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 Chair, Domestic Violence Rules Committee

**IN THE SUPREME COURT
 STATE OF ARIZONA**

In the Matter of:)	
)	
Arizona Rules of)	
Procedure of Protective)	Supreme Court No. _____
Order Procedure)	
)	PETITION FOR ADOPTION OF ARIZONA
)	<i>RULES OF PROTECTIVE ORDER PROCEDURE</i>
_____)	

**PETITION FOR ADOPTION OF
 ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE**

Pursuant to Rule 28, Rules of the Supreme Court, the Domestic Violence Rules Committee, by and through its chair, the Honorable William J. O’Neil, Presiding Civil Judge of the Arizona Superior Court in Pinal County, former Presiding Judge of the Superior Court of Arizona in Pinal County and Chair of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) petitions the court to adopt statewide *Arizona Rules of Protective Order Procedure (ARPOP)* as reflected in the accompanying Appendix A, proposed rules.

I. INTRODUCTION

Hardly a day passes without a news account of domestic violence. The statistics on domestic violence hit hard and leave the reader gasping for breath. Domestic violence appears to continue to be increasing both in numbers of incidents and as troublesome, in severity of cases. In response to this reality, this Court on March 3, 1994 established the Committee on the Impact of Domestic Violence and the Courts (CIDVC). In part, that Committee was charged with the responsibility of assessing state and local proceedings relating to domestic violence and to recommend changes that would promote safety for victims and providers who interact with them. On August 6, 1996 by Administrative Order No. 96-37 this court adopted Policies on Orders of Protection and Injunctions Against Harassment in Domestic Violence Cases and authorized inclusion of the Policies in the *Benchbook for Orders of Protection and Injunctions Against Harassment in Domestic Violence Cases (Domestic Violence Benchbook)*. That Benchbook was in part created to promote consistency in the handling of protective orders in domestic violence cases and to protect the safety of all individuals involved.

In 2005, the Committee on the Rules of Procedure in Domestic Relations Cases included, Rule 96, Domestic Violence Benchbooks in its proposed *Arizona Rules of Family Law Procedure*. This Court on September 22, 2005 continued proposed Rule 96 and directed the Committee on the Rules of Procedure in

Domestic Relations Cases (DR Rules Committee) and the Committee on the Impact of Domestic Violence and the Courts (CIDVC) to consider other alternatives to that proposed rule. This resulted in Administrative Order 2005-85 by which this Court established the Domestic Violence Rules Committee to research, study and consider domestic violence procedures and make such recommendations as it deemed appropriate.

The Committee met and formally recommended and prioritized the creation and adoption of statewide rules of protective order procedure, distinct from but relying upon relevant portions of the present *Arizona Rules of Civil Procedure* and the *Arizona Rules of Procedure for Family Law Procedure (ARFLP)*. These proposed rules would govern the procedures in any Arizona court in all cases related to the issuance of an Order of Protection under A.R.S. § 13-3602, an Emergency Order of Protection under A.R.S. § 13-3624(C), an Injunction Against Harassment under A.R.S. § 12-1809, and an Injunction Against Workplace Harassment under A.R.S. § 12-1810. The Committee concluded that the Administrative Orders issued by this court relating to domestic violence were not effective and were of little assistance to those unrepresented (*pro se*) litigants that seek the assistance of our courts. As a result the Committee began the work of creating these rules of procedure for protective orders. While the Committee has

other recommendations, those are intended to be submitted in a separate report for this court's consideration.

The Committee has a membership of fifteen individuals who represent a broad spectrum of those within the service arena that addresses domestic violence issues. The Domestic Violence Rules Committee is chaired by Judge William J. O'Neil. It is staffed by Konnie K. Young, Domestic Violence Specialist and Lorraine Nevarez, Support Staff with the Administrative Office of the Courts (AOC). The membership represents tribal, limited jurisdiction, and general jurisdiction courts, the Clerk of the Superior Court, as well as mediation, psychology, law enforcement, the Arizona Coalition Against Domestic Violence, the Attorney General and the Governor. The Committee is primarily comprised of a blend of the memberships of CIDVC and the DR Rules Committee. The Committee met monthly since its inception and broke into workgroups to better facilitate the crafting of these proposed rules.

