

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-08-0017
PETITION FOR)
ADOPTION OF AMENDMENTS TO THE)
ARIZONA RULES OF PROTECTIVE)
ORDER PROCEDURE)
)
)
)
)
_____)

ORDER

**ADOPTING AMENDMENTS TO RULES 1, 2, 4, 6, AND 7 OF THE ARIZONA RULES
OF PROTECTIVE ORDER PROCEDURE ON A PERMANENT BASIS**

These rule amendments were adopted on an emergency basis effective September 26, 2008, with a comment period ending May 20, 2009. Upon consideration,

IT IS ORDERED adopting the attached rule amendments on a permanent basis.

DATED this _____ day of September, 2009.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution

Mwa

ATTACHMENT*

Amendments of Arizona Rules of Protective Order Procedure

Rule 1. General Administration

A.-L. [No change in text.]

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.-2. [No change in text.]

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. [No change in text.]

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.-7. [No change in text.]

N. [No change in text.]

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).

* Changes or additions in text are indicated by underlining and deletions from text are indicated by ~~strikeouts~~.

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.-3. [No change in text.]

P. Offender Treatment Programs

1.-2. [No change in text.]

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).

Q.-R. [No change in text.]

Rule 2. Fees and Costs

A.-B. [No change in text.]

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 3. [No change in text.]

Rule 4. Family Law Cases

A. Jurisdiction

1. [No change in text.]

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. [No change in text.]

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).

B. [No change in text.]

Rule 5. [No change in text.]

Rule 6. Rules of Procedure for Issuing Protective Orders

A.-B. [No change in text.]

C. Order of Protection. The judicial officer shall conduct a separate hearing with each plaintiff who requests an Order of Protection.

1.-2. [No change in text.]

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).

D. [No change in text.]

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*.

F. [No change in text.]

Rule 7. Motion to Dismiss, Quash or Modify

A. [No change in text.]

B. Motion to Modify. A plaintiff may request that a protective order be modified at any time during the term of the order.

1.-3. [No change in text.]

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.

Rules 8.-10. [No change in text.]