Committee on the Impact of Domestic Violence and the Courts

Tuesday, February 11, 2020 – 10:00 a.m.
Arizona State Courts Building, 1501 W. Washington – Conference Room 119 A/B
CIDVC Home Page

Time*	AGENDA	Presenter
10:00 a.m.	Call to Order/Welcome and Introductions	*JUDGE WENDY MILLION* *Tucson City Court*
	Approval of Minutes – November 5, 2019 ☐ ***Formal Action/Request***	
	Approval of Minutes – January 6, 2020 ☐ ***Formal Action/Request***	
10:05 a.m.	Gender, Victimization, and Victim Service Needs Among Community Court Defendants	*DR. ALESHA DURFEE* *Arizona State University*
11:05 a.m.	Proposal to Amend ACJA § 1-302: Education and Training ☐ ***Formal Action/Request***	*JUDGE MILLION*
11:20 a.m.	ARPOP Rule Petitions ☐ ***Formal Action/Request***	*KAY RADWANSKI, AOC*
11:40 a.m.	Update: AZPOINT	*MICHELE GILLICH, AOC* *KAY RADWANSKI, AOC*
Noon	**LUNCH**	
12:30 p.m.	Legislative Update	*ELISE KULIK, AOC*
12:45 p.m.	Workgroup Reports	*JUDGE MILLION*
1:15 p.m.	Announcements/Call to the Public Adjournment	*JUDGE MILLION*

Next Meeting
Tuesday, **May 19, 2020**; 10 a.m.
Conference Room 119 A/B
Arizona State Courts Building

Remaining 2020 Meeting Dates
May 19
September 15
November 10

**All times are approximate and subject to change. The CIDVC chair reserves the right to set the order of the agenda. For any agenda item, the committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration § 1-202. Please contact Kay L. Radwanski, CIDVC staff, at (602) 452-3360, with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Angela Pennington at (602) 452-3547. Requests should be made as early as possible to allow time to arrange for the accommodation.*

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Draft Minutes
November 5, 2019 10:00 a.m.
Arizona State Courts Building
Conference Room 119A/B
1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (chair), Elaine Armfield, Judge Marianne T. Bayardi, Judge Bruce R. Cohen, Diane L. Culin, Judge Catherine Gaudreau, Judge Statia Hendrix, Patricia Madsen, Sgt. Jorge Lomeli (proxy for Officer Christopher Malast), Leah Meyers, Doreen Nicholas, Amy Offenberg, Judge Wyatt Palmer, Pearl Puente, Rebecca Strickland, Patricia A. Tracey, Kristi Ward, Sgt. Jose Ferreira (proxy for Tracey Wilkinson)

Telephonic: Anna Harper-Guerrero, Dr. Joi Hollis, Sergeant Lauren Pettey, Judge Bruce Staggs

Absent/Excused: Lynn Fazz, Deborah Fresquez, Susan Johnson-Molina; Judge Debra R. Phelan, Judge Adam Watters, Chief Terry Young

Presenters/Guests: Lt. Theresa Arviso, Surprise Police Department; Judge Carol Scott Berry (Ret.), Jean Egelston; Michele Gillich, AOC ITD; Jennifer Greene, AOC Assistant Legal Counsel; Judge Sharon Sauls, Kyrene Justice Court; David Withey, AOC Chief Legal Counsel

Administrative Office of the Courts (AOC) Staff: Theresa Barrett, Angela Pennington, Kay Radwanski

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I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The November 5, 2019, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:10 a.m. by Judge Wendy Million, chair.

B. Approval of Minutes

The draft minutes from the September 10, 2019, CIDVC meeting were presented for approval.

Motion: To approve the September 10, 2019, minutes. **Moved by** Amy Offenberg. **Seconded by** Judge Catherine Gaudreau. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Update: AZ Statewide Protective Order Project 2020

Michele Gillich, AOC ITD project manager, provided an update on the AZPOINT system and pilot courts. She and Kay Radwanski then provided a step-by-step demonstration with a test

order. CIDVC members asked for clarification on the process during the presentation and provided additional suggestions on how to make the process more efficient, user-friendly, and safer for domestic violence victims.

B. "Near" and Enforceability of Protective Orders (Topic taken out of order.)

Judge Bruce Cohen discussed an opinion issued by the Superior Court in Maricopa County based on an appeal of Order of Protection issued by the Manistee Justice Court. In this case, the order was deemed defective, and therefore unenforceable, because it prohibited the defendant from "go[ing] to *or near*" several different places related to the whereabouts of the defendant. The order did not define "near," and the lower appeal court determined that "near" was unconstitutionally vague. In that case only, the order was invalidated and remanded to the justice court for further action.

David Withey, AOC chief legal counsel, noted the possibility that the protective order forms would need to be changed. Changes to the Order of Protection and Injunction Against Harassment statutes require the plaintiff's address and contact information to be protected. Mr. Withey said research showed that about 25 states have similar "shall not go near" language in their statutes, and none have been declared unconstitutional.

The committee asked for clarification on the case background and discussed possible solutions to the issue of defining "near" in a protective order. Mr. Withey offered to send the case law from other states that were referenced in his research of this case.

C. Phoenix Firearms Transfer Pilot Project

Judge Marianne Bayardi discussed a pilot project at the Phoenix Municipal Court for a defendant in a domestic violence case to comply with a firearms transfer order. Processes documenting the firearms transfer, declaring no ownership of firearms (and thus no need to transfer), and filing a motion for release are included in this pilot. Judge Bayardi said other courts may adapt the forms for their own use.

D. Mandatory Parent Education Programs and Domestic Violence

A.R.S. § 25-351 requires any party involved "in an action for dissolution of marriage, legal separation or annulment that involves a natural or an adopted minor, unemancipated child … in which a party has requested that the court determine custody, specific parenting time or child support" to attend and complete a parental education program. Judge Cohen proposed that the committee, or a workgroup of the committee, develop a five to ten-minute segment on domestic violence that could be included in the parent education program.

E. Draft Legislation: Long-Term Order of Protection

A draft proposal for a long-term Order of Protection has been discussed at several previous CIDVC meetings. After discussion with the committee and with AOC legislative staff, the plan is to have CIDVC will work on this proposal jointly with the newly formed Family Court Improvement Committee (FCIC).

F. Workgroup Reports

Judge Million would like to have the workgroups come together for another "working day" to possible reorganize the workgroups and decide on upcoming projects.

Judicial Education. Judge Million has contacted Dr. Christopher Wilson, who has previously presented at the 2018 Judicial Conference on domestic violence victims and trauma. He is willing to present at the 2020 Judicial Conference. She will ask the conference planning committee to consider asking Dr. Wilson to present a second session. CIDVC may also want to propose a session involving either Dr. Neil Websdale or Dr. Kathleen Ferraro.

The **High Risk and Lethality Assessment Workgroup** is collecting fatality review reports and will ask law students to review them. A questionnaire will be given to the students so they know what information to evaluate.

The **Protective Orders, Enforcement, and Access Workgroup** will update the Ex Parte Hearing bench cards with the new service information. The contested hearing bench cards are also being developed, and the remote video hearing bench cards are being promoted.

The **PO2020/Forms/ARPOP Workgroup**, using a PowerPoint from Marc Peoples along with slides from Ms. Radwanski, has created a training on the ex parte protective order process that includes an update on the legislative changes effective January 1, 2020, and AZPOINT. This group would also like to create an infographic for dissemination to the public and advocates on the legislative changes, the web portal, and new process for service of protective orders.

The **Family Law Workgroup** is planning to develop danger assessment bench cards. They would also like make recommendations for training modules that could be made available at the Judicial Conference or judicial trainings.

III. OTHER BUSINESS

A. Announcements/Call to the Public

- Judge Bayardi asked Ms. Radwanski to email the materials on firearms transfer to the committee.
- The committee was asked to forward topics of interest or proposed agenda items to Ms. Radwanski.
- No one responded to the Call to the Public.

B. Next Meeting.

Tuesday, February 11, 2020; 10 a.m.
Arizona State Courts Building, Conference Room 119 A/B
1501 W. Washington, Phoenix, AZ 85007

The meeting adjourned at 1:38 pm.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Draft Minutes
January 6, 2020 12:15 p.m.
Arizona State Courts Building
Conference Room 227
1501 W. Washington Street, Phoenix, AZ 85007

Telephonic: Judge Wendy Million (chair), Elaine Armfield, Judge Marianne T. Bayardi, Judge Bruce R. Cohen, Diane L. Culin, Lynn Fazz, Judge Catherine Gaudreau, Judge Statia Hendrix, Dr. Joi Hollis, Patricia Madsen, Officer Christopher Malast, Leah Meyers, Doreen Nicholas, Amy Offenberg, Judge Wyatt Palmer, Sergeant Lauren Pettey, Judge Debra R. Phelan, Judge Bruce Staggs, Rebecca Strickland, Patricia A. Tracey, Judge Adam Watters, Tracey Wilkinson, Chief Terry Young

Absent/Excused: Deborah Fresquez, Anna Harper-Guerrero, Susan Johnson-Molina, Pearl Puente, Kristi Ward

Administrative Office of the Courts (AOC) Staff: Kay Radwanski

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I. NEW BUSINESS

Judge Wendy Million, chair, called a special meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) to order at 12:15 p.m. All participating members appeared telephonically. The purpose of the special meeting was for the committee to decide whether a Rule 28 petition should be filed in its name to amend Rule 38, Rules of Protective Order Procedure.

The need for revision to Rule 38 was brought to CIDVC by Judge Bruce Cohen, who had conducted an informal survey of procedures in courts in Maricopa and Pima counties. The survey results showed inconsistent results when one or both parties failed to appear contested protective order hearings.

Kay Radwanski, CIDVC staff, presented a draft petition to CIDVC members for discussion. Revisions were proposed, and consensus was reached on a final version. It was noted that Judge Gerald Williams, North Valley Justice Court, has filed a Rule 28 petition that also addresses Rule 38. Judge Cohen agreed to contact Judge Williams to let him know that CIDVC will be filing a petition on the same subject.

Motion: To approve the filing of a Rule 28 petition to amend Rule 38, Rules of Protective Order Procedure, and authorizing Judge Million to file it on CIDVC's behalf by the January 10, 2020, deadline. **Moved by** Dr. Joi Hollis. **Seconded by** Judge Marianne Bayardi. Motion passed unanimously.

II. OTHER BUSINESS

A. Announcements/Call to the Public

- No one responded to the Call to the Public.

B. Next Meeting. Tuesday, February 11, 2020; 10 a.m.
Arizona State Courts Building, Conference Room 119 A/B
1501 W. Washington, Phoenix, AZ 85007

The meeting adjourned at 12:55 p.m.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Date:	Type of Action Requested:	Subject:
Feb. 11, 2020	☐ Formal Action/Request ☒ Information Only ☐ Other	Gender, Victimization, and Victim Service Needs Among Community Court Defendants

From: Dr. Alesha Durfee, Associate Professor of Women and Gender Studies, and Paul Thomas , Court Administrator, Mesa Municicpal Court.

