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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of) Supreme Court No. R-19-0009
)
PETITION TO AMEND RULE 123, RULES OF) COMMENT IN SUPPORT OF PETITION
THE ARIZONA SUPREME COURT, AND) TO AMEND RULE 123, RULES OF THE
RULES 7, 10, 20, 23, 24, 25, 26, 31, 32, 33, 36,) ARIZONA SUPREME COURT, AND
AND 42 OF THE ARIZONA RULES OF) RULES 7, 10, 20, 23, 24, 25, 26, 31, 32, 33,
PROTECTIVE ORDER PROCEDURE) 36, AND 42 OF THE ARIZONA RULES
) OF PROTECTIVE ORDER PROCEDURE

The Arizona Association of Superior Court Clerks (“Clerks”) submits the following Comment in support of the Petition to Amend Arizona Supreme Court Rule 123 and the Arizona Rules of Protective Procedure (“Petition”) proposed by the Committee on the Impact of Domestic Violence and the Courts (“COVIC”). The Clerks were represented on COVIC. The Petition seeks “to amend Rule 123, Rules of the Supreme Court, and the Arizona Rules of Protective Order Procedure (“ARPOP”) . . . to bring them into conformity with recent amendments to Arizona statutes, to add clarity, and to correct several omissions.” The Clerks are in support of the proposed amendments, but provide the following commentary and requests for clarification.

SPECIFIC RULES

Rule 20 Confidentiality of plaintiff’s address.

Based upon a reading of the proposed new rule, it seems that court will treat the plaintiff’s address automatically as a protected address. The Clerks would like clarification if Plaintiffs will still be required to utilize a Protected Address Form for

purposes of data entry into case management systems. Further, if the Plaintiff lists his or her address on the Petition, whose responsibility will it be to redact such information prior to filing in the Petition. In addition, some Clerks maintain that the Plaintiff's address should only be maintained as confidential if the Plaintiff indicates that the Defendant is currently not aware of Plaintiff's address and that making the address of the Plaintiff confidential in all instances is not necessary.

Rule 24(e) Emergency Orders of Protection; Duration.

In reading the proposed new Rule, an emergency order of protection will expire either at the close of the next judicial business day following the day of issuance or within 72 hours of issuance, whichever is longer. The Clerks do not oppose this change. However, the Clerks believe that if the proposed amended Rule is adopted, then A.R.S. § 13-3624(E) will need to be amended to reflect the fact that the emergency order of protection may not expire until 72 hours after issuance.

Rule 31(c) Transmission of an Order of Protection.

In reading the Petition and the proposed amendments, the Clerks would like formal confirmation that the new service of process procedure will apply to Orders of Protection only, not to Injunctions Against Harassment or Injunctions Against Workplace Harassment. It appears that the procedure for service of Emergency Orders of Protection is not impacted by the proposed rule change, except that it will now be up to the court to register the emergency order with the National Crime Information Center as soon as practicable. It is the Clerks understanding that for the latter two, Injunctions Against Harassment and Injunctions Against Workplace Harassment, it will still be up to the Plaintiff to determine if and when service of process is to occur and to arrange for service

of process. For Orders of Protection, as soon as the Order is issued, unless a judicial officer finds extraordinary circumstances, it is the understanding of the Clerks that the Plaintiff will no longer be able to control or delay service or process, which is something the Clerks have seen in the past, because service will be effectuated by the court transmitting the documents for service to the appropriate law enforcement agency or constable.

The Clerks have also had representatives attend the Arizona Criminal Justice Commission's Statewide Protection Order Meetings on the topic of implementation of service of process, and some Clerks are of the understanding that the intent is not to have each court transmit the documents to law enforcement, but that the AOC will be transmitting the documents for service of process. If such is the case, then the Clerks believe that method of transmission should be reflected in Rule 31(c).

Rule 31(i) Filing the Proof of Service

The proposed revised Rule 31(i) provides that “[p]roof 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. Proof of service may be submitted by facsimile, electronically, or in person.”

The Clerks do not take issue with this proposed revision, so long as some sort of piece of paper, documenting proof of service, will be filed with the issuing court. Some of the Clerks who have attended the Arizona Criminal Justice Commission's Statewide Protective Order Meetings have been part of discussions where it has been contemplated that the law enforcement agency or constable serving the Order of Protection will only enter data into some sort of data entry system, whether it be developed by the AOC or the

individual courts to document service, and not file a document confirming proof of service. The Clerks are opposed to not requiring the filing of a document confirming proof of service. Mere data entry would not be sufficient to constitute proof of service of process.

Rule 32(a) Registration; central repository.

It is not clear to the Clerks why Emergency Orders of Protection are exempt from the registration provision. The Clerks would like additional information as to whether Emergency Orders of Protection are intentionally exempt from the supreme court's registry.

Rule 33 Notification of transferred protective order.

It is not clear to the Clerks which court is responsible for updating the case information within 24 hours, i.e., is it the original issuing court or the court that is receiving the transferred protective order, or both.

Lastly, when protective orders are being transferred from lower or limited jurisdiction courts to superior courts it is not clear if it is the intent of the Rule to do away with Orders of Transfer issued by the transferring court.

CONCLUSION

The Clerks have appreciated the opportunity to participate on COVIC and intend for this Comment and the suggestions contained herein to assist the Arizona Supreme Court in its review of the Petition. The Clerks are in support of the Petition filed by COVIC, and hope the Supreme Court will consider our suggested revisions and requests for clarification to the proposed new Rules.

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DATED this 1st day of May, 2019.

 /s/ Valerie Wyant
Hon. Valerie Wyant, President
Arizona Association of Superior Court Clerks

A copy of this comment has been delivered this
1st day of May, 2019 to:

Clerk of the Supreme Court
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Via email to mmeltzer@courts.az.gov and electronic filing of comment in accordance
with In the Matter of Opening Rules for Public Comment