

Honorable Wendy Million
Tucson City Court
103 E. Alameda
Tucson, AZ 85701
Telephone: (520) 791-3260
Chair, Committee on the Impact
of Domestic Violence and the Courts
Staff: KRadwanski@courts.az.gov

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	
)	Supreme Court No. R-19-0009
Petition to Amend Rule 123, Rules)	
of the Supreme Court, and Rules 7,)	Response and Amended Petition
10, 20, 23, 24, 25, 26, 31, 32, 33,)	(including Additional Amendments to
36, and 42 of the Arizona Rules)	Rules 3, 14, 25, and 29, Arizona Rules of
of Protective Order Procedure)	Protective Order Procedure)
_____)	

Petitioner, the Committee on the Impact of Domestic Violence and the Courts (CIDVC), submits this response and amended petition. The amended petition includes two appendices—Appendix B-Amended, offering a revision based upon comments received, and Appendix C, proposing amendments to four court rules necessitated by recently enacted legislation.

Appendix B shows an amended revision to CIDVC’s proposed change to Rule 31(c). The proposed language makes clear the statutory obligation of each court, but it offers a way for each court to fulfill its obligation to transmit an Order of Protection and accompanying documents to law enforcement for service on a defendant. The AOC is developing a portal through which service data and documents can flow among the issuing court, the AOC, and law enforcement to facilitate service of Orders of Protection.

The proposed revision emphasizes, however, that if the portal is not available, the issuing court must still carry out its obligation to provide law enforcement with the order for service.

Appendix C addresses proposed modifications prompted by new legislation that takes effect January 1, 2020. The need for additional proposals is explained below.

CIDVC met on May 7, 2019, discussed the comments received, approved a response and an amended rule, and authorized the CIDVC chair to file this response on their behalf.

BACKGROUND

In the 2018 53rd Legislature, Second Regular Session, [House Bill 2249](#) (chaptered version) became law. The modified statutes, labeled as “Version 2” on the Legislature’s website, take effect January 1, 2020. They govern Orders of Protection (OP), [A.R.S. § 13-3602-Version 2](#); Emergency Orders of Protection (EOP), [A.R.S. § 13-3624-Version 2](#); Injunctions Against Harassment (IAH), [A.R.S. § 12-2809-Version 2](#); and Injunctions Against Workplace Harassment (IAWH), [A.R.S. § 12-1810-Version 2](#). 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 Version 2 modifications, CIDVC identified court rules that require revision.

ADDITIONAL PROPOSALS

In April 2019, [SB1250](#), which amends A.R.S. § 12-1809, Injunctions Against Harassment, was signed into law. This change in law will allow a person who alleges one or more acts of sexual violence as defined in A.R.S. § 23-371 to petition for an Injunction

Against Harassment. The revision takes effect January 1, 2020. The current law allows for issuance of an IAH based on a series of acts of harassment.

As SB1250 has the same effective date as the 2018 session's HB2249, CIDVC is proposing additional modifications to ARPOP in this response for efficiency. However, if it is the wish of the Court for CIDVC to file these additional proposals in a separate petition, CIDVC will do as instructed. These additional proposed modifications appear in Appendix C.

RESPONSE TO COMMENTS

The Arizona Association of Superior Court Clerks (AASCC) and a representative of the Clerk of the Court, Superior Court in Pima County, have filed comments in response to CIDVC's petition. Each comment will be addressed in turn.

- **Rule 20. Confidentiality of plaintiff's address**

The revised OP and IAH statutes require the court to keep a plaintiff's address and contact information confidential, regardless of whether the defendant knows this information. (See A.R.S. § [13-3602\(c\)\(1\)-Version 2](#), and § [12-1809\(C\)\(1\)-Version 2](#).) Therefore, a plaintiff should not be asked to fill out a protected address form. The plaintiff does need to disclose this information to the court for purposes of service and notification. The director of the Administrative Office of the Courts (AOC) is authorized by [A.C.J.A. § 5-207](#) to approve changes to protective order forms. CIDVC will ask the director to approve changes to the General Petition, including removal of fields for the plaintiff's address. This will resolve the issue of a plaintiff mistakenly including this information on the petition. CIDVC also will propose a new form—the

Plaintiff’s Information Sheet—where the plaintiff will provide contact information to the court for notification and service purposes. This form is confidential by statute. (See A.R.S. §§ 13-3602(O) and 12-1809(K).)

- **Rule 24. Emergency Order of Protection**

[A.R.S. § 13-3624\(E\)-Version 2](#) has been modified to reflect the change in duration of an EOP. Proposed amendments to Rule 24 simply conform the rule to the law.

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

Issue 1. [A.R.S. § 13-3602\(I\)-Version 2](#) requires the issuing court to provide the OP to the appropriate law enforcement agency or constable for service. The revised IAH and IAWH statutes contain no parallel language regarding service. Law enforcement cannot charge a fee for service of an OP, but fees can be charged for service of an injunction. The plaintiff is responsible for working out service fees for the injunctions with the entity performing service, whether law enforcement, a constable, or a private process server. For clarity, the label on Rule 31(c) refers only to the OP to avoid confusion.

