

IN THE SUPREME COURT OF THE STATE OF ARIZONA

FILED
AUG 6 1996
NOEL K. DESSAINT
CLERK SUPREME COURT
BY *N.K.*

In The Matter Of:)
)
ADOPTION OF POLICIES)
REGARDING PROTECTIVE ORDERS)
IN DOMESTIC VIOLENCE CASES)
_____)

Administrative Order
No. 96- 37

RECORDED
AUG 07 1996
AUG 11 1996

On March 3, 1994, by Administrative Order No. 94-14, the Supreme Court established the Committee on the Impact of Domestic Violence and the Courts, in part for the purposes of improving the administration of justice by assessing state and local proceedings related to the issues of domestic violence and recommending system changes that will promote safety for victims and providers who interact with them.

After considerable effort and with the cooperation of the court community and a variety of interested citizens statewide the Committee has developed a Benchbook for Orders of Protection and Injunctions Against Harassment in Domestic Violence Cases. This Benchbook is to promote consistency in the treatment of protective orders in domestic violence cases while safeguarding the rights of the parties and to protect the welfare and safety of all persons involved.

On June 4, 1996, the Arizona Judicial Council recommended approval of policies propounded by the Committee for inclusion in the Benchbook.

Now, therefore, pursuant to the administrative authority vested in the Supreme Court by Arizona Constitution, Article VI, Section 3,

IT IS ORDERED that attached Policies on Orders of Protection and Injunctions Against Harassment in Domestic Violence Cases are adopted and authorized for inclusion in the Benchbook for Orders of Protection and Injunctions Against Harassment in Domestic Violence Cases.

Dated this 6th day of August, 1996.

STANLEY *G.* FELDMAN
Chief Justice

**POLICIES ON
ORDERS OF PROTECTION AND
INJUNCTIONS AGAINST HARASSMENT
IN DOMESTIC VIOLENCE CASES**

1. All requesting parties shall be advised of the right to obtain protective relief in any court and all courts shall be prepared to issue protective orders. Nevertheless, courts located within a one-mile proximity may enter agreements designating a principal court for issuance of Orders of Protection and Injunctions Against Harassment.

2. Petitions involving a threat to personal safety shall be heard as expeditiously as possible. Petitions shall be interspersed with short proceedings and longer matters shall be interrupted to hear petitions.

3. At all stages of proceedings involving protective orders, judicial officers and court personnel shall maintain appropriate security for the parties and themselves.

4. A court shall not order or refer the parties to mediate issues presented in a proceeding for an Order of Protection or any domestic or family violence issues in a proceeding for an Injunction Against Harassment. Parties may participate in mediation to resolve ancillary issues not associated with domestic or family violence only when each party voluntarily requests mediation in writing. In this situation, courts shall be cautious to protect the safety of the parties and to assure that participation is not the product of coercion or duress.

5. The number of times that an Order of Protection or Injunction Against Harassment has been requested and/or quashed does not alone provide a basis for denying a request for protective relief.

6. An Order of Protection or Injunction Against Harassment shall contain the name of only one plaintiff and defendant.

7. When a protective order is issued against a person who is under the age of 18, the minor shall be named as the defendant.

8. An Order of Protection may restrain the defendant from coming near specifically designated persons. The child of married or previously married parties shall not be included in such "no contact" provisions unless the judicial officer has a reasonable belief that harm may result to the child or determines that the alleged acts of domestic violence involved the child. Before granting an order prohibiting contact, the following factors shall be considered:

- a. Whether the child will be harmed if the defendant is permitted to maintain contact with the child.

- b. Whether the child will be endangered if there is contact outside the presence of the plaintiff. The zone of danger for the child may not exist if the plaintiff is not present when contact occurs.
9. Limited jurisdiction courts shall have copies of Superior Court forms for expedited hearings on temporary visitation and custody matters.
10. Each new Petition shall be regarded as a separate action and be assigned a new case number.
11. When Orders of Protection or Injunctions Against Harassment are renewed, a new case number shall be assigned and service of process and registration shall occur. Fees shall be determined by statutes applicable to original petitions.
12. All modified Orders of Protection or Injunctions Against Harassment shall be served and registered in the same manner as original Orders or Injunctions.
13. Issuing Orders of Protection and Issuance of Injunctions Against Harassment involving domestic violence acts.
 - a. Plaintiffs shall be advised that filing fees may be waived or deferred. Court personnel shall not collect advance payment of service fees on behalf of the serving agency. Answer fees may not be charged to a party requesting a hearing.
 - b. Each plaintiff or third party requesting an Order of Protection or Injunction Against Harassment shall be heard by a judicial officer. It is inappropriate for an order to be signed merely on a review of the written petition.
 - c. Judicial officers shall assure that a petition contains information necessary to support the issuance of a protective order or include within the order evidence supporting the issuance obtained from the plaintiff or requesting third party. Of particular importance is a specific statement, including dates, of the domestic violence alleged, as required by statute.
 - d. When an Order of Protection is requested, judicial officers shall inquire whether the plaintiff wants to exercise the right to keep the plaintiff's address protected from disclosure. A plaintiff may not be aware of the right under state law to have the address protected.
 - e. Each party who obtains an Order of Protection or Injunction Against Harassment shall be advised by judicial officer of the specific content of the protective order and that the order is not effective until served on the defendant. Each plaintiff shall be provided with a copy of the protective order and informed how to report violations.

14. Quashing Protective Orders.

- a. In order to quash a protective order, the request shall be made by the plaintiff personally before a judicial officer in order to ensure that the request is not motivated by coercion or duress.
- b. Upon an appearance to request that a protective order be quashed, the judicial officer may exclude the defendant from the hearing who has not been served or who has not requested a hearing to challenge the initial issuance of the order.

15. Renewing Protective Orders.

- a. A new case number shall be assigned.
- b. Fees charged shall be in accordance with those provided by statute for initial filing of a petition.
- c. Issuance of the order or injunction may be based on the same facts alleged in the initial petition or upon new evidence so long as the court finds that a requisite act has occurred or reasonable cause exists.
- d. The renewed order or injunction shall be served on the defendant or an acceptance of service be signed.
- e. A renewed order or injunction shall be registered, as with initial protective orders, to permit effective and timely enforcement.

16. Hearings.

- a. If after service of an Order of Protection or Injunction Against Harassment the defendant requests a hearing, both parties shall be afforded an opportunity to be heard, present evidence, and call and cross examine witnesses. A judicial officer shall state the basis for continuing, modifying or revoking the order. This is required even if a defendant consents to continuation of the protective order.
- b. All parties or witnesses shall be sworn under oath before providing testimony or evidence in connection with a protective order, whether in the consideration of issuing the order or in the course of a subsequent hearing.
- c. All hearings on protective orders shall be recorded to preserve the record and, in the case of limited jurisdiction courts, to avoid the necessity of a *de novo* hearing shall the matter be transferred to the Superior Court.

- d. When an Order of Protection or Injunction Against Harassment is modified after a hearing, the modified order shall be served to be effective. To ensure the safety of protected persons, the court shall inquire whether the defendant will accept service of the modified order and obtain the necessary affidavit. If service is not accepted, the court shall, if possible, determine whether service can be accomplished while the defendant is present.

17. Judicial officers who may issue Orders of Protection and Injunctions Against Harassment shall attend training on these Orders/Injunctions on a regular basis.