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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)
)
PETITION FOR ADOPTION) Supreme Court No. _____
OF AMENDMENTS TO THE)
ARIZONA RULES OF PROTECTIVE)
ORDER PROCEDURE AND THE)
ARIZONA RULES OF FAMILY LAW)
PROCEDURE)
_____)

**PETITION FOR ADOPTION OF AMENDMENT TO THE
*ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE AND
THE ARIZONA RULES OF FAMILY LAW PROCEDURE***

Pursuant to Rule 28, Rules of the Supreme Court, the Honorable Wendy Million, magistrate in the Tucson City Court and chair of the Committee on the Impact of Domestic Violence and the Courts (CIDVC), petitions the court to amend the *Arizona Rules of Protective Order Procedure* (ARPOP) as reflected in the accompanying Appendix A and a related amendment to the *Arizona Rules of Family Law Procedure* (ARFLP) in Appendix B.

Background. The Domestic Violence Rules Committee (DVRC) was established by Administrative Order 2005-85 to “research other statewide domestic violence rules, study the issues relevant to domestic violence procedural matters in Arizona, and consider alternatives to Rule 96, Domestic Violence Benchbooks in the *Arizona Rules of Family Law Procedure* which may include statewide domestic violence rules.” The DVRC convened in 2005 and during the

next year developed a stand-alone set of procedural rules for protective order cases. In June 2007, the Hon. William J. O'Neil, DRVC chair, submitted a Rule 28 petition, asking the Supreme Court to adopt the Arizona Rules of Protective Order Procedure (ARPOP). The Supreme Court adopted the ARPOP in September 2007, making the rules effective on January 1, 2008. The DVRC, having fulfilled its purpose, was disbanded by AO 2008-08 in 2008.

The Committee on the Impact of Domestic Violence and the Courts (CIDVC), realizing that no formal committee remained to address ARPOP modifications, has taken on the role of responding to petitions to amend this body of rules or recommending changes to the rules when it believes them to be necessary.

Purpose of this Petition. In 2013, CIDVC was among the Arizona Judicial Council (AJC) standing committees that was invited to submit ideas for the 2014-2019 strategic agenda. One of CIDVC's areas of interest was access to the courts, specifically by providing information to self-represented parties following plain language principles. When the *Advancing Justice Together* strategic agenda was announced in 2014, among its initiatives under Goal 3, Improving Court Processes, is an effort to review court rules to "restyle, simplify, and clarify" them. CIDVC members saw this initiative as an opportunity to review the ARPOP in their entirety, with the goal of restyling, simplifying, and clarifying them as much as possible through reorganization and the application of plain language principles.

CIDVC members established a workgroup at their May 13, 2014, meeting. The workgroup met and worked during the summer and submitted its first draft to CIDVC on September 9, 2014, at which time members authorized committee staff to share the draft with the Committee on Limited Jurisdiction Courts (LJC) and the Committee on Superior Court (COSC). Comments from those committees were shared with CIDVC members at its November 18, 2014,

meeting, along with a revised rule draft. At that meeting, CIDVC members approved preparation of a Rule 28 petition to amend the ARPOP and authorized the CIDVC chair, on the committee's behalf, to file this petition.

Restyling Changes. The proposed amendments include stylistic revisions intended to make the rules simpler and clearer. But the most significant change is the reorganization of the rules. The existing ARPOP consist of 10 rules with 49 first-level subdivisions. Rule 1, for example, has subdivisions A through R, the first 18 letters of the alphabet. Beneath these first-level subdivisions lie even more subparts, which make can make citation of a rule challenging (e.g., Rule 6(C)(3)(b)(2)(e)(i)). As this is a major restyling of this set of rules, the usual method of showing changes by underlining and strikeouts has not been used. Rather, two correlation tables (Exhibits C and D) are included. Exhibit C shows the current rules and their location in the proposed rules. Exhibit D directs the reader from the proposed new rules to the current rules.

In considering a major reorganization of the ARPOP, the workgroup studied other Arizona court rules. Some rules, such as the Rules of Civil Procedure, the Rules of Criminal Procedure, and the Rules of Evidence, are built upon an organizational framework of main parts identified by Roman numerals. The rules are then organized within these main parts.

The workgroup reorganized the ARPOP according to a similar structure—10 parts with 42 rules, rather than the current 10 rules with 49 subparts. As an aid to making the rules clearer and easier to follow, the main parts were thoughtfully designed to be a roadmap for users, following the chronology of a protective order case as it unfolds.

The stylistic revisions generally follow the conventions recommended in Bryan Garner's *Guidelines for Drafting and Editing Court Rules* (1996), which was a source for the stylistic revisions in the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

Among the basic principles followed were:

- Using short sentences in the simplest words possible
- Avoiding repetition
- Using plain language
- Avoiding legal jargon and unclear terminology
- Using simplified words of authority such as “must,” “may,” “should,” or “will.”

Substantive Changes. Few substantive changes are proposed, as the major purpose of the ARPOP revision was to restyle, clarify, and simplify the rules. However, the substantive changes that are proposed are explained here.

- The definitions rule (Proposed Rule 3) was revised, and three definitions of “harassment” were added for clarity. A.R.S. §§ 12-1809 and 12-1810, the Injunction Against Harassment (IAH) and the Injunction Against Workplace Harassment (IAWH) statutes, each has its own specific definition of harassment. An IAH requires allegations of at least two acts of harassment, while an IAWH requires only one act of harassment. For an Order of Protection or an Emergency Order of Protection, harassment as defined in A.R.S. § 13-2921 applies.

- Proposed Rule 13(c)-(d) makes clear that the court is to provide each plaintiff with a Plaintiff’s Guide Sheet and include a Defendant’s Guide Sheet with the papers to be served on each defendant. The guide sheets provide important information about the protective order process, including modification or dismissal of the order, contested hearings, and firearms.

- Proposed Rule 20 adds to the current rule on the confidentiality of a plaintiff’s address. Rule 20(b) informs that a plaintiff who is staying in a domestic violence shelter

cannot be compelled to disclose the shelter's location. Rule 20(c) provides notice that a person who is a participant in the Secretary of State's Address Confidentiality Program can ask the court to use the substitute address. The Address Confidentiality Program was established by statute in 2011, several years after the ARPOP had taken effect.

- Clarifying language regarding the scope of the petition was added to Proposed Rule 23 as a result of Savord v. Morton, 235 Ariz. 256, 330 P.3d 1013 (Ariz. Ct. App. 1 2014). In Savord, the Court of Appeals directs courts to either limit the scope of the hearing to the allegations of the petition or allow the plaintiff to amend the petition and reschedule the hearing to give the defendant the opportunity to prepare a defense against new allegations.

- At the request of the Arizona Supreme Court Advisory Committee on the Rules of Evidence, the language in Proposed Rule 36 was amended. It adopts the same evidentiary standard used in the Arizona Rules of Family Law Procedure. The Advisory Committee noted in a comment that the "changes are intended to adopt the same standard for admissible evidence in cases governed by the Arizona Rules of Protective Order Procedure that is used in cases governed by the Arizona Rules of Family Law Procedure when strict compliance with the Arizona Rules of Evidence is not demanded."

- Current Rule 1(N), Information to Parties, was deleted in its entirety. While this information is helpful to the parties, it is not a procedural rule for courts. This content can be found in a booklet, [Things You Should Know About Protective Orders](#), which is published on the AZCourts.gov website. The booklet was recently revised according to plain language principles, and updating the booklet in the future is simpler than amending a court rule.

Request to Amend Other Rules. Rule 13, Arizona Rules of Family Law Procedure, contains a reference to current Rule 1(C)(6), ARPOP. If the revisions to the ARPOP are adopted, the family law rule will need to be amended as well. This amendment is reflected in Appendix B.

Pre-Petition Comments. The proposed rules have been circulated for pre-petition comments to the Limited Jurisdiction Court and Superior Court committees, both of which support the filing of the petition but asking CIDVC to consider their comments. A copy of the draft was shared with the Arizona Justice of the Peace Association; no comments have been received from the association. The presiding judges of the superior court and the Arizona Judicial Council both unanimously voted to support the filing of a petition at their respective December 2014 meetings.

Proposed Post-Petition Public Comment Period and Effective Date. Petitioner respectfully requests that the Court consider this petition and proposed rule changes at its earliest convenience. Petitioner additionally requests that the petition be circulated for public comment until May 20, 2015, 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, 2016.

DATED this 8th day of January, 2015.

