

then that case in its entirety would be promptly transferred to the superior court where the existing family court order is in effect. Following the transfer, the superior court judicial officer handling the existing family court matter would assume jurisdiction of all further proceedings relating to the Injunction Against Harassment, including any contesting of the ex parte order.

The Arizona Justice of the Peace Association endorsed the concepts behind this proposal at its annual conference in September of this year. The Justices of the Peace in Maricopa County initially voted to file a rule change petition in support of this amendment. This proposed petition was also presented to the Committee on Limited Jurisdiction Courts (LJC). LJC committee members supported this petition as a mechanism to discuss the issues.

When representatives from justice courts in Maricopa County were able to meet with representatives from Superior Court in Maricopa County, the Superior Court judges pointed out a conflict of law issue. They noted that the problem could not be solved by transferring the entire case to the Superior Court. The legal standards to dismiss or to uphold an Injunction Against Harassment are significantly different than the legal standards required to modify an order for parenting time or legal decision making

under Title 25, which would occur if an Injunction of Harassment were to include children who are subject to a family court order or proceeding. The remedy in those cases in which the injunctive relief would impact a pending Family Court matter or existing legal decision making and parenting order would be under A.R.S. § 25-411. Further, emergency orders are available under Title 25 if the circumstances require immediate action, thereby providing an adequate remedy at law for those litigants.

Leaders from justice courts in Maricopa County and the Superior Court in Maricopa County agree on the problem. We now also agree on a solution. Limited jurisdiction court judges should not add minor children as protected parties to an Injunction Against Harassment if doing so does or could impact a Family Court Order.

PROPOSAL

The current Rule 35 of the Rules of Protective Order Procedure should be amended as follows (new language in red):

(f) Injunctions Against Harassment. When considering the relief to be granted in an injunction against harassment, the issuing court must not add minor children as protected parties if doing so will or may impact an existing family court order or a pending family court action involving the same minor children. This includes any actions for dissolution of marriage, maternity, paternity, annulment, legal decision-making, or parenting time. The proper relief for those cases would be sought in the Superior Court under Title 25. If an injunction is inadvertently issued contrary to the provisions of this paragraph, the injunction is valid and effective until otherwise ordered in the Superior Court.

SUPPORT FOR PROPOSAL

LIMITING INJUNCTIONS THAT IMPACT FAMILY COURT ORDERS TO SUPERIOR COURT WILL BRING THE CHILD-RELATED ISSUES BEFORE A SINGLE JUDGE WITH JURISDICTION TO RESOLVE ALL OF THEM, WILL PROMOTE JUDICIAL ECONOMY, AND WILL DISCOURAGE GAMESMANSHIP AND JUDGE SHOPPING.

Limited jurisdiction judges are frequently asked to issue Injunctions Against Harassment that will impact an existing order from Family Court. While Superior Court has exclusive jurisdiction to issue protective orders when there is a Family Law case between the both parties, limited jurisdiction judges must hear petitions when only one party to the injunction is a party to the Family Court case. Moreover, there is no mechanism to transfer the case to the Superior Court to consider a contested hearing, even though the injunction has an obvious impact one of the parties to the Family Court order.

Many parents allege that their former spouse's new love interest is committing some type of harassment when the children visit the former spouse's residence. Issuing an injunction barring either the children, or the ex-spouse's partner when the children are present, from an ex-spouse's residence can obviously impact the ex-spouse's ability to exercise their parenting time. Under the existing rules, limited jurisdiction judges must

frequently hear these types of cases. Doing so is problematic for four main reasons.

First, it requires the limited jurisdiction judges to address parenting related issue without having the case history or background. Further, the limited jurisdiction judge does not have the legal authority to resolve the issues as those issues are under the exclusive jurisdiction of the superior court.

Second, it creates a significant concern over competing orders, one issued by the limited jurisdiction court precluding a person from being present when children are in the home and the other issued by the family court judge who did not include that restriction on either of the parent's time with the children. In one case, a Maricopa County Deputy Sheriff called a Justice of the Peace and asked which court order controlled, the more recent injunction from justice court given to him by the mother or the Superior Court order given to him by the father. (The deputy was told to contact the County Attorney's Office for legal guidance.) The chart at Attachment 1 to this pleading provides fifteen examples over the course of a little more than a year, from a single justice court in Maricopa County, of cases that included parenting issues that would have been more appropriately heard in Superior Court.

Third, the current practice of re-litigating part of their Family Court case in a limited jurisdiction court is hopelessly confusing to self-represented litigants. To many, a judge is a judge and they may not understand why a judge can keep someone away from their children, but cannot also fix the problems created by issuing such an order. This is especially true when there is testimony in the justice court case concerning what the Superior Court judicial officer purportedly said and when Superior Court orders are offered as exhibits in justice court cases.

Fourth, the current rules almost encourage gamesmanship and judge shopping. Some less-than-fully-candid litigants conceal their Family Court case from limited jurisdiction court judges and use an Injunction Against Harassment as a form of collateral attack on a recent Family Court order or the denial of relief for the same grounds. In buildings with both superior and justice courts, this can happen on the same day and in the same building. Before the Minute Entry from Superior Court is typed and distributed, there may already be an Injunction Against Harassment from a justice court contradicting part of it. But even with courts in the same building, there is no mechanism to transfer the injunction to Superior Court because the parties to the injunction are different than the parties to the family court case.

