

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Tuesday, May 14, 2013 -- 10:00 a.m.

Arizona State Courts Building, 1501 W. Washington – Conference Room 119A/B

Conference Call: 1-408-792-6300; Access Code: 575 783 821

[WebEx Link](#) [CIDVC Home Page](#)

AGENDA

10:00 a.m. Call to Order/ Welcome and Introductions *Hon. Emmet J. Ronan, Chair*

Approval of Minutes – February 12, 2013

Formal Action/Request

10:10 a.m. Making the Connection Between Gun Violence and Domestic Violence *Gloria Galeno, AzCADV*

10:20 a.m. Arizona Case Processing Standards – Protective Orders *Judge Steven McMurry
Presiding JP, Maricopa County
Encanto Justice Court*

Formal Action/Request

10:30 a.m. El Mirage Order of Protection Service Pilot Project *Chief Steve Campbell
Iva Rody, Victim Advocate
El Mirage Police Department*

10:45 a.m. Tucson City Court – Domestic Violence Court Project *Judge Wendy Million*

11:00 a.m. OVW Update: DV Summit and Other Projects *Julee Bruno, AOC*

11:10 a.m. Legislative Update *Amy Love, AOC*

11:25 a.m. Comments to Petitions to Amend ARPOP Rules *Kay Radwanski, AOC*

Formal Action/Request

[R-12-0007](#)

[R-13-0023](#)

[R-13-0002](#)

[R-13-0029](#)

All times are approximate. The Chair reserves the right to set the order of the agenda. For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration § 1-202. Please contact Kay L. Radwanski, staff to the Committee on the Impact of Domestic Violence and the Courts, at (602) 452-3360, with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Julie Graber at (602) 452-3250. Requests should be made as early as possible to allow time to arrange for the accommodation.

11:55 a.m. Language Access Planning *Kay Radwanski, AOC*

12:00 p.m. LUNCH and Workgroup Meetings

1:00 p.m. CIDVC Proposals for Next Strategic Agenda *Kay Radwanski, AOC*

1:10 p.m. Protective Order Forms – Update *Kay Radwanski, AOC*

1:20 p.m. Workgroup Reports *Workgroups*

1:40 p.m. Announcements/Call to the Public *Judge Ronan*

Adjournment *Judge Ronan*

Next Meeting: September 10, 2013 - 10:00 a.m. to 2:00 p.m.
Arizona State Courts Building, Conference Room 345 A/B

2013 Meeting Dates

September 10, 2013 - Conference Room 345 A/B

November 12, 2013 - Conference Room 345 A/B

All times are approximate. The Chair reserves the right to set the order of the agenda. For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration § 1-202. Please contact Kay L. Radwanski, staff to the Committee on the Impact of Domestic Violence and the Courts, at (602) 452-3360, with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Julie Graber at (602) 452-3250. 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

February 12, 2013

Arizona State Courts Building

Conference Room 345A/B

1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (as Acting Chair), Judge Keith D. Barth (*telephonically*), Allison Bones, Ellen R. Brown, Esq., Sonja Burkhalter Gonzales, Chief Steven W. Campbell, Cathy Clarich, Joi Davenport (*telephonically*), Gloria Full, Patricia George (proxy for V. Michele Gamez, Esq.), Judge Carey Hyatt, Judge Joseph Knoblock, Patricia Madsen, Esq., Dana Martinez, Leah Meyers, Judge Cathleen B. Nichols (*telephonically*), Marla Randall (*telephonically*), Kristine Reich, Esq. (*telephonically*), Captain David Rhodes, Renae Tenney, Tracy J. Wilkinson

Absent/Excused: Judge Emmett Ronan, Chair, Judge Carol Scott Berry, Pegg Derrow, Lynn Fazz, Det. Eugene J. Tokosh