Honorable Wendy Million
Magistrate, Tucson City Court

APPENDIX A

Arizona Rules of Protective Order Procedure

Part I. General Administration

1. Scope

These rules govern procedures in Arizona courts for any case brought under Arizona Revised Statutes (“A.R.S.”) § 13-3602, Order of Protection; A.R.S. § 13-3624, Emergency Order of Protection; A.R.S. § 12-1809, Injunction Against Harassment; or A.R.S. § 12-1810, Injunction Against Workplace Harassment.

COMMENT

These rules contain statutory references that may change from time to time. The specific statutory references upon which the rules are based are included as a useful resource for citing the authority. Whenever the word “See” precedes a statutory reference in these rules, this means the cited statute directly supports the preceding text of the rule.

2. Applicability of other rules

To the extent not inconsistent with these rules, the *Arizona Rules of Family Law Procedure* apply to protective order matters heard in conjunction with pending family law cases. In all other cases, the *Arizona Rules of Civil Procedure* apply when not inconsistent with these rules.

3. Definitions

- (a) “**Domestic violence**” means any act specified in A.R.S. § 13-3601(A) combined with any relationship listed in A.R.S. § 13-3601(A).
- (b) “*Ex parte*” means a court procedure carried out for the benefit of one party, without notice to or the presence of the other party.

- (c) **“Harassment,”** when applicable to an Injunction Against Harassment, means a series of acts over any period of time that are directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed, or harassed, and the conduct in fact seriously alarms, annoys, or harasses the person and serves no legitimate purpose. *See* A.R.S. § 12-1809(S).
- (d) **“Harassment,”** when applicable to an Injunction Against Workplace Harassment, means a single threat or act of physical harm or damage or a series of acts over any period of time that would cause a reasonable person to be seriously alarmed or annoyed. *See* A.R.S. § 12-1810(S)(2).
- (e) **“Harassment,”** when applicable to an Order of Protection or an Emergency Order of Protection, means conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed, or harassed and the conduct in fact seriously alarms, annoys, or harasses the person. *See* A.R.S. §§ 13-2921, 13-3601(A), and 13-3624(C).
- (f) **“Legal decision-making”** means the legal right and responsibility of a parent to make major decisions for a child. Legal decision-making may be either joint with both parents or sole with one parent. *See* A.R.S. § 25-401(3).
- (g) **“Protective order,”** as used in these rules, means an Order of Protection, an Emergency Order of Protection, an Injunction Against Harassment, or an Injunction Against Workplace Harassment.

Part II. Types of Protective Orders

4. Protective orders governed by these rules

- (a) **Order of Protection.** An Order of Protection, governed by A.R.S. § 13-3602, may be granted to prevent a person from engaging in acts of domestic violence. It is limited to parties with relationships specified in A.R.S. § 13-3601(A), the domestic violence statute.
- (b) **Emergency Order of Protection.** An Emergency Order of Protection, governed by A.R.S. § 13-3624, may be requested by a peace officer on an emergency or *ex parte* basis when a person's life or health is in imminent danger. It is limited to parties with relationships specified in A.R.S. § 13-3601(A), the domestic violence statute.
- (c) **Injunction Against Harassment.** An Injunction Against Harassment, governed by A.R.S. § 12-1809, may be granted to prevent a person from committing acts of harassment against another. There is no relationship requirement.
- (d) **Injunction Against Workplace Harassment.** An Injunction Against Workplace Harassment, governed by A.R.S. § 12-1810, authorizes an employer to seek a court order preventing a person from being on the employer's premises and from committing acts of harassment against the employer, the workplace, employees, or any other person who is on the employer's property or at the place of business or who is performing official work duties.

Part III. Parties

5. Parties

(a) Plaintiff and other appropriate requesting persons

- (1) *Plaintiff.* The plaintiff is the person or another appropriate requesting person who files the petition for a protective order.

(2) *Plaintiff for an Injunction Against Workplace Harassment.* The plaintiff may be an employer or an authorized agent of the employer.

(3) *Victim.* As used in these rules, the terms “victim” and “plaintiff” are interchangeable.

(4) *Other Appropriate Requesting Persons.*

(A) Parent, Legal Guardian, or Legal Custodian of a Minor. If the person in need of protection is a minor, then the parent, legal guardian, or person who has statutorily defined legal custody of the minor must file the petition unless the court determines otherwise. The petition must name the parent, guardian, or custodian as the plaintiff and the minor as a specifically designated person.

(B) Third Party. If the person in need of protection is either temporarily or permanently unable to request an order, a third party may request a protective order on the person’s behalf. After the request, the judicial officer must determine whether the third party is an appropriate requesting party. *See* A.R.S. §§ 13-3602(A) and 12-1809(A).

(b) Protected person. A protected person is any other specifically designated person who the court has determined should be protected by the order.

(1) *Child as a Protected Person.* A judicial officer cannot include a defendant’s child in a protective order unless there is reasonable cause to believe:

(A) physical harm may result or has resulted to the child, or

(B) the alleged acts of domestic violence involved the child.

(2) *Child and Defendant with No Legal Relationship.* If the defendant and the child have no legal relationship, the judicial officer, upon request, may prohibit the defendant's contact with the child based on danger to the plaintiff.

(c) Defendant.

(1) *Defendant.* The defendant is the person against whom the plaintiff or another appropriate person is seeking protection.

(2) *Minor as a Defendant.* Only the juvenile division of the superior court may issue a protective order against a person under 12 years of age. *See* A.R.S. §§ 13-3602(B)(2) and 12-1809(B)(2).

COMMENTS

Rule 5(a)(3). Crime victims' rights arise upon the arrest or formal charging of a person who is alleged to be responsible for a criminal offense against a victim. *See* A.R.S. § 13-4402(A).

Rule 5(b)(1). A protective order must never be used as a way to modify, amend, affect, or diminish a parent's rights to legal decision-making or parenting time as previously granted in a legal decision-making decree or a parenting time order from a court of competent jurisdiction, unless the judicial officer makes either of the findings listed in subparts (A) and (B) of this paragraph. Under the Violence Against Women Reauthorization Act of 2013, foreign protective orders that include child custody or child support qualify for enforcement through the full faith and credit provision. *See* 18 U.S.C. § 2265 and 42 U.S.C. § 13925(24)(B).

Part IV. Access to Courts

6. Court availability for protective orders

(a) Court Hours. All municipal, justice, and superior courts must be available during normal operating hours to issue and enforce protective orders. For an Emergency Order of Protection after normal operating hours, see Rule 24.

(b) Where to File a Petition. A plaintiff may file a petition for a protective order with any municipal, justice, or superior court judicial officer, regardless of the parties' residence.

All limited and general jurisdiction courts must accept a person's request to file a petition for a protective order even if that particular court does not normally issue protective orders.

(c) Designated Court. Courts located within a one-mile proximity may agree to designate a court for issuance of protective orders. If courts enter into such an agreement, the referring court must provide written or verbal information and directions regarding the designated court and, prior to referral, must ensure that the designated court is open to issue an order that day. If the designated court is not available to issue orders, the referring court must conduct the individual hearing with the plaintiff.

(d) Courts with Part-time Judicial Officers. A court having only a part-time judicial officer must provide coverage for the court, or court staff must direct a person requesting a protective order to the appropriate court location after ensuring a judicial officer is available.

7. Public access to case information

For as long as a plaintiff has the ability by law to have a protective order served or unless otherwise ordered by the court, the court must not make publicly available any information regarding the filing for, contents of a petition for, or issuance of a protective order until proof of service of the protective order has been filed with the court. The court may share information about the protective order with the plaintiff, prosecutors, or law enforcement.

8. Court security

(a) Generally. At all stages of proceedings involving protective orders, the court must:

(1) maintain appropriate security for the parties and court personnel;

- (2) ensure that the parties are treated with fairness, respect, and dignity and are free from intimidation, harassment, or abuse during the court process; and
- (3) provide appropriate safeguards to minimize contact among the parties, their families, and witnesses.

(b) Request for Security. The plaintiff may request the presence of a law enforcement or security officer, if available, in the courtroom during a hearing or for escort to or from the courtroom.

9. Telephonic or video conference proceedings

(a) Grant of Permission. At the request of a party or a witness or on its own motion, the court may allow a party or a witness to testify at any evidentiary hearing or trial by telephone or video conference upon finding that:

- (1) no substantial prejudice will be caused to either party by allowing telephonic or video conference testimony; and
- (2) as to a party, the party is reasonably prevented from attending the hearing or trial;
- (3) as to a witness, the witness is either reasonably prevented from attending or would be unduly inconvenienced by attending the hearing or trial; or
- (4) as to a party or a witness, attendance in person at the hearing or trial would be a burdensome expense.

