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Chair, Domestic Violence Rules Committee

**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of: )  
)  
Arizona Rules of )  
Protective Order Procedure )  
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Supreme Court No. \_\_\_\_\_

**RESPONSE TO PUBLIC COMMENTS AND  
FINAL PETITION FOR ADOPTION OF  
ARIZONA RULES OF PROTECTIVE ORDER  
PROCEDURE**

**FINAL PETITION FOR ADOPTION  
OF ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE**

Pursuant to Rule 28, Rules of the Supreme Court, the Domestic Violence Rules Committee by and through its chair, the Honorable William J. O'Neil, Presiding Judge of Civil Court, petitions the Court to adopt this final version of the *Arizona Rules of Protective Order Procedure (ARPOP)* as reflected in the accompanying Appendix A, proposed rules, with a delayed effective date of January 1, 2009. The Committee further requests that the Supreme Court maintain a portion of the Committee in place to entertain public comments as

the rules are implemented and to conduct a review of the rules two years after the effective date thereof.

Adoption of this comprehensive set of procedural rules is imperative for the reasons that were set forth within the initial petition. These rules will better assure access to justice for those needing protection. Further, the proposed rules will provide uniformity and greatly assist the courts in the efficient administration of justice.

### **RESPONSE TO PUBLIC COMMENTS**

Since filing of their initial petition (R-06-0032), the Committee held three public meetings and continuously posted its latest version of the rules on the Supreme Court's public website. The Committee also did substantial outreach to ensure that interested persons were kept abreast of developments as the rules evolved and considered many informal comments from individuals. Therefore, while it may seem out of the ordinary, it is no surprise to members of the committee that a project of this scope has attracted no formal comments. It should be noted that all the informal public comments received were first vetted through the Committee as a whole and, those accepted, were then addressed at presentations to standing committees of the Arizona Judicial Council. Prior to submission of this final petition, the Limited Jurisdiction Court Committee and the Committee on the Impact of Domestic Violence and Courts both recommended the Court adopt the ARPOP as proposed. Although the Committee on Superior Courts (COSC) did not have a quorum at their last meeting at which the proposed version of ARPOP was presented, no concerns were given by those members present. At prior presentations to COSC at which quorums were realized, recommendations for approval were obtained.

**CHANGES TO THE RULES SINCE THE INITIAL PETITION  
IN RESPONSE TO INFORMAL PUBLIC COMMENTS**

1. Rule 1(C)(1) – Added clarification for issuance of emergency orders of protection needed outside of the normal operating hours of the court by directing the public to the applicable rule for relief.
2. Rule 1(C)(3) – Deleted language directing court personnel to advise plaintiffs of their right to obtain protective relief in any court because it places an unneeded mandate on the court. It also might be interpreted to require the court to advise the broader class of all plaintiffs of the availability of protective orders.
3. Rule 1(I)(2) – Added the word “inadvertently” to the sentence to clarify that a judge can intentionally craft a protective order that conflicts with an existing custody order or parenting plan in situations in which it is deemed necessary for protection of the plaintiff.
4. Rule 1(M) – Reference to Rule of Civil Procedure inserted to assure the proper service of process.
5. Rule 1(M)(3) – Added “which has the same effect as service” to clarify that acceptance of service is available for protective orders.
6. Rule 1(M)(4) – Added a process for serving a defendant who refuses to sign acceptance of service form after a hearing in which the defendant is present. The Committee wanted to include a simplified form of process for defendants who are present in court but refuse to acknowledge receipt of the original or modified order. Because these orders are not effective until served, and service can be difficult, this method will better assure prompt service and protection for parties. Although the Committee was concerned initially about a conflict between the statute that refers to Civil Rule 4(d) and proposed ARPOP Rule

1(M), since they both will be statewide rules with the same force and effect, members determined that the new rule would merely supplement the statute in a modest, reasonable way, consistent with the process.

7. Rule 1(M)(5) – Renumbered and added “of service” for clarification.
8. Rule 1(M)(6) – Renumbered.
9. Rule 1(M)(7) – Renumbered and added language to make clear that modified orders must be properly served on the respondent.
10. Rule 1(P)(3) – Deleted because it placed a mandate on the court that gave the appearance of directing the state to prosecute matters.
11. Rule 1(P)(4) – Renumbered this section due to the deletion of the prior Rule 1(P)(3) as set forth above.
12. Committee Comments Rule 1 (B)(1)(d) – Citation corrected to reflect changed numbering.
13. Committee Comments Rule 1(M) – Added language to clarify the various proofs of service that may be referred to.
14. Rule 4(A)(1) – Deleted unnecessary language and added “custody” to types of actions for which a limited jurisdiction court shall not issue a protective order if the petition for the plaintiff reveals an action is pending in Arizona Superior Court.
15. Rule 4(A)(3)(a-b) – Deleted as the committee determined such delegation was unnecessary.
16. Rule 4(A)(4 & 5) – Renumbered as needed due to the deletion of the prior rule 4(A)(1).
17. Rule 4(A)(5)(c) – Renumbered to Rule 4(A)(4)(c) and language was added to assure an expedited but realistic handling of cases involving the loss of use of home.

18. Rule 4(A)(6) – Renumbered to Rule 4(A)(5).
19. Rule 4(B) – Added language to clarify that these rules contain provisions that allows a protective order to supersede a custody order in limited specified circumstances.
20. Rule 4(B)(5)(a) Added clarifying language that maintains protection of the petitioner while offering a judicial officer an opportunity to assure, in proper circumstances, that visitation may continue to occur.
21. Rule 4(B)(5)(b) – Added language regarding process when no family law action is pending but there is an active custody order.
22. Rule 4(B)(6)(a &b) – Added language to establish standards for the court to utilize in balancing the need for protection with a competing need to implement an existing custody order. This language clarifies what factors a judicial officer should consider when determining these difficult matters. The added language mandates that such modifications be written in a modified order for the protection of both parties and to assure ease of enforcement by law enforcement.
23. Committee Comment for Rule 4(B) – Citation corrected to reflect changed numbering.
24. Rule 5(A)(2) – Added “either” for clarification.
25. Rule 6(C) – Changed “individual” to “separate” for clarification.
26. Rule 6(C)(4) – Deleted “Judicial officers in limited jurisdiction courts” and replaced with “The court” for consistency.
27. Rule 6(E)(5) – Added “Injunction Against Harassment” to title for consistency.
28. Rule 6(F)(5) – Added “Injunction Against Workplace Harassment” to title for consistency.

## CONCLUSION

The Committee respectfully asks the Court to adopt this final version of the *Arizona Rules of Protective Order Procedure (ARPOP)* and suggests a delayed effective date of January 1, 2009, in accordance with the form of order attached or such other order as the Court deems appropriate. The Committee further requests that the Court, by separate administrative order, maintain at least a portion of the Committee in place to entertain public comments as the rules are implemented and to conduct a review of the rules two years after the effective date thereof.

Respectfully submitted this 29th day of June, 2007.

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Hon. William J. O'Neil  
Presiding Civil Court Judge  
Pinal County Superior Court

Original and 6 copies filed with  
The Clerk of the Arizona  
Supreme Court.

Copy mailed or hand-delivered this 29th day of  
June 2007, to:

Chief Justice Ruth V. McGregor  
Vice Chief Justice Rebecca White Berch  
Justice Michael D. Ryan  
Justice Andrew D. Hurwitz  
Justice W. Scott Bales  
David K. Byers, Administrative Director  
Patience Huntwork, Chief Staff Attorney