

1 WILLIAM G. MONTGOMERY
2 MARICOPA COUNTY ATTORNEY
3 (FIRM STATE BAR NO. 00032000)

4 MICHAEL R. McVEY
5 CHIEF DEPUTY (ACTING)
6 301 WEST JEFFERSON STREET, SUITE 800
7 PHOENIX, ARIZONA 85003
8 TELEPHONE: (602) 506-3800
9 (STATE BAR NUMBER 006926)

8 ARIZONA SUPREME COURT

10 IN RE:

11 PETITION TO AMEND RULE
12 25(b), RULES OF PROTECTIVE
13 ORDER PROCEDURE

R-19-0022

MARICOPA COUNTY ATTORNEY'S
RESPONSE TO PETITION TO AMEND RULE
25(b), RULES OF PROTECTIVE ORDER
PROCEDURE

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15 The Maricopa County Attorney hereby responds to the Petition to Amend Rule
16 25(b) of the Rules of Protective Order Procedure and asks this Court to deny the
17 Petition because it is contrary to statutory and case law, and it would undermine the
18 purpose of an Injunction Against Harassment.
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20 Simply stated, an Injunction Against Harassment is designed to protect a plaintiff
21 from continued, additional harassment. It is a preemptive legal step to prevent future
22 harassment and it clearly communicates to the defendant that the plaintiff has felt
23 harassed and that any future contact from the defendant is unwanted. The injunction
24 gives the plaintiff a way to have law enforcement and the courts protect them from the
25 defendant should the defendant choose to disregard the court's order. Petitioner seeks
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1 to change the rule to require a plaintiff to endure one additional harassing event before
2 seeking protection. Petitioner provides no justifiable reason to do so.
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4 While the legislature did not define “series of acts” in A.R.S. § 12-1809, where it
5 has defined similar terms, it has done so consistently with the idea that two events is
6 sufficient. For example, in the stalking statute, the legislature defined a “course of
7 conduct” as “two or more occasions” and “more than one occasion” depending on the
8 type of contact. A.R.S. § 13-2923(D)(1)(a). Likewise, the courts have previously
9 recognized that “series of acts” simply requires more than one incident. *See LaFavo v.*
10 *Cahill*, 203 Ariz. 482, 486, ¶ 14, 56 P.3d 56, 60 (App. 2002) (“At a minimum, the
11 ‘series of acts’ condition requires two incidents.”) The current rule requiring two acts
12 is consistent with legislative definitions in other related areas and the case law.
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16 In A.R.S. § 12-1809, the legislature limited the nature of the acts that constitute a
17 “series of acts” to those that “would cause a reasonable person to be seriously alarmed,
18 annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the
19 person and serves no legitimate purpose.” A.R.S. § 12-1809(S). Petitioner asks this
20 Court to require a plaintiff to endure at least one more seriously alarming or harassing
21 act before seeking relief. The *LaFavo* court recognized that such a requirement should
22 not be necessary “because a person should not have to endure repeated frightening,
23 dangerous or otherwise alarming and intrusive personal conduct that serves no
24 legitimate purpose.” *LaFavo*, 203 Ariz. at 486, ¶ 15, 56 P.3d at 60.
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1 Petitioner's request to reduce a plaintiff's protection by changing the rule is
2 justified, he claims, by the "Draconian criminal punishment" that results from a
3 violation of a lawfully issued injunction.¹ [See Petition at 5]. Instead of subjecting
4 plaintiffs to more harassment, the more logical way to avoid those punishments is by
5 adhering to the requirements of the injunction. Regardless, Petitioner would be better
6 served to take his concerns to the legislature and allow our elected officials to decide
7 if modifications to the way these injunctions are issued or the consequences for
8 violating them are necessary. Asking this Court to modify the rules that are consistent
9 with the statutes and case law is not the appropriate way to addresses these important
10 public policy issues.
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15 Changing Rule 25(b), Rules of Protective Order Procedure, as Petitioner requests
16 would unnecessarily subject plaintiffs to at least one additional act of harassment
17 before they could proactively take a stand to protect themselves by obtaining a court
18 order to stop the harassing behavior. The requested change would only embolden an
19 offensive actor to engage in repeated acts. The change would also lead to absurd results
20 because a defendant could be guilty of stalking under A.R.S. § 13-2923 by engaging in
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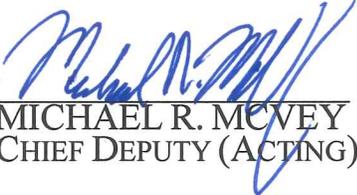
25 ¹ Petitioner's claim that law enforcement officers have "no discretion" in the enforcement of an
26 injunction against harassment is simply inaccurate. [Petition at 5]. A.R.S. § 12-1809(M) provides
27 that a "peace officer, with or without a warrant, *may* arrest a person if the peace officer has probable
28 cause to believe that the person has violated § 13-2810 by disobeying or resisting an injunction that
is issued pursuant to this section, whether or not the violation occurred in the presence of the officer."
(emphasis added).

1 a course of conduct that involves two incidents before a plaintiff would even be able to
2 obtain a civil Injunction Against Harassment.
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4 For these reasons, the Maricopa County Attorney asks this Court to deny the
5 Petition.
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7 Respectfully submitted this 1st day of May 2019.
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9 WILLIAM G. MONTGOMERY
10 MARICOPA COUNTY ATTORNEY

11 By 
12 MICHAEL R. MCVEY
13 CHIEF DEPUTY (ACTING)
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