(b) Documents. Any documents a party wishes to introduce into evidence through a party or a witness appearing telephonically or by video conference must, where practicable, be provided in advance to the party or the witness.

10. No limit on number of protective orders

- (a) No Limit on Requests.** The number of times a plaintiff may request a protective order is not limited.
- (b) No Limit on Orders Granted.** The number of protective orders that courts may grant to the same plaintiff is not limited by statute.
- (c) New Order Pending Expiration of Current Order.** A plaintiff may a petition for another protective order if the plaintiff believes protection is still needed pending expiration of the current protective order.

11. Immigration status

A protective order cannot be denied on the basis of immigration status. *See* 42 § U.S.C. 1981(a).

COMMENT

Immigrants and their children are entitled to the full protection of the law, including protective orders, regardless of status. Denial of a protective order based on national origin would be discriminatory and is prohibited by law. *See* 42 U.S.C. § 1981(a).

12. Party addresses

- (a) Change of Address.** Each party must report any change of address or telephone number to the court to permit notification of any scheduled hearing. If the plaintiff's address and telephone number are protected, any changes must also be protected.
- (b) Continuing Duty to Provide Current Address.** Any person whose address is protected from disclosure has a continuing duty to provide the clerk of the court with a current and correct mailing address where the person can be served or notified.

13. Forms

(a) Mandated Forms. All courts and parties must use only those protective order forms adopted by the Arizona Supreme Court. Individual court identification information, including the name, address, and two assigned court identification numbers, must appear at the top of each form if indicated.

(1) Courts may make margin changes and print only those provisions that apply to the issued order. The first page of every protective order must contain the information in the same format and location as the mandated form.

(2) Any other proposed alterations to or deviations from the approved forms, including text changes, must be submitted to the executive director of the Administrative Office of the Courts for approval prior to use. The executive director is authorized by Arizona Code of Judicial Administration (ACJA) § 5-207 to approve or modify the forms in response to changes in state or federal laws or procedures and make necessary administrative amendments or corrections.

(b) No Charge for Forms. Courts must provide, without charge, all protective order forms, including any form mandated by ACJA § 5-207.

(c) Plaintiff's Guide Sheet. The court must ensure that every plaintiff is given a copy of the *Plaintiff's Guide Sheet*, together with a petition form.

(d) Defendant's Guide Sheet. When issuing a protective order, the court must ensure that a copy of the *Defendant's Guide Sheet* is included with copies of the petition and the protective order for service on the defendant.

14. Filing and service fees

(a) **Notice to Parties.** The court must provide notice to the parties of the following filing and service fees. *See* A.R.S. §§ 12-284, 12-1809, 12-1810, 12-2107, 22-281, and 22-404.

(b) Filing Fees.

(1) A court cannot charge a filing fee for:

(A) a petition for an Order of Protection or an Injunction Against Harassment;

(B) a request to modify an Order of Protection or an Injunction Against Harassment;

(C) a request for a hearing for an Order of Protection, an Injunction Against Harassment, or an Injunction Against Workplace Harassment; or

(D) a motion to dismiss an Order of Protection, an Injunction Against Harassment, or an Injunction Against Workplace Harassment.

(2) A court may charge a filing fee for a petition for an Injunction Against Workplace Harassment pursuant to A.R.S. §§ 12-1810 and 12-284(A).

(3) A court cannot charge a filing fee for a notice of appeal or an answer for an Order of Protection or an Injunction Against Harassment, but a party can be charged the cost of preparing the record.

(4) A court may charge a fee for a notice of appeal of an Injunction Against Workplace Harassment pursuant to A.R.S. § 12-284(A).

(c) Service Fees.

(1) A service fee cannot be charged for:

(A) an Order of Protection that is served by any court-contracted or law enforcement agency. *See* A.R.S. § 13-3602(D).

(B) an Injunction Against Harassment—between parties in a dating relationship—that is served by any court-contracted or law enforcement agency. *See* A.R.S. § 12-1809(D).

(2) For an Injunction Against Harassment—between parties not in a dating relationship—or an Injunction Against Workplace Harassment, the fee is determined by the serving agency. *See* A.R.S. §§ 12-1809(D) and 12-284(A).

(d) Fee Deferrals and Waivers.

(1) A judicial officer may defer or waive any of the fees listed above. *See* A.R.S. § 12-302. A judicial officer cannot require the plaintiff to perform community service as a condition to the waiver or deferral of these fees. Any filing or service fees not waived may be assessed against the plaintiff.

(2) A law enforcement agency or a constable cannot require advance payment of fees for service of process of an Injunction Against Harassment not involving a dating relationship. *See* A.R.S. § 12-1809(D). Court personnel cannot collect advance payment on behalf of the serving agency.

COMMENT

For standards for fee deferrals and waivers, see ACJA § 5-206.

15. Resource information

Courts must make reasonable efforts to direct both parties to information on the Judicial Branch website regarding emergency and support services, approved domestic violence offender treatment programs, safety plans, and other resources. *See* A.R.S. § 13-3602(D).

Part V. Issuance of Protective Orders

16. Commencement of proceedings

A plaintiff must begin an action for a protective order by filing a verified petition with the clerk of the court.

17. Priority for protective orders

A judicial officer must expeditiously schedule an *ex parte* hearing for a protective order involving a threat to personal safety even if previously scheduled matters are interrupted.

18. Record of hearings

A judicial officer must cause all contested protective order hearings and, where practicable, all *ex parte* hearings to be recorded electronically or by a court reporter. An appeal from a contested hearing that was not electronically recorded or otherwise reported results automatically in a new hearing in the original trial court.

19. Prior dismissed orders not considered

A judicial officer must not consider the number of times a protective order has been dismissed as a basis for denying a request for protective relief. Each time a plaintiff petitions for protective relief, the judicial officer must make an independent determination whether there is reasonable cause to issue a protective order under the applicable statute. *See* A.R.S. §§ 13-3602(E), 12-1809(E) and 12-1810(E).

20. Confidentiality of plaintiff's address

- (a) **Protected Address.** At an *ex parte* hearing, a judicial officer must ask whether the plaintiff's address should be protected from disclosure. The plaintiff's address must be protected if it is unknown to the defendant. If the plaintiff's address is protected, the

judicial officer must verify that it does not appear on the petition and the protective order and must avoid stating the address on the record. *See* A.R.S. § 13-3602(C)(1).

(b) Domestic Violence Shelter Address. A plaintiff who is staying in a domestic violence shelter cannot be asked to disclose the location of the shelter. But subject to Rule 12(b), the plaintiff must provide an alternate address to allow for court contact. *See* A.R.S. § 36-3009.

(c) Address Confidentiality Program. A participant in the Address Confidentiality Program may ask the court to use the participant's substitute address as the participant's residential, work, or school address in court records pertaining to a protective order. *See* A.R.S. §§ 41-161 to 169.

21. Other existing orders

(a) Duty to Inquire About Other Existing Protective Orders. Before issuing a protective order, a judicial officer must examine all available records and question the plaintiff to determine whether any other protective order affecting the parties has been issued or served.

(b) Pre-Issuance Hearing. Upon finding that the parties have an existing protective order between them, the judicial officer may schedule a pre-issuance hearing with notice to both parties, unless the judicial officer determines, after reviewing all available records and questioning the plaintiff, that failure to issue the *ex parte* protective order is likely to result in imminent danger to the plaintiff or a protected person.

(c) Orders Affecting Family Law Matters. If a protective order conflicts with an existing legal decision-making order, the protective order controls until further order of a court.

22. Mutual protective orders prohibited

A judicial officer cannot:

- (1) grant a mutual protective order, which means a single order that restrains the conduct of both the plaintiff and the defendant;
- (2) issue a protective order that restricts the plaintiff's conduct based on the plaintiff's own petition; or
- (3) issue two protective orders within the same case number.

COMMENT

States that issue mutual protective orders may be at risk of losing federal funding. *See* 18 U.S.C. § 2265.

23. Order of Protection

- (a) **Individual Hearing.** A judicial officer must conduct an individual hearing with each plaintiff who requests an Order of Protection.
- (b) **Contents of Petition.** In the petition, the plaintiff must:
 - (1) allege each specific act of domestic violence that will be relied on at hearing, and
 - (2) name each person the plaintiff believes should be protected by the order.
- (c) **Petition Verification.** A plaintiff must sign and swear or affirm to the truth of the petition before a judicial officer or another person authorized to administer an oath. If the plaintiff signs the petition outside the presence of the judicial officer or another authorized person, the judicial officer should ask the plaintiff, on the record, to affirm the truth of the allegations and the authenticity of the signature in the petition.

