

1 Justice of the Peace Gerald A. Williams
2 Arizona Bar No. 018947
3 North Valley Justice Court
4 14264 West Tierra Buena Lane
5 Surprise, AZ 85301
6 (602) 372-2000

7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

10 **PETITION TO AMEND RULE 38,**
11 **ARIZONA RULES OF**
12 **PROTECIVE ORDER**
13 **PROCEDURE**

Supreme Court No. R-

14 **Request for Uniform Rule**
15 **When Both Parties Fail**
16 **To Appear for Scheduled**
17 **Hearing**

18 **Background**

19 This petition is filed in the author's individual capacity and not on behalf of
20 other judges or organizations. It respectfully petitions this Court to amend Rule 38
21 of the Arizona Rules of Protective Order Procedure; more specifically, to indicate
22 whether a judicial officer should dismiss or leave in place a protective order when
23 both parties fail to appear at a contested hearing. The Maricopa County Justice
24 Courts' Best Practices Committee discovered that there was no uniform practice
25 and after a discussion at a bench meeting, we could not reach a consensus. The
author of this petition is a co-chair of the Best Practices Committee.

1 **Proposal**

2 Rules of procedure are employed to achieve uniformity and consistency
3 throughout our court system. We have discovered that courts do not interpret the
4 Arizona Rules of Protective Order consistently when both parties fail to appear at a
5 scheduled contested hearing. Rule 38 does not provide clear guidance.

6 All of the Justices of the Peace serving in Justice Courts in Maricopa County
7 (and throughout Arizona) remain deeply concerned about issues concerning
8 domestic violence. All believe that if neither side appears for a hearing, there is a
9 chance that an abuser has prevented a victim from doing so. However, there is not
10 a uniform position on this issue in terms of case management.

11 The majority view is based a pure application of the law and on the standard
12 that applies to every other type of case; specifically, the plaintiff, by failing to
13 appear, has not met the burden of proof at the scheduled hearing as required by
14 Rule 38(g). Consequently, if both sides fail to appear for the hearing, then a judge
15 must dismiss an Order of Protection. This dismissal is made with the knowledge
16 that the Plaintiff can request another order free of charge.

17 The minority view errs on the side of caution and keeps an Order of
18 Protection in place if both the plaintiff and the defendant fail to appear at the
19 scheduled hearing. Judges in the minority view correctly note that an initial
20 determination was made that the plaintiff was credible when the order was granted
21 and that there is no evidence available to discredit that testimony if both parties fail
22 to appear for a hearing.

23 The author of this petition takes no position on how to resolve this
24 discrepancy; he merely requests that the discrepancy be replaced with certainty and
25

1 consistency. Therefore, he requests the Supreme Court add Rule 38(j) to say **one**
2 of the following:

3
4 (j) **Failure to Appear.** If both parties fail to appear at a
5 scheduled contested hearing, the judicial officer shall leave the
6 protective order in place.

7
8 **-OR-**

9 (j) **Failure to Appear.** If both parties fail to appear at a
10 scheduled contested hearing, the judicial officer shall dismiss the
11 protective order.

12 **Conclusion**

13 It is requested that the Court amend Rule 38 of the Arizona Rules of
14 Protective Order Procedure; more specifically, to add a subsection (j) to indicate a
15 procedure for the resolution after a failure to appear of both parties at a scheduled
16 contested hearing.

17 RESPECTFULLY SUBMITTED this day, December 17, 2019.

18 /s/ Gerald A. Williams
19 GERALD A. WILLIAMS
20 Justice of the Peace

21 Electronic copy filed with the
22 Clerk of the Arizona Supreme Court
23 this 17th day of December, 2019.
24
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