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Presiding Civil Court Judge
Pinal County Superior Court
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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	)	
	)	

PETITION FOR ADOPTION OF AMENDMENT TO THE
ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE

Pursuant to Rule 28, Rules of the Supreme Court, the Honorable William J. O'Neil, Presiding Civil Judge of the Arizona Superior Court in Pinal County, Chair of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) and former Chair of the Domestic Violence Rules Committee, petitions the court to amend the Arizona *Rules of Protective Order Procedure* (*ARPOP*) as reflected in the accompanying Appendix A and to approve technical changes in the accompanying Appendix B.

I. INTRODUCTION

In 2005, this Court by Administrative Order 2005-85 established the Domestic Violence Rules Committee to research, study and consider domestic violence procedures and make such recommendations as it deemed appropriate. The Committee met and formally recommended and prioritized the creation and adoption of statewide rules of protective order procedure, distinct

from but relying upon relevant portions of the present *Arizona Rules of Civil Procedure* and the *Arizona Rules of Procedure for Family Law Procedure* (*ARFLP*). Those proposed rules were formally adopted by this Court and govern the procedures in any Arizona court in all cases related to the issuance of an Order of Protection under A.R.S. § 13-3602, an Emergency Order of Protection under A.R.S. § 13-3624(C), an Injunction Against Harassment under A.R.S. § 12-1809, and an Injunction Against Workplace Harassment under A.R.S. § 12-1810.

These rules have a vision. That vision was set forth within this Court's Administrative Order 94-14 and is "aimed at achieving fair, effective, uniform and timely resolution of cases involving protective orders." It is a vision that seeks to enhance public safety. These rules were considered a beginning of an ongoing effort by the judiciary to offer "justice for all" in a fair, effective and uniform manner.

On May 15, 2008, the Governor of Arizona signed into law House Bill 2248 amending A.R.S. §§ 13-3602(E) and 12-1809(E). Those statutes require a judicial hearing officer to consider "any evidence of harassment by electronic contact or communication" as a factor in considering the issuance of a protective order. Rules 6(C)(3) and R. 6(E)(3) of the Arizona Rules of Protective Order Procedure are almost verbatim recitations of the pre-existing statutes. Rule 6 outlines in a step-by-step process what must occur before a court may issue any protective order. It establishes a best practices standard for the issuance of a protective order.

The rule separates the procedures for each of the four types of protective orders covered by these rules. It serves the dual purpose of informing both the judicial officer and the litigants of the findings needed in order to issue the protective order. The proposed amendments to Rule 6 mirror the language and intent of the new Arizona law. This will offer consistency to the process itself.

In addition, there is a need for technical changes to the rules that came about as a result of legislation in the 2007 session. On July 2, 2007, the Governor of Arizona signed into law Senate Bill 1286, which modified warning language that must appear on every Order of Protection. This amendment to A.R.S. § 13-3602 added a subsection that affected citations contained within ARPOP.

II. SUMMARY OF THE PROPOSED AMENDMENTS

Rule 6(C) governs the consideration of petitions for the issuance of orders of protection. Rule 6(E) governs the consideration of petitions for the issuance of Injunctions against Harassment. Both of the subparts of this rule substantially mirror the language that was existent in A.R.S. §§ 13-3602(C) and 13-3602(E). These amendments, as indicated on Appendix A, add the additional language "including evidence of harassment by electronic contact or communication" as required by state law.

In addition, technical changes are needed in subsections of Rules 1, 2, 4, and 7 as indicated on Appendix B.

III. CONCLUSION

Petitioner respectfully requests the Supreme Court consider this petition at its earliest convenience. Petitioner additionally requests that the petition not be circulated for full public comment as the amendments relate to factors that the court by statute must now consider when issuing Orders of Protection and Injunctions Against Harassment. It is requested these proposed amendments be effective at the earliest opportunity to comply with this change in state law.

The approval of these procedural amendments will resolve any potential conflict between the existing rule and the statutory amendments now in effect. They bring a needed clarity that

will better protect the public we serve. These proposed amendments will better assure litigants of fair, effective, uniform and timely resolution of their cases while greatly assisting the courts in the efficient administration of justice.

DATED this 17th day of July 2008.

_____
William J. O'Neil
Presiding Civil Judge
Superior Court of Arizona in Pinal County

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

Copy mailed or hand-delivered this _____ day of
July 2008, to:

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

APPENDIX A

Rule 6. Rules of Procedure for Issuing Protective Orders

C. Order of Protection. The judicial officer shall conduct a separate 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, including any evidence of harassment by electronic contact or communication, 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).

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, including any evidence of harassment by electronic contact or communication, to determine whether the order requested shall be issued *ex parte*.

APPENDIX B

Rule 1. General Administration

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~~(Q)~~(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~~(K)~~(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~~(Q)~~(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~~(L)~~(M), 12-1809(K) and 12-1810(J).

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.

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)~~(M), 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)~~(M), 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. 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)~~(N).

Rule 2. Fees and Costs

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)~~(P), 12-1809(N) and 12-1810(N).

Rule 4. Family Law Cases

A. Jurisdiction

1**.** 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, custody, 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)~~(P).

Rule 7. Motion to Dismiss, Quash or Modify

B. Motion to Modify. A plaintiff may request that a protective order be modified at any time 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)~~(L), 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)~~(M), 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.

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_____	)	

Pursuant to a petition from Judge William J. O'Neil,

IT IS ORDERED:

The attached Amendments to the *Arizona Rules of Protective Order Procedure* are adopted, effective_____.

Dated this ____ day of _____, 2008.

_____
Ruth V. McGregor
Chief Justice