Presenter: Dr. Alesha Durfee

Description of Presentation: Research results related to female defendants in Mesa's Community Court. For information about the project and main findings, here are links to the report and a podcase done for the Center for Victim Research:

Durfee, A. (2019). *Gender, Victimization, and Victim Service Needs Among Community Court Defendants: Final Report*. Center for Victim Research. https://ncvc.dspacedirect.org/bitstream/handle/20.500.11990/1556/R2P%20Fellowships%202019_Arizona%20University%20Mesa%20Municipal 20Court%20Final%20Report.pdf

Durfee, A. & Thomas, P.** (2019). Center for Victim Research. Gender and victimization rates in Community Court. https://victimresearch.org/podcast/tell-us-about-it-episode-22-gender-and-victimization-rate-in-community-court/

Recommended Motion: None

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Date:	**Type of Action Requested:**	**Subject:**
February 11, 2020	☒ Formal Action/Request ☐ Information Only ☐ Other	Proposal to Amend ACJA 1-302: Education and Training

From: Kay Radwanski

Presenter: Judge Wendy Million

Description of Presentation: Judge Million will lead discuss on proposed revisions to ACJA 1-302: Education and Training. The Study Committee on Domestic Violence and Mental Illness in Family Court Cases, in its 2018 report, recommended that "the Supreme Court require annual mandatory training in domestic violence and mental health issues for judicial officers and court personnel involved in family court cases and related protective order matters."

Recommended Motion: Approve a draft proposal to amend ACJA 1:302 and authorize Judge Million to file it on CIDVC's behalf.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet

Part 1: Judicial Branch Administration
Chapter 3: Judicial Officers and Employees
Section 1-302: Education and Training

1. **Effect of the proposal:** This proposal would require judges (including pro tempore judges), clerks and staff who serve in the court in the areas of family law, juvenile law, probate, criminal law, and protective orders to complete 3 hours of training on domestic violence issues every two years.

2. **Significant new or changed provisions:** The Committee on the Impact of Domestic Violence and the Courts (CIDVC) proposes a change to ACJA § 1-302(H)(2) to make periodic training for judicial officers, clerks, and court staff mandatory. The current version of this code requires only "regular training" for judicial officers, clerks, and court staff who process Orders of Protection and Injunctions Against Harassment. "Regular" is undefined and not tracked for compliance.

   In 2018, a series of homicides occurred in Maricopa County when six people were shot and killed within several days. What all of the victims had in common was the killer—Dwight Lamon Jones, who took his own life as law enforcement closed in on him. It was believed he targeted four of these victims because of their relationship to a contentious 2010 divorce case between Jones and his wife. The family court case involved serious allegations of domestic violence and mental illness. The victims included a psychologist who testified on behalf of Dr. Connie Jones during the family court trial; two paralegals[1] who worked in the office of Dr. Jones' attorney; and a psychologist who had no part in the Jones cases but rented an office suite from a counselor who had worked with the Jones' child.

   The Jones' journey into the court system began with an incident in 2009, in which an argument led to Jones locking himself and the parties' 12-year-old son in the family home after Dr. Jones had called 911 and escaped from the house. After several hours, police were finally able to persuade Jones to release the child and come out of the house. He was arrested for domestic violence assault, threatening and intimidating, and disorderly conduct. A criminal case proceeded in a city court, while a family court case began in superior court. Over the next four years, Dr. Jones obtained four successive Orders of Protection. The family court case finally concluded in 2016.

   In August 2018, the Study Committee on Domestic Violence and Mental Illness in Family Court Cases was convened at the Arizona Supreme Court to look at how Arizona family courts treat domestic violence and mental health issues. Retired Chief Justice Ruth V. McGregor headed up the committee. In December 2018, the committee issued its report after interviewing Dr. Connie Jones, her attorney, family

[1] The paralegals did not work for the attorney at the time of the family court litigation.

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court judges, a victim advocate, and a provider of domestic violence offender treatment.

The Study Committee's first recommendation was for the Supreme Court to "require annual mandatory training in domestic violence and mental health issues for judicial officers and court personnel involved in family court cases and related protective order matters."[2] The Study Committee noted that mandatory domestic violence training should extend beyond the mechanics of issuing protective orders and recommended mandatory training for family, juvenile, criminal, and probate courts and for judicial officers and court personnel who work with protective order cases.[3] CIDVC was asked to take the Study Committee's recommendation forward.

Domestic violence knows no age, socioeconomic, religious, racial, gender or educational barriers.[4] The impact of domestic violence in the United States is significant. One study estimates the cost of intimate partner violence to U.S. society, including health costs and productivity losses, to be $5.8 billion, including $4.2 billion for physical violence, $320 million for partner rape, and $342 million for partner stalking, in 1995 dollars. Converted to 2017 dollars, the cost of IPV in the United States would be $9.3 billion.[5] In 2019, 90 victims of domestic violence were killed in Arizona.[6]

Judges play a crucial role in addressing domestic violence. They make decisions that affect the lives of the victim, the abuser, the children and, potentially, other family members. Judges' decisions happen not only in the criminal justice arena, where the violence is being addressed directly, but also in family court, juvenile court, and probate cases and in the issuance and hearing of protective order cases. The judicial system can help protect victims and their families, ensure that perpetrators are held accountable, and prevent further domestic violence.

The Jones case illustrated the importance for Arizona judges to understand the challenges that domestic violence victims face when accessing the legal system and the need to provide procedural justice and access to justice for both victims and offenders. In order to provide the best experience to all parties in cases where domestic violence is involved, judicial officers and court staff must have a basic understanding of the dynamics involved in intimate partner relationships where domestic violence is present. Without that crucial understanding about the barriers involved in leaving an abusive relationship and the insidious nature of true coercive

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[2] Study Committee on Domestic Violence and Mental Illness in Family Court Cases: Report and Recommendations (December 13, 2018), pages 24- 26. See also Summary: Training on domestic violence, page 16.

[3] Id., pages 16-17.

[4] American Judges Association, Domestic Violence & the Courtroom: Knowing the Issues, Understanding the Victim.

[5] Wendy Max, Dorothy P. Rice, Eric Finkelstein, Robert A. Bardwell, and Steven Leadbetter, "The Economic Toll of Intimate Partner Violence Against Women in the United States," Violence and Victims 19, No. 3 (June 2004): 259–72.

[6] Fatality Lists and Reports, Arizona Coalition to End Sexual and Domestic Violence.

controlling abusive behavior, judicial officers struggle to understand the behavior of the parties in front of them and often the danger that may be involved. Additionally, a true understanding of the impact of witnessing domestic violence on children and their parents is crucial to a just determination in family law cases.

Domestic violence cases are tragic, sad, messy and hard, and many judges shy away from the decisions that must be made to keep families safe. Receiving regular updates on these topics, along with changing protective order laws and other legal issues that arise in cases where domestic violence is alleged is necessary for all judges who may see this issue in their courtrooms. Unlike other topics that are limited by jurisdiction or court assignment, domestic violence, like computer security and courtroom safety, is relevant to all our judicial officers and court staff.

Additionally, in the vast majority of cases where domestic violence is involved, the plaintiffs, and often the defendants, are self-represented, involved in several court systems, and attempting to navigate the various court systems on their own. The mandatory training of court staff will lead to more procedural justice in these cases, as staff come to understand the trauma and fear these litigants are often experiencing as they come to court.

3. **Committee actions and comments**: (Summarize comments and responses)

4. **Controversial issues**: CIDVC has supported mandatory domestic violence training for judicial officers and court personnel in the past, but there has been resistance to adding more mandatory training requirements. Currently, annual training on ethics and computer safety/network security is mandated for judicial officers and court employees. Those topics are important, but so is training on domestic violence. Domestic violence issues touch many other case types in ways that far surpass the mechanics of issuing Orders of Protection and Injunctions Against Harassment. Attendees at the annual Judicial Conference self-select their sessions, and it has not gone unnoticed that many of those who choose domestic violence-related sessions do so because they already have a strong interest in and knowledge about this topic.

5. **Recommendation**: Adopt the revision to ACJA § 1-302(H) as presented.

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ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Judicial Branch Administration
Chapter 3: Judicial Officers and Employees
Section 1-302: Education and Training

A. Definitions. In this section, the following definitions apply:

"Accredited Sponsor" means an individual or organization that has been granted status to accredit their programs by the Committee on Judicial Education and Training (COJET).

"Computer security/network security training" means training addressing measures that strengthen the security of the Arizona judiciary's data, systems and network to protect confidentiality, integrity and availability of information.

"Continuing education" means training or education that leads to improved job-related skills, knowledge or abilities, or specialized skills that enhance the ability to perform job functions.

"County training coordinator" means the local training coordinator designated in each county.

"Credit hour" means an increment of continuing education determined by COJET to constitute one credit toward COJET requirements. In most instances, 60 minutes of education equals one credit hour.

"Education Services" means the division of the Administrative Office of the Courts (AOC) responsible for planning and implementing education for the judiciary.

"Ethics training" means a training session related to appropriate personal behavior in the workplace, codes of conduct, fair treatment in the courts, or avoiding the occurrence or perception of impropriety in carrying out responsibilities.

"Facilitator" means a specifically trained individual who leads local or small group activities that take place as part of a larger program.

"Faculty" means an individual who plans, prepares, and presents an education program. This definition includes individuals who serve as moderator or coordinator of a panel, and individuals who perform pre-planning for one-to-one training activities with measurable educational outcomes.

"Hearing officer, paid," means an individual paid by the court to serve as a civil traffic or small claims hearing officer.

"Hearing officer, volunteer" means an individual who serves voluntarily as civil traffic or small claims hearing officer.

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"Judicial education" means continuing professional education for judges, probation and court personnel.

"Judge" means any person who is authorized to perform judicial functions within the Arizona judiciary, including a justice or judge of a court of record, a justice of the peace, magistrate, water master, court commissioner, referee or pro tempore judge.

"Live training" means training or education provided by one or more faculty or facilitators to an individual or a group using real time interaction.

"Local training coordinator" means the person designated in each court or department to coordinate judicial education.

"Non-facilitated learning" means an individual study program conducted without the aid of an instructor, facilitator, or active co-participants.

"On-call" means employees who are available when summoned for service, do not have an established work schedule and whose schedule is on an as-needed basis.

"Orientation" means knowledge, skills and ethics necessary to begin the job.

"Probation personnel" means probation officers, surveillance officers, detention officers, youth supervisors, support staff, and any other staff assigned to probation departments and juvenile courts.

"Program Sponsor" means an individual, group or organization conducting continuing education for COJET credit hours.

B. Applicability. This section establishes education standards for all judges, probation and court personnel in Arizona.

C. Purpose. The education and training of judicial officers and court employees are necessary to maintain judicial independence and carry out the judicial branch's obligation to administer justice impartially and competently. The following standards shall ensure that judges and judicial branch employees continually receive education and training necessary to achieve the highest standard of competence, ethical conduct, integrity, professionalism, and accountability.

D. Organization.

1. Director of the Administrative Office of the Courts. Under the direction of the supreme court, the administrative director of the AOC shall prepare guidelines for implementing these standards, and shall develop, administer, and coordinate judicial education programs throughout the state. The Committee on Judicial Education and Training (COJET) and Education Services shall assist the director in this effort.

2. Education Services shall:

   a. Staff COJET and its standing advisory committee meetings;

   b. Conduct judicial education and faculty development programs;

   c. Evaluate educational programs;

   d. Provide guidance to judges and judicial employees in the selection of appropriate educational opportunities;

   e. Develop a network of trainers throughout the courts; and

   f. Prepare an annual report on educational activities in the courts.

3. COJET shall oversee all standards, policies and procedures governing accreditation and compliance with judicial education in Arizona.

4. Training coordinators. Each court or department shall designate at least one person as the local training coordinator for continuing judicial education. The training coordinator shall accredit local programs, maintain records of compliance with education standards, provide training opportunities, and coordinate local training programs.

   The courts in counties with more than 500,000 people shall have a full-time training department supervised by a qualified employee at the supervisory or higher management level.

