



# Evidence

## (and Courtroom Procedure)

September 6, 2023

**Charles Adornetto**  
Judicial Education Officer  
Maricopa County Justice  
Courts



1

1

## What is Evidence?

- Evidence is defined as anything presented to a judge or jury that is offered to prove the existence of a fact.
- Testimony, documents or other material received in court to be considered by fact finder to prove or disprove a fact of consequence.
- Examples of evidence include tangible and intangible things such as real or physical evidence, direct or witness evidence, circumstantial or indirect evidence including interviews and interrogations.

2

2

## Purpose of Evidence

- Offered as an item of proof
- Offered to impeach (challenge the credibility of) a witness
- Can be used to rehabilitate a witness
- Can be useful to the court in determining sentence after conviction

3

3

## Direct or Circumstantial Evidence

- Direct: clearly proves the fact asserted: "I saw him hit the victim in the nose."
- Circumstantial: gives rise to inference that event occurred, or another fact exists: "I heard a slapping noise, saw the defendant run away from the victim, and saw the victim's nose start to bleed."
- Direct and circumstantial evidence are both admissible, considered by fact finder and treated similarly under Arizona law.
- RAJI 4: Evidence may be direct or circumstantial. Direct evidence is a physical exhibit or the testimony of a witness who saw, heard, touched, smelled or otherwise actually perceived an event. Circumstantial evidence is the proof of a fact or facts from which the existence of another fact may be determined. The law makes no distinction between direct and circumstantial evidence. You must determine the weight to be given to all the evidence without regard to whether it is direct or circumstantial.

4

4

## Types of Evidence - Testimony

- Testimony
  - a) Facts: Personal observations or knowledge perceived directly by witness.
  - b) Opinions:
    - i. Layperson -- only if based on personal observations and helpful to fact finder
    - ii. Expert -- only if qualified and helpful to fact finder

5

5

## Types of Evidence – Testimony

- Stated differently, testimony is:
  - a) Oral statement under oath or affirmation;
  - b) By a competent witness;
  - c) Made or admitted in court (live testimony and deposition); and
  - d) About personal observations or admissible opinions

6

6

## Types of Evidence – Non-testimonial

- Documents require foundation + testimony to explain, or a stipulation
- Will often have hearsay issues (hearsay will be discussed later)
- Real – physical objects like guns, clothes, drugs
- Demonstrative – created solely for or at trial, like a diagram, chart, graph, summary of damages, etc.

7

7

## Judge's Role

- Admit only relevant and reliable evidence.
- Exclude unreliable or irrelevant evidence.
- *NUMEROUS EXCEPTIONS TO BOTH OF THESE GENERAL CONCEPTS.*
- Decide admissibility of evidence, considering:
  - a) Relevance
  - b) Foundation
  - c) Special rules (opinions, hearsay, privilege, character evidence, etc.)

8

8

## Judge's Role

- The Three Steps
  1. Objection and/or motion to strike answer;
  2. Brief Response (if any and if necessary);
  3. Ruling: Sustained, overruled, reserved, granted, denied, "why don't you rephrase".
- When in doubt, the 3 Rs:
  - **R**ecess, **R**esearch and get it **R**ight.

9

9

## Judge's Role

- Control presentation and receipt of evidence
- Determine mode, order and time limits of presentation
- Have evidence marked for identification
- Make and preserve the record:
  - Make record of evidentiary issues and rulings, including rationale when appropriate.
  - Make sure admitted and offered exhibits are secure.
  - Make sure non-recorded rulings are reflected on the record (sidebar; offers of proof; chambers rulings).

10

10

## Rules of Evidence

- The primary purpose of the Rules of Evidence is to prevent the introduction of evidence which is irrelevant or unreliable, unfairly prejudicial, or unduly time consuming to present.
- Evidence Rule 103(d): To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.
- Any evidence seized or discovered in violation of a person's constitutional rights (4th, 5th, 6th U.S. Constitutional Amendments) will **not** be admitted at a criminal trial.
- Most issues regarding the admissibility of evidence are resolved by the Judge prior to the trial.

11

11

## Organization of Arizona Rules of Evidence

- General Provisions: ARE 101-106; 1101-1103
- Judicial Notice: ARE 201
- Presumptions in Civil Cases: ARE 301-302
- Relevancy and Its Limits: ARE 401-415
- Privileges: ARE 501-502
- Witnesses (and A LOT more): ARE 601-615
- Opinions and Expert Testimony: ARE 701-706
- Hearsay: ARE 801-807
- Authentication and Identification: ARE 901-903
- Contents of Writings, Recordings and Photographs: ARE 1001-1008.

