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**ARIZONA SUPREME COURT**

In the matter of: )  
)  
PETITION TO AMEND RULES 23 ) Supreme Court No. 20 - \_\_\_\_\_  
AND 38 OF THE ARIZONA RULES OF ) (expedited consideration  
PROTECTIVE ORDER PROCEDURE ) requested)  
\_\_\_\_\_ )

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend the rules specified above as proposed in Appendix A. The proposed amendments implement legislative enactments affecting the protective order rules from the 2020 legislative session as more particularly described below.

**I. Purpose of the Proposed Rule Amendments.**

The proposed rule amendments in Appendix A and changes to official forms in Appendices B, C and D would implement the changes to A.R.S. §§ 13-3602 and -3624 made by SB 1441 that establish notice requirements and hearing rights when the protective order petitioner is awarded exclusive possession of the parties' residence and later vacates the residence before expiration of the protective order. The proposed amendments to the rules track the language of this legislation.

## **II. Preliminary Comments.**

The proposed rule changes were drafted by staff to the Committee on the Impact of Domestic Violence in the Courts and reviewed by the Committee Chair, Judge Wendy Million. They have not been sent to the court community for pre-filing comments due to the short period of time since the enactment of the new statutory provisions.

## **III. Request for Expedited Consideration and Adoption.**

SB 1441 will become effective August 25, 2020. Implementation of SB 1441 will require changes not only to the rules, but also to forms that are issued by Administrative Directive: the Plaintiff's Guide Sheet for Protective Orders and the Defendant's Guide Sheet for Protective Orders, Appendices B and C show the changes that will be made to these documents. The AOC has also developed a Notice form (Appendix D) for use by the plaintiff and the court as contemplated by SB 1441. Also, the following Notice to Plaintiff will be added below the signature block on the Emergency Order of Protection:

**NOTICE TO PLAINTIFF: If this order gives you exclusive use and possession of the residence and you move out while this order is in effect, you must notify the court within five days of moving out of the residence.**

As permitted by Supreme Court Rule 28(h), petitioner requests expedited consideration and adoption of the proposed amendments with a comment period to

follow, so they can be effective at the same time as the new legislation on August 25, 2020,

Respectfully submitted this 13th day of July, 2020.

By /S/  
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## APPENDIX A

### Arizona Rules of Protective Order Procedure

(deletions shown with ~~strike through~~, new language is underlined)

**Rules 1 through 22** [No changes]

#### **23. Order of Protection**

**(a) through (g)** [No changes]

**(h) Relief.** When issuing an Order of Protection, *ex parte* or after a hearing, a judicial officer may:

- (1) prohibit the defendant from having any contact with the plaintiff or other protected persons, with any exceptions specified in the order. *See* A.R.S. § 13-3602(G)(3).
- (2) grant the plaintiff exclusive use of the parties' residence if there is reasonable cause to believe that physical harm otherwise may result. *See* A.R.S. § 13-3602(G)(2). If the plaintiff moves out of the residence while the order is in effect, the plaintiff must file a written notice with the court within five days after moving. Upon receipt, the court must provide a copy of the notice to the defendant and advise of the right to request a hearing pursuant to A.R.S. § 13-3602(L).
  - (A) A plaintiff who is not the owner of the residence may be granted exclusive use for a limited time.
  - (B) The defendant may be permitted to return one time, accompanied by law enforcement, to pick up personal belongings.
  - (C) At a contested hearing, a judicial officer may consider ownership of the parties' residence as a factor in continuing the order of exclusive use.
- (3) order the defendant not to go on or near the residence, place of employment, or school of the plaintiff or other protected persons. Other specifically designated locations may be included in the order. If the defendant does not know the address of these additional places, a judicial officer may, at the plaintiff's request, protect the additional addresses. *See* A.R.S. § 13-3602(G)(3).
- (4) grant the plaintiff the exclusive care, custody, or control of any animal that is owned, possessed, leased, kept, or held by the plaintiff, the defendant, or a minor child residing in the residence or household of the plaintiff or the defendant and order the defendant to stay away from the animal and forbid the defendant from taking, transferring,

encumbering, concealing, committing an act of cruelty or neglect in violation of A.R.S. § 13-2910, or otherwise disposing of the animal. *See* A.R.S. § 13-3602(G)(7).

(5) grant relief that is necessary for the protection of the plaintiff and other specifically designated persons and proper under the circumstances. *See* A.R.S. § 13-3602(G)(6).

