

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-20-0038
RULES 23 AND 38, RULES OF)
PROTECTIVE ORDER PROCEDURE)
)
) FILED: 8/25/2020
)
)
_____)

**ORDER
AMENDING RULES 23 AND 38, RULES OF PROTECTIVE ORDER PROCEDURE
ON AN EMERGENCY BASIS**

On July 13, 2020, David K. Byers, on behalf of the Administrative Office of the Courts, filed a rule petition to amend Rules 23 and 38 of the Arizona Rules of Protective Order Procedure and related official forms as required to conform to certain statutory amendments adopted during the last legislative session. The petition also requested expedited consideration to permit the rules' adoption by August 25, 2020, the effective date of the statutory amendments. On July 13, 2020, this Court granted Petitioner's request for expedited consideration and opened the petition for public comment by no later than October 1, 2020, with any Reply to be submitted by October 15, 2020. Upon consideration,

IT IS ORDERED adopting the proposed rule amendments as modified, as shown in the Attachment hereto, on an emergency basis under Supreme Court Rule 28(h)(2), effective on August 25,

2020. Conforming revisions to the related official forms as requested in the rule petition shall be made by Administrative Directive. The Court will consider whether to adopt the rule amendments on a permanent basis at its December 2020 Rules Agenda or at another scheduled conference.

DATED this 25th day of August, 2020.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

TO:

Rule 28 Distribution
David K. Byers

ATTACHMENT¹

ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE

Rule 23. Order of Protection

(a) through (g) [No change]

(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) – (5) [No change]

(i) - (k) [No change]

* * *

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 one hearing in writing. *See* A.R.S. §§ 13-3602(~~H~~)(L), 12-1809(H), 12-1810(G).

¹ Additions to text are shown by underscoring; deletions by ~~strikeouts~~.

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

(1) If an Order of Protection grants exclusive use of the residence, a judicial officer must hold a hearing within ~~five~~ 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) 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) through (i) [No change]