

Family Court Improvement Committee
Judge Paul McMurdie, Chair
c/o Susan Pickard, Staff
1501 W. Washington St., Ste. 410
Phoenix, Arizona 85007

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No.
PETITION TO AMEND RULE 35 OF	)	
ARIZONA RULES OF PROTECTIVE	)	
ORDER PROCEDURE AND RULES	)	
91.6 AND 91.7 OF ARIZONA RULES	)	
OF FAMILY LAW PROCEDURE	)	

BACKGROUND

The court referred Rule Change Petition R-19-0047 to the Family Court Improvement Committee (FCIC) for input. Briefly, the court indicated that it was concerned with the proposed rule change because A.R.S. § 12-1809 grants all courts, including non-record courts, the authority to determine harassment injunctions. While recognizing the problem when a harassment injunction issued from a non-record court interferes with a superior court's parenting order, the court sought a process solution to ensure the child's safety while reconciling the family court orders regarding parenting time and legal decision-making. The FCIC, in collaboration with representatives from the Committee on Limited Jurisdiction Courts (LJC), discussed the problem and unanimously endorsed this substitute proposal.

THE PROBLEM

The problem raised in R-19-0047 relates to what to do when a harassment injunction between a parent and a third party impacts a parenting order for the parent not involved in the harassment-injunction proceeding. For example, Mother obtains an injunction against Father's new live-in girlfriend. Father is not a party to the injunction-proceedings, and the girlfriend is not a party to the family court case. The injunction may prohibit contact between the girlfriend and the child, affecting the Father's ability to parent the child in his home.

The following is the existing statutory and rule authority that impacts these circumstances:

A.R.S. Section 12-1809(A)

A. A person may file a verified petition with a magistrate, justice of the peace or superior court judge for an injunction prohibiting harassment. If the person is a minor, 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 is a specifically designated person for the purposes of subsection F of this section. If a person is either temporarily or permanently unable to request an injunction, a third party may request an injunction 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. Notwithstanding the location of the plaintiff or defendant, any court in this state may issue or enforce an injunction against harassment.

ARPOP Rule 35. Legal Decision-Making and Parenting Time

(a) Provisions for Legal Decision-Making and Parenting Time. Except as otherwise provided in this rule, a protective order cannot contain provisions regarding legal decision-making or parenting time issues. Legal issues such as maternity, paternity, child support, legal decision-making, parenting time, dissolution of marriage, or legal separation may be addressed only by the superior court in a separate action under A.R.S. Title 25.

(b) Contact Between a Child and a Defendant Who Have a Legal Relationship. Before granting a protective order prohibiting contact with a child with whom the defendant has a legal relationship, the judicial officer must consider:

- (1) whether the child may be harmed if the defendant is permitted to maintain contact with the child, and
- (2) whether the child may be endangered if there is contact outside the presence of the plaintiff.

(c) Provisions for Parenting Time and Child Exchanges.

(1) A limited jurisdiction court that issues an order prohibiting contact with the plaintiff cannot include exceptions that allow the defendant to come near or contact the plaintiff in person for legal decision-making or parenting time with a child. A limited jurisdiction court may allow contact by mail or e-mail to arrange parenting time and may provide for child exchanges under circumstances not involving contact with the plaintiff in person.

(2) A superior court judicial officer may issue a protective order or modify an existing protective order that includes an exception allowing the defendant to come near or contact the plaintiff in person to implement a legal decision-making or a parenting time order after considering the following factors and making specific findings on the record:

(A) feasible alternatives regarding contact to carry out the legal decision-making or parenting time order, such as exchanges at a protected setting, a public facility or other safe haven, or through a third person;

(B) the parties' wishes;

(C) each party's history of domestic violence;

(D) the safety of the parties and the child;

(E) each party's behavioral health; and

(F) reports and recommendations of behavioral health professionals.

(d) Modification of an Existing Protective Order. Any change made by a superior court judicial officer to an existing protective order must be included in a modified protective order. Each change must be set forth in the modified protective order with sufficient detail to assure understanding and compliance by the parties and ease of enforcement by law enforcement officers. The superior court judicial officer must obtain an acceptance of service signed by the defendant if the parties are present at the time the modification is made. If the defendant refuses to sign an acceptance of service, the judicial officer must have the defendant served in open court in accordance with Rule 31.

(e) Active Legal Decision-Making Order. When a family law action is not pending but there is an active legal decision-making order issued by an Arizona court that involves a child of the defendant, a limited jurisdiction court may issue an *ex parte* protective order but then must transfer the matter to the superior court in accordance with procedures set forth in Rule 34.

ARFLP Rule 91.6. Other Post-Judgment Petitions

A party seeking any other post-judgment relief not specifically addressed in Rule 91 or Rules 91.1 through 91.5 must file a petition in compliance with Rule 91 that states detailed facts supporting the requested relief; and the specific legal authority that permits the court to grant the relief requested.

FCIC SUGGESTED SOLUTIONS.

The solution must include the following characteristics:

- Preserve the court's ability to hear the case regarding a harassment injunction to protect a child as necessary, even though the resulting order may have a *de facto* impact on an existing family court order.
- Provide a means to resolve a conflict between the harassment injunction and the parenting order.
- Provide a method for the harassment injunction to be brought to the superior court's attention in the related family matter without inundating the court with a review of all injunctions, specifically because not all are contested.

Current ARPOP 35(e) applies only when the child impacted is the child of the defendant. So FCIC suggests adding Rule 35(f) to provide for the orderly processing harassment injunction. FCIC suggests adding a new section to Family Rule 96 to allow the superior court to reconcile the orders' potential conflicts. The adversely affected parent can petition the Superior Court to transfer the harassment case to be heard in conjunction with the family court matter. The procedure in Rule 96 is not automatic as not all harassment injunctions will be appealed or affect parenting orders. Suggested changes or additions to the applicable rules are as follows:

ARPOP RULE 35

No change (a) – (e)

(f) Defendant Is a Non-Parent of Child.

When a harassment injunction involves a child who is not the defendant's legal or biological child, the limited jurisdiction court may issue an *ex parte* protective order and conduct any contested hearings. To the extent the order affects the parenting rights of the person who is not a party to the harassment injunction action, the remedy for such a person is under Rule 91 of the ARFLP.

ARFLP RULE 91.6

Rule 91.6. Orders That Impact Parenting Orders

If a limited jurisdiction court issues a harassment injunction and the order affects a party's parenting rights in a legal decision-making or parenting time order issued by a court of this state, the parent impacted may petition for relief from the order under the family court cause number. The petition shall comply with Rule 91 and must state details supporting the requested relief and the specific legal authority that permits the court to grant the relief requested.

If a limited jurisdiction court issued the harassment injunction, the superior court may:

- (a) direct the limited jurisdiction court to transfer the order to the superior court under a superior court cause number;

- (b) join the third party to the proceeding in the Superior Court but only in the newly assigned cause number and not as a party in the family court case;
- (c) schedule a concurrent proceeding between the matters;
- (d) direct that notice be provided to the third party of any hearing related to the harassment injunction;
- (e) conduct such proceedings as necessary to reconcile the orders;
- (f) modify the orders as deemed appropriate.

ARFLP RULE 91.7

Rule 91.67. Other Post-Judgment Petitions

A party seeking any other post-judgment relief not specifically addressed in Rule 91 or Rules 91.1 through ~~91.5~~ 91.6 must file a petition in compliance with Rule 91 that states detailed facts supporting the requested relief; and the specific legal authority that permits the court to grant the relief requested.