**(i) through (k)** [No changes]

**Rules 24 through 37** [No changes]

### **38. Contested hearing procedures**

**(a) Requesting a Hearing.** At any time while a protective order or a modified protective order is in effect, a defendant may request one hearing in writing. *See* A.R.S. §§ 13-3602(~~H~~)(L), 12-1809(H), 12-1810(G).

**(b) Exclusive Use.** If exclusive use of a residence is awarded to the plaintiff, the court, on written request of a party, may hold additional hearings at any time if there is a change in circumstances related to the primary residence. *See* A.R.S. § 13-3602(L).

**(b) through (i)** renumber

**Rules 39 through 42** [No changes]

## Appendix B

ALL COURTS IN ARIZONA

ADDRESS

CITY, AZ ZIP CODE

TELEPHONE NUMBER

### Plaintiff's Guide Sheet for Protective Orders

**This guide sheet provides basic information about protective orders. Keep this guide for future reference. If you receive a protective order, you should always carry a copy of the order with you.**

#### TYPES OF PROTECTIVE ORDERS

**1. ORDER OF PROTECTION (OP)**—An OP is used when you and the defendant (the person from whom you want protection) have a specific relationship. In addition to having a qualifying relationship, you must state how an act of domestic violence was threatened or committed against you within the last year.

A qualifying relationship for an Order of Protection includes any of the following:

- married to each other (past or present)
- live together (past or present)—intimate partners
- romantic or sexual relationship (past or present)
- parent of a child in common
- one party is pregnant by the other
- related as parent, grandparent, child, grandchild, brother, sister (including step or in-law)
- live together (past or present)—not intimate partners

**READ THIS  
FIRST.**

**2. INJUNCTION AGAINST HARASSMENT (IAH)**—If you and the defendant do not share any of these relationships, you may ask for an Injunction Against Harassment (IAH). You must tell on the petition how the defendant has committed a series of acts (more than one) of harassment against you in the last year or one act of sexual violence (as defined in ARS § 23-371) against you.

**3. INJUNCTION AGAINST WORKPLACE HARASSMENT (IAWH)**—An employer or owner of a business or operation may file for this type of injunction for the benefit of an employee or the business based on a single act or a series of acts of harassment.

#### PETITION

Your request for a protective order begins when you file a petition with the court. There is no cost to file the petition for an OP or an IAH. In the petition, you must provide dates and facts about the domestic violence or harassing acts that you allege the defendant has committed against you or why you believe domestic violence or harm may occur without protection. **NOTE: If the judge grants your request, the defendant will be given a copy of your *petition* and the order. The petition may be used in future judicial proceedings.** You can list only one defendant per petition. If you want to file against more than one person, you must file a separate petition for each defendant.

#### CHILDREN AS OTHER PROTECTED PERSONS

You may ask for a child be included as a protected person only if (1) the child is not the defendant's child or (2) the child is the defendant's child and the domestic violence involved the child. Only a superior court judge can decide child custody (legal decision-making) or parenting time in a separate family law action.

#### FAMILY COURT

If either you or the defendant file an action for maternity, paternity, annulment, legal separation, or divorce, tell the clerk immediately so the protective order case can be transferred to the superior court.

**FILING A PETITION ON BEHALF OF A MINOR OR ANOTHER PERSON**

If you are:

- a parent, guardian, or custodian of a minor who is asking for protection from someone else, choose the relationship between the *minor* and the *defendant* on the petition.
- applying on behalf of a person who is either temporarily or permanently unable to request an order, choose the relationship between the *person* and the *defendant* on the petition.

**SERVICE AND EFFECT**

**Order of Protection:** The court will send the OP to the appropriate law enforcement agency for service. There is no cost for service of an OP. If law enforcement is unable to serve the OP within 15 days, law enforcement will contact you. Law enforcement has a continuing duty to attempt service, so if you have additional information about the defendant’s location, please contact the law enforcement agency. The OP will be valid and enforceable for one year from the date of service. A served OP is enforceable by law enforcement in any state or tribal nation in the United States.

**Injunction Against Harassment or an Injunction Against Workplace Harassment:** You have one year from the date of issuance to ask for an IAH or IAWH to be served on the defendant. The order will be valid and enforceable for one year from the date of service. The court will instruct you on how service can be made. Law enforcement will serve an IAH involving a dating relationship or based on an act of sexual violence at no cost. There is a fee to serve an IAWH or an IAH not involving a dating relationship or sexual violence. The cost to serve injunctions depends on mileage and number of attempts. If you cannot afford pay for service, you can ask the judge to defer or waive the fee.