5. Faculty shall be selected based on subject matter expertise, faculty training, and creditability.

   a. Faculty are primarily judges, members of the legal community, and court personnel who have expertise in the curriculum, knowledge of adult education principles, and the ability to prepare and present educational material effectively. Authorities from other disciplines may be used when their expertise aligns with specific program goals.

   b. Education and training programs shall emphasize the use of modern adult education principles that focus on participative learning. Faculty members shall be familiar with effective teaching techniques based on these principles, including:

      (1) Creating a dialogue with participants by encouraging their input concerning substantive areas; and
      (2) Asking participants questions to evaluate their comprehension and learning.

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E. Program Accreditation.

1. A program must meet the following requirements to be accredited:

   a. The program is job-related or relates to the justice system;

   b. The program constitutes an organized program of learning with significant intellectual or practical content;

   c. The program is meant to improve job-related professional competencies and skills;

   d. The program is at least 30 minutes in length or consists of related segments totaling at least 30 minutes of instruction;

   e. Participants in live training programs are given the opportunity to evaluate program effectiveness;

   f. Participants receive materials such as handouts, manuals, study guides, flowcharts, or substantial written outlines, except when writing an article or reading and evaluating a book;

   g. Breaks, non-substantive speeches, and business meetings shall not be accredited; and

   h. The program sponsor shall keep attendance records for five years and shall forward attendance records, relevant program materials and program evaluations to the party accrediting the program upon request.

2. Accreditation shall be granted in three ways:

   a. Local programs. Training coordinators shall accredit a program offered locally for employees in their court or division when:

      (1) Program sponsors submit a proposal with an agenda, duration and other supporting materials if requested by the local training coordinator;
      (2) Upon conclusion of a program, the program sponsor provides the training coordinator with an agenda, attendee list and compiled participant feedback from evaluations. Handouts and other written materials may also be requested by the local training coordinator; and
      (3) The local training coordinator determines the program has substantive value.

   b. Individual employee programs. Training coordinators shall accredit a program attended by an individual when:

      (1) Prior to the program, and at the discretion of the training coordinator, the individual submits an agenda, duration and other supporting materials;

(2) Upon conclusion of a program, the employee provides an agenda, outline and other supporting material. Handouts, evaluations or other written materials may also be requested by the local training coordinator; and
(3) The training coordinator determines the program has substantive value.

c. Regional or statewide programs. COJET, Education Services or accredited sponsors shall accredit a program offered to participants statewide or from a broad geographical or jurisdictional area. County training coordinators or their designee may accredit programs that are countywide or that involve participants from one or more counties. This procedure eliminates the need for each local training coordinator to accredit the same program for individual participants.

3. Programs not sponsored by a court. Individuals attending education programs not sponsored by a court may be granted credit hours, with approval from a supervisor and training coordinator, if the program is applicable to their position or fosters court-related career growth.

4. Concurrent accreditation. Courses of at least two hours in duration may be accredited for more than one required area, including ethics, core curricula, and computer/network security.

5. Non-facilitated learning. With prior approval of a supervisor and prior accreditation by a training coordinator, an individual may engage in non-facilitated learning consisting of one or more of the following:

   a. Writing articles or other materials beyond the normal scope of the job position;

   b. Watching video and listening to audio programs; and

   c. Reading and evaluating a book, not to exceed one-half credit hour for every 30 pages.

6. Faculty Credit. COJET recognizes the educational mastery necessary to teach a course and values teaching by judges and court staff. An individual may receive up to eight hours of faculty credit in a calendar year in accordance with the following criteria:

   a. Credit hours may be granted to faculty at the rate of three-for-one the first time a course is taught and two-for-one the second and each consecutive time that course is taught;

   b. Credit hours may be granted to a program facilitator at the rate of two-for-one for the time spent facilitating the program;

   c. Credit hours may be granted for developing curriculum not to exceed four credit hours in a calendar year; and

   d. Faculty credit for live trainings can be used to meet the live training requirement.

7. College courses relevant to court duties may be accredited at a rate of two credit hours for each college credit hour earned. College courses directly relevant to specific job duties may be accredited for each hour of classroom attendance. Institutions offering courses or individuals taking a course may request accreditation through a written request to their local training coordinator or Education Services accompanied by an agenda, course syllabus, outline and other supporting material as requested by the accrediting body. An individual may receive up to eight credit hours in a calendar year for college courses.

8. Appeals of accreditation decisions. All appeals shall be made in writing no later than December 15 of each calendar year.

    a. Appeals of local training coordinator accreditation decisions shall be submitted in writing to Education Services. The Education Services Director shall review the request and make a determination within fifteen business days of the request.

    b. Appeals of Education Services accreditation decisions shall be submitted in writing to the COJET chair in care of the Education Services Director. The COJET chair shall review the request, contact other members of COJET at the chair's discretion, and make a determination within fifteen business days of the request.

9. Sponsor accreditation. Accredited sponsors may accredit programs they sponsor. Any person or organization with five years experience sponsoring judicial education programs may apply or be nominated to be an accredited sponsor by COJET. COJET may condition or terminate sponsor accreditation at any time.

    a. Application. The typed application shall contain the following information:

        (1) Whether the applicant is a non-profit organization;
        (2) The approximate number of courses offered by the applicant in the preceding three years, including the location, subject matter, attendance, total hours of instruction and faculty for courses relating to the judiciary;
        (3) The approximate percentage of total courses offered by the applicant relating to the judiciary;
        (4) A description of the experience and qualifications of key faculty involved in courses related to the judiciary;
        (5) A list of current accreditations or certifications granted by other organizations; and
        (6) A statement of willingness by the applicant to comply with requirements for program accreditation and verification of attendance.

    b. Nomination. Members of COJET may nominate an individual or organization to be an accredited sponsor, subject to the approval of the full committee.

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F. Exemptions.

1. Permanent exemptions. Temporary or on-call personnel, other than judges and law clerks, are exempt from compliance with the standards unless ordered to participate in judicial education programs by their respective chief judge or presiding judge.

2. Temporary exemptions. Upon request, the chief justice, the chief judge, the presiding judge of the superior court in each county, or their designees may grant exemptions to judges and employees of their court for temporary circumstances, including but not limited to:

   a. Medical or other physical conditions preventing active participation in educational programs;

   b. Extended, approved leave of absence;

   c. Military leave;

   d. Extended jury duty;

   e. Temporary medical waivers for defensive tactics courses, in accordance with ACJA § 6-107.

3. Qualifications for temporary exemption. To qualify for an exemption, an employee shall demonstrate a good faith effort to attend training prior to their request. An employee on medical or other leave may also qualify for an exemption from the core curricula and ethics training requirements.

G. Reporting Procedures.

1. Individual compliance reporting. Judges and employees shall file compliance reports with designated training coordinators in accordance with local policies and procedures.

2. Court and department reporting.

   a. The local training coordinator shall maintain records of compliance for all individuals in their court or department.

   b. The chief justice, the chief judge, the presiding judge of the superior court in each county, or their designee shall certify compliance, non-compliance, and exemptions by filing consolidated compliance reports for their respective courts or counties each year for the calendar year beginning January 1 and ending December 31.

   c. The local training coordinator shall submit a report no later than January 31 of each calendar year to Education Services using an approved reporting format. The report shall include:

(1) The number of compliant individuals;
(2) Number of non-compliant individuals, including name, department, reason for non-compliance and completed credit hours;
(3) Number of individuals exempt from compliance, including name, department, reason for exemption, completed credit hours, and duration of leave, as appropriate; and
(4) Other information as requested by Education Services.

3. County reporting. Education Services shall compile and distribute countywide reports to county superior court presiding judges for approval.

4. Statewide judicial education report. Education Services shall compile county reports into a statewide judicial education report for submission to the chief justice no later than February 28 of each year.

H. General Requirements for Compliance.

1. All full-time judges and court personnel governed by these standards shall complete at least sixteen credit hours of judicial education each year, including ethics training, computer security/network security training, and six hours of live training.

2. Full-time judges and full-time and part-time court personnel starting employment after January 1, as well as court personnel with a regular part-time schedule shall complete the requirements (including live training, ethics and computer security/network security training) according to a prorated schedule:

   a. Those starting between January 1 – March 31 or with part-time schedule of between 30 and 39 hours each week shall complete seventy-five percent of the requirements;

   b. Those starting between April 1 – June 30 or with part-time schedule of between 20 and 29 hours each week shall complete fifty percent of the requirements;

   c. Those starting between July 1 - September 30 or with a part-time schedule of less than 20 hours each week shall complete twenty-five percent of the requirements; or

   d. Those starting between October 1 – December 31 shall complete orientation and ethics as appropriate to the job position.

3. Specialized training. Judges (including pro tempore judges), clerks and staff who ~~process Orders of Protection and Injunctions Against Harassment~~ serve in the court in the areas of family law, juvenile law, probate, criminal law, and protective orders ~~shall attend training on such orders and injunctions on a regular basis~~ must complete 3 hours of training on domestic violence issues every two years.

4. Non-compliance. Judges not meeting requirements and without an exemption are subject to disciplinary action in accordance with the Code of Judicial Conduct. Probation and court personnel not meeting requirements and without an exemption may be subject to disciplinary action by their respective administrative authorities.

I. Requirements for Judges.

1. Educational requirements. Consistent with the Code of Judicial Conduct, judges shall obtain and maintain professional competence through judicial education, spend such time as may reasonably be required to accomplish that purpose, support and assist other judges attending judicial education programs as participants or faculty and, when reasonably able to do so, teach in judicial or legal education programs. Judges shall complete mandatory judicial education including:

   a. The general requirements specified in subsection (H) or training determined by the chief justice to meet the general requirements;

   b. Orientation as applicable to their position and jurisdiction;

   c. Attendance at the annual judicial conference unless excused through a written request approved by the chief justice; and

   d. Attendance at a program of regional or national scope at least once every three years.

2. Educational standards.

   a. Judicial education shall address relevant areas such as judicial competence, performance, case management, opinion writing, and administration.

   b. Judicial education programs are designed to impart knowledge, improve skills and techniques and increase the understanding of judges regarding their responsibilities and their impact on the judicial process, the people involved, and society. Judicial education programs shall include:

      (1) Orientation for new judges on procedures and functions of the applicable court and relevant procedural and substantive law;
      (2) Education for new judges on major legal subjects and practical skills needed by them and appropriate to the jurisdiction of the court in which they serve;
      (3) Periodic educational offerings for all judges on the substantive, procedural, and evidentiary laws of Arizona, the ethics of the profession, United States constitutional law and applicable federal law;
      (4) Continuing education programs emphasizing new developments in the law and judicial administration, procedural and technological developments in the judicial system, opinion writing, and other programs to enhance the efficiency, abilities, and knowledge of each judge;
      (5) Advanced and specialized programs; and

(6) Bench books, video and audio programs, and other non-facilitated learning opportunities.

3. Appellate court judges.

   a. Orientation. A new appellate judge shall receive orientation on administrative procedures and operation and procedural and substantive law by an experienced judge of the same court before assuming office or within twelve months after appointment.

   b. Continuing education. At least every second year the chief judges of the court of appeals shall attend the annual seminar or meeting of the Council of Chief Judges of Courts of Appeals.

4. Superior court judges.

   a. Orientation. Before assuming office, or within the first twelve months of assuming office, a new superior court judge shall receive orientation by an experienced judge of the superior court and shall complete the orientation requirements for judges of general jurisdiction courts approved by COJET.

   b. Bench assignment. The presiding judge of the court shall determine if a superior court judge shall attend an approved program before assuming a new assignment in a specialized division. A judge shall complete the specialized dependency-training program approved by COJET prior to or within twelve months of assuming a new assignment involving dependency cases.

