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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court
)	No.
PETITION TO AMEND RULE 16 OF)	
ARIZONA RULES OF PROTECTIVE)	
ORDER PROCEDURE)	

INTRODUCTION

Pursuant to Rule 28, Ariz. R. Sup. Ct., the Domestic Violence Law Clinic at the University of Arizona’s James E. Rogers College of Law petitions the Court to amend the Arizona Rules of Protective Order Procedure. This proposed amendment will add specific language on amending an Order of Protection petition within the Arizona Rules of Protective Order Procedure.

THE PROBLEM

The absence of language specific to amending a petition for a protective order within the Rules of Protective Orders themselves is problematic and

confusing, and should be addressed by a simple rule change that is consistent with existing caselaw, the Arizona Rules of Civil Procedure, and the Arizona Rules of Family Law Procedure.

Our clients, as well as those of Emerge! Center Against Domestic Abuse are often denied the right to amend their petitions. This significantly limits their due process rights and jeopardizes their safety.

The Arizona Court of Appeals, Division I held that Arizona courts are authorized to rule on a request to amend an Order of Protection (OOP), and in fact must grant leave to amend when justice so requires. *Savord v. Morton*, 235 Ariz. 256, 260 (App. 2014) (stating it was a violation of the respondent's due process rights to allow the petitioner to testify to events beyond the allegations on the OOP petition and a better option would be to allow the petitioner to amend her petition).

Rule 2 of the Arizona Rules of Protective Orders states that the Arizona Rules of Family Law Procedure and the Arizona Rules of Civil Procedure apply when they are not inconsistent with the rules of Protective Order Procedure. Because the Arizona Rules of Protective Order Procedure are silent with respect to the question of amending a petition for an OOP, we must look to these rules for procedural guidance concerning amendments to petitions for OOPs.

Both sources directed to by the Arizona Rules of Protective Order Procedure permit amendments:

(1) Arizona Rules of Civil Procedure: Specifically, if a party seeks leave of the court to amend a pleading, permission to amend the pleading is within the discretion of the court, and “must be freely given when justice requires.” Ariz. Rules Civ. Proc., Rule 15(a)(2). The court may also permit amendment if “at trial, a party objects that evidence is not within the issues raised in the pleadings”. Ariz. Rules Civ. Proc., Rule 15(b)(1).

(2) Arizona Rule of Family Procedure: Rule 28 of the Arizona Rules of Family Law Procedure allows for a party to amend a pleading as a matter of right before a trial or by leave of the court. “Leave to amend will be freely given when justice requires.” Ariz. R. Fam. Law Proc. 28(a)(2) (Formerly cited as AZ ST RFLP Rule 34). The court may also permit amendment if “at trial, a party objects that evidence is not within the issues raised in the pleadings”. Ariz. R. Fam. Law Proc. 28(b)(1) (Formerly cited as AZ ST RFLP Rule 34).

While both these affirm the right to amend a petition, the absence of language specific to amending an order of protection within the Rules of Protective Orders themselves is problematic and confusing, particularly following *Savord v. Morton*, 235 Ariz. 256 (Ct. App. 2014). In *Savord*, the court held that a respondent

has a right to know the allegations that will be the subject of the contested OOP hearing prior to the hearing as a matter of due process. 235 Ariz. at 259–60. The court specifically stated that, rather than allowing the petitioner to testify about matters beyond those stated on the petition, a better practice would be to permit the petitioner to amend the petition and reschedule the hearing. *Id.* at 260 ¶ 17.

DVLC SUGGESTED SOLUTION

Incorporating language about amending petitions into the Rules of Protective Order Procedures clarifies for petitioners, clerks, attorneys, and judges that such amendments are acceptable and sometimes necessary. For victims of domestic violence to have meaningful access to justice, they should not have to research caselaw or cross-reference other rule sets to understand and advocate for their right to request leave to amend a petition when necessary. In the interest of procedural clarity that will benefit all those involved in the process of determining whether an Order of Protection remains in place, the Domestic Violence Law Clinic respectfully request amendment of the Arizona Rules of Protective Orders through the addition of Rule 16.1 as stated below.

It is important to note that, while we are proposing an additional section within the Arizona Rules of Protective Orders, this amendment does not produce any substantive changes in procedures, content, or violations of Orders of

Protection. Rather, including language on the right to amend merely simplifies the procedural landscape for petitioners, clerks, attorneys, and judges.

Arizona Rules of Protective Orders, Part VIII.
Contested Protective Order Hearings,
Rule 16.1: Amendments to Petitions

A petitioner may amend a verified petition once as a matter of course at any time before a contested hearing. The court may also permit amendment if at trial, a party objects that evidence is not within the issues raised in the pleadings. The petitioner must provide a copy of the amended petition on the respondent without delay. The court may grant a continuance to enable the respondent to respond to the amended petition.

/s/ Negar Katirai

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