(d) Petition Review. A judicial officer must review the petition, any other pleadings on file, and any other evidence offered by the plaintiff, including any evidence of harassment by electronic contact or communication. *See* A.R.S. § 13-3602(E).

(e) Reasonable Cause Determination.

(1) To grant an *ex parte* Order of Protection, a judicial officer must find reasonable cause to believe that the defendant may commit an act of domestic violence or has committed an act of domestic violence within the past year or within a longer period if the court finds good cause exists to consider a longer period. Periods when a defendant was absent from the state or incarcerated are excluded from the one-year calculation. *See* A.R.S. § 13-3602(E)-(F).

(2) A separate reasonable cause determination must be made as to the plaintiff individually and as to any other person listed in the petition, including any child with whom the defendant has a legal relationship. A separate reasonable cause determination is not required for a plaintiff's child with whom the defendant has no legal relationship.

(f) Relationship Test.

(1) A judicial officer must find that a specific relationship exists, either by statute, blood, or marriage, between the plaintiff and the defendant. *See* A.R.S. § 13-3601(A).

(2) Statutory relationships include:

(A) persons who are residing or who have resided in the same household;

(B) a victim and a defendant who have a child in common;

(C) a victim or a defendant who is pregnant by the other party;

- (D) the victim is a child who resides or has resided in the same household as the defendant, and
 - (i) is related by blood to a former spouse of the defendant, or
 - (ii) is related by blood to a person who resides, or who has resided in the same household as the defendant; or
- (E) a victim and a defendant who currently share or previously shared a romantic or sexual relationship. In determining whether the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship, the court may consider the following factors:
 - (i) the type of relationship;
 - (ii) the length of the relationship;
 - (iii) the frequency of the interaction between the victim and the defendant; and
 - (iv) if the relationship has terminated, the length of time since the termination.
- (3) Blood relationships include a victim related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother, or sister.
- (4) Marriage relationships include:
 - (A) a victim and a defendant who are either married or who have been previously married, and
 - (B) a victim who is related to the defendant or the defendant's spouse by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law, or sister-in-law.
- (5) The relationship test is also met when a plaintiff acts on behalf of a victim if any of the following apply:

(A) the plaintiff is the parent, legal guardian, or person who has legal custody of a minor or an incapacitated person who is a victim, unless the court determines otherwise, or

(B) the victim is either temporarily or permanently unable to request an order. *See* A.R.S. § 13-3602(A).

(g) Additional Review for Limited Jurisdiction Courts. A court must ask the plaintiff whether a family law action is pending in the superior court and determine whether the court has jurisdiction pursuant to Rule 34.

(h) Relief. When issuing an Order of Protection, *ex parte* or after a hearing, a judicial officer may:

- (1) prohibit the defendant from having any contact with the plaintiff or other protected persons, with any exceptions specified in the order. *See* A.R.S. § 13-3602(G)(3).
- (2) grant the plaintiff exclusive use of the parties' residence if there is reasonable cause to believe that physical harm otherwise may result. *See* A.R.S. § 13-3602(G)(2). A plaintiff who is not the owner of the residence may be granted exclusive use for a limited time. The defendant may be permitted to return one time, accompanied by law enforcement, to pick up personal belongings. At a contested hearing, a judicial officer may consider ownership of the parties' residence as a factor in continuing the order of exclusive use.
- (3) order the defendant not to go on or near the residence, place of employment, or school of the plaintiff or other protected persons. Other specifically designated locations may be included in the order. If the defendant does not know the address of

these additional places, a judicial officer may, at the plaintiff's request, protect the additional addresses. *See* A.R.S. § 13-3602(G)(3).

- (4) grant the plaintiff the exclusive care, custody, or control of any animal that is owned, possessed, leased, kept, or held by the plaintiff, the defendant, or a minor child residing in the residence or household of the plaintiff or the defendant and order the defendant to stay away from the animal and forbid the defendant from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect in violation of A.R.S. § 13-2910, or otherwise disposing of the animal. *See* A.R.S. § 13-3602(G)(7).
- (5) grant relief that is necessary for the protection of the plaintiff and other specifically designated persons and proper under the circumstances. *See* A.R.S. § 13-3602(G)(6).

(i) Firearms

- (1) When issuing an Order of Protection, *ex parte* or after a hearing, the judicial officer must ask the plaintiff about the defendant's use of or access to firearms to determine whether the defendant poses a credible threat to the physical safety of the plaintiff or other protected persons.
- (2) Upon finding that the defendant is a credible threat to the physical safety of the plaintiff or other protected persons, the judicial officer may, for the duration of the Order of Protection:
 - (A) prohibit the defendant from possessing, purchasing, or receiving firearms; and
 - (B) order the defendant, immediately after service of the Order of Protection, to transfer any firearm owned or possessed, to the appropriate law enforcement agency. *See* A.R.S. § 13-3602(G)(4).

(3) A plaintiff reporting violations of the order to transfer firearms must be referred to the appropriate law enforcement agency.

(j) Effectiveness. An Order of Protection takes effect when it is served. *See* A.R.S. § 13-3602(K).

(k) Denial of Request or Setting of Pre-Issuance Hearing. If after the *ex parte* hearing the judicial officer has insufficient information on which to issue an order, the judicial officer may either deny the request or set a hearing within 10 days and provide reasonable notice to the defendant. The judicial officer must document denial of any request. *See* A.R.S. § 13-3602(F).

COMMENTS

Rule 23(e). Significant or repetitive acts of domestic violence by the defendant that posed a grave danger to the plaintiff or protected persons may present good cause to consider time periods beyond the one year.

Rule 23(h)(2)-(3). If the residence is included in the no-contact provision of an Order of Protection, an apartment number must not be listed. By listing the address and location without the apartment number, the defendant is prohibited from being on the premises, including the parking lot.

Rule 23(i). The appropriate law enforcement agency referenced in subpart (2)(B) is generally the police department or the sheriff's office with jurisdiction over the location of the defendant or the firearm.

24. Emergency Order of Protection

(a) Authority to Issue an Emergency Order of Protection.

- (1) In a county having a population of 150,000 or more, the presiding judge of the superior court in that county must make available on a rotating basis a judge, a justice of the peace, a magistrate, or a commissioner to issue an Emergency Order of Protection by telephone during hours that the courts are closed. *See* A.R.S. § 13-3624(A).
- (2) In a county having a population of less than 150,000, a judge, a justice of the peace, a magistrate, or a commissioner may issue an Emergency Order of Protection by telephone. *See* A.R.S. § 13-3624(B).

(b) Issuance. A judicial officer may issue an order in writing or orally:

- (1) if a law enforcement officer has reasonable grounds to believe that a person is in immediate and present danger of domestic violence based on an allegation of a recent incident of actual domestic violence, or
- (2) at the plaintiff's request upon finding that the plaintiff's life or health is in imminent danger. *See* A.R.S. §§ 13-3624(C) and (F).
- (3) The availability of an Emergency Order of Protection is not affected by either party leaving the residence. *See* A.R.S. § 13-3624(G).

(c) Relief. When issuing an Emergency Order of Protection, a judicial officer may:

- (1) enjoin the defendant from committing an act of domestic violence;
- (2) grant one party exclusive use and possession of the parties' residence if there is reasonable cause to believe that physical harm may otherwise result;

- (3) restrain the defendant from contacting the plaintiff or other specifically designated persons and coming near the residence, place of employment, or school of the plaintiff or other designated persons, if there is reasonable cause to believe that physical harm may otherwise result; or
- (4) prohibit the defendant from possessing or purchasing a firearm for the duration of the order, after finding that the defendant may inflict bodily injury or death on the plaintiff. *See* A.R.S. § 13-3624(D).

(d) Service.

- (1) A law enforcement officer who receives verbal authorization for an Emergency Order of Protection is required to:
 - (A) complete and sign the emergency order as instructed by the judicial officer;
 - (B) give a copy of the Emergency Order of Protection to the plaintiff or an appropriate third party;
 - (C) arrange for service upon the defendant; and
 - (D) file a certificate of service with the court and verbally notify the sheriff's office that a judicial officer has issued an Emergency Order of Protection. *See* A.R.S. § 13-3624(F).

- (f) Duration.** An emergency order expires at the close of the next judicial business day following the day of issuance, unless the court extends it. *See* A.R.S. § 13-3624(E). The plaintiff may file a petition for an Order of Protection on the next judicial business day.

COMMENT

Regardless of the authorizing judicial officer's jurisdiction, the judicial officer may issue an Emergency Order of Protection using the superior court name and case number. Statute requires

the law enforcement agency to file the Emergency Order of Protection and proof of service in superior court.

