

Honorable Wendy A. Million  
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**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

In the Matter of:	)	Supreme Court
	)	No. R-21-0010
PETITION TO AMEND RULE 16 OF	)	
ARIZONA RULES OF PROTECTIVE	)	Comment to Petition
ORDER PROCEDURE	)	
_____	)	

The Committee on the Impact of Domestic Violence and the Courts (CIDVC) has authorized the Honorable Wendy A. Million, CIDVC chair, to file this comment to Petition No. R-21-0010 on the committee’s behalf.

The petitioner correctly notes that when the Rules of Protective Order Procedure are silent on a particular procedure, reliance on the Rules of Civil Procedure or the Rules of Family Law Procedure is necessary. CIDVC agrees that there is a need to add a rule here but proposes an alternative version to address the issues raised by the petitioner.

Petitioner suggests adding a new Rule 16.1, following Rule 16, Commencement of Proceedings, in Part V, Issuance of Protective Orders. However,

CIDVC believes that the more appropriate placement of a new rule would be in Part VIII, Contested Protective Order Hearings, with modification to Rule 38 as proposed in the Appendix.

CIDVC's proposal would allow amendment of a petition only at a contested hearing. The plaintiff, in the initial petition, made sufficient showing for the court to find a legal basis to issue the protective order for the benefit and safety of the plaintiff. Amending a successful, already-adjudicated petition that is not being challenged by the defendant would serve little purpose. A defendant can request a contested hearing at any time while the protective order is in effect. In many cases, however, the defendant never requests a contested hearing. Allowing a plaintiff to amend a petition "just in case" the defendant asks for a contested hearing would serve little purpose and, in fact, could provide the impetus for the defendant to ask for a contested hearing. In addition, contested hearings are set on short notice—five to ten days from the request depending on the issues—and requiring the plaintiff to provide advance written notice of the amended petition prior to the hearing may be impractical.

CIDVC agrees that if the defendant does challenge the petition, then the plaintiff should be allowed an opportunity to amend it at the contested hearing. But CIDVC also recognizes the defendant's due process rights. Due process requires that the defendant "receive notice, reasonably calculated to apprise him of the action in order to adequately prepare his opposition." *Savord v. Morton*, 235 Ariz. 256, 260 (Ct. App. 2014). Under CIDVC's proposal, the defendant would be offered three options

after being presented with a copy of the amended petition: (1) request a continuance to a future date, (2) ask for a brief recess to prepare to meet the additional allegations, or (3) waive both a continuance and a recess and proceed with the contested hearing. These options will provide the defendant with notice of the additional allegations and an opportunity to prepare his or her opposition to them.

For the reasons stated above, CIDVC respectfully asks the Court to adopt the proposed amendment to Rule 38, Rules of Protective Order Procedure, as set forth in the Appendix.

Respectfully submitted this 27th day of April, 2021.

/s/

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## **APPENDIX**

## Rule 38

### 38. Contested hearing procedures

(a) through (c) [No changes]

**(d) Amended Petition.** At a contested hearing, if a plaintiff seeks to testify or present evidence about relevant allegations that were not included in the petition, the court must:

(a) Allow to the plaintiff to amend the petition in writing on a form provided by the court, a copy of which the court must immediately provide to the defendant; and

(b) Offer the defendant each of the following options:

(1) A continuance of the hearing, within the timeframes specified by Rule 38(b), to allow the defendant the opportunity to prepare for the additional allegations; or

(2) A brief recess to allow the defendant the opportunity to review the amended petition and prepare for the additional allegations; or

(3) An explanation of the options above and an opportunity to waive them. If the defendant waives both the opportunity for a continuance or a brief recess, then the court must proceed

with the contested hearing on the amended petition that  
includes the additional allegations.

**(d) through (f)** [re-number]