**CONTESTED HEARING**

If the defendant disagrees with the protective order, the defendant has the right to ask for a hearing. The court will conduct the hearing within 5 to 10 business days after the defendant makes a written request. At this hearing, you may present evidence (exhibits) and have witnesses testify on your behalf. The judge will take testimony from you, the defendant, and any witnesses to decide whether there is a legal reason to keep the order in place. If you do not appear for the hearing, the court may dismiss your order; therefore, you must notify the court of any change in your contact information to ensure you get notice of any hearing dates and times.

**NO-CONTACT ORDERS**

The defendant can be arrested for violating this protective order, even if you initiate contact. **If the defendant does not want you to contact him or her, the defendant has the right to request a protective order against you.** Orders are not automatically granted upon request—legal requirements must be met.

**RESIDENCE AND PROPERTY**

You may ask the judge to give you exclusive use of a residence you share with the defendant. If the defendant needs to retrieve personal belongings, the judge may order a standby. Standby allows the defendant to return once with a law enforcement officer to get necessary personal belongings. **IMPORTANT: If you move out of the residence while the court order is still in effect, you must notify the court within five days of moving out. Click here to find the form or ask the court for a blank form.** Neither law enforcement nor a protective order can resolve conflicts over property, title, furniture, finances, real estate, or other ownership issues. If the judge grants the defendant standby, the defendant must arrange a time and date with a law enforcement agency.

**FIREARMS**

You may ask the judge to order the defendant not to possess, receive, or purchase firearms or ammunition while the protective order is in effect.

<b>ANIMALS</b>	If you are asking for an Order of Protection, you may also ask the court to grant you the custody, care, and control of any animal owned by you, the defendant, or a minor child living in your household if you believe the defendant is a danger to the animal.
<b>COUNSELING</b>	Counseling for the defendant can be ordered only at a hearing of which the defendant has notice and an opportunity to participate.
<b>CHANGING OR DISMISSING THE ORDER</b>	<b>Nothing you do on your own can dismiss or change this protective order.</b> If you want to change or dismiss this order, you must make a written request to the court.
<b>PUBLIC ACCESS</b>	To comply with federal law, no identifying information about you from this protective order case will be published on the Judicial Branch website ( <a href="http://www.azcourts.gov">www.azcourts.gov</a> ).
<b>RESOURCES, SAFETY PLANS</b>	See Domestic Violence Info ( <a href="http://www.azcourts.gov/domesticviolencelaw">http://www.azcourts.gov/domesticviolencelaw</a> ) and the booklet <a href="#"><i>Things You Should Know About Protective Orders</i></a> for information about protective orders, resources, and safety plans.

Appendix C

ALL COURTS IN ARIZONA ADDRESS CITY, AZ ZIP CODE TELEPHONE NUMBER

Defendant: \_\_\_\_\_ Date: \_\_\_\_\_ Case No. \_\_\_\_\_

**Defendant’s Guide Sheet for Protective Orders - Please Read Carefully**

This guide sheet provides more information about the petition and the order that have been served on you.

The PETITION contains the plaintiff’s allegations against you and the relief that was requested from the court. The ORDER tells you what conditions the judge granted. If you were served only with a petition, a pre-issuance hearing will be scheduled.

**IF YOU HAVE BEEN SERVED WITH:**

**ORDER OF PROTECTION.** An Order of Protection has been issued because you allegedly committed or may commit an act of domestic violence against the plaintiff. You and the plaintiff have one of the following relationships:

- married (past or present)
- live/lived together as intimate partners
- romantic or sexual relationship (past or present)
- parent of a child in common
- one party is pregnant by the other
- related as parent, grandparent, child, grandchild, brother, sister (including step or in-law)
- live/lived together but not as intimate partners

**INJUNCTION AGAINST HARASSMENT.** You allegedly have committed a series of acts (more than one) of harassment or one act of sexual violence (as defined in ARS § 23-371) against the plaintiff within the last year.

**INJUNCTION AGAINST WORKPLACE HARASSMENT.** An employer or a business owner, for the benefit of employees or the business, has filed a petition against you, alleging at least one act of harassment.

**SERVICE AND EFFECT**

This protective order is valid for one year from the date it was served on you. It is enforceable by law enforcement in any state or tribal nation in the United States.

