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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of: )  
 )  
Petition to Amend Rule 123, Rules )  
of the Supreme Court, and Rules 7, ) Supreme Court No. R-19-\_\_\_\_\_  
10,20, 23, 24, 25, 26, 31, 32, 33, )  
36, and 42 of the Arizona Rules )  
of Protective Order Procedure )  
\_\_\_\_\_ )

Pursuant to Arizona Supreme Court Rule 28, Wendy A. Million, chair of the Committee on the Impact of Domestic Violence and the Courts, respectfully petitions this Court to amend Rule 123, Rules of the Supreme Court, and the Arizona Rules of Protective Order Procedure (ARPOP), as reflected in the accompanying Appendices A and B, to bring them into conformity with recent amendments to Arizona statutes, to add clarity, and to correct several omissions.

**BACKGROUND**

In the 2018 53<sup>rd</sup> Legislature, Second Regular Session, the legislature passed House Bill 2249, and the governor signed it into law. The bill modifies statutes that govern Orders of Protection (OP), Emergency Orders of Protection (EOP), Injunctions Against Harassment (IAH), and Injunctions Against Workplace Harassment (IAWH). The

modifications take effect January 1, 2020. The Arizona Rules of Protective Order Procedure (ARPOP) guide Arizona courts in the management of these four protective orders. To assist courts in implementing the modifications, some of the rules require revision. CIDVC also proposes changes to several rules either to clarify them or to correct omissions.

## **DISCUSSION**

### **I. Rule changes necessitated by HB2249.**

A. *Service.* One of the most significant changes in protective order procedure will be how the domestic violence Order of Protection (OP) will be given to law enforcement for service. Under current law, a plaintiff who obtains an OP from a court is responsible for requesting service by delivering the petition and the order to law enforcement, a constable, or a private process server. The plaintiff has one year from the date the order is issued to request service. If the plaintiff fails to do so, the order expires. When HB2249 takes effect on January 1, 2020, the responsibility of moving the paperwork to law enforcement for service will shift to the courts.

The Arizona Criminal Justice Commission (ACJC) provided the impetus for HB2249. ACJC recognized that only about 50 percent of the protective orders issued by Arizona courts each year are served on defendants.<sup>1</sup> This results in fewer orders being registered with the National Crime Information Center (NCIC), and

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<sup>1</sup> The reasons for lack of service vary. A plaintiff could decide not to request service, allowing the order to expire unserved; a defendant could actively avoid service; or law enforcement could be unable to locate the defendant.

subsequently, unavailable to the National Instant Criminal Background Check System (NICS). A person who attempts to purchase a firearm from a federally licensed dealer must submit to a NICS background check. A valid protective order can stop the sale of the firearm—but only if information about the protective order is in the NCIC database. ACJC’s objective was to increase the number of protective orders in the NCIC database and, in turn, expand the data available to the NICS, with the ultimate goal of keeping firearms out of the hands of domestic violence abusers.

This change is significant for Arizona domestic violence victims. Victim advocates will play a key role in informing plaintiffs that delivering the OP to law enforcement for service will no longer be the plaintiff’s decision or obligation. The Arizona Coalition to End Sexual and Domestic Violence (ACESDV) supported HB2249 and is aware of the role that advocates must play in helping victims adapt to this change. Advocates will make efforts to educate victims on the process, so they understand that the filing of a petition and the issuance of an OP will prompt the court to transmit the paperwork to law enforcement for service on the defendant.

A.R.S. § 13-3602, as revised, will then require law enforcement to communicate with the plaintiff about the status of service. As soon as practicable after serving the order, law enforcement will have to inform the plaintiff that service is complete. If the service is not accomplished within fifteen days, law

enforcement will be required to follow up with the plaintiff regarding status and to ask for additional information that might improve chances of service.

Service-related rules in need of modification are:

- Rule 123 and Rule 7. Rule 123(d)(3), Rules of the Supreme Court, and Rule 7, ARPOP, are nearly identical. Each must be amended to eliminate the reference to the plaintiff's ability to control service.
- Rule 31. Changes to Rule 31 are needed to guide courts on implementation of the duty to transmit the Order of Protection to law enforcement for service. The revised statute is silent as to the timeframe in which courts must transmit the order. CIDVC proposes that the court transmit the petition and the order to the appropriate law enforcement agency on the same day the order issued. An exception could be granted only if the court finds extenuating circumstances and makes a finding on the record as to the nature of those circumstances. If the court delays service, the delay should last no longer than 72 hours.

