or witness to give testimony at any evidentiary hearing or trial, telephonically or by video conference, if the court finds, as to a party, that a party is reasonably prevented from attending the hearing or trial and the court finds, as to a witness, that the witness is either, a) reasonably prevented from attending the hearing or trial; b) would be unduly inconvenienced by attending the hearing or trial; or c) attendance in person at hearing or trial would be a burdensome expense to either the witness or a party.

2. Any documents a party wishes to introduce into evidence through a party or witness appearing telephonically or by video conference shall, where practicable, be provided in advance to the party or witness.

COMMITTEE COMMENTS

Rule 1(A). These rules contain statutory references that may change from time to time, but the Committee determined it would be helpful to include the specific statutory references upon which the rules are based. Whenever the word “See” precedes a statutory reference in these rules, this means the cited statute directly supports the preceding text of the rule.

Rule 1(C)(5). Immigrants and their children need and are entitled to the full protection of the law, including orders of protection, regardless of status. A denial of a protective order would be considered discrimination based on national origin which is specifically prohibited by law. *See* 18 USC §§ 2261 and 2262.

Rule 1(D). Crime Victims’ Rights arise on the arrest or formal charging of the person or persons who are alleged to be responsible for a criminal offense against a victim. *See* A.R.S. § 13-4402(A).

Rule 1(E). Matters other than family or domestic violence may be appropriate for alternative dispute resolution. These controversies should be considered separate from domestic and family violence issues. Recognizing that matters of domestic violence may impact the alternative dispute resolution, it is important that victims of domestic violence have an opt-out prerogative.

The Mediation and Domestic Violence Policy Adopted by the American Bar Association House of Delegates in July 2000, states: “RESOLVED, That the American Bar Association recommends that court-mandated mediation include an opt-out prerogative in any action in which one party has perpetrated domestic violence upon the other party.”

Rule 1(F). A protective order shall never be used as a way to modify, amend, affect or diminish the parents’ rights to custody, parenting time or access to children as previously granted in a custody decree or a parenting time order from a court of competent jurisdiction, unless the judicial officer makes either of the findings listed in subdivisions (1) and (2) of this paragraph. Under the Violence Against Women Act III (VAWA III), foreign Orders of Protection that include child custody and/or child support do qualify for enforcement through the full faith and credit provision. *See* 18 U.S.C. § 2265.

Rule 1(G). States that issue mutual protective orders may be at risk of losing federal funding. *See* Violence Against Women Act III, 42 U.S.C. § 379.6 (1994).

Rule 1(M). The defendant shall be personally served because 1) personal service on the defendant satisfies the criminal notice requirement if a violation of the protective order is prosecuted under criminal statutes, and 2) unless the *Certificate of Service* shows personal service on the defendant, many Sheriffs' Offices, which are the holders of record, will not accept a protective order for purposes of Law Enforcement Protective Order Repository (LPOR)/National Crime Information Center (NCIC) entry.

Rule 1(P). Before ordering defendants to domestic violence offender treatment programs, judicial officers shall review the information in *Domestic Violence Offender Treatment Programs and Offender Accountability*, noting especially that anger management programs and couple's counseling are not substitutes for domestic violence offender treatment programs. A list of Licensed Behavioral Health Facilities that provide Misdemeanor Domestic Violence Treatment Programs can be found by calling (602) 364-2595 or contacting the Arizona Department of Health Services, Division of Licensing Services, Office of Behavioral Health Licensing.

Rule 2. Fees and Costs

A. Notice to Parties. The court shall provide notice to the parties of the filing and service fees listed below. See A.R.S. §§ 12-284, 12-1810, 12-2107, 22-281 and 22-404.