5. Judges of limited jurisdiction courts. Before assuming office, or within the first twelve months of assuming office, a new judge of a limited jurisdiction court shall receive orientation by an experienced judge of a limited jurisdiction court and shall begin the orientation program for judges of limited jurisdiction courts approved by COJET. The new judge must successfully complete the orientation program for judges of limited jurisdiction courts approved by COJET within eighteen months of assuming office.

6. Judges pro tempore. Judges pro tempore are officers of the court and have all of the duties and responsibilities of a judge. Proper orientation and continuing education assure that judges pro tempore are provided with information, process descriptions and procedures necessary to fulfill their judicial role. Judges pro tempore shall be subject to the following requirements:

   a. Superior court judges pro tempore.

      (1) Full-time superior court judges pro tempore serving the full term allowed by statute shall complete the same requirements as judges of the superior court;
      (2) Part-time superior court judges pro tempore appointed to serve less than full-time, but serving repeatedly on a regularly scheduled basis, shall:

(a) Complete a specialized training program approved by COJET prior to or within the first twelve months of assuming duties; and
(b) Complete other training deemed appropriate by the presiding judge of the court.

(3) On-call judges pro tempore shall complete training deemed appropriate by the presiding judge of the court.

b. Limited jurisdiction judges pro tempore.

(1) All limited jurisdiction judges pro tempore shall receive orientation by an experienced judge of a limited jurisdiction court before assuming duties, unless waived by the presiding judge of the superior court in the respective county.
(2) Full-time limited jurisdiction judges pro tempore shall complete the same requirements as limited jurisdiction judges.
(3) Part-time limited jurisdiction judges pro tempore shall complete the training approved by COJET before assuming duties.
(4) The presiding judge of the superior court in the respective county may require part-time limited jurisdiction court judges pro tempore to complete other training deemed appropriate. Judges pro tempore shall sign an affidavit verifying completion of the required training. The local court shall submit the affidavit to the presiding judge of the superior court in the respective county.
(5) The presiding judge of the county may delegate the determination of training needed for on-call judges pro tempore in justice and municipal courts to the municipal or justice court presiding judge.
(a) Before assuming duties, a limited jurisdiction court judge pro tempore who serves on an on-call basis must complete training approved by COJET.
(b) The presiding judge of the superior court in the respective county may require limited jurisdiction court judges pro tempore who serve on an on-call basis to complete other training deemed appropriate.
(c) A judge pro tempore in a limited jurisdiction court shall sign an affidavit verifying completion of the required training. The local court shall submit the affidavit to the presiding judge of the superior court in the respective county.

7. Civil traffic and small claims hearing officers. Hearing officers are officers of the court (A.R.S. §§ 22-506 and 28-1553). Proper orientation and continuing education assure that hearing officers are provided with information, process descriptions and procedures necessary to fulfill their judicial role. Hearing officers are subject to the following requirements:

a. All small claims hearing officers shall complete a specialized training program approved by COJET prior to or within twelve months of assuming hearing officer duties.

b. All civil traffic hearing officers must complete an initial program approved by COJET prior to assuming hearing officer duties. Civil traffic hearing officers must also complete a specialized training program approved by COJET prior to or within

12 months of assuming hearing officer duties. (Rule 6(a), Rules of Court Procedure for Civil Traffic and Civil Boating Violations).

c. Paid hearing officers shall complete the annual educational requirements for judges, but are not required to attend the annual judicial conference; and

d. Volunteer hearing officers are not subject to the annual education requirements for judges, unless required by the presiding judge of the superior court in the respective county.

J. Standards for Administrators, Clerks and Court Personnel.

1. Education requirements. All administrators, clerks and court personnel shall complete the general requirements.

2. Orientation. Orientation for administrators, clerks, probation and court personnel shall take place no later than 90 days after assuming duties and shall include an explanation of their specific job duties and familiarization with court structure and procedures, including an overview of:

   a. The Arizona judiciary, including the structure and function of each court;

   b. Current issues in the courts;

   c. Expectations when dealing with the public in the courts;

   d. An introduction to effective communication skills for court employees;

   e. Computer/network security awareness;

   f. Local court-related issues;

   g. Court security; and

   h. Judicial education.

3. Court administrators, managers and directors shall attend at least one program conducted out-of-state or in-state by an established, nationally recognized training organization every three years.

4. Training coordinators. Staff serving as training coordinators shall attend a training coordinator orientation conducted by Education Services within the first 90 days of appointment.

K. Standards for Probation Personnel.

1. Education requirements. All probation personnel shall complete the general education requirements specified in subsection (H).

2. Curriculum standards.

   a. Training and staff development programs are designed to meet the educational needs of probation officers at various stages of their careers by imparting knowledge, improving skills and techniques, increasing understanding of job responsibilities and explaining the effects that probation can have on the judicial system, clients and society. Subject areas are at the discretion of the individual agency and may include:

      (1) Case classification, risk and needs assessment;
      (2) Cultural awareness;
      (3) Caseload management and case planning;
      (4) Creative problem-solving and decision-making;
      (5) Role awareness, judgment and leadership;
      (6) Specialized caseloads (e.g. alcohol, drugs, mental illness, white collar crime, gangs, sexual abusers, special learning needs, domestic violence and absconders);
      (7) Introduction to intensive probation; and
      (8) Personnel practices and procedures.

   b. Court-related education and training programs are designed to impart knowledge and understanding of the Arizona judiciary and the legal process and shall address the areas of proficiency, competency and performance. Court-related education and training programs shall include:

      (1) Orientation prior to assumption of caseload and casework responsibilities;
      (2) Education for new probation officers on major probation subjects and practical skills needed by them and appropriate to the agency in which they work;
      (3) Continuing education for probation staff emphasizing new developments in the probation field, procedural developments in the judicial system and training needed to enhance individual efficiency and abilities;
      (4) Periodic educational offerings for management staff in organizational development and supervisory skills;
      (5) Advanced and specialized programs for probation managers; and
      (6) Non-facilitated learning opportunities for probation staff.

3. Training program requirements for probation and surveillance officers.

   a. Orientation. Prior to assumption of caseload and casework responsibilities, all adult and juvenile probation officers shall receive orientation within the first 90 days of employment, including the following subjects:

      (1) Agency mission, goals and objectives;
      (2) Agency policies and procedures;
      (3) Utilization of agency resources;

(4) Role of the professional probation officer;
(5) Court philosophy, judicial system roles, responsibilities and inter-relationships;
(6) Rules of criminal procedure, the criminal code, and sentencing alternatives (adult);
(7) Personnel procedures, performance appraisal, diversity, grievance procedures, the Code of Conduct for Judicial Employees, disciplinary actions;
(8) Privacy, security and confidentiality of records; and
(9) Philosophy of staff development, training requirements and specific job responsibilities.

b. Probation Officer Certification Academy. All adult and juvenile probation officers shall successfully complete the Probation Officer Certification Academy within the first twelve months of employment in accordance with ACJA § 6-104. Specific training areas shall include:

(1) Evidence-based practices;
(2) Ethics;
(3) Courtroom testimony, responsibilities and behavior;
(4) Legal liabilities and issues in probation;
(5) Understanding and managing probationer behavior;
(6) Role of substance abuse in delinquent and criminal behavior;
(7) Utilizing community resources;
(8) Communication skills; and
(9) Interviewing techniques.

c. Officer safety orientation. All adult and juvenile probation and surveillance officers shall successfully complete officer safety orientation within 30 days of hire in accordance with ACJA § 6-107.

d. Defensive tactics and firearms. All probation and surveillance officers in safety sensitive positions shall:

(1) Successfully complete the Defensive Tactics Academy as soon as practical, but no later than 120 days from the date of employment, and annually thereafter a minimum of eight hours of defensive tactics refresher training in accordance with ACJA § 6-107; and
(2) If approved to attend, successfully complete the Firearms Academy and participate in mandatory training thereafter, re-qualifying annually in accordance with ACJA § 6-113.
(3) A chief probation officer or director of juvenile court services, having good cause, may request an extension of time for an officer to complete the Defensive Tactics Academy from the administrative director.

5. Training program requirements for intensive probation supervision (IPS) officers. All adult and juvenile probation and surveillance officers assigned to the IPS program shall

successfully complete the Institute for Intensive Probation Supervision training within twelve months of assignment.

5. Standards for probation training staff. Adult and juvenile probation agencies in counties with a population of over 500,000 shall have a full-time training department supervised by a qualified employee at the supervisor or higher management level. The training staff shall dedicate all of their time to training and training-related activities. Every training officer shall complete train the trainer activities each year.

6. Standards for chief probation officers and directors of juvenile court. Every chief probation officer or director of juvenile court shall attend at least one program conducted out-of-state or in-state by an established, nationally recognized training organization every three years.

L. Standards for Detention Personnel.

Detention officers shall comply with the Arizona Juvenile Detention Standards for detention staff training.

M. Funding and Financial Assistance.

1. Funding sources.

   a. State funds. The State of Arizona, through the supreme court, shall make funding available, whenever possible, for judges and court personnel to attend local, state and national judicial education programs.

   b. Local funds. Judges and administrators responsible for preparing court budgets shall request funds from their funding authority necessary to support the educational requirements of judges and court personnel of their court. The supreme court will request state appropriations when necessary to fund compliance with educational standards and to enhance the quality of educational programs.

2. Financial assistance.

   a. Programs within the state. Supreme court education funds available for direct financial assistance shall be used first to support mandatory in-state orientation programs for new judges and other education priorities established by the chief justice.

   b. Programs outside the state. Supreme court education funds available for direct financial assistance may be available for attendance at National Judicial College or National Center for State Courts programs.

      (1) Available funds shall be used in order of the following priorities:

(a) Newly elected or appointed judges seeking to attend a suitable comprehensive judicial education program.
(b) Judges and court personnel complying with the education standards but who have been unable to attend a suitable comprehensive judicial education program within the first two years of taking office.
(c) Judges and court personnel complying with the education standards and who last attended a judicial education program three or more years prior to seeking financial assistance from the supreme court.
(d) Judges and court personnel complying with the education standards seeking to attend non-resident seminars and educational conferences applicable to their judicial responsibilities and jurisdictional level.
(e) Where an urgent or critical need exists, a judge may be considered for direct financial assistance more than once during the same year, assuming funds are available and taking into account the needs of other judges in the categories listed above.

(2) When financial assistance is available, judges and court personnel shall complete a scholarship application.

c. Tuition and conference fees. State funds may be available on a limited basis to pay tuition or registration fees for approved programs. These funds, when available, may be requested through Education Services. State funds shall not be used to pay for attendance at sporting events, excursions, plays, or social activities.

N. Social Programs. When appropriate, social programs may be initiated and developed by professional associations. Social events held in conjunction with education programs shall not interfere with education sessions. All programs held in conjunction with COJET or Education Services sponsored events shall be coordinated with Education Services.