25. Injunction Against Harassment

- (a) Individual Hearing.** The judicial officer must conduct an individual hearing with each plaintiff who requests an Injunction Against Harassment.
- (b) Contents of Petition.** The petition must 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) and (S).
- (c) 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. If the plaintiff signs the petition outside the presence of the judicial officer or another authorized person, the judicial officer should ask the plaintiff, on the record, to affirm the truth of the allegations and the authenticity of the signature in the petition.
- (d) Petition Review.** A judicial officer must 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.
- (e) Findings Required.**

 - (1) The judicial officer must issue an Injunction Against Harassment upon finding:

 - (A) reasonable evidence that the defendant has committed a series of acts of harassment against the plaintiff during the year preceding the filing; or
 - (B) that good cause exists to believe that great or irreparable harm would result to the plaintiff if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition and specific facts attesting to the plaintiff's

efforts to give notice to the defendant or reasons supporting the plaintiff's claim that notice should not be given. *See* A.R.S. § 12-1809(E).

(f) Relief. When issuing an Injunction Against Harassment, *ex parte* or after a hearing, a judicial officer may:

- (1) prohibit all contact with the plaintiff or other protected persons, except as otherwise specifically ordered in writing by the court. *See* A.R.S. § 12-1809(F)(2).
- (2) prohibit the defendant from going near the residence, place of employment, or school of the plaintiff or other protected persons. The judicial officer may include other specifically designated locations in the Injunction Against Harassment. *See* A.R.S. § 12-1809(F)(2).
- (3) grant relief that is necessary for the protection of the plaintiff and other specifically designated persons and that is proper under the circumstances. *See* A.R.S. § 12-1809(F)(3).

(g) Firearms. The judicial officer must ask the plaintiff about the defendant's use of or access to firearms. If necessary to protect the plaintiff or any other specifically designated person, the judicial officer may prohibit the defendant from possessing, purchasing, or receiving firearms for the duration of the order.

(h) Denial of Request or Setting of Pre-Issuance Hearing. If after the *ex parte* hearing the judicial officer has insufficient information on which to issue an order, the judicial officer may either deny the request or set a hearing within 10 days and provide reasonable notice to the defendant. The judicial officer must document denial of any request. *See* A.R.S. § 12-1809(E).

COMMENT

There is no statutory provision regarding an Injunction Against Harassment that would prohibit issuance by a limited jurisdiction court when a family law action is pending in superior court.

26. Injunction Against Workplace Harassment

- (a) **Individual Hearing.** A judicial officer must hold an individual hearing with each plaintiff—an employer or an authorized agent of the employer—who requests an Injunction Against Workplace Harassment.
- (b) **Contents of Petition.** The petition must allege at least one act of harassment and the dates of occurrence. *See* A.R.S. § 12-1810(C)(3).
- (c) **Petition Verification.** The plaintiff must sign and swear or affirm to the truth of the petition before a judicial officer or another person authorized to administer an oath. If the plaintiff signs the petition outside the presence of the judicial officer or another authorized person, the judicial officer should ask the plaintiff, on the record, to affirm the truth of the allegations and the authenticity of the signature in the petition.
- (d) **Petition Review.** A judicial officer must review the petition, any other pleadings on file, and any evidence offered by the plaintiff. *See* A.R.S. § 12-1810(E).
- (e) **Findings Required.**
 - (1) The judicial officer must issue an Injunction Against Workplace Harassment upon finding:
 - (A) reasonable evidence of workplace harassment by the defendant during the year preceding the filing; or
 - (B) that good cause exists to believe that great or irreparable harm would result to the plaintiff or to another person who enters the plaintiff's property or who is

performing official work duties if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition and upon finding specific facts attesting to the plaintiff's efforts to give notice to the defendant or reasons supporting the plaintiff's claim that notice should not be given.

(f) Relief. When issuing an Injunction Against Workplace Harassment, *ex parte* or after a hearing, a judicial officer may:

(1) restrain the defendant from coming near the employer's property or place of business and restrain the defendant from contacting the employer or other person while that person is on or at the employer's property or place of business or is performing official work duties. *See* A.R.S. § 12-1810(F)(1).

(2) grant relief that is necessary for the protection of the plaintiff, employees, or other persons who enter the employer's property and that is proper under the circumstances. *See* A.R.S. § 12-1810(F)(2).

(g) Denial of Petition or Setting of Pre-Issuance Hearing. If after the *ex parte* hearing the judicial officer has insufficient information on which to issue an order, the judicial officer may either deny the request or set a hearing within 10 days and provide reasonable notice to the defendant. The judicial officer must document denial of any request.

COMMENT

There is no statutory provision regarding an Injunction Against Workplace Harassment that would prohibit issuance by a limited jurisdiction court when a family law action is pending in superior court.

27. Cross petitions

- (a) **Separate Orders.** Where each party has separately petitioned a court for a protective order, a judicial officer may grant separate protective orders upon finding that each petitioning party is entitled to protection and has requested appropriate relief. The judicial officer should make reasonable effort to ensure that no conflicting relief is granted.
- (b) **Hearing on Separate Petitions.** If opposing parties file separate petitions for protective orders, the judicial officer may:
- (1) hear each petition at separate *ex parte* hearings, or
 - (2) set a joint hearing on both cases.
- (c) **Case Numbers.** The cross petition may be assigned a new case number or a case number associated with a pending family law case in superior court. But if a court assigns the same number to a family law and a protective order case, the court cannot allow remote electronic access to any case information regarding the registration, filing of a petition for, or issuance of the protective order, if such publication would be likely to reveal to the general public the identity or location of the party protected by the order. *See* Rule 123(g)(1)(E)(ii) and (iii), *Rules of the Supreme Court*. *See also* 18 U.S.C. § 2265(d)(3).

28. Conflicting orders

- (a) **Effectiveness of Conflicting Orders.** When two parties have obtained conflicting protective orders, both orders must be given full force and effect, regardless of whether the orders were issued by courts of limited or general jurisdiction.
- (b) **Hearing on Conflicting Orders.** If two judicial officers have issued protective orders that involve the same parties and grant conflicting relief, the orders must be set for hearing within five court business days after discovery of the conflict. The judicial

officers who issued the conflicting orders must consult with each other and assign the cases to one jurisdiction to resolve the parts that conflict. Between two limited jurisdiction orders, it is presumed that the court where the first petition was filed will conduct the hearings to resolve the conflicting orders. In all other cases, the conflicting orders must be heard in superior court. *See* A.R.S. § 13-3602(H).

29. Alternative dispute resolution

(a) Prohibition on Mediation of an Order of Protection. Parties to an Order of Protection cannot be referred to alternative dispute resolution (ADR) regarding the Order of Protection. *But see* Rule 67(B)(3), *Arizona Rules of Family Law Procedure*, regarding mediation of parenting time or legal decision-making when an Order of Protection is in effect.

(b) Mediation of a Harassment Injunction. If the court determines that an ADR process is appropriate for a harassment injunction case, the court may refer the case to ADR.

(c) Notification Regarding Nonparticipation in ADR. Before beginning ADR, each party must be notified in writing or orally in open court of the ability to decline to participate in ADR. Neither party can be required to appear for ADR pending determination of this matter.

COMMENT

Matters other than family or domestic violence may be appropriate for alternative dispute resolution. These controversies should be considered separately from domestic and family violence issues.

Domestic violence matters may impact alternative dispute resolution, and it is important for domestic violence victims to have an opt-out prerogative. The Mediation and Domestic Violence

Policy adopted by the American Bar Association House of Delegates in July 2000 states:

“RESOLVED, That the American Bar Association recommends that court-mandated mediation include an opt-out prerogative in any action in which one party has perpetrated domestic violence upon the other party.”

30. Offender treatment programs

(a) When Offender Treatment May Be Ordered. After a hearing of which the defendant had notice and in which the defendant had an opportunity to participate, a judicial officer may order the defendant to complete a domestic violence offender treatment program that is approved by the department of health services or a probation department or any other program deemed appropriate by the court. *See* A.R.S. § 13-3602(G)(5).

(b) Noncompliance with Offender Treatment. If a judicial officer becomes aware that a defendant has failed to comply with an order to complete a domestic violence offender treatment program, the judicial officer may refer the matter to an appropriate law enforcement agency. A superior court judicial officer may also set the matter for an Order to Show Cause hearing. *See* A.R.S. § 13-3602(N).