12

12

## When the Rules of Evidence Don't Apply

- Hearings regarding *admissibility* of evidence (suppression hearings);
- Preliminary and probable cause hearings;
- Protective Order Hearings (ARPOP 36);
- Probation violation hearings (reliable evidence not privileged);
- Civil Traffic cases;
- Small Claims cases.

13

13

## Privileged Communications

- Witnesses have a right to have certain types of confidential communications barred from disclosure in court
- Marital Communications A.R.S. 12-2232
- Anti-Marital Fact Privilege A.R.S. 12-2231
- Attorney-Client A.R.S. 12-2234
- Clergy A.R.S. 12-2233 **(clergy only)**
- Informant-Reporter A.R.S. 12-2237
- Doctor-Patient A.R.S. 12-2235
- Self-incrimination!
- **Objection: Ask yourself: is there an important policy to protect?**

14

14

## Spousal Privilege

A. General rule: A spouse cannot testify for or against their spouse without their spouse's consent. A.R.S. § 13-4062.

B. Exceptions (also in statute)

- 1. In a criminal action or proceeding for a crime committed by one spouse against the other or "in a criminal action or proceeding against the husband for abandonment, failure to support or provide for or failure or neglect to furnish the necessities of life to the wife or the minor children."
- 2. Either spouse may be examined as a witness for or against the other in a prosecution for any homicide, aggravated assault, sexual assault, any dangerous crime against children, arson, armed robbery, burglary, kidnapping, sexual contact with someone under 15, child sex trafficking, bigamy or adultery, committed by either spouse,

15

15

## Spousal Privilege Exceptions, ctd

- 3. For sexual assault committed by the husband if either of the following occurs:
  - a. Before testifying, the testifying spouse makes a voluntary statement to a law enforcement officer during an investigation of the offense or offenses about the events that gave rise to the prosecution or about any statements made to the spouse by the other spouse about those events.
  - b. Either spouse requests to testify.
- 4. *"When a defendant commits a crime against his or her spouse and is charged for that crime, the crime exception to the anti-marital fact privilege allows the witness-spouse to testify regarding not only that charge, but also any charges arising from the same unitary event."* *Phoenix City Prosecutor v. Lowery*, 430 P.3d 884 (Ariz. 2018). In that case, husband attempted to prevent his intoxicated wife from driving and parked one of their vehicles behind the car she was in to keep her from leaving. She backed into their other vehicle, damaging both, and left. She was charged with three counts of DUI and one count of domestic violence criminal damage. The Arizona Supreme Court held the wife's charges did not need to be separated into different trials and the husband could testify about the DUI charges as well as the DV charge.

16

16



## State Has Continuing Duty to Disclose

- The duty to disclose evidence does not end!
- Brady Evidence (Exculpatory)
- There are **serious** consequences for failure to disclose (continuance, preclusion, mistrial, Willits, case dismissed, disciplinary, etc.)

17

17

## The “Rule”

- Witness exclusion may be ordered by the court to prevent prospective witnesses from remaining in the courtroom during testimony of other witnesses.
- Also known as "invoking the rule"
- Evidence Rule 615 Exceptions
  - Investigating officer
  - Victim
  - Parties or Party Designee
  - Expert Witnesses(?)
- See also Criminal Rule 9.3

18

18

## Opinions of Witnesses

- Witnesses ordinarily are not permitted to give their opinions or draw conclusions on matters about which they are testifying.
- However, there are a few exceptions to the general rule. Everything a person perceives through their senses is generally expressed in the form of a conclusion.
- Witness must testify about facts within their first-hand knowledge and observation:
- “I stood right next to him, saw him, and smelled him –and he looked drunk to me...”
- May give opinion if rationally based on his/her perception; no special expertise is required:
- Speed of vehicles, intoxication, demeanor

19

19

## Expert Testimony – R.Ev. 702

- An exception to the **opinion rule** is testimony offered by an **expert witness**
- Is expert qualified (knowledge, skill, education, training and/or experience) within a specific field of expertise (scientific, technical or other specialized knowledge)?
  - Judge decides if witness is qualified.
- Will evidence assist fact finder to understand evidence or decide fact in issue?
  - Is evidence reliable, focusing on principles and methods, *not* conclusions?
  - Judge performs a gatekeeper role

20

20

## Expert Testimony – ARE 702 – *Daubert*

- Text of Rule 702
- A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
  - **(a)** the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
  - **(b)** the testimony is based on sufficient facts or data;
  - **(c)** the testimony is the product of reliable principles and methods; and
  - **(d)** the expert has reliably applied the principles and methods to the facts of the case.