1. Filing fees:

a. *Petition for or Request to Modify Order of Protection/Injunction Against Harassment* - no fee

b. *Petition for Injunction Against Workplace Harassment* - fee pursuant to A.R.S. §§ 12-1810 and 12-284(A)

c. *Petition to Request a Hearing for Order of Protection/Injunction Against Harassment/Injunction Against Workplace Harassment* - no fee

d. *Motion to Quash or Dismiss Order of Protection/Injunction Against Harassment* – no fee

e. *Motion to Quash or Dismiss Injunction Against Workplace Harassment* – no fee

f. *Notice of Appeal of Order of Protection/Injunction Against Harassment and Answer* - no filing fee, but a party may be charged the cost of preparing the record.

g. *Notice of Appeal of Injunction Against Workplace Harassment* - fee pursuant to A.R.S. § 12-284(A)

2. Service fees:

a. *Order of Protection* - no fee if served through any court contracted agency or law enforcement. A.R.S. § 13-3602(D)

b. *Injunction Against Harassment involving a dating relationship* - no fee if served through any court contracted agency or law enforcement. A.R.S. § 12-1809(D)

c. *Injunction Against Harassment not involving a dating relationship* - fee determined by the serving agency A.R.S. § 12-1809(D)

d. *Injunction Against Workplace Harassment* - fee determined by the serving agency A.R.S. § 12-284(A)

B. Fee Deferrals and Waivers.

1. A judicial officer may defer or waive any of the fees listed above. *See* A.R.S. § 12-302. A judicial officer shall not require the plaintiff to perform community service as a condition to the waiver or deferral of these fees. If any filing or service fees have not been waived, they may be assessed against the plaintiff.

2. A law enforcement agency or constable is prohibited from requiring the advance payment of fees for service of process of Injunction Against Harassment not involving a dating relationship. *See* A.R.S. § 12-1809(D). Court personnel shall not collect advance payment on behalf of the serving agency.

C. Costs and Attorneys' Fees. Costs of the action, including attorneys' fees, may be assessed against any party.

1. After a hearing with notice to the affected party, a judicial officer may order any party to pay the costs of the action, including reasonable attorneys' fees, if any. *See* A.R.S. §§ 13-3602(O), 12-1809(N) and 12-1810(N).

2. In determining whether to award costs and/or attorneys' fees, considerations include:

- a. The merits of the claim or defense asserted by the unsuccessful party,
- b. Whether the award would pose an extreme hardship to the unsuccessful party, and
- c. Whether the award may deter others from making valid claims.

COMMITTEE COMMENTS

Rule 2(A). The notice of filing and service fees referenced in Rule 2 may be found in the *Plaintiff's Guide Sheet for Protective Orders* approved by the Arizona Supreme Court.

Rule 2(B). Standards for fee deferrals and waivers may be found in the Arizona Code of Judicial Administration § 5-206: Fee Deferrals and Waivers.

Rule 3. Protected and Unpublished Addresses

A. Confidentiality of Plaintiff's Address. At the ex parte hearing, the judicial officer shall inquire whether the plaintiff's address should be protected from disclosure.

1. The plaintiff's address shall be protected only if it is unknown to the defendant. *See* A.R.S. §13-3602(C)(1).
2. The judicial officer shall verify that the plaintiff's protected address does not appear on the petition and protective order and shall avoid stating the address on the record.

B. Continuing Duty to Provide the Clerk with Current Address. Any person whose address is ordered protected from disclosure under this rule shall have a continuing duty to provide the clerk of the court with a current and correct mailing address where the person can be served.

Rule 4. Family Law Cases

A. Jurisdiction

1. Except as otherwise provided below, a limited jurisdiction court shall not issue a protective order if the petition or plaintiff's statement reveals that an action for maternity, paternity, annulment, dissolution of marriage or legal separation is pending in Arizona Superior Court.
2. If a family law action is pending in the superior court, the superior court has exclusive jurisdiction to issue the protective order. As a result, a limited jurisdiction court shall refer such plaintiff to the superior court. An action is considered to be pending if either:
 - a. an action has been commenced but no final judgment, decree or order has been entered; or
 - b. a post-decree proceeding has been commenced, but no final order determining that proceeding has been entered. *See* A.R.S. § 13-3602(O).
3. When the presiding judge of a county delegates, a judicial officer of a limited jurisdiction court may issue a protective order if one of the following applies:
 - a. Imminent danger to the plaintiff by the alleged defendant; or
 - b. Special circumstances, such as the distance the plaintiff must travel to superior court, the time of day, or the presence of the alleged defendant, prevent or hinder the plaintiff's access to the superior court in which a family law action is pending.
4. No protective order is invalid or ineffective merely because a judicial officer of a limited jurisdiction court issued it when an action for maternity or paternity, annulment, legal separation, or dissolution of marriage was pending in superior court.