During the legislative session, ACJC representatives presented the draft legislation to several AJC standing committees, including CIDVC, the Committee on Superior Court (COSC), and the Committee on Limited Jurisdiction Courts (LJC). At COSC, concern was raised that the judge should be able to delay service if necessary—for example, if the plaintiff had not made a safety plan, was unaware that the court would be sending

the order out for service quickly, or if the OP would impact a related domestic relations case.

CIDVC members are concerned that delaying service for anything other than extenuating circumstances would undercut the legislative intent to increase the number of orders served on defendants. Permitting the plaintiff to ask for a delay or allowing the court to hold on to the OP for an indefinite amount of time would maintain the status quo—with orders going unserved without explanation. Therefore, CIDVC proposes that the judge could order delayed service only if there are extenuating circumstances that must be articulated on the record. In such an event, the court could delay transmission of the OP for no more than 72 hours.

B. *Supreme Court as repository.* Another major change in HB2249 is that it makes the Arizona Supreme Court—rather than each county sheriff—the central repository for OPs and the two types of harassment injunctions. The exception is the Emergency Order of Protection, for which each county sheriff will continue to be the repository. The legislative revisions further obligate the issuing court—rather than each county sheriff—to register each served order with NCIC within 24 hours. The AOC IT Division is in the process of building a central case registry, part of which will be a database with protective order case information from every limited and general jurisdiction court in Arizona. When an order is served, the issuing court must update its case information system. The AOC will

receive the service information from the issuing court and then transmit data to NCIC to meet the statutory requirement.

Rules in need to revision to address changes in the repository are:

- Rule 32. The modification documents the requirements for courts to transmit data to NCIC and for the Arizona Supreme Court to maintain a central protective order repository.
- Rule 33. This change eliminates the requirement for courts to the county sheriff when a protective order is transferred to another court.

C. *Confidentiality of plaintiff's contact information*. Amendments to the OP and IAH statutes will require the courts to keep the plaintiff's address and contact information confidential, regardless of whether the defendant knows that information.

- Rule 20. The proposed amendment would require the judicial officer to (1) ensure that the plaintiff's address and contact information do not appear on either the petition or the protective order and (2) avoid stating the plaintiff's address or contact information on the record.

D. *Emergency Order of Protection*. Amendments to A.R.S. § 13-3624 will require law enforcement to register the EOP with NCIC, instead of notifying the county sheriff about issuance of the EOP. The EOP will last for 72 hours or until the end of the next judicial business day, whichever is longer. Currently, the EOP expires

at the end of the next judicial business day. The revision also will require the judicial officer to document issuance of the EOP.

- Rule 24. Proposed revisions will advise courts of law enforcement's obligation to register the EOP with NCIC, the EOP's extended duration, and the documentation requirement.

**II. Rule changes to add clarity.** This petition includes a request to clarify two ARPOP rules.

- Rule 36. The Advisory Committee on Rules of Evidence has recommended that this rule be amended so that it mirrors Rule 403, Arizona Rules of Evidence. CIDVC supports this request.
- Rule 42. CIDVC proposes that this rule be amended to make clear that a protective order is final and appealable and, therefore, not subject to Rule 54(c), Rules of Civil Procedure, or Rule 78(c), Rules of Family Law Procedure.

**III. Corrective rule changes.** CIDVC requests the amendment of four ARPOP rules that require correction, grammatical improvement, or to resolve omissions.

- Rule 10. The proposed amendment adds the word *file*, which was inadvertently omitted when this rule was revised in 2015.
- Rule 23. The proposed amendment adds the relative pronoun *who* in place of the gerund *reporting* for grammatical improvement.
- Rule 25. The proposed amendment adds language advising that the IAH is effective upon service. This language parallels Rule 23(j), which applies to the

OP. This part of Rule 25 was inadvertently omitted when this rule was revised in 2015.

- Rule 26. The proposed amendment adds language advising that the IAWH is effective upon service. This language parallels Rule 23(j), which applies to the OP. This part of Rule 26 was inadvertently omitted when this rule was revised in 2015.

### CONCLUSION

For the reasons stated above, CIDVC respectfully asks the Court to adopt the proposed amendments to Rule 123(d)(3), Rules of the Supreme Court, as set forth in Appendix A, and ARPOP Rules 7, 10, 20, 23, 24, 25, 26, 31, 32, 33, 36, and 42, as set forth in Appendix B. CIDVC members unanimously approved a draft petition at their November 13, 2018, meeting, and authorized the CIDVC chair to file it on their behalf.