Control by mental, emotional or physical violence is the central issue in these matters. Conflict, whether external or internal, is always present in these court proceedings. There is the internal conflict of whether the court will lend its power in protecting those seeking relief or decline their requests. There is the internal turmoil of whether to proceed at the risk of increased violence, loss of income or even the fear of the loss of a relationship. There is the external conflict

that can occur before, during or after the hearing. The enormous numbers of individuals who seek orders of protection are not represented by attorneys and frequently find the task of entering the court system for assistance to be daunting. Recognizing this complex reality the Committee determined that a need for rules that would guide a person through the procedure with frequent references to statutes to better direct their understanding was needed.

There is a deliberate effort by the Committee to include information within these rules that normally would not be found within rules of procedure. The Committee has intentionally taken a dynamic approach to these specialized rules and with good reason. The singular purpose of protective orders is protection. A large percentage of people seeking the court's protection are *pro se*. These rules are directed to those *pro se* litigants with an eye towards safety and security for them. This Court's Administrative Order 94-14 sought "to recommend changes that would promote safety for victims and providers who interact with them." To better promote safety for victims and providers, it is not unreasonable to take the extra step of informing these members of the public, through these rules, what steps will promote protection. One of the goals of the Committee is to provide the *pro se* litigant with the tools needed to find safety. These rules are driven by a desire to give direction to those who are in fear and unrepresented. When President Bush announced his initiative to broaden the federal effort to address

domestic violence, he created Family Justice Centers. He stated that he expected that effort would begin a national movement of compassion for victims of domestic violence. His formula was simple: open a full-service center and stop the run-around. As the President said, “There’s **a better way to do this.**” At the center of these rules is the Committee’s resolve to establish “a better way to do this.”

These rules do not contemplate any change to our existing statutes, but instead follow as often as possible the language and intent of those laws. This will offer consistency to the process itself. The judicial landscape is governed by three separate sets of rules that offer a landmine filled with potential confusion for those who enter in. Presently these proceedings are governed by the rules of evidence and either the family law rules or the civil rules or both.

The nature of family cases led the DR Rules Committee to adopt an overriding goal to eliminate wherever possible the adversarial nature of court processes for the operation of the family court. They sought problem solving as the dispute-resolution model. Those rules apply in family law matters which are filed in Superior Court. However, the laudable goal of those rules is out of place in domestic violence orders of protection. At a minimum the goal itself can present confusion for the litigant and the judiciary. At its worst, that goal in these cases may be dangerous. The rules in civil cases assume a conflict-driven system that adopts litigation by argument. The complexity of the civil rules driven by the

adversarial approach is unsuited to these protective order cases. Trial by conflict with the extensive discovery rules is equally out of place in these orders of protection.

Unlike family law cases, protective orders are limited in duration by law. By way of example, orders of protection terminate one year after their service upon a defendant. They cannot be extended. Those seeking further relief must file a new action. On the other hand, unlike many civil cases, protective orders anticipate *ex parte* hearings, followed by a potential hearing with notice but with a minimal exchange of discovery, if any. For litigants the uncertainty only deepens as they enter into the world of general jurisdiction courts and limited jurisdiction courts. The family law rules do not apply in limited jurisdiction cases; the civil rules do. If there is an emergency, a litigant may request a protective order in a limited jurisdiction court even if there is a pending family law case in Superior Court. While that order is forwarded to the Superior Court, the perplexity of following civil law rules in the limited jurisdiction court and then switching to family law rules once the case is transferred to Superior Court is real and unfortunate.

The swirl of bewilderment increases when the petitioner is confronted with the rules of evidence. Law school students are required to study the rules of evidence. Lawyers work with these rules throughout their careers. Judges renew

their efforts to better understand these rules with continuing education titles that vary from “The Rules of Evidence,” to “Advanced Rules of Evidence” to any multitude of specialized studies on individual rules or subparts. The simple reality is that the vast majority of individuals who enter the courthouse petitioning for these protective orders relief will know nothing about these evidentiary rules. While evidentiary rules are important, the Committee determined that the more reasonable approach would be to use a standard for evidence that is used in administrative hearings.

The disorientation becomes disproportionate when one considers that while the rules of evidence apply under the rules for civil cases, they do not apply under the rules for family cases . . . unless they do apply in family cases when a request has been made to apply them. Once again the litigant can encounter one set of evidentiary rules at the limited jurisdiction court only to discover a different set of evidentiary standards apply at the Superior Court. This dizzying merry-go-round of procedure would be laughable if the subject matter were not so serious.