Issue 2. The AASCC and John Baird, Pima County Superior Court Clerk’s Office, raise a similar concern about the process for moving documents from the court to law enforcement for service. The AOC’s IT Division is developing a service portal through which data will be transmitted to the appropriate law enforcement agency for service. The agency will get notice that an OP is in its queue and is ready for service in its jurisdiction. The portal also will provide access to the documents that law enforcement must serve on the defendant.

The AOC will support the service portal through which this information will flow, but each issuing court ultimately is responsible for ensuring that the documents needed for service are provided to the appropriate law enforcement agency. (*See [A.R.S. § 13-3602\(I\)-Version 2.](#)*)

To address the concerns raised, however, CIDVC proposes the following additional language to Rule 31(c) in Appendix B-AP: The court may accomplish transmission of the Order of Protection and accompanying documents by using a service portal managed by the Administrative Office of the Courts. But if the portal is unavailable for any reason, the issuing court must provide the documents to law enforcement in some other manner.

- **Rule 31(i). Filing proof of service**

Law enforcement officers and others who serve protective orders will be able to document service electronically in the AOC's service portal. The design will allow data to flow electronically. However, the IT team is aware of the request from the AASCC and individual courts for a printed proof of service. The portal will be built so that transmitted data will populate a Declaration of Service or similar form that the Clerk or the court can print out for its file.

- **Rule 32. Registration of protective order and proof of service**

Unlike the OP and injunction statutes, the EOP statute, [A.R.S. § 13-3624-Version 2](#), does not designate the Supreme Court as the central repository for this type of order. Law enforcement bears the responsibility for filing the EOP and transmitting its data to the National Crime Information Center (NCIC).

- **Rule 33. Notification of transferred protective order**

The proposed change to Rule 33 is to clarify that a court will not have to notify the county sheriff of a transferred order because the Supreme Court—not the sheriff—will be the central repository. Otherwise, the rule is unchanged. A court that transfers a protective order (the sending court) must update its case management system within 24 hours. This in turn will update the Court Protective Order Repository (CPOR), which is maintained by the AOC. The AOC, on behalf of the Supreme Court as holder of record, will in turn update the information with NCIC. There is no intent to do away with a transfer order; that procedure is unaffected.

CONCLUSION

CIDVC appreciates the comments from the AASCC and Mr. Baird and hopes that this response and additional proposal clarify the protective order process and the rules.

For the reasons stated above, CIDVC respectfully asks the Court to adopt the additional proposed amendment to Rule 31 (Appendix B-Amended) and to adopt the modifications to Rule 123(d)(3), Rules of the Supreme Court, and ARPOP Rules 7, 10, 20, 23, 24, 25, 26, 32, 33, 36, and 42, as set forth in CIDVC’s original petition (Appendices A and B). CIDVC also requests the Court’s consideration of the additional proposals set forth in Appendix C.

Respectfully submitted this 22nd day of May, 2019.

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

APPENDIX B-Amended

Proposed Amendment to Rule 31, Rules of Protective Order Procedure

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 may accomplish transmission of the Order of Protection and accompanying documents by using a service portal managed by the Administrative Office of the Courts. But if the portal is unavailable for any reason, the issuing court must provide the documents to law enforcement in some other manner. 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]

~~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.~~

APPENDIX C

Proposed Amendment to Rules 3, 14, 25, and 29 Rules of Protective Order Procedure

3. Definitions

(a) – (b) [no changes]

(c) “**Harassment,**” when applicable to an Injunction Against Harassment, means a series of acts over any period of time that are directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed, or harassed, and the conduct in fact seriously alarms, annoys, or harasses the person and serves no legitimate purpose or one or more acts of sexual violence as defined in A.R.S. § 23-371. *See* A.R.S. § 12-1809(S).

(d) – (g) [no changes]

14. Filing fees

(a) – (b) [no changes]

(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 or where the harassment is sexual violence as defined in A.R.S. § 23-371—that is served by any court-contracted or law enforcement agency. *See* A.R.S. § 12-1809(D).

(2) For an Injunction Against Harassment—between parties not in a dating relationship— or an Injunction Against Workplace Harassment, the fee is determined by the serving agency. *See* A.R.S. §§ 12-1809(D) and 12-284(A).

25. Injunction Against Harassment

(a) [no change]

(b) **Contents of Petition.** In the petition, the plaintiff must allege a series of specific acts of harassment or an act or acts of sexual violence as defined in A.R.S. § 23-371, including dates of occurrence, that will be relied on at hearing. A series of acts means at least two events. *See* A.R.S. § 12-1809(C) and (S).

(c) – (d) [no changes]

(e) Findings Required.

(1) The judicial officer must issue an Injunction Against Harassment upon finding:

(A) reasonable evidence that the defendant has committed a series of acts of harassment or at least one act of sexual violence as defined in A.R.S. § 23-371, against the plaintiff during the year preceding the filing; or

(B) that good cause exists to believe that great or irreparable harm would result to the plaintiff if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition and specific facts attesting to the plaintiff's efforts to give notice to the defendant or reasons supporting the plaintiff's claim that notice should not be given. *See* A.R.S. § 12-1809(E).

(f) – (h) [no changes]

COMMENT [no change]

29. Alternative dispute resolution

(a) [no change]

(b) **Mediation of a Harassment Injunction.** If the court determines that an ADR process is appropriate for a harassment injunction case, the court may refer the case to ADR. This does not include harassment injunctions based on allegations of sexual violence.

(c) [no change]