COMMENT

Anger management programs and couple's counseling are not substitutes for domestic violence offender treatment programs. A list of approved facilities that provide misdemeanor domestic violence treatment programs can be obtained from the Arizona Department of Health Services, Division of Licensing Services, Office of Behavioral Health Licensing. The list of DHS-approved providers is also published on the Judicial Branch website.

Part VI. Service and Registration

31. Service of protective orders

- (a) **Who Can Effect Service.** A protective order can be served only by a person authorized by Rule 4(d), *Arizona Rules of Civil Procedure*, A.R.S. §§ 13-3602(R), 12-1809(R), or 12-1810(R) or as otherwise provided in this rule.
- (b) **Expiration of an Unserved Order.** A protective order expires if it is not served on the defendant, together with a copy of the petition, within one year from the date the judicial officer signs the protective order. *See* A.R.S. §§ 13-3602(K), 12-1809(J) and 12-1810(I).
- (c) **Certification Not Required.** There is no requirement that the copy of the order served on the defendant be certified.
- (d) **Service of a Modified Order.** The service and registration requirements applicable to the original protective order also apply to a modified protective order.
- (e) **Acceptance of Service.** 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. In superior court, the minute entry must reflect the method of service that was used.
- (f) **Service in Court.** If the defendant is present in court and refuses to sign an acceptance of service form, the judicial officer must have the defendant served in open court by a person specially appointed by the court. A judicial appointment to effectuate service may be granted freely, is valid only for the service of the protective order or modification entered in the cause, and does not constitute an appointment as a registered private process server. A specially appointed person directed to serve such process must be a court employee who is at least 21 years old and cannot be a party, an attorney, or the

employee of an attorney in the action whose process is being served. If such an appointment is entered on the record, a signed order is not required provided a minute entry reflects the special appointment and the nature of service.

(g) Service at the Scene. If a defendant is physically present with the plaintiff and has not yet been served, a peace officer may be summoned to the scene and may use the plaintiff's copy of the protective order to effect service on the defendant.

(h) Filing the Proof of Service. The original proof of service must be promptly filed with the clerk of the issuing court. If mailed, proof of service must be postmarked no later than the end of the seventh court business day after the date of service. Proof of service may be submitted by facsimile, provided the original proof of service is promptly filed with the court. *See* A.R.S. §§ 13-3602(M), 12-1809(L) and 12-1810(K).

(i) Effective Date. An initial protective order takes effect when the defendant is served with a copy of the order and the petition, and it expires one year from the date it is served. A modified order takes effect upon service but expires one year after service of the initial order.

COMMENT

The defendant must be personally served because 1) personal service on the defendant satisfies the criminal notice requirement if a violation of the protective order is prosecuted under criminal statutes, and 2) unless the affidavit of service, acceptance of service, or return of service shows personal service on the defendant, many sheriffs' offices, which are the holders of record, will not accept a protective order for entry into protective order databases.

32. Registration of protective order and proof of service

- (a) **Notification to Sheriff.** Each issuing court must, within 24 hours of receipt of 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(M), 12-1809(L) and 12-1810(K).
- (b) **Central Repository.** Each county sheriff is required to maintain a central repository so the existence and validity of protective orders may be verified. *See* A.R.S. §§ 13-3602(M), 12-1809(L) and 12-1810(K).
- (c) **Notice of Modified or Dismissed Order.** Within 24 hours after entry, the court must send notice of modification or dismissal of a protective order to the sheriff in the county where the original protective order is registered. The modification or dismissal order must be in writing and sent electronically via facsimile or e-mail, not by telephone, to the sheriff.
- (d) **Validity.** A protective order, whether or not registered, is a valid court order one year from the date of service.

33. Notification of transferred protective order

A court that transfers a protective order to another court must, within 24 hours, notify its sheriff's office in writing of the transfer and update information in its case management system.

Part VII. Family Law Cases

34. Jurisdiction

- (a) **Superior Court Jurisdiction.** The superior court has exclusive jurisdiction to issue a protective order when a family law action is pending between the parties. A limited

jurisdiction court must refer a plaintiff who has a pending family law action to the superior court. An action is pending if either:

- (1) an action has begun but no final judgment, decree, or order has been entered, or
- (2) a post-decree proceeding has begun but no final order determining that proceeding has been entered. *See* A.R.S. § 13-3602(P).

(b) Limitation on Limited Jurisdiction Courts. A limited jurisdiction court cannot issue a protective order if the plaintiff's petition or other evidence reveal that an action for maternity, paternity, annulment, legal decision-making and parenting time, dissolution of marriage, or legal separation is pending in an Arizona superior court. Nevertheless, if a limited jurisdiction court does issue a protective order when an action for maternity, paternity, annulment, legal decision-making, legal separation, or dissolution of marriage is pending in superior court, the order is valid and effective. *See* A.R.S. § 13-3602(P).

(c) Transfer to Superior Court. If, after issuance of a protective order, a limited jurisdiction court is notified in writing or verifies that a family law action is pending, the court must promptly transfer all documents relating to the protective order to the superior court.

- (1) Within 24 hours of notification, all papers, together with a certified copy of docket entries or other records, must be transferred to the superior court where the action is pending. Proof of service that arrives after the protective order has been transferred to the superior court must be sent to the superior court immediately.
- (2) Despite this transfer requirement, unless prohibited by a superior court order, a limited jurisdiction court may hold a hearing on all matters relating to an *ex parte*

protective order if the hearing was requested before the court received written notice of the pending superior court action.

- (3) If a hearing has been requested in a transferred case, the superior court must hold the hearing within five days if exclusive use of the residence is involved and within 10 days for all other cases. This time period begins on the date the transferred protective order is filed with the superior court.

35. Legal decision-making and parenting time

(a) Provisions for Legal Decision-Making and Parenting Time. Except as otherwise provided in this rule, a protective order cannot contain provisions regarding legal decision-making or parenting time issues. Legal issues such as maternity, paternity, child support, legal decision-making, parenting time, dissolution of marriage, or legal separation may be addressed only by the superior court in a separate action under A.R.S. Title 25.

(b) Contact Between a Child and a Defendant Who Have a Legal Relationship. Before granting a protective order prohibiting contact with a child with whom the defendant has a legal relationship, the judicial officer must consider:

- (1) whether the child may be harmed if the defendant is permitted to maintain contact with the child, and
- (2) whether the child may be endangered if there is contact outside the presence of the plaintiff.

(c) Provisions for Parenting Time and Child Exchanges.

- (1) A limited jurisdiction court that issues an order prohibiting contact with the plaintiff cannot include exceptions that allow the defendant to come near or contact the

plaintiff in person for legal decision-making or parenting time with a child. A limited jurisdiction court may allow contact by mail or e-mail to arrange parenting time and may provide for child exchanges under circumstances not involving contact with the plaintiff in person.

(2) A superior court judicial officer may issue a protective order or modify an existing protective order that includes an exception allowing the defendant to come near or contact the plaintiff in person to implement a legal decision-making or a parenting time order after considering the following factors and making specific findings on the record:

(A) feasible alternatives regarding contact to carry out the legal decision-making or parenting time order, such as exchanges at a protected setting, a public facility or other safe haven, or through a third person;

(B) the parties' wishes;

(C) each party's history of domestic violence;

(D) the safety of the parties and the child;

(E) each party's behavioral health; and

(F) reports and recommendations of behavioral health professionals.

(d) Modification of an Existing Protective Order. Any change made by a superior court judicial officer to an existing protective order must be included in a modified protective order. Each change must be set forth in the modified protective order with sufficient detail to assure understanding and compliance by the parties and ease of enforcement by law enforcement officers. The superior court judicial officer must obtain an acceptance of service signed by the defendant if the parties are present at the time the modification is

made. If the defendant refuses to sign an acceptance of service, the judicial officer must have the defendant served in open court in accordance with Rule 31.

- (e) **Active Legal Decision-Making Order.** When a family law action is not pending but there is an active legal decision-making order issued by an Arizona court that involves a child of the defendant, a limited jurisdiction court may issue an *ex parte* protective order but then must transfer the matter to the superior court in accordance with procedures set forth in Rule 34.

COMMENT

When a Title 25 action is pending, family law judicial officers should refer to the options in A.R.S. § 25-403.03(F), including supervised exchanges for parenting time, when a protective order is in effect.

Part VIII. Contested Protective Order Hearings

36. Admissible evidence

- (a) **Relevant Evidence and Exclusions.** Relevant evidence is admissible provided, however, that the court must exclude evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, undue delay, wasting time, needlessly presenting cumulative evidence, or lack of reliability.
- (b) **Reports, Documents, or Forms as Evidence.** Any report, document, or standardized form required to be submitted to a court may be considered as evidence if either filed with the court or admitted into evidence by the court.