Adopted by Administrative Order 2006-120, effective January 1, 2007. Amended by Administrative Order 2008-06, effective January 23, 2008. Amended by Administrative Order 2011-38, effective March 30, 2011, with the exception of § 1-302(H)(4), which shall be effective January 1, 2012. Amended by Administrative Order 2012-60, effective July 31, 2012. Amended by Administrative Order 2014-75, effective January 1, 2015. Amended by Administrative Order 2014-135, effective January 1, 2015. Technical amendment by Administrative Order 2015-96, effective January 1, 2016. Amended by Administrative Order 2019-63, effective June 5, 2019. Amended by Administrative Order 2019-149, effective November 27, 2019.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Date:	**Type of Action Requested:**	**Subject:**
February 11, 2020	☒ Formal Action/Request ☐ Information Only ☐ Other	ARPOP Rule Petitions

From: Kay Radwanski

Presenter: Kay Radwanski

Description of Presentation: Five petitions affecting the Arizona Rules of Protective Order Procedure (ARPOP)--including one by CIDVC--were filed in the current rules cycle. Three of the petitions affect Rule 38. The comment period closes May 1. This item is presented for discussion and for CIDVC members to decide whether comments, if any, should be filed by the committee.

Recommended Motion: Authorize Judge Million to file a comment to specified petitions on CIDVC's behalf.

Gerald A. Williams
Arizona Bar No. 018947
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85301

Judge Bruce R. Cohen
Family Department Presiding Judge
Maricopa County Superior Court
125 West Washington, Suite 101
Phoenix, Arizona 85003

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No. R-19-
PETITION TO AMEND RULES	)	
OF PROTECTIVE ORDER	)	
PROCEDURE 35	)	

BACKGROUND

This pleading proposes changes to the Arizona Rules of Protective Order Procedure (ARPOP) to prohibit problems that can occur when more than one judicial officer issues potentially conflicting court orders that impact child parenting time in the context of Injunctions Against Harassment. It is filed on behalf of the Justice of the Peace Bench in Maricopa County and the Presiding Family Court Judge in Maricopa County.

The initial proposal put forth by the Justice of the Peace Bench was to amend ARPOP rule 34 to allow limited jurisdiction courts to initially grant injunctions; but if a limited jurisdiction court issued an Injunction Against Harassment that impacted an existing court order concerning parenting time,

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
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/s/ Keith Russell
KEITH RUSSELL
Presiding Justice of the Peace
Maricopa County
Justice Court Administration
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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.

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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of: PETITION TO AMEND RULES 23, 24, 25 & 26 OF THE ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE	Supreme Court No. R-__-_____ **Petition to Amend Rules 23(a), 24(b)(2), 25(a) & 26(a) of the Arizona Rules of Protective Order Procedure**

Pursuant to Rule 28 of the Supreme Court, Mike Palmer, writing on behalf of the Coalition to Stop Abuse of Civil Harassment Law,[1] petitions this Court to amend Rules 23(a), 24(b)(2), 25(a) & 26(a) of the Rules of Protective Order Procedure to make it clear to judges that they do not *have* to issue criminal Orders of Protection or civil Injunctions Against Harassment when petitions are defective on their face.

I. Background

This petition arises out of real world observations of how judges in Arizona

[1] The Coalition is a loose collection of Arizona residents (including a Law Enforcement officer) who have been abused by civil Injunction law. (I.e., who have been vindicated on appeal, but whose reputations will forever be tarnished, much like what happened to U.S. Supreme Court Justice Brett Kavanaugh when he was falsely accused.)

handle petitions for either criminal OOP's or civil IAH's.

To review, in Arizona, all protective orders commence with a filing of a verified petition with the clerk of the court. (ARPOP Rule 16.)

The first order of business for a judge should be to determine if, on its face, a petition meets the minimum requirements to issue an order. (That is, a "prima facie" test.)

For example, to issue a civil Injunction Against Harassment, the law requires a "series of acts." (Which this Court has said is "two or more acts.") But from what we have observed, plaintiffs often document only one act of (alleged) harassment, rendering their petition defective on its face.

In theory, if a petitioner does not document more than one act of harassment, then that should be the end of the matter because the petition is meritless, not having met the requirements of the law. Think traffic tickets and how they're routinely dismissed for defect.

As such, a hearing over it is pointless. (Not to mention a waste of valuable court resources.)

But this is not what happens in practice in the world of protective orders.

In practice what really happens is that judges tell the petitioner that their petition is defective, why it is defective, and then *judges counsel the petitioner about how to cure the defect* so as to obtain their Injunction! (Often by going on a fishing expedition with the plaintiff to string new catches onto the petition.)

This Court would never know that any of this goes on under the covers

because, as we'll show, petitions are often amended by plaintiffs at the direction of judges in a "backdated" manner to cure defects. As such, everything looks proper to casual observers. But we must look closer.

There is an old saying about laws and sausage: it is better not to see either being made. But here we need to see how protective orders really are made. And the only way to see is to either attend a hearing in person or to listen to the audio from hearings, as below.

So, to show the Court how the System really works, we have uploaded a seven minute audio file (.mp3) of short audio clips, taken from a 1.5 hour long real world ex parte hearing to issue a civil IAH. (To play the audio, type "tiny.cc/civil_IAH_audio" , without the quotes, in a web browser. (Note the caps and underscores in the hyperlink.[2]))

Here is a brief narrative of the audio: The judge begins by acknowledging the law, that an Injunction *has* to be based on the written petition. Nevertheless, she tells the plaintiff that if, during plaintiff's testimony, the plaintiff adds anything verbally over and above what is written in the petition, then the plaintiff should add these new allegations—in backdating fashion—to the petition!

Then, in the next audio clip, the judge concedes that the instant petition is defective because it lists only one act of (alleged) harassment. (This should have ended the hearing. Actually, it should never have gone to a hearing at all, since it

[2] The full link is https://jumpshare.com/v/YLf29GNBG5Mn4u34D5Ci

didn't pass the *prima facie* test.)

Nevertheless, the judge tries to help the plaintiff make her case by going on a fishing expedition with the plaintiff. (That is, suborning new "evidence" of harassment from the plaintiff, evidence that was NOT in the petition.)

Next, we hear the plaintiff say that she has video of the alleged harassment. But that she did NOT enter it into evidence for the petition hearing. Nor did the plaintiff mention any video in her petition.

But again the judge counsels the plaintiff as to how to game the System, telling the plaintiff to mention the video in the petition so that the judge can lawfully consider it.

Then, once again, the judge admits that, as the petition currently stands, there is not enough evidence to issue an Injunction. (Saying it is "close.") So, in a Judy Judy-like way, the judge solicits even more testimony from the plaintiff and counsels the plaintiff how to close the gap to get an Injunction. (Specifically, by adding embellishments to the petition about how many times the plaintiff told the defendant to stop the alleged harassment. (We add here that there was never any harassment. The injunction was vacated on appeal. See Epilogue.))

At the 2 minute mark, the judge reads the law on Harassment again, again noting that there must be a "series of acts." But that plaintiff's petition only alleges one act, on one date. (At the same place and time.)

Undaunted, the judge presses on, asking the plaintiff if she has ever told the defendant to stay away from her. The plaintiff answers "No." So again, there was

no reason for the judge to continue this hearing.

The judge even says so at the 3 minute mark, calling this matter "borderline," acknowledging that the plaintiff is bringing up new things that are not on the petition, but as the petition currently stands, there is not enough.

Then, based on what the judge thinks might happen in the future, she tells the plaintiff that "I need just a little more on *paper*."

The judge indicates that she needs this not only to issue an Injunction, but also to bolster petitioner's case in anticipation of a challenge hearing or appeal by the defendant!

The judge counsels the plaintiff to add more acts of harassment during the last year, specifically citing times.

At the 4 minute mark, the judge gets more specific and tells the plaintiff the defect in her petition: That petitioner has not shown that the (alleged) harassment has been continuous and, at this point in time, the judge *still* cannot issue an Injunction.

Next, the judge counsels the plaintiff to burn the video to CD for an anticipated challenge hearing. (Whereas no judge told the defendant to do the same with his video evidence for his challenge hearing.)

At 5 minutes, the plaintiff says that she will follow her attorney's ... err, the judge's advice, and will "add" more items to the petition. Again the judge counsels that plaintiff that she must make an airtight case on her petition or else the Injunction will not stand when challenged by the defendant. Specifically, the judge

tells the plaintiff "*we* need to have more there to show that you're being harassed, that he's singling you out." (Who is the "we" here?)

And with that, the judge "orders" the plaintiff to "add on paper" to the petition. The judge says she will take a recess to allow the plaintiff time to cure her defective petition, and even offers the plaintiff a government issued pen and paper to do so! (The judge also tells the plaintiff to put hearsay in the petition, namely the plaintiff's version of what her not-entered-into-evidence video allegedly shows.)

At 6 minutes, the judge again reinforces to the plaintiff that she (the plaintiff) must add to her petition to make this an airtight case because the judge "almost guarantees" that the defendant will request a challenge hearing. That the challenge hearing will be based on what is written in the (soon to be amended in accordance with the judge's advice) petition. Then the judge reminds the plaintiff "Dates. Try to do your dates."

At the end of the excerpt, at 6:30, after a recess, the judge claims that, "in the interest of justice," she has allowed the plaintiff to add to her petition in order to get an Injunction.

Of course this totally ignores justice for the defendant.

You're the attorneys, so you tell us. Is it lawful for a judge to consider facts not entered into evidence? (That is, not stated in a complaint or petition?) Is it lawful for judges to go on fishing expeditions to try to find new evidence to hang a defendant? Is it lawful for judges to aid a plaintiff to enlarge a criminal or civil complaint in order to make a case against a defendant?

Even if all these acts by judges are lawful, they can't be right because they are inherently prejudicial. Judges are essentially acting as pro bono attorneys for plaintiffs, advising them how to make their case against their (perceived) adversaries. So in addition to judges acting as "judge, jury and executioner," we can add "legal counsel for plaintiff" to the list. No wonder so many Injunctions are granted. Judges are granting their own petitions!

II. Purpose

While the audio above is only a sample of one, it is the Coalition's observation that it is representative of the norm in Arizona. For whatever reasons, many judges feel that they need to issue protective orders whenever petitioned, regardless of the initial merits of a petition.

This must stop.

Apparently the state of Minnesota has faced a similar problem with its judges feeling obligated to issue protective orders, because Minnesota statute says "Nothing in this section shall be construed as requiring a hearing on a matter that has no merit."

And so we propose adding the same language to Rules 23(a), 24(b)(2), 25(a) & 26(a) of the ARPOP that Minnesota has in its statutes. And amplifying that language as below.

III. Contents of the Proposed Rule Amendment

<u>Nothing in this section shall be construed as requiring a hearing on a matter that has no merit. If a petition is meritless, the judge shall not hold a hearing and</u>

shall dismiss the matter sua sponte. Furthermore, if a petition is meritless, a judge is prohibited from advising a petitioner how to cure their petition.

This language needs to be added to all four Rules (as opposed to one place in Rule 16) because, as we have seen in the past in this forum, judges don't read or remember all of the ARPOP. So this language needs to be associated with each individual Rule so that judges will see this instruction when considering any particular type of order.

As there is no downside to including these instructions to the Rules, we ask in the interest of *equal* justice that this petition be granted.

To the best of our knowledge, no one has filed a similar petition within the past five years.

SUBMITTED this 10th day of January 2020.

By /s/ Mike Palmer

EPILOGUE

For inquiring minds who want to know, here is the story behind the Injunction. (It is instructive to see how plaintiffs have learned to turn Injunctions Against Harassment—what was meant to be a shield—into a sword, ironically, to harass others.)

The plaintiff is a small town newspaper reporter/publisher in Quartzsite. At the time, her husband was a town Councilman in Quartzsite. As such, she is part of the Establishment.

One night at a town hall meeting, the defendant, who is known by the locals for speaking out against the Establishment, was speaking to the Council during a Call to the Public. When the defendant said something to the Council that the plaintiff didn't like, the plaintiff, who was sitting in the audience, made the "cut him off" gesture to her husband who was sitting on the Council. (She ran her thumb across her throat.)