5. If, after issuance of a protective order, the limited jurisdiction court is notified in writing or verifies that a family law action is pending, all documents relating to the protective order promptly shall be transferred to the superior court.

a. Within 24 hours of the notification, all papers, together with a certified copy of docket entries or other records shall be transferred to the superior court where the action is pending. If the Certificate of Service arrives after the protective order is transferred to the superior court, the Certificate of Service shall immediately be sent to the superior court.

b. Notwithstanding this transfer requirement, unless prohibited by a superior court order, a limited jurisdiction court may hold a hearing on all matters relating to an *ex parte* protective order if the hearing was requested before receiving written notice of the pending superior court action.

c. If a hearing has been requested in a transferred case, the superior court shall hold the hearing within five days of receipt of the transferred protective order.

6. Only the juvenile division of the superior court may issue a protective order against a person under 12 years of age. See A.R.S. §§ 13-3602(B) and 12-1809(B).

B. Child Custody and Parenting Time

1. A protective order shall not contain provisions regarding child custody or parenting time issues. Legal issues, such as maternity, paternity, child support, custody, parenting time, dissolution of marriage or legal separation, may only be addressed by the superior court in a separate action under Title 25 of the *Arizona Revised Statutes*.

2. An Order of Protection may restrain the defendant from contacting or coming near specifically designated persons. See A.R.S. § 13-3602(G)(3).

3. If there is no legal relationship between the defendant and the child, the judicial officer, upon request, may prohibit the defendant's contact with the child based on danger to the plaintiff.

4. Before granting a protective order prohibiting contact with a child with whom the defendant has a legal relationship, the judicial officer shall consider the following factors:

a. Whether the child will be harmed if the defendant is permitted to maintain contact with the child.

b. Whether the child will be endangered if there is contact outside the presence of the plaintiff.

5. No protective order which prohibits contact with the plaintiff shall include exceptions that allow the defendant to contact or come near the plaintiff for child custody or parenting time with the children.

COMMITTEE COMMENT

Rule 4(B). When an action under Title 25 is presented, Family Law Judicial Officers shall consider the options set forth in A.R.S. § 25-403(P), including supervised exchanges of parenting time, when a protective order is in effect.

Rule 5. Rules of Evidence and Disclosure for Protective Order Hearings

A. Admissible Evidence

1. All relevant evidence is admissible, except the court may exclude evidence if:
 - a. the probative value is outweighed by the danger of unfair prejudice;
 - b. the evidence results in confusion of the issues;
 - c. admitting the evidence may result in undue delay;
 - d. a needless presentation of cumulative evidence would result, or
 - e. the evidence lacks reliability.
2. Any report, document, or standardized form required to be submitted to the court may be considered as evidence if filed with the court or admitted into evidence by the court.

B. Disclosure. The disclosure requirements set forth in Rule 26.1, *Arizona Rules of Civil Procedure*, and Rules 49 and 50, *Arizona Rules of Family Law Procedure*, do not apply to hearings on Orders of Protection, Injunctions Against Harassment and Injunctions Against Workplace Harassment, unless otherwise specifically ordered by the court.

COMMITTEE COMMENT

Rule 5 (A)(1). This rule is intended to give the court broad discretion in determining whether proffered evidence shall be admissible in any individual protective order hearing.

Rule 5(A)(2). This Rule allows the court to consider as evidence at any stage of the proceedings any report or document ordered or required by the court to be submitted to the court, such as drug testing results and reports from Offender Treatment Programs, custody evaluators, Conciliation Services, Family Law Masters, Parenting Coordinators, and other court-appointed experts.

Rule 6. Rules of Procedure for Issuing Protective Orders

A. Commencement of Proceedings. A party shall commence an action for a protective order by filing a verified petition with the clerk of the court.

B. Priority for Protective Orders. A judicial officer shall expeditiously schedule an *ex parte* hearing for a protective order involving a threat to personal safety even if previously scheduled matters are interrupted.

C. Order of Protection. The judicial officer shall conduct an individual hearing with each plaintiff who requests an Order of Protection.

1. *Contents of Petition.* The petition shall allege specific acts of domestic violence and name each individual the plaintiff believes should be included as a protected person.

