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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of: )  
 )  
PETITION TO AMEND RULE 31, ) Supreme Court  
ARIZONA RULES OF PROTECTIVE ) No. R-16-00\_\_\_\_  
ORDER PROCEDURE )  
\_\_\_\_\_ )

**PETITION TO AMEND RULE 31,**

**ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE**

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend Rule 31, Arizona Rules of Protective Order Procedure (ARPOP), as reflected in the accompanying Appendix A.

**Purpose.** The purpose of the proposed amendment is to expedite service of Orders of Protection by clarifying that courts are permitted to transmit orders to law enforcement agencies electronically, while simultaneously providing safety to a domestic violence victim.

The Order of Protection statute, A.R.S. § 13-3602(D), requires a plaintiff, upon issuance of an Order of Protection, to request service of the order by city police, the county sheriff, or a constable, depending on the type of court that issued the order. City police are to serve orders issued by city courts; constables are to serve orders issued by justice of the peace courts; and county sheriffs are to serve orders issued by superior courts. The Injunction Against Harassment statute, A.R.S. § 12-1809(D), contains similar language.

A protective order becomes effective when it is served on the defendant. Under Arizona statute, law enforcement or a process server has seven business days to return proof of service to the court. After the court receives the proof of service, the court has 24 hours to record service and forward the protective order and proof of service to the county sheriff, who is the holder of record. An officer who wishes to confirm validity of the order for enforcement purposes must contact the holder of record for that confirmation.

For many plaintiffs, delivering the order to the correct law enforcement agency can be challenging. The plaintiff must first locate the correct agency and then deliver the paperwork to it. Determining the correct agency can be confusing, and transportation can be difficult. Some Arizona courts have attempted to assist plaintiffs in this endeavor by transmitting orders—by fax, email, or simply by having a designated location where law enforcement routinely picks up orders—to

a cooperating law enforcement agency where the defendant resides, is employed, or can be located. Other courts have participated in the Glendale Police Department's protective order coordinator project in which eleven partner cities in Maricopa County work with one coordinator to effect cross-jurisdictional service across the valley.

Through these projects, orders are timely served, courts receive proof of service expeditiously, and plaintiffs can find out more quickly when their orders have been served.

The purpose of an Order of Protection is to provide safety to the plaintiff. Advocates report that violence can escalate when a domestic violence victim attempts to leave the relationship, increasing the risk of harm, including serious and life-threatening injuries. The seven-business day time period given to law enforcement for providing proof of service to the court can be problematic. As a practical matter, seven consecutive business days is actually nine calendar days as this time must include two weekend days. The court then has 24 hours to transmit the order to the sheriff, who then can confirm validity of the order upon request by a law enforcement officer. These can be ten days of increased risk to a victim who does not know if or when the protective order has been served.

This time lag also presents enforcement problems. A plaintiff who claims that the defendant has violated the order between the time it was served and the

time the sheriff can confirm its validity will have challenges with enforcement. An officer responding to a call that the order has been violated will not be certain that a valid order is in effect until the sheriff can confirm it.

While some courts have developed processes for electronic transmission of orders to law enforcement, others may be reluctant to do so without appropriate authority through court rule. This proposed rule change would provide that authority. Not only will this rule change expedite service of orders and optimize communication between courts and law enforcement, it will improve customer service and provide options for plaintiffs.

**Substantive Changes.** The proposed amendment to Rule 31, ARPOP, will allow a court to transmit documents for service of an Order of Protection or an Injunction Against Harassment based on a dating relationship to a cooperating law enforcement agency or a private process server under contract with a court. There are no fees for service of Orders of Protection or Injunctions Against Harassment based on dating relationships, so this modification would have no impact on fees.

**Pre-Petition Comments.** This petition has not been circulated for pre-petition comments.

**Request for a Modified Comment Period.** As this petition has not been circulated for pre-petition comments and the public and various stakeholders have

not had an opportunity to comment, a modified comment period is requested as follows:

April 20, 2016: First round of comments due

May 20, 2016: Amended petition due

June 15, 2016: Second round of comments due

July 13, 2016: Reply due

**Conclusion.** Petitioner requests that the Court open this petition for comments during the modified periods described above. Petitioner additionally requests that the Court adopt the proposed rule, either as filed or as modified after comments, with an effective date of January 1, 2017.

DATED this 11<sup>th</sup> day of January, 2016.

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David K. Byers

## APPENDIX A

### Arizona Rules of Protective Order Procedure

#### 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) Transmission of an Order of Protection or an Injunction Against Harassment.** Upon issuance of an Order of Protection or an Injunction Against Harassment based on a dating relationship, and at the plaintiff's request, a court may transmit the documents for service to a cooperating law enforcement agency or a private process server under contract with the court.

~~(e)~~ **(d) Certification Not Required.** There is no requirement that the copy of the order served on the defendant be certified.

~~(d)~~ **(e) Service of a Modified Order.** The service and registration requirements applicable to the original protective order also apply to a modified protective order.

~~(e)~~ **(f) 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)~~ **(g) 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)~~ **(h) 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)~~ **(i) 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)~~ **(j) 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.