

SUPREME COURT OF ARIZONA

In the Matter of ) Arizona Supreme Court  
 ) No. R-19-0009  
RULE 123, RULES OF THE SUPREME )  
COURT, AND RULES 7, 10, 20, 23, )  
24, 25, 26, 31, 32, 33, 36, AND )  
42, RULES OF PROTECTIVE ORDER ) **FILED 08/27/2019**  
PROCEDURE )  
 )  
 )  
\_\_\_\_\_ )

**ORDER**

**AMENDING RULE 123 OF THE ARIZONA RULES  
OF THE SUPREME COURT AND RULES 3, 7, 10, 14, 20,  
23, 24, 25, 26, 29, 31, 32, 33, 36, AND 42 OF  
THE ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE**

A petition and amended petition having been filed proposing to amend Rule 123 of the Arizona Rules of the Supreme Court and Rules 3, 7, 10, 14, 20, 23, 24, 25, 26, 29, 31, 32, 33, 36, and 42 of the Arizona Rules of Protective Order Procedure, and having considered the petition, amended petition, and comments,

**IT IS ORDERED** that Rule 123 of the Arizona Rules of the Supreme Court and Rules 3, 7, 10, 14, 20, 23, 24, 25, 26, 29, 31, 32, 33, 36, and 42 of the Arizona Rules of Protective Order Procedure be amended in accordance with the attachment to this Order, effective January 1, 2020.

DATED this 27th day of August, 2019.

\_\_\_\_\_/s/\_\_\_\_\_  
ROBERT BRUTINEL  
Chief Justice

TO:

Hon Wendy A Million

John Baird

Hon Valerie Wyant

Rule 28 Distribution List

**ATTACHMENT<sup>1</sup>**

**RULES OF THE SUPREME COURT OF ARIZONA**

**Rule 123. Access to the Judicial Records of the State of Arizona**

\* \* \*

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

\* \* \*

(3) *Protective Orders.* ~~For as long as a plaintiff has the court ability by law to have a protective order served or 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.

**ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE**

**Rule 3. Definitions**

\* \* \*

**(c) “Harassment,”** when applicable to an Injunction Against Harassment, means:

**(1)** 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. [~~See A.R.S. § 12-1809(S);~~ or

**(2)** one or more acts of sexual violence as defined in A.R.S. § 23-371.

\* \* \*

**Rule 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.

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<sup>1</sup> Additions to the text of a rule are shown by underscoring and deletions of text are shown by ~~strike-through~~.

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**Rule 10. No Limit On Number of Protective Orders**

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(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.

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**Rule 14. Filing and Service Fees**

\* \* \*

**(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).

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**Rule 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).~~

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**Rule 23. Order of Protection**

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**(i) Firearms**

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

\* \* \*

**Rule 24. Emergency Order of Protection**

\* \* \*

**(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.

**Rule 25. Injunction Against Harassment**

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**(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).

\* \* \*

**(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).

\* \* \*

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

**Rule 26. Injunction Against Workplace Harassment**

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

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**Rule 29. Alternative Dispute Resolution**

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**(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.

**Rule 31. Service of Protective Orders**

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**(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.

\* \* \*

**(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).

\* \* \*

### 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.~~

### Rule 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 for one year from the date of service.

### **Rule 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.

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### **Rule 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.

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### **Rule 42. Appeals**

**(a) Appealable Orders.** The following orders are appealable and are not subject to Rule 54(c), Rules of Civil Procedure, or Rule 78(c), Rules of Family Law Procedure:

(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~~2~~, Contested Protective Order Hearings.