2. *Petition Verification.* A plaintiff must sign and swear or affirm to the truth of the petition before a judicial officer or other person authorized to administer an oath.

3. *Petition Review.* A judicial officer shall review the petition, any other pleadings on file, and any evidence offered by the plaintiff to determine whether there is reasonable cause to believe that the defendant may commit an act of domestic violence or has committed such an act, and whether the order requested shall be issued *ex parte*. See A.R.S. § 13-3602(E).

a. *Reasonable cause determination.*

1) In determining reasonable cause, the judicial officer shall consider specific acts of domestic violence alleged within the past year, or within a longer period of time if the court finds good cause. Periods of the defendant's absence from the state or incarceration shall not be included in calculating the one year. See A.R.S. §13-3602(C)(3), (E)(2) & (F).

2) A separate reasonable cause determination shall be made as to the plaintiff individually, any children with whom the defendant has a legal relationship and any other person listed in the petition. If a reasonable cause determination is made for the plaintiff, a separate reasonable cause determination is not required for the children with whom the defendant has no legal relationship.

b. *Relationship Test.*

1) The judicial officer must find that a specific relationship exists, either by statute, blood or marriage, between the plaintiff and the defendant. See A.R.S. § 13-3601(A).

2) Statutory relationships include:

a) persons who are residing or who have resided in the same household;

b) victim and defendant who have a child in common;

c) victim or the defendant who are pregnant by the other party; or

d) victim is a child who resides or has resided in the same household as the defendant, and

i) is related by blood to a former spouse of the defendant, or

ii) is related by blood to a person who resides, or who has resided in the same household as the defendant.

3) Blood relationships include victim related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister.

4) Marriage relationships include:

a) victim and defendant who are either married or who have been previously married; and

b) victim who is related to the defendant or the defendant's spouse by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law, or sister-in-law. See A.R.S. § 13-3601(A).

5) The relationship test is also met when a plaintiff acts on behalf of a victim if any of the following apply:

a) the plaintiff is the parent, legal guardian or person who has legal custody of a minor or incapacitated person who is a victim, unless the court determines otherwise; or

b) the victim is either temporarily or permanently unable to request an order. See A.R.S. § 13-3602(A).

4. *Additional Review for Limited Jurisdiction Courts.* Judicial officers in limited jurisdiction courts shall inquire of the plaintiff whether a family law action is pending in the superior court and determine whether the court has jurisdiction pursuant to Rule 4(A).

5. *Issuance of Order of Protection.* An Order of Protection shall be issued *ex parte* if the judicial officer finds reasonable cause to do so as set forth in paragraph 3 above. At the initial *ex parte* hearing, the plaintiff or appropriate third party shall be provided with a copy of the Order of Protection, which may include any of the following provisions.

a. *No Contact Orders.* The judicial officer may prohibit all contact with the plaintiff or other protected parties, except as otherwise specifically ordered in writing by the court. See A.R.S. § 12-1809(F)(2).

b. *Exclusive Use of Residence.* The judicial officer may grant plaintiff exclusive use of the parties' residence, if there is reasonable cause to believe that physical harm otherwise may result. See A.R.S. § 13-3602(G)(2). If the plaintiff is not the owner of the residence, the judicial officer may grant exclusive use for a limited period of time. At a contested hearing, the judicial officer may consider ownership of the parties' residence as a factor in continuing the order of exclusive use. The judicial officer may allow the defendant to return one time, accompanied by a law enforcement officer, to pick up personal belongings.

c. *Prohibited Locations.* The judicial officer may also order that the defendant not go near the residence, place of employment or school of the plaintiff or other protected parties. The judicial officer may include other specifically designated location(s) in the Order. If the defendant does not know the address of these additional places, the judicial officer may, upon request of the plaintiff, leave the addresses protected. See A.R.S. § 13-3602(G)(3).

d. *Firearms and Ammunition.*

1) The judicial officer shall ask the plaintiff about the defendant's use of or access to weapons or firearms. This inquiry shall be made to determine if the defendant poses a credible threat to the physical safety of the plaintiff or other protected persons. The judicial officer may, for the duration of the Order of Protection:

a) prohibit the defendant from possessing, purchasing or receiving firearms and ammunition; and

b) order the defendant, immediately after service of the Order of Protection, to transfer any firearm or ammunition, owned or possessed, to the appropriate law enforcement agency. See A.R.S. § 13-3602(G)(4).