After this, during a break in the meeting, the defendant approached the plaintiff and calmly asked her a few times why she had done this to him.

A Quartzsite police officer witnessed the entire event, but refused to intervene (even when asked by plaintiff) telling the plaintiff that the defendant was not harassing her but merely exercising his First Amendment right.

Despite what the eyewitness law enforcement officer told her that night, the plaintiff ran to a judge the next day crying "Harassment!" (Ironic because this newspaper publisher/reporter has probably "harassed" people herself by asking questions to get a story.)

The Injunction was eventually vacated on appeal. But not without a few months of the Sword of Damocles hanging over defendant's head, since the punishment for allegedly violating an Injunction Against Harassment is instant jail, no judicial discretion. And a subsequent criminal record for life. (No expungement

in Arizona.)

The final irony was that the Injunction was vacated because it did not meet the "series of acts" requirement for Injunctions.

(And the Appeals court also said that even if it had been a series of acts, no reasonable person would have been in fear of the defendant calmly asking questions about what the plaintiff had done to him.)

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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:	)	
	)	
Petition to Amend Rule 38,	)	
Rules of Protective Order Procedure	)	Supreme Court No. R-20-_____
_____	)	

Pursuant to Arizona Supreme Court Rule 28, Wendy A. Million, chair of the Committee on the Impact of Domestic Violence and the Courts, respectfully petitions this Court to amend Rule 38, Rules of Protective Order Procedure, as reflected in the accompanying Appendix to add clarity regarding requests for contested hearings, appearances, and procedures for conducting contested protective order hearings.

DISCUSSION

There is uncertainty surrounding the appearance or non-appearance of plaintiffs and defendants at contested protective order hearings. This is not a new issue, but recent discussion of it—and the resulting myriad of opinions—has brought it to the forefront. CIDVC is filing this petition with the goal of bringing resolution and clarity to the procedures for contested protective order[1] hearings.

[1] For purposes of this petition, "protective order" means an Order of Protection (A.R.S. § 13-3602), an Injunction Against Harassment (A.R.S. § 12-1809), or an Injunction Against Workplace Harassment (A.R.S. § 12-1810). The

Judge Bruce Cohen, presiding judge of the Family Department, Superior Court in Maricopa County, recently conducted an informal survey of family court judges in Maricopa and Pima counties to ascertain their practices when both the plaintiff and the defendant fail to appear at a contested protective order hearing that the defendant formally requested. Arizona statutes authorize contested protective order hearings[2], but the court rules lack specificity on the procedures to be followed when one or both parties fail to appear.

The responses to Judge Cohen's informal survey showed a lack of uniformity in procedures being followed when a party fails to appear at a contested protective order hearing. Opinions from a sampling of the responses are summarized as follows:

- If neither party appears, vacate the hearing and leave the order in effect.
- If neither party appears, dismiss the protective order.
- If the defendant appears but the plaintiff does not, dismiss the protective order.
- If the plaintiff appears but the defendant does not, require the plaintiff to prove, by a preponderance of the evidence, that the protective order should remain in effect, even though the plaintiff has already carried the burden of proof for issuance of the order at an *ex parte* hearing.
- If the defendant fails to appear, affirm the protective order but allow the defendant a second chance to ask for another contested hearing.

---

procedures for requesting a contested hearing are the same, regardless of the type of protective order. See Part VIII. Contested Protective Order Hearings, Rules of Protective Order Procedure.

[2] *See* A.R.S. §§ 13-3602(L), 12-1809(H), and 12-1810(G).

- The court rules do not require the defendant to attend the hearing that the defendant requested.

Because of the divided opinions and the disparate treatment that parties may be experiencing in these two counties, Judge Cohen shared the survey results with Judge Million, in her capacity as CIDVC chair, and Judge Paul McMurdie, chair of the Family Court Improvement Committee.

CIDVC proposes revisions to Rule 38 to resolve the conflicting opinions, ensuring that contested hearing procedures are applied uniformly statewide.

Requesting a Hearing. The proposed amendment to Rule 38(a) resolves the question of whether the defendant is entitled to request a second contested hearing if the defendant voluntarily fails to appear at the first requested contested hearing. It gives a person of ordinary intelligence a reasonable opportunity to know what the consequence will be if a defendant's failure to appear is voluntary and without good cause shown.

Appearance at the Contested Hearing. The proposed addition of Rule 38(e) clarifies the actions the court is to take when either the plaintiff, the defendant, or both fail to appear at a contested hearing.

Procedure. Rule 38(f), as reorganized, instructs on the procedures that are to be followed if both parties appear and the contested hearing goes forward.

To resolve this issue expediently, Judge Million sought consent from CIDVC members to file this petition on the committee's behalf. A quorum of CIDVC members met by conference call on January 6, 2020, and unanimously authorized the filing of the attached proposal. By these revisions, the committee is attempting to clarify Rule 38, so

the parties understand the importance of attending contested hearings and the consequences for failure to attend. This plain language supports the purpose of the protective order laws, which is to make sure that the plaintiff remains safe and the defendant gets access to a full contested hearing. It also supports the public policy of requiring the plaintiff to be present at court for only one contested hearing and that the *ex parte* order remains in place in the absence of a contested hearing.

CONCLUSION

For the reasons stated above, CIDVC respectfully asks the Court to adopt the proposed amendments to Rule 38, Rules of Protective Order Procedure, as set forth in the Appendix.

Respectfully submitted this seventh day of January, 2020.

/s/_____
Honorable Wendy A. Million
Magistrate, Tucson City Court

APPENDIX

Additions are shown by underline; deletions are shown by ~~strikethrough~~.

RULES OF PROTECTIVE ORDER PROCEDURE

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, unless it can be shown that the defendant did not have actual notice of the requested hearing or for other good cause shown. *See* A.R.S. §§ 13-3602(I), 12-1809(H), 12-1810(G).

(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 court business days of the request.

(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) Notice of Hearing. The court must notify the plaintiff of the hearing. There is no statutory requirement for personal service of the hearing notice.

(d) Court Security Measures. The court must take reasonable measures to ensure that the parties and any witnesses at the hearing are not subject to harassment or intimidation in the courthouse or on adjoining property. For each hearing, the judicial officer must determine whether there is a need to have a law enforcement officer or a security officer present to help ensure the hearing is orderly or to provide escort for either party. The court may direct the defendant to remain in the courtroom for a period of time after the plaintiff is excused.

(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:

~~(e)~~ (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.

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

~~(g)~~ (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.

~~(h)~~ (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.

~~(i)~~ (5) *Service of Modified Protective Order*. ~~The plaintiff or the court must arrange for service of a~~ A modified protective order must be served on the defendant. ~~the judicial officer should assist this process by asking the defendant to sign an acceptance of service form in the courtroom~~ Procedures for serving a defendant who is present in the courtroom are set forth in Rule 31(f)-(g).

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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:	Supreme Court No. R-
PETITION TO AMEND RULE 38, ARIZONA RULES OF PROTECIVE ORDER PROCEDURE	**Request for Uniform Rule When Both Parties Fail To Appear for Scheduled Hearing**

Background

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

Proposal

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

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

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

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

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

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

> (j) **Failure to Appear.** If both parties fail to appear at a scheduled contested hearing, the judicial officer shall leave the protective order in place.
>
> **-OR-**
>
> (j) **Failure to Appear.** If both parties fail to appear at a scheduled contested hearing, the judicial officer shall dismiss the protective order.

Conclusion

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

RESPECTFULLY SUBMITTED this day, December 17, 2019.

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

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

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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:	)	
	)	Supreme Court No. R-__-____
PETITION TO AMEND	)	[Clerk's office will assign number]
RULE 28,	)	
[Rules of the Supreme Court]		
Petition to Amend 17B A. R. S.		
Arizona Rules Protective Order Procedure		
Part VIII		
Rule 38 and Rule 39	)	

Pursuant to Rule 28, Rules of the Supreme Court, Ursula M. Johnston respectfully petitions this Court to adopt amendments to Rule 38 and Rule 39, Arizona Rules of Protective Order Procedure governing Contested Hearing Procedures, as proposed below.

I. Background, Problem and Purpose of the Proposed Rule Amendments

An overwhelming number of people (i.e., petitioners or plaintiffs) who petition and obtain a protective order do so honestly, in good faith, and with the primary motives of:

- Protecting their personal safety;

- Preventing an individual from further behaving in an unsafe, uncooperative or threatening manner toward the plaintiff; and
- Enabling law enforcement to be better informed of the situation so they can effectively protect and serve the parties involved.

Background. In Arizona, Orders of Protection (Orders) are costly and not easily obtained. People (i.e., petitioners or plaintiffs) undergo scrutiny and expense and must successfully convince courts that an Order is warranted. A judicial officer issues the Order after performing due diligence in accordance with Rule 38, Arizona Rules of Protective Procedure, including Arizona Rules of Family Law Procedure, where applicable. Then, to activate the Order, after legally obtaining it, plaintiffs must comply with all timelines, terms and conditions for having it served to the defendant.

For first-time filers in the state of Arizona, it can be a confusing, expensive and complicated process and an intimidating experience. There is no ombudsman. Individuals filing for a protective order will have a different experience depending upon the time, the day or the court where they file the petition. For example, someone may not be there to assist with completing the paperwork (which is unnecessarily complicated), or the person filing may be in an emotionally-weakened state of mind, unaware of the defendant's rights, or next steps.

The Committee on the Impact of Domestic Violence and the Courts (CIDCV) can and should be asked to provide insight into these dynamics from the perspective of judicial officers and individuals filing protective orders.

Problem. Most persons filing for an Order of Protection do so as self-litigants or without legal representation and because they truly fear for their safety. The brochures do not sufficiently inform individuals of what could potentially ensue regarding the defendant's appeal rights. For example, the brochures do not explain that should the defendant contest the Order, it is subject to revocation and quashing — and if quashed, the plaintiff must pay the defendant's attorney fees. Collectively, these dynamics create additional vulnerabilities and hardships for the person who already is vulnerable to the point of filing for the Order. The problem is exacerbated for people filing for a protective order for the first time; persons with limited English proficiency; those with limited education; or where the defendant's status in the community, income or financial resources exceed those of the plaintiff, or the defendant has legal representation but the plaintiff does not.

When a judicial officer issues an Order, obviously they do so within the confines of the law. In so doing, that judicial officer has deemed the plaintiff as meeting the standard of providing proof; and that judicial officer has considered such proof as sufficient evidence for issuing the Order. Therefore, should the defendant contest the Order, neither the plaintiff nor the judicial officer first issuing the Order should be subject to further scrutiny as to the soundness of issuing it in the first place.

The flaw in this law is the unbridled ability of a defendant to contest and quash a legally obtained Order. This can be particularly problematic when a civil

matter also exists (e.g., divorce, custody battle). Giving a defendant this ability creates an imbalance of power between the parties and compromises the integrity of this law. Rule 38, Arizona Rules of Protective Order Procedure governing Contested Hearing Procedures, as currently written, compromises safety and has the potential to bring harm to innocent persons who seek to prevent harm and protect themselves. This "legal loophole" clogs courts and sets the stage for retaliation and undue punishment against the plaintiff.

When an Order of Protection is contested, the governing rules regarding the hearing procedures are too stringent for plaintiffs and too lax for defendants. The court gives no deference to the due-process decision made by the judge who first granted the Order. There is no formal process for making every effort to include that judge as a witness at the contested hearing or to assign the same judicial officer as the contested hearing's presiding judge. Essentially excluding the judicial officer who first issued the Order from the contested hearing procedures creates a greater imbalance of power – in the defendant's favor.