**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, 2019, 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, 2020.

Respectfully submitted this 9th day of January, 2019.

/s/  
\_\_\_\_\_  
Honorable Wendy A. Million  
Magistrate, Tucson City Court

## APPENDIX A

### RULES OF THE SUPREME COURT

#### **123(d). Access to Case Records.**

(1) – (2) [no changes]

(3) *Protective Orders.* ~~For as long as a plaintiff has the court ability by law to have a protective order served on a~~ Unless otherwise ordered by the court, the custodian shall not make publicly available any information regarding the filing of or 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 custodian may permit law enforcement agencies to access these records when necessary to carry out their official responsibilities.

(4) – (5) [no changes]

## APPENDIX B

### RULES OF PROTECTIVE ORDER PROCEDURE

#### 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, t~~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.

#### 10. No limit on number of protective orders

(a) – (b) [no changes]

(c) **New Order Pending Expiration of Current Order.** A plaintiff may file a petition for another protective order if the plaintiff believes protection is still needed pending expiration of the current protective order.

#### 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. A judicial officer must verify that the plaintiff's residential address and contact information do not appear on the petition or the protective order. The judicial officer must avoid stating the plaintiff's residential address or contact information on the record. See A.R.S. §§ 12-1809(C)(1) and 13-3602(C)(1).~~

(b) – (c) [no changes]

#### 23. Order of Protection

(a) – (h) [no changes]

##### (i) Firearms

(1) – (2) [no changes]

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

(j) – (k) [no changes]

**COMMENT** [no changes]

## 24. Emergency Order of Protection

(a) – (c) [no changes]

### (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~~ register the emergency order with the National Crime Information Center as soon as practicable. See A.R.S. § 13-3624(F).

(e) **Duration.** An emergency order expires at the close of the next judicial business day following the day of issuance, ~~unless the court extends it~~ or within 72 hours of issuance, whichever is longer. See A.R.S. § 13-3624(E). The plaintiff may file a petition for an Order of Protection on the next judicial business day.

**(f) Documentation.** The judicial officer who issues an oral Emergency Order of Protection must document the issuance of the order as soon as practicable.

COMMENT [no changes]

## 25. Injunction Against Harassment

(a) – (h) [no changes]

**(i) Effectiveness.** An Injunction Against Harassment takes effect when it is served. See A.R.S. 12-1809(J).

## 26. Injunction Against Workplace Harassment

(a) – (g) [no changes]

**(h) Effectiveness.** An Injunction Against Workplace Harassment takes effect when it is served. See A.R.S. 12-1810(I).

## 31. Service of protective orders

(a) – (b) [no changes]

**(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 with the approval of the plaintiff, a court may must transmit the

~~documents for service to a cooperating~~ the appropriate law enforcement agency or a private process server under contract with the court constable. The court must transmit the documents on the same day the Order of Protection is issued, unless the judicial officer makes a finding on the record that extraordinary circumstances exist. If the judicial officer delays service because of extraordinary circumstances, the judicial officer must indicate a time, not to exceed 72 hours, by which the court must transmit the order to the appropriate law enforcement agency or constable for service.

**(d) – (h)** [no changes]

**(i) Filing the Proof of Service.** ~~The original p~~Proof of service must be promptly filed with the clerk of the issuing court as soon as practicable after service but no later than 72 hours, excluding weekends and holidays. 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~~ electronically, or in person. See A.R.S. §§ 13-3602(M)(P), 12-1809(L) and 12-1810(K).

**(j)** [no changes]

#### **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)~~**(a) Registration; central repository.** Within 24 hours of return of service, every Order of Protection, Injunction Against Harassment, and Injunction Against Workplace Harassment must be registered by the issuing court with the National Crime Information Center. The supreme court will maintain a central repository for these types of protective orders.

~~(e)~~**(b) 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 the case information in its case management system.

### **36. Admissible evidence**

**(a) Relevant Evidence and Exclusions.** The court must limit the scope of the hearing to the allegations of the petition. Relevant evidence is admissible provided, however, that the court ~~must~~ may exclude relevant evidence if its probative value is substantially 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)** [no changes]

**COMMENT** [no changes]

### **42. Appeals**

**(a) Appealable Orders.** The following orders, which are not subject to Rule 54(c), Rules of Civil Procedure, or Rule 78(c), Rules of Family Law Procedure, 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-<sub>2</sub> Contested Protective Order Hearings.

**(b)** [no changes]

**COMMENT** [no changes]