COMMENT

Rule 36(a). This rule is intended to give the court broad discretion in determining whether proffered evidence is admissible in any individual protective order hearing. The language of Rule

36(a) has been amended to adopt the standard used in Rule 2(B)(2) of the *Arizona Rules of Family Law Procedure*, except the “or failure to adequately and timely disclose same,” given Rule 37 provides that disclosure requirements generally “do not apply to hearings on Orders of Protection, Injunctions Against Harassment and Injunctions Against Workplace Harassment.” These changes are intended to adopt the same standard for admissible evidence in cases governed by the *Arizona Rules of Protective Order Procedure* that is used in cases governed by the *Arizona Rules of Family Law Procedure* when strict compliance with the *Arizona Rules of Evidence* is not demanded. To the extent those standards differed under the prior rules, this amendment is a change in the standard for admissible evidence in cases governed by the *Arizona Rules of Protective Order Procedure*.

Rule 36(b). This rule allows the court to consider as evidence at any stage of the proceedings any report or document ordered or required by the court to be submitted to the court, such as drug testing results and reports from offender treatment programs, custody evaluators, conciliation services, family law masters, parenting coordinators, and other court-appointed experts.

37. Disclosure

The disclosure requirements in Rule 26.1, *Arizona Rules of Civil Procedure*, and Rules 49 and 50, *Arizona Rules of Family Law Procedure*, do not apply to hearings on Orders of Protection, Injunctions Against Harassment, and Injunctions Against Workplace Harassment, unless otherwise specifically ordered by the court.

38. Contested hearing procedures

- (a) Requesting a Hearing.** At any time while a protective order or a modified protective order is in effect, a defendant may request one hearing in writing. *See* A.R.S. §§ 13-3602(I), 12-1809(H), 12-1810(G).
- (b) Scheduling the Hearing.** A judicial officer must hold the hearing at the earliest possible time.
- (1) If an Order of Protection grants exclusive use of the residence, a judicial officer must hold a hearing within five court business days of the request.
- (2) For all other protective orders, a judicial officer must hold a hearing within 10 court business days of the request unless the judicial officer finds good cause to continue the hearing for a longer period of time.
- (c) Notice of Hearing.** The court must notify the plaintiff of the hearing. There is no statutory requirement for personal service of the hearing notice.
- (d) Court Security Measures.** The court must take reasonable measures to ensure that the parties and any witnesses at the hearing are not subject to harassment or intimidation in the courthouse or on adjoining property. For each hearing, the judicial officer must determine whether there is a need to have a law enforcement officer or a security officer present to help ensure the hearing is orderly or to provide escort for either party. The court may direct the defendant to remain in the courtroom for a period of time after the plaintiff is excused.
- (e) Parties' Right to Be Heard.** The judicial officer must ensure that both parties have an opportunity to be heard, to present evidence, and to call and examine and cross-examine witnesses.

- (f) **Oath or Affirmation.** The court must administer an oath or affirmation to all parties and witnesses at all hearings.
- (g) **Standard of Proof.** For a protective order to remain in effect as originally issued or as modified at a hearing, the plaintiff must prove the case by a preponderance of the evidence.
- (h) **Basis for Continuing, Modifying, or Revoking Protective Orders.** At the conclusion of the hearing, the judicial officer must state the basis for continuing, modifying, or revoking the protective order.
- (i) **Service of Modified Protective Order.** The plaintiff or the court must arrange for service of a modified protective order on the defendant. A judicial officer should assist this process by asking the defendant to sign an acceptance of service form in the courtroom.

39. Costs and attorney fees

- (a) **Award.** 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(P), 12-1809(O), and 12-1810(O).
- (b) **Considerations.** In determining whether to award costs or attorney fees, the judicial officer may consider:
- (1) the merits of the claim or the defense asserted by the unsuccessful party;
 - (2) whether the award will pose an extreme hardship on the unsuccessful party; and
 - (3) whether the award may deter others from making valid claims.

Part IX. Motions to Modify or Dismiss

40. Motion to modify

- (a) Request for Modification.** A plaintiff may ask for modification of a protective order at any time during the term of the order.
- (b) Verification of Identity.** When a plaintiff files a motion to modify, court personnel must verify the plaintiff's identity.
- (c) Modification Prior to Contested Hearing Request.** If a contested hearing has not yet been requested or held, the judicial officer must personally interview the plaintiff and make sufficient inquiry of the plaintiff to determine that the plaintiff is not making the request under duress or coercion.
- (d) Modification After Contested Hearing or Request for Contested Hearing.** If a contested hearing has been requested or has occurred, the motion to modify must be set for hearing with notice to the defendant.
- (e) Service and Registration of a Modified Order.** The service and registration requirements applicable to the original protective order also apply to a modified protective order. *See* Part VI. Service and Registration.

41. Motion to dismiss

- (a) Request for Dismissal.** A plaintiff may request the dismissal of a protective order at any time during the term of the order.
- (b) Verification of Identity.** When a plaintiff files a motion to dismiss, court personnel must verify the plaintiff's identity.

(c) **Personal Interview.** The judicial officer must personally interview the plaintiff and make sufficient inquiry of the plaintiff to determine that the plaintiff is not making the request under duress or coercion.

(d) **Request with Defendant Present.** If the plaintiff and the defendant appear jointly on a motion to dismiss, the judicial officer may interview the plaintiff separately only if the defendant has been served but has not requested a hearing.

(e) **Request with Defendant Absent.** If the plaintiff requests dismissal of an order and the defendant is not present, the judicial officer may act without notice to the defendant.

Part X. Appeals

42. Appeals.

(a) **Appealable Orders.** The following orders are appealable:

- (1) An order denying a petition for an Order of Protection, an Injunction Against Harassment, or an Injunction Against Workplace Harassment.
- (2) An Order of Protection, an Injunction Against Harassment, or an Injunction Against Workplace Harassment that is entered, affirmed, modified, or quashed after a hearing at which both parties had an opportunity to appear.
- (3) An *ex parte* protective order is not appealable; rather, a defendant may contest it by requesting a hearing as set forth in Part VIII. Contested Protective Order Hearings.

(b) **Court to Which Appeal Must Be Made.** Orders are appealed as follows:

- (1) An order entered by a limited jurisdiction court is appealed to the superior court.
- (2) An order entered by a superior court is appealed to the court of appeals.

COMMENT

A protective order entered by a limited jurisdiction court after a hearing at which both parties had an opportunity to appear may be appealed to the superior court. *See* A.R.S. §§ 13-3602(P), 12-1809(O), and 12-1810(O). The procedures to be followed are set forth in A.R.S. § 22-261 for justice courts, are made applicable to municipal courts by A.R.S. § 22-425, and are governed by the *Superior Court Rules on Appellate Procedure-Civil*.

APPENDIX B¹

Arizona Rules of Family Law Procedure

Rule 13. Public Access to Proceedings and Records

A. – C. [no change]

D. Access to Records. Records of family court proceedings shall be maintained and disclosed in accordance with Rule 123, *Rules of the Supreme Court*, Rule ~~1(C)(6)~~ 7, *Arizona Rules of Protective Order Procedure*, and Rule 43 of these rules. Unless otherwise provided in Rule 123, *Rules of the Supreme Court*, or Rule ~~1(C)(6)~~ 7, *Arizona Rules of Protective Order Procedure*, the court may, upon a finding that the confidentiality or privacy interests of the parties, their minor children, or other person whose information appears of record outweighs the public interest in disclosure, make any record of a family court matter closed or confidential or otherwise limit access to such records.