When a contested hearing is underway, a plaintiff is subject to undue scrutiny in the form of satisfying the Standard of Proof described in Rule 38(g). Satisfying this standard is highly subjective when the nature of a plaintiff's complaint against a defendant is verbal, emotional, not apparent, or a defendant's demeanor toward others or communication with a plaintiff is covert or duplicitous. In such cases, it is next to impossible for a plaintiff to supply evidence that would satisfy the Standard of Proof described in Rule 38(g). Most troubling is this: When

a plaintiff is truthful and obedient and supplies evidence to the court — such as proof of perjury committed during a contested hearing — the presiding judge has the leeway to ignore evidence, revoke the Order and assess attorney fees against plaintiffs. These procedural loopholes can, and have caused financial harm, trauma, serious injury or death to untold numbers of plaintiffs in Arizona.

In matters of harassment, stalking, verbal or emotional abuse, having witnesses or obtaining evidence of a defendant's behavior can be daunting and traumatizing for plaintiffs, particularly those for whom this is a first-time Order of Protection. Helping a judge to understand why one has become fearful of another and how that fear constitutes "a preponderance of the evidence" is even more daunting and becomes even more traumatizing to first-time-filing plaintiffs whose abuser has more money or legal representation and who uses subtle manipulation and cunning tactics that many judicial officers do not comprehend.

Purpose. Because an Order of Protection is a civil matter where a defendant is neither declared guilty or innocent nor subject to legal action or punishment if they comply with the Order, there is no hardship imposed upon defendants by virtue of the existence of the Order. Likewise, amending the existing Rules as proposed herein will not impose hardship on the defendant; but will document and send the message that the Court values the plaintiff's safety and makes every effort to ensure both parties' safety via the intact Order.

Proposal. When it comes to protective orders, there is a learning curve for both the litigants and judges presiding at contested hearings. This petition seeks to

amend Rule 38 to give the benefit of the doubt to both plaintiff and defendant when it is a first-time Order of Protection for the plaintiff. This would mean that in such cases the presiding judge at a contested hearing cannot revoke, shorten, quash or dismiss an Order *in its entirety* when it is the plaintiff's first time filing for and obtaining an Order of Protection from a court in the state of Arizona. Further, this would mean neither party is required to provide evidence at the contested hearing and any evidence provided will be taken into consideration solely for the purpose of modifying an Order to the plaintiff's explicit satisfaction.

II. Contents of the Proposed Rule Amendment

In the Appendix attached hereto, the proposed new language has been added using underscoring. The proposed new language to be taken into consideration would amend Part VIII of A.R.S. Rules of Protective Order Procedure, Rule 38. Contested Hearing Procedures; and Rule 39. Costs and Attorney Fees. No deletions are proposed.

RESPECTFULLY SUBMITTED this 5th day of December 2019.

By

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Appendix

17B A.R.S. Rules Protect.Ord. Proc., Rule 38
Formerly cited as AZ ST RPOP Rule 8

Rule 38. Contested Hearing Procedures

Currentness

(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(I), 12-1809(H), 12-1810(G).

(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 court business days of the request.

(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) Notice of Hearing. The court must notify the plaintiff of the hearing. There is no statutory requirement for personal service of the hearing notice.

(d) Court Security Measures. The court must take reasonable measures to ensure that the parties and any witnesses at the hearing are not subject to harassment or intimidation in the courthouse or on adjoining property. For each hearing, the judicial officer must determine whether there is a need to have a law enforcement officer or a security officer present to help ensure the hearing is orderly or to provide escort for either party. The court may direct the defendant to remain in the courtroom for a period of time after the plaintiff is excused.

(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. Except in cases where it is the plaintiff's first time filing for and obtaining the Order of Protection, f~~F~~or 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. If it is the plaintiff's first Order of Protection filed in a court in the state of Arizona, the court and judicial officer:

(1) shall not discontinue, revoke or dismiss the protective order in its entirety;

(2) shall engage both plaintiff and defendant in agreeing to any terms or conditions for modifying the protective order;

(3) shall consider evidence and the lack thereof with impunity in determining protective order modification.

(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.

Credits

Formerly Rule 8, added Sept. 5, 2007, effective Jan. 1, 2008. Renumbered Rule 38 and amended Aug. 27, 2015, effective Jan. 1, 2016.

17B A. R. S. Rules Protective Order Proc., Rule 38, AZ ST RPOP Rule 38
Current with amendments received through 05/1/19

17B A.R.S. Rules Protect.Ord. Proc., Rule 39
Formerly cited as AZ ST RPOP Rule 2

Rule 39. Costs and Attorney Fees

Currentness

(a) Award. After a hearing with notice to the affected party, a judicial officer may order any party to pay the costs of the action, including reasonable attorneys' fees, if any. *See* A.R.S. §§ 13-3602(P), 12-1809(O), and 12-1810(O).

(b) Considerations. In determining whether to award costs or attorney fees, the judicial officer may consider:

(1) the merits of the claim or the defense asserted by the unsuccessful party;

(2) whether the award will pose an extreme hardship on the unsuccessful party; and

(3) whether the award may deter others from making valid claims;

(4) dismissing any claims for attorney fees or attorney fee awards for either party when it is the plaintiff's first time filing for and obtaining the Order of Protection.

Credits

Formerly Rule 2 in part, added Sept. 5, 2007, effective Jan. 1, 2008. Amended Sept. 16, 2008, effective Sept. 26, 2008. Adopted on a permanent basis effective Sept. 3, 2009. Renumbered Rule 39 and amended Aug. 27, 2015, effective Jan. 1, 2016.

17B A. R. S. Rules Protective Order Proc., Rule 39, AZ ST RPOP Rule 39
Current with amendments received through 05/1/19 1

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Date:	**Type of Action Requested:**	**Subject:**
February 11, 2020	☐ Formal Action/Request ☒ Information Only ☐ Other	Update: AZPOINT

From: Kay Radwanski

Presenter: Michele Gillich, AOC-ITD; Kay Radwanski, AOC-Court Services

Description of Presentation: The presenters will provide an update regarding AZPOINT--the Arizona Protective Order Initiation and Notification Tool--that went into production on January 1, 2020.

Recommended Motion: Information only.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Date:	**Type of Action Requested:**	**Subject:**
February 11, 2020	☐ Formal Action/Request ☒ Information Only ☐ Other	Legislative Update

From: Kay Radwanski

Presenter: Elise Kulik, AOC Government Affairs

Description of Presentation: Ms. Kulik will provide an update regarding domestic violence-related legislation that has been introduced in the current legislative session.

Recommended Motion: Information only.

CIDVC

54th Legislature - 2nd Regular Session, 2020 Friday, Feb 7 2020 12:42 PM

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Domestic Violence

Posted Calendars and Committee Hearings

S1441: PROTECTION ORDERS; MODIFICATION; RESIDENCE POSSESSION
Hearing: Senate Rules (Monday 02/10/20 at 1:00 PM, Caucus Rm. 1)

Bill Summaries

H2003: FIREARMS; PROHIBITED POSSESSORS; DUE PROCESS

The state of Arizona, counties, municipalities and other political subdivisions cannot prohibit a person from possessing a firearm unless the person is a prohibited possessor or a court of competent jurisdiction issues an order that prohibits the person from possessing a firearm and, prior to the court issuing the order, the person was given notice of the order and given an opportunity to respond. Some exceptions.

First sponsor: Rep. Fillmore (R - Dist 16)
Others: Rep. Carroll (R - Dist 22)

H2003 Daily History	Date	Action
FIREARMS; PROHIBITED POSSESSORS; DUE PROCESS	*2/6*	referred to House jud.

H2321: SEVERE THREAT ORDER OF PROTECTION

A petitioner is authorized to file a verified petition in the superior court or a municipal court requesting the court to issue a severe threat order of protection (STOP order). The petition for a STOP order must include a list of specified information, including a specific statement of either a credible threat of death or serious physical injury or an act of violence that resulted in or was intended to cause death or physical injury that occurred within the preceding 6 months, or a specific behavior or act that justifies the reasonable belief that the respondent is a danger to self or others. Evidence the court is required to review is listed. The court is authorized to order a mental health evaluation of the respondent at no cost to the respondent. The court is required to issue an ex parte temporary STOP order on the day of or day after the court receives the petition, if the court determines that there is probable cause to believe that the respondent poses a danger to self or others and that, for the safety of the respondent and others, the respondent should not possess a firearm for the duration of the order, which is 14 days. The court is authorized to schedule a hearing on a petition for a STOP order within 14 days after receipt of the petition. At a hearing, the court is required to issue a STOP order if the court determines that clear and convincing evidence exists to believe the respondent poses a danger to self or others and that, for the safety of the respondent and others, the respondent should not possess a firearm for the duration of the order, which is 1 year. Within 90 days after a STOP order is issued, the respondent is entitled to one hearing on written request to quash the order. Establishes a process for extending a STOP order. If the respondent to a petition for a STOP order is a minor, the petition must be transferred to the juvenile court. A person who is subject to an ex parte temporary STOP order or a STOP order is prohibited from possessing or purchasing a firearm, and violations are a class 4 (lower mid-level) felony. It is a class 5 (second lowest) felony to make a false sworn statement for the purpose of obtaining a STOP order.

First sponsor: Rep. Friese (D - Dist 9)
Others: Rep. Andrade (D - Dist 29), Rep. Bolding (D - Dist 27), Rep. Fernandez (D - Dist 4), Rep. Gabaldon (D - Dist 2), Rep. Longdon (D - Dist 24), Rep. Powers Hannley (D - Dist 9), Rep. Rodriguez (D - Dist 27), Rep. Salman (D - Dist 26), Rep. Sierra (D - Dist 19), Rep. Teller (D - Dist 7), Rep. Terán (D - Dist 30)

H2321 Daily History	Date	Action

No actions posted for this bill within the requested time frame.

H2391: SEXUAL VIOLENCE; INTERPRETERS; SERVICE PROVIDERS

A linguistic interpreter is prohibited from disclosing as a witness and communication between a victim and a linguistic interpreter is protected in the same manner as communication between a victim and a crime victim advocate. Establishes the Sexual Assault Services Fund, to be administered by the Department of Economic Security. The Dept is required to spend monies in the Fund to provide financial assistance through a competitive grant process to "sexual violence service providers" (defined) for victims of sexual violence through contracts for services. Eligibility requirements to receive Fund monies are specified. Appropriates $10 million from the general fund in FY2020-21 to the Fund for providing the grants.

First sponsor: Rep. Teller (D - Dist 7)
Others: Rep. Campbell (R - Dist 1), Rep. Cano (D - Dist 3), Rep. Chavez (D - Dist 29), Rep. DeGrazia (D - Dist 10), Rep. Gabaldon (D - Dist 2), Rep. A. Hernandez (D - Dist 3), Rep. Longdon (D - Dist 24), Rep. Peten (D - Dist 4), Rep. Terán (D - Dist 30), Rep. Thorpe (R - Dist 6)

H2391 Daily History	Date	Action
SEXUAL VIOLENCE; INTERPRETERS; SERVICE PROVIDERS	*2/4*	referred to House jud, appro.

H2540: EMOTIONAL ABUSE; VULNERABLE ADULTS

For the purpose of Adult Protective Services statutes, the definition of "abuse" is expanded to include "emotional abuse" (defined).

