

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-20-0002
RULE 38, RULES OF PROTECTIVE)
ORDER PROCEDURE)
) **FILED: 8/26/2020**
)
)
_____)

**ORDER AMENDING
RULE 38, ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE**

A petition having been filed proposing to amend Rule 38, Arizona Rules of Protective Order Procedure, and comments having been received, upon consideration,

IT IS ORDERED that Rule 38, Arizona Rules of Protective Order Procedure, is amended in accordance with the attachment to this order, effective January 1, 2021.

DATED this 26th day of August, 2020.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

TO:

Rule 28 Distribution
Hon Wendy A Million
Lisa M Panahi

ATTACHMENT*

ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE

Rule 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~~ is entitled to only one hearing, which must be requested in writing. A defendant waives the right to contest the protective order if the defendant fails to appear at the requested hearing or for other good cause shown. See A.R.S. §§ 13-3602(L), 12-1809(H), 12-1810(G).

(b) **Scheduling the Hearing.** A judicial officer must hold the hearing at the earliest possible time.

~~(1)~~(1) **Order for Exclusive Use of Residence.** If an Order of Protection grants exclusive use of the residence, a judicial officer must hold a hearing within 5 court business days of the request. 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).

~~(2)~~(2) **Other Orders.** For all other protective orders, a judicial officer must hold a hearing within 10 court business days of the request unless the judicial officer finds good cause to continue the hearing for a longer period of time.

(c) — (d) [[[No changes]]]

~~(e) **Parties' Right to Be Heard.** The judicial officer must ensure that both parties have an opportunity to be heard, to present evidence, and to call and examine and cross-examine witnesses.~~

~~(f) **Oath or Affirmation.** The court must administer an oath or affirmation to all parties and witnesses at all hearings.~~

~~(g) **Standard of Proof.** For a protective order to remain in effect as originally issued or as modified at a hearing, the plaintiff must prove the case by a preponderance of the evidence.~~

~~(h) **Basis for Continuing, Modifying, or Revoking Protective Orders.** At the conclusion of the hearing, the judicial officer must state the basis for continuing, modifying, or revoking the protective order.~~

~~(i) **Service of Modified Protective Order.** The plaintiff or the court must arrange for service of a modified protective order on the defendant. A judicial officer should assist this process by asking the defendant to sign an acceptance of service form in the courtroom.~~

* Additions are depicted in underline and deletions are depicted in ~~strikethrough~~.

(e) Appearance at the Contested Hearing.

(1) Defendant fails to appear. If the plaintiff appears for the contested hearing and the defendant fails to appear, and the defendant received actual notice of the hearing, the protective order will remain in effect.

(2) Plaintiff fails to appear. If the defendant appears for the contested hearing and the plaintiff fails to appear, and the plaintiff received actual notice of the hearing, the protective order will be dismissed.

(3) Neither party appears. If neither party appears for the contested hearing, and each party received actual notice, the hearing will be vacated, and the protective order will remain in effect.

(f) Procedure. If both parties appear and a contested hearing is conducted, the following rules apply:

(1) Parties' Right to Be Heard. The judicial officer must ensure that both parties have an opportunity to be heard, to present evidence, and to call and examine and cross-examine witnesses.

(2) Oath or Affirmation. The court must administer an oath or affirmation to all parties and witnesses at all hearings.

(3) Standard of Proof. For a protective order to remain in effect as originally issued or as modified at a hearing, the plaintiff must prove the case by a preponderance of the evidence.

(4) Basis for Continuing, Modifying, or Revoking Protective Orders. At the conclusion of the hearing, the judicial officer must state the basis for continuing, modifying, or revoking the protective order.

(5) Service of Modified Protective Order. A modified protective order must be served on the defendant. Procedures for serving a defendant who is present in the courtroom are set forth in Rule 31(f)-(g).