2) The plaintiff reporting violations of the order to transfer firearms and ammunition shall be referred to the appropriate law enforcement agency.

e. *Other relief.* The judicial officer may grant relief that is necessary for the protection of the plaintiff and other specifically designated persons and that is proper under the circumstances.

7. *Effectiveness of an Order of Protection.* An Order of Protection is not in effect until it is served pursuant to Rule 1(L). See A.R.S. § 13-3602(D).

8. *Denial of an Order of Protection.* If after the *ex parte* hearing the judicial officer does not have sufficient information to grant the Order of Protection, the judicial officer may deny the request or set a hearing within ten days with reasonable notice to the defendant. The judicial officer shall document any denial of an Order of Protection. See A.R.S. § 13-3602(F).

D. Emergency Orders of Protection

1. Authority to Issue an Emergency Order of Protection

a. In counties with a population of 150,000 or more, the presiding judge of the superior court in that county shall make available on a rotating basis a judge, justice of the peace, magistrate or commissioner to issue an Emergency Order of Protection by telephone during hours that the courts are closed. *See A.R.S. § 13-3624(A).*

b. In counties with a population of less than 150,000, a judge, justice of the peace, magistrate or commissioner may issue an Emergency Order of Protection by telephone. *See A.R.S. § 13-3624(B).*

c. The availability of an Emergency Order of Protection is not affected by either party leaving the residence. *See A.R.S. § 13-3624(G).*

2. Emergency Orders of Protection Issued Ex Parte

a. A judicial officer may issue a written or oral order if a law enforcement officer has reasonable grounds to believe that a person is in immediate and present danger of domestic violence based on an allegation of a recent incident of actual domestic violence. *See A.R.S. § 13-3624(C).*

b. A judicial officer may issue a written or oral order upon the request of the alleged victim if there is a finding that a person's life or health is in imminent danger. *See A.R.S. § 13-3624(F).*

c. A third party may request an emergency order on behalf of a plaintiff who is either temporarily or permanently unable to make the request. The judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff. *See A.R.S. § 13-3624(F).*

3. Issuance of an Emergency Order of Protection. An Emergency Order of Protection is issued for the protection of a person in immediate and present danger of domestic violence. *See A.R.S. § 13-3624.* An Emergency Order of Protection may:

a. Enjoin the defendant from committing an act of domestic violence.

b. Grant one party exclusive use and possession of the parties' residence if there is reasonable cause to believe physical harm may otherwise result.

c. Restrain the defendant from contacting the plaintiff or other specifically designated persons and coming near the residence, place of employment or school of the plaintiff or other designated persons, if there is reasonable cause to believe physical harm may otherwise result.

d. Prohibit the defendant from possessing or purchasing a firearm and ammunition for the duration of the order, upon a finding that the defendant may inflict bodily injury or death on the plaintiff. *See A.R.S. § 13-3624(D).*

4. *Service of an Emergency Order of Protection.*

a. The law enforcement officer who receives verbal authorization for an Emergency Order of Protection shall complete and sign the emergency order as instructed by the judicial officer. The law enforcement officer shall then give a copy of the Emergency Order of Protection to the plaintiff or appropriate third party.

b. The law enforcement officer shall arrange for service upon the defendant. After service of the Emergency Order of Protection on the defendant, the law enforcement officer shall file a certificate of service with the court and verbally notify the sheriff's office that a judicial officer has issued an Emergency Order of Protection. *See* A.R.S. § 13-3624(F).

5. *Duration.* An emergency order expires at the close of the next day of judicial business following the day of issuance, unless otherwise continued by the court. *See* A.R.S. § 13-3624(E). A petition for an Order of Protection may be filed the following business day.

E. Injunction Against Harassment. The judicial officer shall conduct an individual hearing with each plaintiff who requests an Injunction Against Harassment.

1. *Contents of Petition.* The petition shall allege a series of specific acts of harassment and the dates of occurrence. A series of acts means at least two events. *See* A.R.S. § 12-1809(C).

2. *Petition Verification.* A plaintiff must sign and swear or affirm to the truth of the petition before a judicial officer or other person authorized to administer an oath.