Success on any major scale requires one to accept responsibility. This ritual quagmire is the responsibility of the judicial branch to resolve. The Committee established goals and the following mission statement to guide its efforts:

The mission of the Domestic Violence Rules Committee is to 1) establish a comprehensive, statewide set of rules of procedure for protective orders aimed at achieving fair, effective, uniform and timely resolution of cases involving protective orders, and 2) enhance enforcement of protective orders and public safety to the extent possible and appropriate.

The difficulties which this Committee addressed through these rules incorporated the realities of questionable practices that exist in this difficult area and included the blending of these cases between the limited jurisdiction courts and the general jurisdiction court. As is often true with an undertaking, while perfection was sought, there is no claim that it was found. The Committee welcomes and encourages a full comment period to fully review these proposed rules. The Committee requests that in order to aid in the handling of such comments that this court extends the duration of the Committee beyond its present sunset of December 31, 2007.

The acknowledgment that these rules may not be perfect is not an acknowledgement that they are unneeded. These proposed rules resolve many issues that have too long gone unaddressed and offer a reasoned approach to address the manner in which these cases are now handled. At the core of the

efforts of this Committee is an effort to put in place a reasoned, accessible approach to these four types of protective orders to aid the *pro se* litigant.

Those who seek the mystical “silver bullet” that will put an end to domestic violence will not find it within these rules. At the same time, perhaps these rules will offer that which is often most needed but frequently overlooked: Hope. That wonderful deaf and blind woman, Helen Keller, remarked, “The greatest tragedy of life is to have sight, but to lack vision.” These rules have a vision. That vision is set forth within this Court’s Administrative Order 94-14 and is “aimed at achieving fair, effective, uniform and timely resolution of cases involving protective orders.” It is a vision that seeks to enhance public safety. For there to be an ending, there must be a beginning. Let these rules then be a beginning of an ongoing effort by the judiciary to offer “justice for all” in a fair, effective and uniform manner.

II. SUMMARY OF THE PROPOSED RULES

Rule 1. General Administration

A. Applicability of Rules

This rule defines the scope of the rules and to the extent not inconsistent, which other rules of procedure may apply. Throughout these rules there is an intentional and frequent reference to statutes underscore these rules.

B. Definitions

This portion of the rule defines various terms that are used in protective order cases. As with the rest of the rules, an effort is made to assure that a *pro se* litigant can understand the process by referring primarily to the rules themselves. It is not intended to be exhaustive.

C. Access to the Courts

This rule reviews the obligation of the court to be available to issue orders to all individuals regardless of residency or immigration status. It further outlines the procedure which a court must follow to refer a petitioner to a different court for relief.

D. Court Security

This rule outlines the responsibility the court has to ensure that proceedings are conducted in a safe manner.

E. Alternative Dispute Resolution

This rule prohibits the mediation of an order of protection. It sets forth the requirements and method for a referral to alternative dispute resolution (ADR).

F. Children as Protected Persons

This rule addresses the unique findings required to find children as protected persons.

G. Mutual Protective Orders Prohibited.

This rule explains under what circumstances a separate order may be issued but prohibits mutual protective orders in same case.

H. Cross Petitions.

This rule explains the process for handling cross petitions.

I. Multiple Orders, Cross Orders and Conflicting Orders

This rule establishes a uniform procedure for resolving these types of conflicting orders. It formalizes the requirement that the judicial officer must examine available records and question the plaintiff to determine whether there are pre-existing protective orders in place.

J. Transfer of Protective Orders

This rule requires prompt notification to the Sheriff's Office of the issuance of a protective order.

K. No Limit on Number of Protective Orders

This rule provides that there is no limit on how many times a petitioner may seek relief. While there is a possibility of a party utilizing the rule to obtain a collateral appeal, the committee believes the law requires the judicial officer to review the petition and make an independent decision each time a petition is filed.

L. Record of Hearings

This rule provides that all contested protective orders must be recorded and *ex parte* hearings should be.

M. Service of Protective Orders

This rule explains how protective orders are to be served and their effective date as provided by statute.

N. Information for Parties.

This rule is intentionally informational to assure the *pro se* litigant is fully protected once an order is issued.

O. Registration of Protective Order and Affidavit, Acceptance or Return of Service.

This rule standardizes the duty of the issuing court to forward the protective order and proof of service to the sheriff for registration.

P. Offender Treatment Programs

This rule empowers the court to require the defendant to a domestic violence offender treatment program but only after notice and a hearing.

Q. Change of Address

This rule explains the need for the court to be notified of any change in address.

R. Telephonic/Video Conference Proceedings

This rule authorizes the court to conduct the hearing using telephonic or video conferencing.