21

21

## Discretion

- For **ALMOST** all evidentiary issues, trial court has broad discretion, meaning review on appeal is abuse of discretion standard.
- ***Discretion is one of a trial judge's best friends.***
- Recognize and exercise your discretion.
- Say that you are exercising your discretion and what you have considered.
- Often the objection goes to the weight and not to the admissibility.

22

22

## Foundation

- How does witness know what s/he is testifying about?
- Why should blood test results be admitted?
- How does witness know gun has anything to do with this case?
- Person offering evidence generally needs to show foundation **before** seeking admission.

23

23

## Objection: Foundation

- Ask the objector: “What sort of foundation is missing?”
- For example, for a photo, we need to know (1) who took the photo, (2) when was it taken, and (3) does the witness confirm that the photo fairly and accurately represents what he saw?
- You may gently prompt an SRL to provide foundation.

24

24

## Relevance

- R.Ev. 401, 402: Evidence is relevant if:
  - a) it has **any** tendency to make a fact more or less probable than it would be without the evidence; and
  - b) the fact is of consequence in determining the action.
- Relevant evidence is generally admissible.
- Irrelevant evidence is not admissible.

25

25

## Relevance—R.Ev. 403

- Relevant evidence **may** be excluded “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”
- R.Ev. 403 is all about context and discretion:
  - “Unfair prejudice,” not “just” prejudice.
  - Jury confusion (bench trial confusion?).
  - Waste of time and cumulative evidence.
  - “[D]anger of” things; the thing itself (certainty) not required.

26

26

## Objection: Relevance

- Ask yourself: does it matter?
- If in doubt, let it in. You likely will not be reversed for allowing irrelevant evidence in.
- "Counsel, I don't see the relevance yet either, but I shall give provide a little latitude. Objection overruled."
- For non-jury, you can always allow and "give it the weight it is due."

27

27

## Order of Proceedings

- Opening Statement
- Direct, Cross, Redirect of Plaintiff's witnesses
- Direct, Cross, Redirect of Defendant's witnesses
- Direct, Cross, Redirect of Plaintiff's rebuttal witnesses, if any
- Direct, Cross, Redirect of Defendant's surrebuttal witnesses, if any
- Closing Argument
- Ruling

28

28

## R.Ev. 611: Examining Witnesses

- Cross-examination is not bound by scope of direct. R.Ev. 611(b)
- Leading questions generally not allowed on direct, except as may be necessary to develop the witness's testimony, and ordinarily are allowed on cross-examination. R.Ev. 611(c)
- Party may interrogate a hostile witness or adverse party using leading questions. R.Ev. 611(c)

29

29

## Objection: Leading Question

- Ask yourself: "Does the question compel the answer?"
- Leading: "So, is that when he hit you in the face?"
- Not Leading: "What happened next?"
- It's O.K. to lead someone through the preliminaries, but when the testimony gets to the critical part, you shouldn't lead. BUT you can always lead a hostile witness.
- Ruling: "Counsel, rephrase the question."

30

30

## Witness Examinations

- **Direct examination** is the first examination of a witness
- **Cross examination** is allowed following direct examination due to the constitutional right of the defendant to “confront his/her accuser.” Witnesses are examined by an attorney other than the attorney who conducted the direct examination of the witness.
- **Voir Dire Examination:**
  - During the voir dire process, attorneys may attempt to determine relevancy and competency of a witness to testify

31

31

## Witness Impeachment

- The purpose and intent of **impeachment** of a witness is to demonstrate that a witness is unworthy of belief
- Impeachment may be accomplished by:
  - Showing inconsistent statements
  - Showing bias or prejudice in favor or against a party
  - Showing prior convictions within the past ten years including both felonies and misdemeanors
  - Perjury or false information

32

32



## Authentication R.Ev. 901 & 902

- Different from hearsay (Something can be genuine and can still be hearsay)
- Is it what the litigant is claiming it to be?
- Self-authenticating documents include government records that are signed and sealed, certified copies of public records, and acknowledged documents
- “But it is notarized!”