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

Presenters/Guests: Theresa Barrett (AOC), Julee Bruno (AOC), Cindy Cook (AOC), Jami Cornish, Esq. (Diane Halle Center for Family Justice), Andrea C. Lawrence, Esq. (Hallier & Lawrence, PLC), Shannon Rich (Arizona Coalition Against Domestic Violence), Hon. Steven D. Sheldon, Ret. (Franks, Sheldon & Houser, P.C.), Sara A. Swiren, Esq. (Franks, Sheldon & Houser, P.C.), David Withey (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the February 12, 2013, meeting of the Committee on the Impact of Domestic Violence and the Court (CIDVC) was called to order at 10:05 a.m. by the Honorable Wendy Million, acting as chair in the place of the Honorable Emmett Ronan, chair, who was unable to attend. Judge Million welcomed all members and guests, and she introduced new members Ellen R. Brown, Domestic Violence Unit supervisor at the Pima County Attorney's Office in Tucson, and Steven W. Campbell, chief of police, City of El Mirage.

B. Approval of Minutes

The minutes of the September 11, 2012, CIDVC meeting were presented for approval.

Motion: To approve the September 11, 2012, meeting minutes as presented. **Action:** Approve, **Moved by** Cathy Clarich, **Seconded by** Judge Joseph Knoblock. Motion passed unanimously.

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Evidentiary Issues at Order of Protection Hearings

Hon. Steven D. Sheldon (Ret.) and Sara A. Swiren, Esq.; Andrea C. Lawrence, Esq., and Jami Cornish, Esq., presented evidentiary issues that they and other law practitioners have encountered at Order of Protection (OP) hearings. The issues relate to the preclusion of relevant and admissible evidence. Actual cases and case materials were used to illustrate these evidentiary issues and their impact on parties and cases. By referencing and applying the relevant sections of the Arizona Rules of Protective Order Procedures (ARPOP) to these cases, the attorneys challenged the legal basis for some judges to refuse to allow plaintiffs to testify about or admit any evidence of domestic violence allegations not specifically included in their petitions for OPs and for some courts to refuse to admit evidence based on non-disclosure when the ARPOP specifically states that disclosure is not required.

These concerns were brought to CIDVC to generate discussion and to remedy current practices. Judge Sheldon suggested additional training for courts on rules of disclosure and admissible evidence at OP hearings. Ms. Swiren pointed out the limited amount of space on the petition form for the plaintiff to list all of the allegations and suggested providing more space. Ms. Lawrence suggested holding an evidentiary hearing where all of the evidence would be presented and then giving the defendant a choice between presenting a defense at that time or returning at a later time to reply.

Judge Carey Hyatt noted that frequent judicial rotation and inexperienced commissioners may contribute to confusion about disclosure and due process notice requirements. Judge Sheldon responded that a balance is needed between protecting defendants' due process without truncating victims' rights. Members agreed that more training was necessary and a CIDVC workgroup should be assigned to study these issues.

B. Planning for the Next Strategic Agenda

Theresa Barrett, AOC manager of the Court Programs Unit, announced that the Arizona Judicial Branch has begun developing its Strategic Agenda for 2015-20. Ms. Barrett reviewed the planning process and the environment and thought process during the development of the current strategic agenda. She discussed the role that CIDVC members can play in the next strategic agenda and noted that one of CIDVC's primary charges to improve victims' safety is an ongoing topic throughout all strategic agendas. She provided members with different examples of how CIDVC has addressed this charge through their education efforts and other recommendations to the supreme court and then summarized the major accomplishments in the current strategic agenda and outlined ongoing initiatives.

Ms. Barrett reported that the AJC Strategic Agenda Subcommittee met in December and several topics were identified: Focus on access to justice issues for *pro se* litigants and language access; engage in proactive communication with the public to combat misperceptions of the judiciary by increasing public understanding of the role of judges and how they are selected; explore new technologies; and identify high-impact targets.

Ms. Barrett sought input from CIDVC in the drafting of the next strategic agenda and inquired about actual projects that members would recommend and current trends that members are seeing that may impact the courts in the next five years. She noted that CIDVC's recommendations will be presented to the Arizona Judicial Council (AJC) at its June meeting and the deadline for input is May 8, 2013.

CIDVC members agreed to create a Strategic Agenda Workgroup. Allie Bones, Ellen Brown, Gloria Full, Patricia George, Patricia Madsen, and Renae Tenney volunteered for the workgroup.