Comments

Throughout these rules the Committee has used extensive comment to better guide and explain matters in language directed to the pro se litigant.

Rule 2. Fees and Costs

This rule outlines the fees and costs that apply in these various types of protective orders. It also outlines how fee deferrals and waivers may be obtained. Finally it explains that attorney fees and costs may be awarded under statute.

Rule 3. Protected and Unpublished Addresses

This rule provides procedures for a party to protect the party's address if the party believes that physical or emotional harm would result if the address is not protected. It also provides a procedure to serve a party with a protected address. Finally, it requires all parties to keep the Clerk of the Court apprised of their current address.

Rule 4. Family Law Cases

A. Jurisdiction

This rule resolves the potential legal difficulty of the exclusive jurisdiction of the Superior Court in family law matters and the right of parties under law to request emergency relief in limited jurisdiction courts. Rather than seek a statutory change, this rule authorizes the Presiding Judge of each county to determine what practice best fits their county. The Presiding Judge would be authorized to delegate protective orders in family law cases under the guidelines set forth in this rule. This method is similar to the method utilized under existing law to allow limited jurisdiction judicial officers to hear matters as “juvenile hearing officers.” As importantly, this rule establishes that a limited jurisdiction protective order is not invalid even if a family law matter is pending.

B. Child Custody and Parenting Time

This rule prohibits the issuance of protective orders in child custody and parenting cases except under the limited circumstances described in the rule.

Rule 5. Rules of Evidence and Disclosure for Protective Order Hearings

This rule allows an administrative hearing standard for admission of evidence. The judicial officer is intentionally given broad discretion in these matters to assure justice is done. The rule also makes clear that the disclosure

requirements of the rules governing civil cases and the rules governing family law cases do not apply.

Rule 6. Rules of Procedure for Issuing Protective Orders

This rule outlines in a step-by-step process what must occur before the court may issue any protective order. It establishes by rule a best practices standard for the issuance of a protective order. The rule separates the procedures for each of the four types of protective orders covered by these rules. It serves the dual purpose of informing both the judicial officer and the litigants of the findings needed in order to issue the protective order.

Rule 7. Motion To Dismiss, Quash or Modify

This rule establishes the procedure for a party to dismiss, quash or modify a protective order. The purpose of the rule is to establish a best methods practice for the court to follow in modifying any previously issued protective order. It sets standards for the court to follow in considering a modification and what steps must be taken if the order is modified.

Rule 8. Contested Hearing Procedures

This rule provides best practices procedures for the court in setting and conducting contested hearings. It sets forth time deadlines for the court to hold the requested hearing and requires the court to notify the plaintiff of the hearing.

Rule 9. Appeals

This rule explains the orders which may be appealed and to which court the appeal is to be directed to. A denial of an ex parte order may not be appealed.

Rule 10. Forms

This rule sets forth the mandate that all courts and parties shall only use those protective order forms adopted by the Supreme Court. It outlines what dynamic modifications are permitted to the approved forms. It authorizes the Executive Director of the Administrative Office of the Courts to approve the administrative amendments or corrections and in response to changes in the law. The rule also establishes that the court must provide the protective order forms, without charge, to the public upon request. The rule requires the court to have information on emergency and support services in the local area as well as information regarding a safety plan for the litigant.

III. CONCLUSION

Petitioner respectfully requests that the Supreme Court consider this petition and proposed rules at its earliest convenience. Petitioner additionally requests that the petition be circulated for full public comment and that the court adopt the proposed rules as they currently appear or as modified in light of comments received from the public, with an effective date of January 1, 2008.

The approval of these procedural rules will resolve the pervasive confusion and conflict over the applicability of other procedural rules in protective order cases. They bring a needed clarity that will better protect the public we serve. These proposed rules will better assure litigants of fair, effective, uniform and timely resolution of their cases while greatly assisting the courts in the efficient administration of justice.

DATED this 30 day of October 2006.

William J. O'Neil
Presiding Civil Judge
Superior Court of Arizona in Pinal

Original and 6 copies filed with
The Clerk of the Arizona
Supreme Court.

Copy mailed or hand-delivered this _____ day of
October 2007, to:

Chief Justice Ruth V. McGregor
Vice Chief Justice Rebecca White Berch
Justice Michael D. Ryan
Justice Andrew Hurwitz
Justice W. Scott Bales
David K. Byers, Administrative Director
Patience Huntwork, Chief Staff Attorney