33

33

## Admissibility of Duplicates R.Ev. 1002

- If the original would be admitted, then a copy will work too.
- “A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.”

34

34

## Hearsay R.Ev. 801

- Hearsay is an out of court statement offered to prove the truth of the matter asserted.
- More rigorously, “hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- There are many exceptions to the hearsay rule. Exceptions are made because it's still reliable. For example, "business records".
- Also, an out of court statement may not be hearsay if offered for another reason.

35

35

## Non-Hearsay

- An Admission By A Party-Opponent. R.Ev. 801(d)(2). Example = A statement made by a defendant in a telephone conversation prior to his arrest was admissible.
- **Note; Tricky Point:** The prosecution can introduce a criminal defendant’s statement into evidence; but a criminal defendant cannot introduce his own statements through another witness because if the defendant offers it, then it is hearsay. The defendant can get around this problem by testifying.
- Prior Inconsistent Statements are non-hearsay. R.Ev. 801(d)(1).

36

36

## (Some) Hearsay Exceptions

- (There are 30)
- Business Records Exception. R.Ev. 803(6).
- Public Records and Reports. R.Ev. 803(8). Example = Vehicle registration from ADOT.
- Dying Declaration. R.Ev. 804(b)(2).
- Present Sense Impression. R.Ev. 803(1).
- Excited Utterance. R.Ev. 803(2).
- Recorded Recollection. R.Ev. 803(5).
- Former Testimony. R.Ev. 803(25), R.Ev. 804(b)(1).

37

37

## More Hearsay

- R.Ev. 805: Hearsay within hearsay is not excluded if each part of the combined statements conforms with an exception to the rule.
- R.Ev. 806: Attacking and Supporting the Declarant's Credibility.
- Hearsay Objection: Ask yourself: “Is the real witness missing from the room?”

38

38

## Confrontation (Crawford)

- The U.S. Supreme Court held that the confrontation clause to the U.S. Constitution permits the admission of out-of-court testimonial statements of witnesses only if the declarant was unavailable and the defendant had a prior opportunity to cross-examine the declarant. Crawford v. Washington, 541 U.S. 36 (2004).
- Criminal cases only.
- There is an exception to Crawford if the statements made to the police were made to assist the police with an ongoing emergency.
- Calibration and maintenance records are not testimonial and qualified as a business records exception to hearsay rule.
- Affidavits of service are not testimonial.

39

39

## Police Reports

- They are hearsay in cases where Rules of Evidence apply: They are something the officer stated (in this case wrote) outside of the current court proceeding and they are typically introduced to show that the events described in them actually happened.
- (They will be marked as an exhibit (to refresh the recollection of a witness or to impeach a witness), but not offered for admission.)
- Specifically exempted from the public record exception:
- **R.Ev. 803(8) Public Records.** A record or statement of a public office if: (A) it sets out:
- (ii) a matter observed while under a legal duty to report, **but not including, in a criminal case, a matter observed by law-enforcement personnel;**

40

40

## Business Records

- First consideration: Foundation
  - 1. The witness has personal knowledge of the business' filing system;
  - 2. The witness removed a certain record from a certain file;
  - 3. It was the right file;
  - 4. The witness recognizes the exhibit as the record he or she removed from the file; and
  - 5. The witness specifies the basis on which he or she recognizes the exhibit.

41

41

## Business Records

- Second consideration: Hearsay
  - 1. The document was prepared by a business employee;
  - 2. The document was prepared at or near the time of the event;
  - 3. By or from a person who had first hand knowledge acquired in the course of a regularly conducted business activity;
  - 4. It was a routine practice of the business to prepare such reports;
  - 5. The report was reduced to written form; and
  - 6. That the report was made in the regular course of business.