3. *Petition Review.* A judicial officer shall review the petition, any other pleadings on file and any evidence offered by the plaintiff to determine whether the order requested shall be issued *ex parte*.

4. *Issuance of Injunction Against Harassment*

a. *Findings Required.* The judicial officer shall issue an Injunction Against Harassment if there is a finding of reasonable evidence of harassment of the plaintiff by the defendant during the year preceding the filing or that good cause exists to believe that great or irreparable harm would result to the plaintiff if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition. *See* A.R.S. § 12-1809(E).

1) If the judicial officer is going to issue the Injunction Against Harassment at the *ex parte* hearing, the judicial officer must find specific facts attesting to the plaintiff's efforts to give notice to the defendant or reasons supporting the plaintiff's claim that notice should not be given.

2) If the judicial officer denies issuing an Injunction Against Harassment at an *ex parte* hearing, the judicial officer may set a hearing within ten days with reasonable notice to the defendant.

b. *No Contact Orders.* The judicial officer may prohibit all contact with the plaintiff or other protected parties, except as otherwise specifically ordered in writing by the court. See A.R.S. § 12-1809(F)(2).

c. *Prohibited Locations.* The judicial officer may also order that the defendant shall not go near the residence, place of employment or school of the plaintiff or other protected parties. The judicial officer may include other specifically designated location(s) in the Injunction Against Harassment. See A.R.S. § 12-1809(F)(2).

d. *Protected Persons.* The judicial officer may grant relief that is necessary for the protection of the plaintiff and other specifically designated persons and that is proper under the circumstances. See A.R.S. § 12-1809(F)(3).

e. *Other Relief:*

1. The Judicial Officer may grant relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances. A.R.S. § 12-1809(F)(3).

2. The judicial officer shall ask the plaintiff about the defendant's use of or access to weapons or firearms. The judicial officer may prohibit the defendant from possessing, purchasing or receiving firearms and ammunition for the duration of the Injunction Against Harassment.

5. *Denial of an Order of Protection.* If after the *ex parte* hearing the judicial officer does not have sufficient information to grant the Order of Protection, the judicial officer may deny the request or set a hearing within ten days with reasonable notice to the defendant. The judicial officer shall document any denial of an Order of Protection. See A.R.S. § 13-3602(F).

F. Injunction Against Workplace Harassment. The judicial officer shall hold a hearing with each plaintiff/employer or authorized agent of the employer who requests an Injunction Against Workplace Harassment.

1. *Contents of Petition.* The petition shall allege at least one act of harassment and the dates of occurrence. See A.R.S. §12-1810(C)(3).

2. *Petition Verification.* An employer or authorized agent must sign and swear or affirm to the truth of the petition before a judicial officer or other person authorized to administer an oath.

3. *Petition Review.* A judicial officer shall review the petition, any other pleadings on file and any evidence offered by the employer or authorized agent to

determine whether the Injunction requested shall be issued *ex parte*. See A.R.S. § 12-1810(E).

4. *Issuance of Injunction Against Workplace Harassment*

a. The judicial officer shall issue an Injunction Against Workplace Harassment upon finding: 1) reasonable evidence of workplace harassment by the defendant during the year preceding the filing; or 2) good cause to believe that great or irreparable harm would result to the employer or other person who enters the employer's property or who is performing official work duties, if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition.

b. The court must find specific facts attesting to the employer's efforts to give notice to the defendant or reasons supporting the employer's claim that notice should not be given.

c. The judicial officer may prohibit all contact with the plaintiff or other protected parties, except as otherwise specifically ordered in writing by the court. See A.R.S. § 12-1809(F)(2).

d. The judicial officer may grant relief that is necessary for the protection of the employer, employees or other persons who enter the employer's property and that is proper under the circumstances.

e. If an Injunction Against Workplace Harassment is granted, the employer or authorized agent shall be provided with a conformed copy of the Injunction Against Workplace Harassment at the initial *ex parte* hearing.

5. *Denial of an Order of Protection.* If after the *ex parte* hearing the judicial officer does not have sufficient information to grant the Order of Protection, the judicial officer may deny the request or set a hearing within ten days with reasonable notice to the defendant. The judicial officer shall document any denial of an Order of Protection. See A.R.S. § 13-3602(F).

