

1 John A. Furlong, Bar No. 018356
General Counsel
2 STATE BAR OF ARIZONA
3 4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
4 Telephone: (602) 252-4804
John.Furlong@staff.azbar.org
5

6 **IN THE SUPREME COURT**
STATE OF ARIZONA

7 PETITION TO REPEAL THE
8 ARIZONA RULES OF PROTECTIVE
9 ORDER PROCEDURE

Supreme Court No. R-13-0029

**Comment of the State Bar of Arizona
on Petition to Repeal the Arizona
Rules of Protective Order Procedure**

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11 The Arizona Rules of Protective Order Procedure were proposed by the
12 Domestic Violence Rules Committee (DVRC), a committee which was formed in 2005,
13 following the issuance of an administrative order by the Chief Justice of the Arizona
14 Supreme Court. *See Administrative Order No. 2005-85.* The Committee was
15 specifically established to do three things: 1) to research other statewide domestic
16 violence rules; 2) to look at the relevant issues related to domestic violence procedural
17 matters in Arizona; and 3) to consider alternatives to the procedural policies in the
18 Arizona Rules of Family Law Procedure “Domestic Violence Benchbook.” *Id.* The
19 Committee was comprised of Superior Court judges and commissioners, Municipal
20 Court and Tribal Court judges, attorneys and staff from the Governor’s Office, the
21 Arizona Supreme Court, the Superior Court Clerk’s office, the Maricopa County
22 Sheriff’s Office, the Arizona Coalition Against Violence, and the Office of the Attorney
23 General, along with a psychologist. *Id., Appendix A.* The stated mission of the DVRC
24 was “1) to establish a comprehensive, statewide set of rules of procedure for protective
25 orders aimed at achieving fair, effective, uniform and timely resolution of cases

1 involving protective orders, and 2) enhance enforcement of protective orders and public
2 safety to the extent possible and appropriate.” DVRC *Mission Statement*.

3 DVRC members held ten meetings over a period of 18 months and drafted a set
4 of stand-alone procedural rules which were submitted to the Arizona Supreme Court in
5 June 2007. As reflected in the minutes of the DVRC meetings, substantial discussion
6 and public comment went into developing the set of rules. The rules were approved by
7 the Arizona Supreme Court on September 5, 2007, and became effective January 1,
8 2008. The Rules apply to issuance of orders of protection (A.R.S. § 13-3602),
9 emergency orders of protection (A.R.S. § 13-3624(C), injunctions against harassment
10 (A.R.S. § 12-1809), and injunctions against workplace harassment (A.R.S. § 12-1810).

11 Petitioner herein is seeking the repeal of those approved Rules of Protective
12 Order Procedure. Without explaining how, his main argument appears to be that the
13 Rules of Protective Order Procedure are unconstitutional. Apparently, in support of
14 Petitioner’s argument, the petition contains numerous citations to *Marsin v. Udall*, 78
15 Ariz. 309, 279 P.2d 721 (1955), a prosecution case that involved the propriety and
16 timeliness of filing an affidavit of bias and prejudice against a sitting judge. Petitioner
17 uses language from *Marsin* to then argue that somehow litigants in a protective order
18 hearing are denied a right to a fair trial under the Rules of Protective Order Procedure.
19 Contrary to Petitioner’s argument, however, *Marsin* offers no support for his assertions.

20 The only issue in *Marsin* was whether the procedure for assigning a case to a
21 judge for trial, under the local rules of Maricopa County Superior Court existing in
22 1955, could supersede a litigant’s right to file an affidavit of bias and prejudice against
23 that assigned judge. The Arizona Supreme Court held it could not. *Marsin* was later
24 superseded by statute. See *Hofstra v. Mahoney*, 108 Ariz. 498, 502 P.2d 1317 (1977),
25 *decision vacated*, 108 Ariz. 498, 502 P.2d 1317 (1977). While Petitioner is correct that

1 *Marsin* addresses a party's right to a "fair and impartial trial before a fair and impartial
2 judge," it does so in the context of exercising an affidavit of bias and prejudice. The
3 adoption of local rules by a County court cannot be analogized to the adoption of the
4 Arizona Rules of Protective Order Procedures as outlined herein. Nothing in *Marsin*
5 supports an argument that the Rules of Protective Order Procedures are
6 unconstitutional.

7 In litigation, there is a party who wins and one who loses. Here, Petitioner
8 appears to be aggrieved by an adverse ruling in a protective order hearing. That mere
9 experience, however, cannot form the grounds for the abrogation of a set of procedural
10 rules that were approved by the Arizona Supreme Court after a lengthy, formal, and
11 thorough consideration of the issues that brought the rules into existence. Petitioner
12 presented nothing to suggest that the Arizona Rules of Protective Order Procedure, in
13 their entirety, are unconstitutional and need to be repealed.

14 **CONCLUSION**

15 The State Bar opposes the propose to repeal the Arizona Rules of Protective
16 Order Procedure.

17 RESPECTFULLY SUBMITTED this 29th day of April
18 2013.

19
20 By John A. Furlong
21 John A. Furlong
General Counsel

22 Electronic copy filed with the Clerk
23 of the Supreme Court of Arizona this
24 29th day of April, 2013.

25 By: Kathleen A. Lundgren