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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND
RULE 14, ARIZONA RULES OF
PROTECTIVE ORDER PROCEDURE

Supreme Court No. R-__-_____

**Petition to Amend Rule 14,
Arizona Rules of
Protective Order Procedure**

Pursuant to Rule 28, Rules of the Supreme Court, Mike Palmer, writing on behalf of the Coalition to Stop Abuse of Civil Harassment Law,¹ petitions this Court to make amendments to Rule 14 of the Rules of Protective Order Procedure as below.

I. BACKGROUND

The Arizona Legislature has made it clear that litigants in civil IAH's should not be charged a fee to have access to the courts.

For example, plaintiff's in civil Injunctions Against Harassment (IAH's) are

¹ The Coalition is a loose collection of Arizona residents (including a Law Enforcement officer) who have been abused by civil Injunction law. (I.e., who have been vindicated on appeal, but whose reputations will forever be tarnished - much like what happened to U.S. Supreme Court Justice Brett Kavanaugh.)

not to be charged a fee to petition, per A.R.S. § 12-1809(D). Similarly, defendants in civil IAH's are not be charged a fee for a challenge hearing, per § 12-1809(H). And litigants are not be charged a fee to appeal a civil IAH, per § 12-1809(O).

And, for the most part, ARPOP Rule 14 carries out the Legislature's overall intent.

A. Purpose #1

Except that, in what the Coalition presumes was an oversight by the Legislature, the Legislature failed to anticipate that in appealing a civil IAH, a litigant has to pay a \$26 fee to prepare the record for appeal. (That fee set by A.R.S. §12-284.)

Currently, ARPOP Rule 14(b)(3) simultaneously recognizes both the intent of the Legislature and its instant oversight by saying "A court cannot charge a filing fee for a notice of appeal ..., but a party *can* be charged the cost of preparing the record." (Our emphasis on "can.")

Although the Rule is technically correct, it is not right to charge a litigant the cost of preparing the record, as it is tantamount to charging a litigant a fee to appeal. (Since preparing the record is a necessary prerequisite for an appeal.)

While \$26 might not sound like a lot of money, for some, paying \$26 up front is a hardship, effectively barring them access to the court.

While ARPOP Rule 14(d)(1) allows a judicial officer to waive the fee for preparing the record, that typically requires an Application for Waiver, which in

itself a hardship on the pro se litigant and should not be necessary simply because the Legislature goofed. (A hardship on the court too, adjudicating all the extra paperwork.)

Given the Legislature's intent that litigants in civil IAH's not be charged a fee for access to the courts, the Coalition proposes that the "*can* be charged the cost of preparing the record" in ARPOP Rule 14(b)(3) be changed to "should not be charged." (As allowed by A.R.S. § 12-302(H)(8) we presume.)

Aside: Note that Rule 14(b)(3) also covers the same fee for an appeal of criminal Orders of Protection. While the Coalition's focus is on civil IAH's, it is just as just that litigants in criminal OOP's not be charged to appeal their case either, since that is the Legislature's intent for them also.

B. Purpose #2

Along similar lines, the Coalition also requests that this Court waive postage and handling fees for service in anticipation of A.R.S. §12-1809; Version 2 coming into effect on January 1, 2020.

One of the changes in Version 2 is that, in a civil IAH action, the plaintiff's address and contact information will automatically be "sealed." (See A.R.S. § 1809; Version 2 (C)(1).)

Without a plaintiff's address or contact information, defendants in civil IAH's will not be able to comply with Ariz. R.Civ.P. 5(a)(2) to serve copies of motions, appeals, etc. on plaintiffs. So, for example, a defendant will not be able to certify that

he has mailed a copy of his Appellant Memorandum to the Appellee, as currently required by Court's Pro-Se Guide, *Appealing a Civil Case to the Superior Court*.

The Coalition's fear is that the courts will work around this problem by charging defendants a "postage and handling" fee of \$7 every time it is necessary for a defendant to mail a copy of a motion, appeal, etc. to the plaintiff.

But forcing defendants to pay to serve their accusers does not comport with the Legislature's intent that defendants in civil IAH's not be charged a fee to have access to the courts.

So, in anticipation of A.R.S. §12-1809; Version 2 going into effect next year, the Coalition requests that Rule 14(c)(1) be amended to add new Rule 14(c)(1)(C) to say that a service fee cannot be charged for: "postage and handling to mail a litigant's paperwork to the plaintiff." (Could make the counties automatically pay for it per A.R.S. § 12-302(H)(6), since the Legislature has effectively hamstrung defendants from locating their plaintiffs for service?)

Aside: Note that someone in the court system will need to update the Pro Se Guides to reflect that it is no longer incumbent on defendants to Certify that they mailed paperwork to a plaintiff. Rather, the language might need to be changed to reflect that the defendant lodged a copy of the paperwork with the clerk of the court, and it is for the clerk to mail the paperwork to the plaintiff. (Perhaps the clerks will have to Certify that they mailed the paperwork to the plaintiff?)

II. Contents of the Proposed Rule Amendment

Rule 14

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(b) Filing Fees.

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

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(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~~ nor should a party be charged the cost of preparing the record.

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(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).

(C) postage and handling to serve a litigant defendant's paperwork on the plaintiff.

SUBMITTED this 10th day of January 2019.

By /s/Mike Palmer