COMMITTEE COMMENTS

Rule 6(C)(3)(a). Significant or repetitive acts of domestic violence by the defendant that posed a grave danger to the plaintiff or protected persons may present good cause to consider time periods beyond the one year.

Rule 6(C)(5)(a)-(c). If the residence is included in the no contact provision of an Order of Protection, an apartment number shall not be listed. By listing the address and location without the apartment number, the defendant is prohibited from being on the premises, including the parking lot.

Rule 6(C)(5)(d). The appropriate law enforcement agency referenced in subdivision (5) is generally the police department or sheriff's office with jurisdiction over the location of the defendant or firearm.

Rule 6(D). Regardless of the jurisdiction of the authorizing judicial officer, the court may issue an Emergency Order of Protection using the superior court name and case number. The law enforcement agency shall file the Emergency Order of Protection with certification of service in superior court.

Rules 6(E)(1);6(F)(1) There is no statutory provision regarding Injunction Against Harassment or Injunction Against Workplace Harassment that would prohibit issuance by a limited jurisdiction court when a family law action is pending in superior court.

Rule 7. Motion To Dismiss, Quash Or Modify

A. Motion to Dismiss or Quash. A plaintiff may request that a protective order be dismissed or quashed at any time during the term of the order.

1. At the time a Motion to Dismiss or Quash is filed or requested, court personnel shall verify the identity of the plaintiff.

2. The plaintiff shall personally appear before the judicial officer and explain why dismissal of the order is sought. The judicial officer shall make sufficient inquiry of the plaintiff to determine that the plaintiff is not making the request under duress or coercion.

3. If the plaintiff and defendant appear jointly on a Motion to Dismiss or Quash, the judicial officer may interview the plaintiff separately only when the defendant has been served but has not requested a hearing. If the plaintiff requests that an order of the court be dismissed and the defendant is not present, the judicial officer may take action without notice to the defendant.

4. If an Order of Protection or Injunction Against Harassment is dismissed or quashed, the sheriff in the county where the original Order of Protection or Injunction Against Harassment was registered shall be notified in writing within 24 hours of the entry of the order. Notice of dismissal of a protective order shall be sent to the sheriff in the county where the original protective order was registered. The dismissal of the order shall be in writing and sent electronically via facsimile or e-mail, not by telephone, to the sheriff.

B. Motion to Modify. A plaintiff may request that a protective order be modified at anytime during the term of the order.

1. At the time a Motion to Modify is filed or requested, court personnel shall verify the identity of the plaintiff.

2. The plaintiff shall personally appear before the judicial officer and explain why modification of the order is sought. The judicial officer shall make sufficient

inquiry of the plaintiff to determine that the plaintiff is not making the request under duress or coercion. The judicial officer may interview the plaintiff separately only when the defendant has been served but has not requested a hearing.

3. A motion to modify made after a hearing cannot be granted without setting a hearing and giving notice to the defendant.

4. The service and registration requirements applicable to the original protective order also apply to a modified protective order. A modified protective order is effective upon service and expires one year after the date of service of the original protective order. *See* A.R.S. § §13-3602(K), 12-1809(J) and 12-1810(I).

5. If an Order of Protection or Injunction Against Harassment is modified and served, the sheriff in the county where the original Order of Protection or Injunction Against Harassment was registered shall be notified in writing within 24 hours after the court receives the Certificate or Acceptance of Service. *See* A.R.S. §§13-3602(L), 12-1809(K) and 12-1810(J). Notice of modification of a protective order shall be sent to the sheriff in the county where the original protective order was registered. The modification order shall be in writing and sent electronically via facsimile or e-mail, not by telephone, to the sheriff.

Rule 8. Contested Hearing Procedures

A. Requesting a Hearing. At any time while a protective order or modified protective order is in effect, a defendant may request one hearing in writing. *See* A.R.S. § 13-3602(I).

1. A Judicial Officer shall hold a hearing at the earliest possible time.

a. If an Order of Protection grants exclusive use of the home, a judicial officer shall hold a hearing within five court business days of the request.

b. For all other protective orders, a judicial officer shall hold a hearing within ten court business days of the request unless the judicial officer finds good cause to continue the hearing for a longer period of time.