42

42

## DUIs

- Foundational requirements to admit a “breath test or other records” are listed at A.R.S. § 28-1323.
  1. Test was performed on an approved device;
  2. Operator had a valid permit;
  3. Duplicate tests were administered and the results were within 0.02 alcohol concentration of each other;
  4. Operator followed an approved checklist; *and*
  5. Device was in proper operating condition.
- Blood tests are governed by A.R.S. § 28-1388.
- MVD records – Self authenticating if meet requirements of A.R.S. § 28-444 and R.Ev. 902(4) and (10).
- PBT results – admissible for presence of alcohol

43

43

## DUIs

- Horizontal Gaze Nystagmus (HGN)
- If case includes an AC result, witness can testify to the HGN result being consistent with an AC of .08 or higher
- If NO AC result, witness is restricted to testimony that the HGN result “is consistent with a neurological dysfunction one cause of which could be alcohol ingestion” – *State of Arizona, ex rel. Hamilton v. City of Mesa, Lopresti, Real Party in Interest*, 165 Ariz. 514 (1990) (commonly referred to as “*Lopresti*”)
- Ultimate Fact Testimony
- ***Fuening v. Superior Court***, 139 Ariz. 590 (1983) is the Arizona Supreme Court case which says that “trial courts should exercise a great deal of caution in admitting” testimony by the officer that the defendant was “drunk,” “intoxicated”, “under the influence” or impaired to the slightest degree because that goes to “the ultimate issue” and that is the province of the jury.

44

44

## Rule 614: Judge Calling/Examining Witness

- Calling. The court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.
- Examining. The court may examine a witness regardless of who calls the witness.
- Don't do in criminal cases!
- I have done it for protective orders.

45

45

## Negative Inference

- Civil cases only:
- Finder of fact may draw a negative inference from a party's failure to testify/refusal to answer.
- (Can assume testimony/answer would have been bad for party/witness.)
- Wohlstrom v. Buchanan, 180 Ariz. 389, 884 P.2d 687 (1994);  
Wieseler v. Prins, 167 Ariz. 223, 805 P.2d 1044 (App. 1990).
- Beware: Never, never, never in criminal cases!

46

46

## Questions?

- Many thanks to:
- Hon. Gerald Williams
- Hon. Laine McDonald
- Hon. Steven McMurry (Ret.)





## Appeals; BOP; Rules of Evidence or Alternatives

### Criminal Matters

Type	Appeal	BOP	R Ev	Alternative
Criminal	14 days	Beyond a Reasonable Doubt	Yes	
Evidentiary Hearing on Motion to Suppress	14 days after sentence	<p>Crim 16.2(b):</p> <p>(1) <b>Generally</b>. Subject to (b)(2), State has BOP by a <b>preponderance of the evidence</b> the lawfulness in all respects of the acquisition of all evidence that the State will use at trial.</p> <p>(2) <b>Defendant's Burden</b>. If any of the conditions listed below are present, the State's BOP under (b)(1) arises only after Def <b>alleges specific circumstances and establishes a prima facie case</b> supporting the suppression of the evidence at issue:</p> <p>(A) the evidence involves a confession, identification, search, or seizure, and the defendant is entitled under Rule 15 to discover how the evidence was obtained;</p> <p>(B) defense counsel was present when the evidence was taken; or</p> <p>(C) the evidence was obtained under a warrant.</p>	No	Ev 104(a): The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.
Warrant		Crim 2.4(a): Probable Cause to believe an offense has been committed and Def committed it.		
Juvenile	10 or 14 days	Beyond a Reasonable Doubt	Yes	No jury trials; § 8-325(C) says 10 days and use CivTr, which says 14 days (CivTr 28)
Preliminary Hearing		Crim 5.4(a): The finding of probable cause shall be based on substantial evidence, which may be hearsay in whole or in part in the following forms: 1) Written reports of expert witnesses; 2) Documentary evidence without foundation, provided there is a substantial basis for believing such foundation will be available at trial and the document is otherwise admissible; and 3) The testimony of a witness concerning the declarations of another or others where such evidence is cumulative or there is reasonable ground to believe that the declarant(s) will be personally available for trial.	No	Crim. 5.3(a): Admit only such evidence as is material to the question whether probable cause exists to hold the defendant for trial.