**MODIFYING OR DISMISSING THIS ORDER**

Only a judge can modify or dismiss this protective order. The plaintiff cannot dismiss or change this protective order without the court's written approval.

**CONTACT WITH THE PLAINTIFF**

You can be arrested for violating this protective order, even if the plaintiff initiates contact with you. You have the right to request a protective order against the plaintiff if you do not want the plaintiff to contact you. But orders are not automatically granted upon request. Legal requirements must be met.

**REQUEST FOR HEARING**

**Contested Hearing.** If you disagree with this protective order (regardless of its type), you have the right to request a hearing. The hearing will be held within

5 to 10 business days after you file a written request at the court that issued this order.

**Exclusive Possession of Residence.** If the court issued an Order of Protection that granted the plaintiff exclusive possession of a residence shared with you, the plaintiff must notify the court if he/she moves out of the residence while the order is in effect. Upon receipt of the notice, the court will send a copy to you. You have a right to a court hearing, upon written request, if there has been a change of circumstances related to the shared residence. See ARS § 13-3602(L).

In either situation, if a hearing is held and the order remains in effect or is modified, and you and the plaintiff are either married (past or present), live together as intimate partners (past or present), or are parents of a child in common, you may be prohibited from possessing a firearm. This prohibition may apply even if you fail to appear for the hearing. If you have questions about whether your request for a hearing can result in a firearms prohibition, you should contact an attorney. The court cannot give you legal advice.

**RESIDENCE AND  
PROPERTY**

The judge may have given the plaintiff exclusive use of a residence shared with you and may have allowed you a law enforcement standby. If the judge has granted standby on the protective order, you may return to the residence once with a law enforcement officer to obtain necessary personal belongings. You must arrange a date and time with law enforcement for the standby. Neither law enforcement nor this protective order can resolve conflicts over property, title, furniture, finances, real estate, or other ownership issues.

**FIREARMS**

If the judge has ordered under Arizona law that you cannot possess, receive, or purchase firearms, you must surrender them within 24 hours after service of this protective order to the law enforcement agency named on this order. You should ask law enforcement to issue proof of the surrender. You may also have to provide documentation to the court that firearms were transferred to the specified law enforcement agency. If you have questions about a firearms prohibition and surrender, you should contact an attorney. The court cannot give you legal advice.

**CHILDREN**

If your child is listed as a protected person, you may be referred to superior court. Only a superior court judge can decide child custody (legal decision-making) or parenting time in a separate family law action.

**FAMILY COURT**

If either you or the plaintiff file an action for maternity, paternity, annulment, legal separation, or divorce, advise this court immediately so the protective order case can be transferred to the superior court.

Appendix D

All Courts in Arizona/NCIC#/DPS# Address City, Arizona Zip Code Telephone Number

<p>_____</p> <p><b>Plaintiff</b></p> <p><b>v.</b></p> <p>_____</p> <p><b>Defendant</b></p>	<p>_____</p> <p><b>Case No.</b></p>	<p><b>NOTICE REGARDING EXCLUSIVE POSSESSION OF A SHARED RESIDENCE</b></p>
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I am the plaintiff in the above-captioned case. This court issued an Order of Protection on my behalf and granted me exclusive possession of a residence that I shared with the defendant. I am giving notice to the court that effective \_\_\_\_ / \_\_\_\_ / \_\_\_\_\_, I moved out of the previously shared residence located at:

\_\_\_\_\_ Street Address \_\_\_\_\_ City \_\_\_\_\_ State/Zip Code

Under penalty of perjury, I swear or affirm the above statement is true.

\_\_\_\_\_ Plaintiff \_\_\_\_\_ Date

**NOTICE TO THE DEFENDANT**

The Order of Protection issued by this court granted the plaintiff exclusive possession of a residence that you shared with the plaintiff. The plaintiff has provided the above notice to this court regarding exclusive possession of the shared residence. You have a right to a hearing pursuant to A.R.S. § 13-3602(L). If you wish to be heard by the court, you must file a hearing request in writing. A Hearing Request form is provided with this notice.

\_\_\_\_\_ Date \_\_\_\_\_ Judicial Officer or Clerk

**CERTIFICATE OF TRANSMITTAL**

Notice [ ] mailed [ ] provided personally to Defendant on \_\_\_\_/\_\_\_\_/\_\_\_\_ by \_\_\_\_\_