B. Notice of Hearing. The court shall notify the plaintiff of the hearing. There is no statutory requirement for personal service of notice of the hearing.

C. Court Security Measures. The court shall take reasonable measures to ensure that the parties and their witnesses at the hearing are not subject to harassment or intimidation in the courthouse or adjoining property. For each hearing, the judicial officer shall determine whether there is a need to have a law enforcement officer, a security officer, or a victim's advocate present to help ensure the hearing is orderly.

D. Parties' Right to be Heard. The judicial officer shall ensure that both parties have an opportunity to be heard, to present evidence and to call and examine and cross-examine witnesses.

E. Oath or Affirmation. The court shall administer an oath or affirmation to all parties and witnesses at all hearings.

F. Standard of Proof. The plaintiff shall prove the case by a preponderance of the evidence, in order for a protective order to remain in effect as originally issued or as modified after the hearing.

G. Basis for Continuing, Modifying or Revoking Protective Orders. At the conclusion of the hearing, the judicial officer shall state the basis for continuing, modifying or revoking the protective order.

H. Service of Modified Protective Order. The plaintiff or the court shall arrange for service of a modified protective order on the defendant. A judicial officer should assist this process by requesting the defendant sign an acceptance of service form in court.

Rule 9. Appeals

A. Final Orders. All final orders following a hearing with notice to the affected party may be appealed:

1. To the superior court for limited jurisdiction protective orders
2. To the court of appeals for superior court orders

B. Appealable Orders.

1. An order denying a petition for an Order of Protection, Injunction Against Harassment or an Injunction Against Workplace Harassment under A.R.S. §§ 12-1809, 12-1810, 36-3602, or
2. An Order of Protection, Injunction Against Harassment or an Injunction Against Workplace Harassment that is issued, affirmed, modified or quashed after a hearing at which both parties had an opportunity to appear. An *ex parte* protective order is not appealable unless affirmed or modified after a hearing.

COMMITTEE COMMENTS

Rule 9. A protective order entered by a limited jurisdiction court after a hearing at which both parties had an opportunity to appear, may be appealed to the superior court. See A.R.S. §§ 13-3602(O), 12-1809(N) and 12-1810(N). The procedures to be followed are set forth in A.R.S. § 22-261 for justice courts, are made applicable to municipal courts by A.R.S. § 22-425, and are governed by the Superior Court Rules on Appellate Procedure-Civil.

Rule 10. Forms

A. Forms Adopted by the Arizona Supreme Court. All courts and parties shall only use those protective order forms adopted by the Arizona Supreme Court. Individual

court identification information, including the name, address and two assigned court identification numbers, shall appear at the top of each form.

1. Courts may make margin changes and print only those provisions that apply to the issued order. Every first page of every protective order must contain the information in the same format and location as the mandated form.

2. Any other proposed alterations to or deviations from the approved forms, including text changes, shall be submitted to the Executive Director of the Administrative Office of the Courts for approval prior to use. The Executive Director shall be authorized to approve or modify the forms in response to changes in state or federal laws or procedures and make necessary administrative amendments or corrections.

B. Courts Required to Provide All Forms Without Charge. Courts are required to provide, without charge, all forms for protective orders. This requirement includes any form mandated for use in all Arizona courts under A.C.J.A. § 5-207.

C. Information Sheet on Available Emergency and Support Services. Courts shall make reasonable efforts to provide to both parties an appropriate information sheet on emergency and support services that are available in the local area.

D. Safety Plan. Courts shall provide to plaintiffs information about a safety plan and shall make reasonable efforts to provide information on appropriate emergency and support services once the order is issued. See A.R.S. § 13-3602(D).

COMMITTEE COMMENTS

Rule 10(A). Arizona Code of Judicial Administration Section 5-207 authorizes the Executive Director of the Administrative Office of the Courts to approve or modify the forms in response to changes in state or federal laws or procedures and make other necessary administrative amendments or corrections, pursuant to Administrative Order 2001-86.

Rule 10(C)(D). The Arizona Supreme Court Administrative Office of the Courts has developed a statewide resource list of services categorized by county and a model safety plan. Copies may be downloaded from the Internet at:
<http://www.supreme.state.az.us/dr/dv.htm>. See A.R.S. § 13-3602(D).