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

APPENDIX C

Current Rule Number		Proposed Rule Number	
Rule 1. General Administration			
1.A.	Applicability of Rules		
	1.A.1. Scope of these Rules	1	Scope
	1.A.2. Applicability of Other Rules	2	Applicability of other rules
1.B.	Definitions	3	Definitions
	1.B.1. Parties	5	Parties
	1.B.2. Protective Orders	4	Protective orders governed by these rules
1.C.	Access to the courts and protective order case information		
	1.C.1. – 1.C.4.	6	Court availability for protective orders
	1.C.5.	11	Immigration status
	1.C.6.	7	Case information
1.D.	Court security		
	1.D.1.- 1.D.3.	8	Court security
	1.D.4.	38	Contested hearing procedures (d) Court Security Measures
1.E.	Alternative dispute resolution	29	Alternative dispute resolution
1.F.	Children as protected persons	5	Parties (b)(1) Minor as a protected person
1.G.	Mutual protective orders prohibited	22	Mutual protective orders prohibited
1.H.	Cross petitions	27	Cross petitions
1.I.	Multiple orders, cross orders and conflicting orders	21	Other existing orders
		28	Conflicting orders
1.J.	Transfer of protective orders	33	Transfer of protective orders
1.K.	No limit on number of protective orders	10	No limit on number of protective orders
		19	Prior dismissed orders not considered
1.L.	Record of hearings	18	Record of hearings
1.M.	Service of protective orders	31	Service of protective orders
1.N.	Information for parties		<i>deleted</i>
1.O.	Registration of protective order and affidavit, acceptance or return of service	32	Registration of protective order and proof of service
1.P.	Offender treatment programs	30	Offender Treatment Programs
1.Q.	Change of address	12	Party Addresses (a) Change of address
1.R.	Telephonic/video conference proceedings	9	Telephonic or video conference proceedings
Rule 2. Fees and Costs			
2.A.	Notice to parties	14	Filing and services fees (a) Notice to Parties
2.B.	Fee deferrals and waivers	14	Filing and service fees (b) Fee deferrals and waivers
2.C.	Costs and attorneys' fees	39	Costs and attorneys' fees

Current Rule Number		Proposed Rule Number	
Rule 3. Protected and Unpublished Addresses			
3.A.	Confidentiality of plaintiff's address	20	Confidentiality of Plaintiff's Address
3.B.	Continuing duty to provide the clerk with current address	12	Party Addresses (b) Continuing duty to provide current address
Rule 4. Family Law Cases			
4.A.	Jurisdiction	34	Jurisdiction
	4.A.5.	5	Parties 5(c)(2) Minor as a defendant
4.B.	Child custody and parenting time	35	Legal decision-making and parenting time
	4.B.3.	5	Parties 5(b)(2) Minor and defendant with no legal relationship
Rule 5. Rules of Evidence and Disclosure for Protective Order Hearings			
5.A.	Admissible evidence	36	Admissible evidence
5.B.	Disclosure	37	Disclosure
Rule 6. Rules of Procedure for Issuing Protective Orders			
6.A.	Commencement of proceedings	16	Commencement of proceedings
6.B.	Priority for protective orders	17	Priority for protective orders
6.C.	Order of Protection	23	Order of Protection
6.D.	Emergency Orders of Protection	24	Emergency Order of Protection
6.E.	Injunction Against Harassment	25	Injunction Against Harassment
6.F.	Injunction Against Workplace Harassment	26	Injunction Against Workplace Harassment
Rule 7. Motion to Dismiss, Quash or Modify			
7.A.	Motion to dismiss or quash	40	Motion to dismiss
7.B.	Motion to modify	41	Motion to modify
Rule 8. Contested Hearing Procedures		38	Contested hearing procedures
Rule 9. Appeals		42	Appeals
Rule 10. Forms			
10.A.	Forms adopted by the Arizona Supreme Court	13	Forms adopted by the Arizona Supreme Court (a) Mandated forms
10.B.	Courts required to provide all forms without charge	13	Forms adopted by the Arizona Supreme Court (b) No charge for forms
10.C.	Information sheet on available emergency and support services	15	Resource information
10.D.	Safety plan	15	Resource information

APPENDIX D

Proposed Rule Number		Current Rule Number	
<i>Part I. General Administration</i>			
1	Scope	1	A.1. Scope of these Rules
2	Applicability of other rules	1	A.2. Applicability of Other Rules
3	Definitions	1	B. Definitions
<i>Part II. Types of Protective Orders</i>			
4	Protective orders governed by these rules	1	B.2. Protective Orders
	Order of Protection	1	B.2.d. Order of Protection
	Emergency Order of Protection	1	B.2.a. Emergency Order of Protection
	Injunction Against Harassment	1	B.2.b. Injunction Against Harassment
	Injunction Against Workplace Harassment	1	B.2.c. Injunction Against Workplace Harassment
<i>Part III. Parties</i>			
5	Parties	1	B.1. Parties
	(a) Plaintiff and other appropriate requesting persons		
	(1) Plaintiff	1	B.1.b.1. Plaintiff
	(2) Victim	1	B.1.d. Victim
	(3) Other appropriate requesting persons	1	B.1.b.2. Other Appropriate Requesting Parties
	(b) Protected person	1	B.1.c. Protected Persons
	(1) Minor as a protected person	1	F. Children as Protected Persons
	(2) Minor and defendant with no legal relationship	4	B.3.
	(c) Defendant		
	(1) Defendant	1	B.1.a. Defendant
(2) Minor as a defendant	4	A.5.	
<i>Part IV. Access to Courts</i>			
6	Court availability for protective orders	1	C.1.-4.
7	Public access to case information	1	C.6.
8	Court security	1	D. Court Security
9	Telephonic or video conference proceedings	1	R. Telephonic/Video Conference Proceedings
10	No limit on number of protective orders	1	K. No Limit on Number of Protective Orders
11	Immigration status	1	C.5.
12	Party addresses		
	(a) Change of address	1	Q. Change of Address
	(b) Continuing duty to provide current address	3	B. Continuing Duty to Provide the Clerk with Current Address
13	Forms adopted by the Arizona Supreme Court	10	Forms

Proposed Rule Number		Current Rule Number	
	(a) Mandated forms	10	A. Forms adopted by the Arizona Supreme Court
	(b) No charge for forms	10	B. Courts Required to Provide All Forms Without Charge
14	Filing and service fees	2	Fees and Costs
	(a) Notice to parties	2	A. Notice to Parties
	(b) Fee deferrals and waivers	2	B. Fee Deferrals and Waivers
15	Resource information	10	C. Information Sheet on Available Emergency and Support Services D. Safety Plan
<i>Part V. Issuance of Protective Orders</i>			
16	Commencement of proceedings	6	A. Commencement of Proceedings
17	Priority for protective orders	6	B. Priority for Protective Orders
18	Record of hearings	1	L. Record of Hearings
19	Prior dismissed orders not considered	1	K. No Limit on Number of Protective Orders
20	Confidentiality of plaintiff's address	3	A. Confidentiality of Plaintiff's Address
21	Other existing orders	1	I. Multiple Orders, Cross Orders and Conflicting Orders
22	Mutual protective orders prohibited	1	G. Mutual Protective Orders Prohibited
23	Order of Protection	6	C. Order of Protection
24	Emergency Order of Protection	6	D. Emergency Order of Protection
25	Injunction Against Harassment	6	E. Injunction Against Harassment
26	Injunction Against Workplace Harassment	6	F. Injunction Against Workplace Harassment
27	Cross petitions	1	H. Cross Petitions
28	Conflicting orders	1	I. Multiple Orders, Cross Orders and Conflicting Orders
29	Alternative dispute resolution	1	E. Alternative Dispute Resolution
30	Offender treatment programs	1	P. Offender Treatment Programs
<i>Part VI. Service and Registration</i>			
31	Service of protective orders	1	M. Service of Protective Orders
32	Registration of protective order and proof of service	1	O. Registration of Protective Order and Affidavit, Acceptance or Return of Service
33	Transfer of protective orders	1	J. Transfer of Protective Orders
<i>Part VII. Family Law Cases</i>		4	Family Law Cases
34	Jurisdiction	4	A. Jurisdiction
35	Legal decision-making and parenting time	4	B. Child Custody and Parenting Time
<i>Part VIII. Contested Protective Order Hearings</i>			
36	Admissible evidence	5	A. Admissible Evidence
37	Disclosure	5	B. Disclosure
38	Contested hearing procedures	8	Contested Hearing Procedures

Proposed Rule Number		Current Rule Number	
	(a) Requesting a hearing	8	A. Requesting a Hearing
	(b) Notice of hearing	8	B. Notice of Hearing
	(c) Court security measures	8	C. Court Security Measures
	(d) Parties' right to be heard	8	D. Parties' Right to Be Heard
	(e) Oath or affirmation	8	E. Oath or Affirmation
	(f) Standard of proof	8	F. Standard of Proof
	(g) Basis for continuing, modifying or revoking protective orders	8	G. Basis for Continuing, Modifying or Revoking Protective Orders
	(h) Service of modified protective order	8	H. Service of Modified Protective Order
39	Costs and attorneys' fees	2	C.
<i>Part IX. Motions to Dismiss or Modify</i>		7	Motion to Dismiss, Quash or Modify
40	Motion to dismiss	7	A. Motion to Dismiss or Quash
41	Motion to modify	7	B. Motion to Modify
<i>Part X. Appeals</i>			
42	Appeals	9	Appeals
	(a) Appealable orders	9	A. Appealable Orders
	(b) Court to which appeal must be made	9	B. Court to Which Appeal Is to Be Made