## Appeals; BOP; Rules of Evidence or Alternatives

### Criminal Matters—Post Conviction

Type	Appeal	BOP	R Ev	Alternative
Trial of Prior Conviction	14 days	Clear and Convincing.		Trial to court.
Restitution	Payments not stayed (court collects but holds)	Preponderance of the evidence (In re Stephanie B., 204 Ariz. 466, (App 2003) (citing State v. Reynolds, 171 Ariz . 678 (App 1992)).		§ 13-804(l): may be supported by evidence or information introduced or submitted to court before sentencing or any evidence previously heard by judge during proceedings
Contempt--FTP		§ 13-810(E): Def has wilfully failed to pay criminal fine/assessment or intentionally refused to make a good faith effort to obtain the monies required for payment		
Marijuana Expungement	14 days	Clear and Convincing for State to show defendant is not entitled to expungement		§ 36-2822(B)(3)
Animal Return		On Defendant		§ 13-2910.11
DV Firearm Seizure		Unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat or another person in the household, the court shall order the return of the firearm to the owner or possessor.		§ 13-3601(F)
Post Conviction Relief	30 days for Petition for Review	Defendant has burden of proving factual allegations by a preponderance of the evidence. If Defendant proves a constitutional defect, State has burden of proving the defect was harmless beyond a reasonable doubt.		AZ.R.Cr.P. 32.13(c) and 33.13(c)
Probation Violation Hg		Preponderance	No	AZ.R.Cr.P. 27(b)(3): Any reliable evidence not privileged

**Appeals; BOP; Rules of Evidence or Alternatives**

**Civil Matters**

Type	Appeal	BOP	R Ev	Alternative
Civil	14 days	Preponderance	Yes	
Small Claims	No	Preponderance	No	SC 12(e): Any non-privileged evidence tending to make a fact at issue more or less probable is admissible unless judicial officer determines the evidence lacks reliability, or will cause unfair prejudice or confusion, or waste time.
Evictions	5 days	Preponderance	Yes	
Wage Garnishment Reduction Hearing		Clear and convincing		§ 12-1598.10(F): based on clear and convincing evidence that the judgment debtor or family would suffer extreme economic hardship as a result of the garnishment, court may reduce the amount from 25/10% to not less than 15/5%.
Garnishment OSC				See § 12-1598.13 for wage See § 12-1593 for money or property
Civil Traffic	14 days	Preponderance	No	CivTr 17(a): Protect privilege; Evidence may be admitted subject to a determination that the evidence has some probative value to a fact at issue.
Judgment Debtor Exam		SC 18: A judgment from a small claims lawsuit may be enforced in accordance with Title 12, Chapter 9 and 22-243 through 22-246. An attorney may represent a party for post-judgment proceedings.		§ 22-524B for SC: The judge, a hearing officer, a court employee designated by the judge or a person authorized by law to administer oaths may conduct the debtor's examination. At the hearing, the judgment debtor shall provide the court with information on the debtor's assets and liabilities. This information shall include money, property, corporate shares and interest, loans and support payments. The court or judgment creditor may require additional information.  Also § 12-1631 for civil

Appeals; BOP; Rules of Evidence or Alternatives

Protective Orders

(OPs served after 9-24-22 valid for 2 years!)

Type	Appeal	BOP	R Ev	Alternative (ARPOP)
Ex Parte OP		20(e)(1): Reasonable cause to believe Def may commit an act of DV or has committed an act of DV	No	
IAH		<p>With pre-issuance hearing: 25e1A</p> <p>To grant w/o pre-issuance hearing: 25e1A and 25e1B</p>	No	<p>25(e)(1)(A): reasonable evidence that Def committed a <b>series</b> of acts of harassment , at least 1 during previous year <b>or</b> at least <b>one</b> act of <b>sexual violence</b> against Plain</p> <p>25(e)(1)(B): good cause exists to believe that great or irreparable harm would result to Plain if injunction is not granted before Def can be heard in opposition and specific facts attesting to Plain's efforts to give notice to Def or reasons supporting Plain's claim that notice should not be given.</p>
Contested Protective Orders	14 days (not stayed)	<p>Preponderance</p> <p>38(f)(4): At the conclusion of the hearing, the judicial officer <b>must</b> state the basis for continuing, modifying, or revoking the protective order.</p>	?	36(a): The court must limit the scope of the hearing to the allegations of the petition. Relevant evidence is admissible provided, however, that the court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, undue delay, wasting time, needlessly presenting cumulative evidence, or lack of reliability.
New Allegations at Contested Hearing		Rule 38(d): Court <b>must</b> allow plaintiff to amend on form provided by court and		<p><b>Must</b> allow defendant options:</p> <ol style="list-style-type: none"> <li>1 Continuance</li> <li>2 Brief recess</li> <li>3 Waive and proceed</li> </ol>