First sponsor: Rep. Longdon (D - Dist 24)
Others: Sen. Alston (D - Dist 24), Rep. Butler (D - Dist 28), Rep. Dunn (R - Dist 13), Rep. Epstein (D - Dist 18), Rep. Jermaine (D - Dist 18), Rep. Pawlik (D - Dist 17), Rep. Peten (D - Dist 4), Rep. Sierra (D - Dist 19), Sen. Steele (D - Dist 9), Rep. Teller (D - Dist 7), Rep. Tsosie (D - Dist 7)

H2540 Daily History	Date	Action
EMOTIONAL ABUSE; VULNERABLE ADULTS	*1/27*	referred to House hel-hu ser.

H2543: FIREARM TRANSFERS; DOMESTIC VIOLENCE OFFENSES

For the purpose of the criminal code, the definition of "prohibited possessor" of a firearm is expanded to include any person who has been convicted of either a domestic violence offense that involved another of a specified list of offenses, or any other offense that involves the use or attempted use of physical force or the threatened use of a deadly weapon if the victim and the defendant have a domestic relationship (as defined elsewhere in statute), and to include any person who is subject to an order of protection that was issued after the person received notice and had an opportunity to participate in the proceedings. At the time of sentencing, the court is required to inform a person who is a prohibited possessor due to a domestic violence conviction that the person is prohibited from owning or possessing a firearm, and to order the person to transfer all firearms to the appropriate law enforcement agency or a federally licensed firearms dealer within 24 hours after the court issues the order. The law enforcement agency or federally licensed firearms dealer that receives a transferred firearm may dispose of the firearm in accordance with state and federal law. More.

First sponsor: Rep. Longdon (D - Dist 24)
Others: Rep. D. Hernandez (D - Dist 2), Rep. Rivero (R - Dist 21)

H2543 Daily History	Date	Action
FIREARM TRANSFERS; DOMESTIC VIOLENCE OFFENSES	*2/6*	referred to House jud.

H2696: FAMILY LAW; DOMESTIC VIOLENCE; RESOURCES

For the purpose of awarding legal decision-making, the court is required to consider the existence of significant domestic violence regardless of whether formal criminal proceedings have been or will be brought. The list of evidence the court may use to determine if a person has committed an act of domestic violence is expanded to include photographs and audio and video recordings. The list of factors the court must consider to determine if a parent has rebutted a presumption that and award of legal decision-making to a parent who committed the act of domestic violence is contrary to the child's best interest is expanded to include whether the parent is restrained by or subject to any other protective order. In a contested resources and fees hearing, the court is required to make specific findings on the record regarding the relative financial resources of the parties.

First sponsor: Rep. Nutt (R - Dist 14)
Others: Rep. Blackman (R - Dist 6), Rep. Cobb (R - Dist 5), Rep. Dunn (R - Dist 13)

H2696 Daily History	Date	Action
FAMILY LAW; DOMESTIC VIOLENCE; RESOURCES	*1/30*	referred to House jud.

H2721: POSSESSION OF FIREARMS; BUILDINGS; LIABILITY

A person who is not prohibited from possessing a firearm under federal or state law is allowed to possess a firearm in any "building or structure that is a public accommodation" (defined) unless the owner or tenant, or his/her agent, specifically prohibits firearms in the building or structure or if firearms are prohibited under specified state law. Unless prohibited by law, the person may carry the firearm either concealed or in a visible manner. A person is not subject to civil liability for engaging in conduct that is otherwise justified under statute governing justification. The owner or tenant of a building or structure that is a public accommodation is not liable for the acts of a person who is otherwise justified in using deadly physical force under statute governing justification.

First sponsor: Rep. Thorpe (R - Dist 6)

H2721 Daily History	Date	Action
POSSESSION OF FIREARMS; BUILDINGS; LIABILITY	*2/6*	referred to House jud.

S1164: SEVERE THREAT ORDER OF PROTECTION

In counties with a population of 150,000 persons or more, the presiding judge of the superior court, during the hours that the courts are closed, is required to make available on a rotating basis a judge or commissioner who may issue a severe threat order of protection (STOP order) by telephone. In counties with a population of less than 150,000 persons, a superior court judge or commissioner may issue a STOP order by telephone. The judge or commissioner may issue a written or oral STOP order if a peace officer attests to having probable cause to believe that a person poses a threat of death or serious physical injury to self or others or has committed an act or attempted act of violence that resulted in or is intended to result in death or serious physical injury to self or others within the preceding 14 days. A STOP order includes an order enjoining the respondent from contacting any person or entering any premises that is the subject of a threat and that justified the order, an order requiring the respondent to be evaluated by a behavioral health professional to determine if the respondent is a danger to self or others and whether the respondent should be referred for treatment, an order prohibiting the respondent from possessing or purchasing a firearm for the duration of the STOP order and requiring the respondent to designate a responsible custodian to take possession of any firearms in the respondent's possession, and any other relief that is necessary to protect the respondent or any other person who is the subject of a threat, act or attempted act that resulted in the STOP order. A STOP order expires in 14 days or after the respondent provides the court with a notice of completion of an evaluation by a behavioral health professional, whichever is later, unless otherwise continued by the court. A STOP order must state that the respondent is entitled to a hearing on written request, and hearing procedures are established.

First sponsor: Sen. Brophy McGee (R - Dist 28)
Others: Sen. Bowie (D - Dist 18), Sen. Carter (R - Dist 15)

S1164 Daily History	Date	Action

SEVERE THREAT ORDER OF PROTECTION	*1/21*	referred to Senate jud.

S1165: FIREARM TRANSFERS; DOMESTIC VIOLENCE OFFENSES

For the purpose of the criminal code, the definition of "prohibited possessor" of a firearm is expanded to include any person who has been convicted of either a domestic violence offense that involved another of a specified list of offenses, or any other offense that involves the use or attempted use of physical force or the threatened use of a deadly weapon if the victim and the defendant have a domestic relationship (as defined elsewhere in statute), and to include any person who is subject to an order of protection that was issued after the person received notice and had an opportunity to participate in the proceedings. At the time of sentencing, the court is required to inform a person who is a prohibited possessor due to a domestic violence conviction that the person is prohibited from owning or possessing a firearm, and to order the person to transfer all firearms to the appropriate law enforcement agency or a federally licensed firearms dealer within 24 hours after the court issues the order. The law enforcement agency or federally licensed firearms dealer that receives a transferred firearm may dispose of the firearm in accordance with state and federal law. More.

First sponsor: Sen. Brophy McGee (R - Dist 28)
Others: Sen. Bowie (D - Dist 18), Sen. Carter (R - Dist 15)

S1165 Daily History	Date	Action
FIREARM TRANSFERS; DOMESTIC VIOLENCE OFFENSES	*1/21*	referred to Senate jud.

S1276: SEXUAL ASSAULT SURVIVORS; RIGHTS

Establishes a list of rights that a survivor of a sexual assault has, including the right to consult with a sexual assault victim advocate, the right to not be charged for a medical evidentiary examination, the right to a prompt analysis of sexual assault kit evidence, the right to be reasonably protected from the defendant, and the right to not be required to submit to a polygraph examination.

First sponsor: Sen. Boyer (R - Dist 20)

S1276 Daily History	Date	Action
SEXUAL ASSAULT SURVIVORS; RIGHTS	*1/27*	referred to Senate jud.

S1441: PROTECTION ORDERS; MODIFICATION; RESIDENCE POSSESSION

While an order of protection is in effect, if a party was granted the use and exclusive possession of the parties' residence and subsequently moves out of the house, the party is required to notify the court within five days after moving out of the residence. The court is authorized to hold additional order of protection hearings at any time if there is a change in circumstances related to the primary residence.

First sponsor: Sen. E. Farnsworth (R - Dist 12)
Others: Rep. Grantham (R - Dist 12), Rep. Petersen (R - Dist 12)

S1441 Daily History	Date	Action
PROTECTION ORDERS; MODIFICATION; RESIDENCE POSSESSION	*2/6*	Senate jud amended; report awaited.
PROTECTION ORDERS; MODIFICATION; RESIDENCE POSSESSION	*1/30*	referred to Senate jud.

S1624: FIREARM SALES; TRANSFERS; BACKGROUND CHECKS

If neither party to a prospective firearms sale or transfer is a licensed firearms dealer, the parties must complete the transaction through a licensed firearms dealer. Some exceptions. The dealer must process the sale or transfer and comply with all requirements of federal, state and local law as if the dealer were a party to the transaction, including a background check on both parties. If the dealer cannot legally deliver the weapon to the purchaser, the dealer must return the weapon to the seller. If the dealer cannot legally return the weapon to the seller, the dealer must deliver the

weapon to law enforcement. The dealer may charge a fee of up to $20 for the costs incurred in facilitating the sale or transfer. Violations are a class 5 (second-lowest) felony.

First sponsor: Sen. Navarrete (D - Dist 30)
Others: Sen. Alston (D - Dist 24), Sen. Bradley (D - Dist 10), Sen. Contreras (D - Dist 19), Sen. Dalessandro (D - Dist 2), Sen. Gonzales (D - Dist 3), Sen. Mendez (D - Dist 26), Sen. Otondo (D - Dist 4), Sen. Peshlakai (D - Dist 7), Sen. Quezada (D - Dist 29), Sen. Rios (D - Dist 27), Sen. Steele (D - Dist 9)

S1624 Daily History	Date	Action
FIREARM SALES; TRANSFERS; BACKGROUND CHECKS	*2/5*	referred to Senate jud.

S1626: ORDER OF PROTECTION; FIREARM POSSESSION

A person who is at least 18 years of age and who is either a law enforcement officer, a "family or household member" (defined), a school administrator or teacher or a licensed behavioral health professional who has personal knowledge that the respondent is a danger to self or others is permitted to file a verified petition in the superior court for a one-year Severe Threat Order of Protection (STOP order), which prohibits the respondent from owning, purchasing, possessing or receiving or having in the respondent's custody or control a firearm or ammunition for up to one year. The petitioner is also permitted to request that the court issue an Ex Parte STOP order, which prohibits the respondent from owning, purchasing, possessing or receiving or having in the respondent's custody or control a firearm or ammunition until a court-scheduled hearing on the one-year STOP order. Establishes required timelines for hearings on STOP orders. Factors the court must consider in determining whether grounds for an Ex Parte STOP order or one-year STOP order exist are listed. Statements that must be included on a STOP order are specified, including that the respondent has the right to request one hearing to terminate a one-year STOP order at any time during the order's effective period. On issuance of an Ex Parte STOP order or one-year STOP order, the court is required to order the respondent to relinquish to a local law enforcement agency all firearms and ammunition in the respondent's custody or control or that the respondent possesses or owns. A peace officer who takes possession of a firearm or ammunition is required to issue a receipt that identifies all firearms and ammunition that have been relinquished or removed and file the receipt with the court that issued the Ex Parte STOP order or one-year STOP order. Establishes a process for the return or disposal of relinquished firearms and ammunition.

First sponsor: Sen. Gonzales (D - Dist 3)
Others: Sen. Alston (D - Dist 24), Sen. Bradley (D - Dist 10), Sen. Contreras (D - Dist 19), Sen. Dalessandro (D - Dist 2), Sen. Mendez (D - Dist 26), Sen. Navarrete (D - Dist 30), Sen. Otondo (D - Dist 4), Sen. Peshlakai (D - Dist 7), Sen. Quezada (D - Dist 29), Sen. Rios (D - Dist 27), Sen. Steele (D - Dist 9)

S1626 Daily History	Date	Action
ORDER OF PROTECTION; FIREARM POSSESSION	*2/5*	referred to Senate jud.