The solution to these problems is to continue to allow limited jurisdiction courts to hear and to grant *ex parte* requests for Injunctions Against Harassment, but if there is a Family Court order that could be impacted, then the judicial officer should refer the plaintiff to Family Court only as to the portion of the case that involves the children, rather than include the children in an injunction order. In addition to promoting judicial economy and avoiding conflicts of law, the requested change also promotes access to justice because by having one judge hear all issues connected to a case involving children, litigants will not need to repeatedly take off work to present parts of their case again to a new judge or hire attorneys to represent them in additional legal matters.

CONCLUSION

We respectfully request that the amendment proposed above be adopted.

RESPECTFULLY SUBMITTED, this 13th day of December 2019.

/s/ Bruce R. Cohen
BRUCE R. COHEN
Family Court Presiding Judge
Superior Court of Arizona
Maricopa County
125 West Washington
Suite 101
Phoenix, AZ 85003

/s/ Keith Russell
KEITH RUSSELL
Presiding Justice of the Peace
Maricopa County
Justice Court Administration
222 North Central Ave.,
Suite 210
Phoenix, AZ 85004

Attachment One
Examples of Injunctions Against Harassment with Issues That
Should Be Before a Family Court Judge

North Valley Justice Court Case Number	Nature of Parties	Superior Court Background
CC2018105746 (23 May 2018)	Step-mom vs. Birth mom	Birth mom & dad's parenting time overlapped child's athletic practices & games
CC2018188806	Boyfriend vs. Girlfriend's Ex-husband	Ex-husband had a history of reporting boyfriend to his employer and to a variety of agencies; Family Court order directing ex-husband not to do so was admitted into evidence
CC2018222994	Father vs. Mother's Boyfriend	Criminal assault investigation against boyfriend involving the children; Facts will also for the basis for a petition to modify custody; Same fact pattern will be litigated in Justice Court and then in Family Court
CC2018258502	Father vs. Step-father	Long history of violence between parties; Step-father had also allegedly become violent and abusive toward teenage boy; Child custody modification pending
CC2018251442	Mom vs. Dad	Both parties were allegedly recovering drug addicts; Active Superior Court case involving parties' child; Initial Dependency Hearing, Dependency Contested
CC2018246841	Ex-wife vs. Husband's Girlfriend	Injunction Against Harassment Petition Filed one month after Decree of Dissolution was final (in the same building); Most of the evidence at the hearing concerned girlfriend's involvement in pick up and drop off of children
CC2018258502	Father vs. Step-father	Plaintiff admitted Defendant did not harass him; Case was about whether Step-father was mean to high school son; Superior Court Post-Decree Mediation had been scheduled and was set for the day after the hearing on the injunction in Justice Court
CC2019076427	Ex-wife vs. Husband's Girlfriend	Plaintiff brought in an Amended Post-Decree Temporary Family Court Order stating in part, "Father's parenting time must be in the presence of one of father's parents or another person (adult) agreed upon by the parties in writing and shall not be in the presence of [girlfriend]." JP did not issue injunction against girlfriend given ongoing superior court case. FC2013070146
CC2019076579	Father vs. Ex-wife's Boyfriend	Father claims his ex-wife's boyfriend assaulted him during child custody exchange. Glendale Police responded.
CC2019087207	Mother vs. Step-Mother	Mother (Plaintiff) claims ex-husband's new wife beat Plaintiff's son. Criminal investigation was started.

CC2019-119461	Mother vs. Niece	Mother (Plaintiff) claims defendant improperly signed her daughter out of school, allowed daughter to have access to medical marijuana, and forced her to babysit while Defendant went out drinking. Plaintiff obtained Justice Court order same day she lost legal decision-making authority over her children in Family Court case. Family Court orders were admitted as evidence in subsequent Justice Court hearing.
CC2019-143069	Mother vs. Father's Girlfriend	There were allegations of custodial interference, including an altercation in the parking lot immediately after a Family Court hearing. Girlfriend locked child in car so that mother could not have access until the father arrived. (The vehicle's air conditioner was running.)
CC2019-142422	Husband's vs. Wife Female Employee	Wife had numerous contacts with employee in connection with allegations of adultery. Employee denied affair but she would often bring the husband's children to transfer point for child custody exchanges.
CC2019196988	Father vs. Ex-girlfriend's boyfriend	Plaintiff alleged that the Defendant was disruptive during parenting time exchanges and during the children's sporting events. Keeping injunction in place triggered transportation problems for mother because boyfriend often picked up children from father's residence. Request to modify parenting time is pending.
CC2019211931 (16 Oct 2019)	Father vs. Ex-girlfriend's boyfriend	Plaintiff alleged that Defendant assaulted mother in front of daughter who tried to stop the attack. Defendant allegedly responded by threatening 9 year-old daughter. Custody modification is pending.