

COMMITTEE ON SUPERIOR COURT

Date Action Required:	Type of Action Required:	Subject:
February 5, 2010	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	SUPPORT REVISION TO ARPOP RULE

FROM: Patricia Madsen, Managing Attorney, Community Legal Services
Elizabeth R. Finn, Presiding Judge, Glendale City Court

PRESENTER(S): Patricia Madsen

DISCUSSION: This is a request for COSC to support changing ARPOP Rule 4(B)(5)(b). The rule change would require limited jurisdiction courts to transfer protective orders when the protected party is the subject of a custody, parenting time, or visitation order. Many times, a new significant person or spouse is the party in a protective order where custody, parenting time, or visitation rights of another party can be affected. Although limited jurisdiction courts should retain the ability to issue the protective order, it is in the interests of all the parties to have any contested hearing heard in the superior court. By mandating the transfer to superior court, one court will be deciding all factors in relation to the custody or visitation of the protective parties.

RECOMMENDED MOTION:

Support amending ARPOP Rule 4(B)(5)(b) as indicated in Petition.

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)
)
Arizona Rules of)
Protective Order Procedure,)
Rule 4(B)(5)(b))
)
)
)
)
)
_____)

Supreme Court No. _____

**PETITION FOR AMENDMENT TO
ARIZONA RULES OF PROTECTIVE ORDER
PROCEDURE**

Pursuant to Rule 28, Rules of the Supreme Court, Elizabeth R. Finn, Presiding Judge for Glendale City Court, petitions the Court to amend Rule 4(B)(5)(b) of the *Arizona Rules of Protective Order Procedure (ARPOP)* as reflected in the accompanying Appendix A, with an effective date of January 1, 2011.

Adoption of this amendment will clarify the procedure for courts when an *ex parte* protective order should be transferred to Superior Court. This amendment will better assure access to justice for those needing protection.

The rule change would require limited jurisdiction courts to transfer protective orders when the protected party was the subject of custody, parenting time or visitation order. Many times, a new significant person or spouse are the party in a protective order where custody, parenting time or visitation rights of another party can be affected. Though limited jurisdiction courts should retain the ability to issue the protective order, it is in the interests of all the parties to have any contested hearing heard in the superior court. By mandating the

transfer to superior court, one court will be deciding all factors in relation to the custody, parenting or visitation of the protective parties.

Though there may not be a pending case in superior court, many times the parent of a child is ordered to have no contact with a child who is subject to custody or parenting time order. This amendment would also require the transfer of a protective order from a limited jurisdiction court when the order involves the child of the defendant when the child is subject to custody, parenting time or visitation order. By mandating the transfer to superior court, one court will be deciding all factors in relation to the custody or visitation of the protective parties.

CONCLUSION

The petitioner respectfully asks the Court to adopt this amendment to Rule 4(B)(5)(b) of the *Arizona Rules of Protective Order Procedure (ARPOP)* with an effective date of January 1, 2011.

Respectfully submitted this 8th day of January, 2010.

Elizabeth R. Finn
Presiding Judge, Glendale City Court
5711 W. Glendale
Glendale, AZ 85301
Phone: 623-930-2440
FAX: 623-930-2010
efinn@glendaleaz.com

In Support of Petition:

George Logan, Presiding Judge, Surprise City Court
Richard Lynch, Presiding Judge, Avondale City Court
Michael Simonson, Presiding Judge, Goodyear City Court

Gerald Williams, Justice of the Peace, North Valley Justice Court
John Keegan, Justice of the Peace, Arrowhead Justice Court
Chris Mueller, Justice of the Peace, Hassayampa Justice Court
Louraine Arkfeld, Presiding Judge, Tempe Municipal Court

Filed electronically with the Supreme Court on the
8th of January, 2010.

Appendix "A"

Rule 4(B)(5)(b)

~~When a family law action is not pending, but there is an active custody order issued by an Arizona court involving the defendant or a child of the defendant, a limited jurisdiction court may issue an *ex parte* protective order, but then shall transfer the matter to the superior court in accordance with the procedures set forth in Rule 4(A)(4).~~ When a family law action is not pending, but there is an active custody, parenting time or visitation order issued by an Arizona court, a limited jurisdiction court may issue an *ex parte* protective order that includes (1) a child of the defendant subject to the active custody, parenting time or visitation order, or (2) a protected person subject to an active custody, parenting time or visitation order. After issuance, the limited jurisdiction court shall immediately transfer the matter to the superior court in accordance with the procedures set forth in Rule 4(A)(4). An active custody, parenting time or visitation order is any custody, parenting time or visitation order still in effect. Any hearing on the protective order shall be conducted by the superior court.