

# A Primer—Arizona's New Protective Order Landscape

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Today's primer addresses significant year 2020 reform affecting all title 12 and 13 protective orders.

## Statutory Authority

Orders of protection allege an act of domestic violence under A.R.S. §13-3601 *et seq.* The statutory scheme defines (i) a requisite relationship of the parties; and (ii) the qualifying act, usually within the past year. In contrast, title 12 protective orders do not need to allege domestic violence. Title 12 includes injunctions against harassment, for which no relationship is required but a "pattern" of conduct is required and defined under A.R.S. §12-1809. Additionally, title 12 includes injunctions against harassment, for which no relationship is required but a "pattern" of conduct is required and defined under A.R.S. §12-1810. Procedures for all three are within Arizona Rules of Protective Order Procedure, and in these times of Covid-19 restrictions, evolving orders at various court websites.

## AZPOINT—Digital Filing and Electronic Transmittal to Law Enforcement for Service Nationwide

Historically, a plaintiff securing an order of protection could keep the original for a year before effectuating service, thus maintaining control over its effective time period because such orders take effect upon service. Delayed service of title 13 protective orders is no longer likely. Senate engrossed HB2249 (Fifty-third Legis. 2nd Regular Session 2018)<sup>1</sup> resulted in reform affecting these protective orders, effective the 31st of December 2019. Some key provisions included that orders of protection will generally be served promptly by law enforcement and streamlining data entry into NCIC (National Crime Information Center). The Arizona Supreme Court now serves as a central repository for title 13 protective orders and the title 12 injunctions. There are now portals for court clerks, the agency serving documents, and importantly, for any public member to prepare petitions at any location in advance of actual filing.<sup>2</sup>

## Domestic Violence Legal Document Preparer Program

The DVLDP authorized legal document preparers to become certified in handling domestic violence cases and then as an em-

ployee at a domestic violence shelter or legal aid provider. Expanding upon the concurrently running announcement in this issue by the AOC, specific authority to DVLDPs includes:

*"[p]reparing, completing, or assisting clients with completion of court forms and other court or administrative agency documents for filing with any court or administrative agency related to Order of Protection cases and related Family Law, Landlord/Tenant Law, Creditor/Debtor Law, or Public Benefits matters; ... Assisting in service of process; ... Assisting in the preparation of evidence for hearings and mediations in the case types noted above; ... Assisting clients during court and administrative hearings; and ... Responding to requests for information from the presiding judicial officer or administrative hearing officer during a hearing."*<sup>3</sup>

## Task Force's Pending Changes Affecting Arizona's Practice of Law

In its pending petition R-20-0034 by the

Court's Task Force on the Delivery of Legal Services, the Task Force stated its concern focused around closing the oft-discussed "access to justice" gap. In addition to those of us who spoke in opposition to certain proposals, the reader may see that at the Court's rule forum as of June 9, there are 242 comments in writing (34,689 views). The two areas of opposition generally within the commentary focused on proposals that would permit non-attorney owned law firms and that would authorize widely non-lawyer LLLP advocates.

A development as Arizona follows the "Ontario" and "Washington" models (there called Limited License Legal Technicians) is that Washington state's supreme court voted 7 to 2 on June 4 to suspend any new LLLT licensure except those "in the pipeline" already if they complete their requirements by a given deadline. In its announcement, that court wrote that "the court voted by majority Thursday, June 4, 2020, to sunset the Limited License Legal Technicians (LLLT) Program. The majority also rejected the LLLT Board's requested expansion of practice areas and proposed rule revisions." Letter, Debra L. Stephens, Chief Justice Washington State Supreme Court (05 June 2020). As to the entire of the Arizona petition pending and its pro-

gram, the last (second) comment period closed on May 26th. The Court's website shows one more posted deadline of June 22nd for "Petitioner's final response and, if needed, a Second Amended Petition..." The petition itself, a response with amended petition, appendices 1 and 2 and their amendments, and the Court's orders are at <https://www.azcourts.gov/Rules-Forum/aft/1118>. The reader will wish to review promptly upon seeing this July issue of the MCBA's publication in which this essay appears if s/he would wish to offer a posting if there might be a subsequent amended petition and corresponding final comment period.

## Arizona's June 4 Implementation of the D.V. Licenses Legal Advocate Program

On the same day as Washington's vote, the Arizona Supreme Court implemented the Task Force's domestic violence portion of the petition. The AOC announcement in this issue discusses the new Licensed Legal Advocates under the newly authorized pro-

gram. Contrary to the DVLDP, the DVLTA will be permitted to offer legal advice and otherwise provide certain representation. The sample scope of service engagement letter sets forth the scope of representation to include providing general legal information and referrals to attorneys, but also "Legal advice and assistance regarding immediate legal issues within the scope of service such as orders of protection, paternity, child support, dissolution, legal decision-making and parenting time during legal intake." and also legal advice and as-

## Assistance in Completing Forms in the Same Substantive Law Areas, and in Gathering Evidence. As well, LLAs will have a seat in courtrooms at counsels' table to assist the litigant during proceedings.<sup>4</sup>

## Criminal Law Implications

Sometimes, admissibility of evidence in domestic violence cases must weigh the rights of criminal defendants to discover and use exculpatory evidence against rights of privacy of victims. For instance, evidentiary analyses are outlined in *Fox-Embrey v. Neal (in re Main)*, 2 CA-SA 2019-0045 (App. Div. Two 04 June 2020) (murder and child abuse charges wherein the defendant sought medical and therapeutic records and victims invoked protections under the Victims' Bill of Rights). Several domestic violence rule change petitions are pending, including a proposal by the Pima County Attorney (R-20-0023) to add an evidentiary rule so that other crimes of domestic violence would

become admissible in a domestic violence prosecution. Watch the August 2020 rules agenda to see which of the many proposals move forward. ■

<sup>1</sup> Forms effective January 1st, 2020 were mandated in Administrative Directive 2019-10. The November 6th, 2019 Administrative Order 2019-143 mandates courts' participation in AZPOINT effective January 1st, 2020.

<sup>2</sup> PRACTICE TIP: Access information, forms, instruction, and safety protocol information at <https://azpoint.azcourts.gov/> or at <https://superiorcourt.maricopa.gov/lit/protection-orders/>

<sup>3</sup> S.Ct. Admin. Ord. 2020-25, ¶ 129 (January 2020); see also ACJA §57-201-.208 (Code of Judicial Administration, Certification and Licensing Programs).

<sup>4</sup> S.Ct. Admin. Ord. 2020-84 (05 June 2020); replaced by Admin. Ord. 2020-88 (10 June 2020); see Appendix 2 for a sample representation agreement.

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