C. OVW Update: DV Summit

Julee Bruno, AOC Education Services specialist, updated members on upcoming projects and initiatives that are supported by the OVW grant from the U.S. Department of Justice that expires June 30, 2013:

- The "Domestic Violence Summit: Court Community Response," is scheduled for March 15, 2013, at the Fiesta Inn and Conference Center in Tempe, Ariz. The program will feature national speakers who will discuss current issues surrounding domestic violence and its impact on Arizona (e.g., witness intimidation, sex trafficking, and protective orders).
- A workbook is being developed to accompany the DV bench book, which will contain scenarios, how-to's, and best practices. The workbook will be presented to judges by webcast.
- At least two DV training sessions are being planned for the 2013 Judicial Conference in June.

D. AzCADV White Paper

Allie Bones presented an executive summary ("white paper") from the Arizona Coalition Against Domestic Violence (AzCADV). The report was created to outline community recommendations about systems changes needed in the courts to better protect domestic violence victims and to hold abusers accountable. Ms. Bones said these issues were identified and solutions proposed during the Coalition's 2012-2016 strategic planning process. She summarized the main points and proposed solutions as follows:

1. Low prosecution rates (as compared to DV arrests) - Workgroup to identify solutions and conduct research into causes.
2. Lack of regulation of supervised parenting time/supervised visitation centers - Establish regulations and requirements for providers.
3. CPS involvement in family court proceedings - Hold meetings with CPS, juvenile court and family court to understand how each operates and to collaborate on serving survivors and their children to minimize contradictions in systems.
4. Limited translation/interpretation services in the courts - Additional resources needed for those who do not speak English or Spanish.
5. Need for consistency in court services - DV training for judges, best interest attorneys, guardians ad litem, commissioners, judges pro tem, parenting coordinators, and custody evaluators; consistency with Orders of Protection; how to provide new information and new best practices.

Members considered changes to CIDVC's current workgroups to discuss new topics. Some members proposed discontinuing the A.R.S. §13-3601 Review Workgroup and the Batterer Treatment Programs Workgroup. Members supported a new education workgroup to include judicial education and other disciplines (such as law enforcement and prosecution) and a new child welfare and family court workgroup to address situations where CPS is involved. CIDVC agreed to first set up the strategic agenda workgroup and hold off on creation of other workgroups until the strategic agenda planning is completed.

E. Legislative Update

Shannon Rich, AzCADV systems advocacy coordinator, presented a brief overview of the domestic violence-related legislation that has been introduced during the current legislative session. Ms. Rich noted that AzCADV's legislative priority for 2013 is the budget and funding for domestic violence programs. She outlined the measures that AzCADV is supporting, opposing, and tracking and provided status information on the bills' progress.

In Support

SB 1038 (parenting time; court-ordered supervisors)
SB 1111 (spousal maintenance)
HB 2383 (domestic violence; arrest; predominant aggressor)
HB 2392 (confidential information; protective orders; injunctions)

In Opposition

SB 1071 (modification of legal decision-making)
SB 1072 (parenting time; relocation of child)
SB 1202 (out-of-wedlock children; fathers; rights)

Tracked

HB 2002 (missing child; reporting offenses)
SB 1236 (domestic relations committee; membership)
SB 1172 (qualifying charitable credit; itemizing deductions)

F. Update: Petitions to Amend ARPOP Rules

Kay Radwanski, AOC court policy analyst, reported on several rule petitions that have been filed that affect the Arizona Rules of Protective Order Procedure (ARPOP). Members were asked to consider whether CIDVC should file formal comments to any of the petitions.

- [R-12-0007](#) – ARPOP Rule 6(E)(4)(e)(2)
This petition filed by Michael Roth regarding Injunctions Against Harassment (IAH) and weapons was continued from 2012 with another version under consideration. The Court substituted language proposed by the State Bar that would require a judge to make a finding that the defendant is a credible threat to the plaintiff before prohibiting weapons on an IAH. The deadline to respond to the petition is May 20, 2013. Ms. Radwanski will work with the ARPOP Workgroup to prepare a comment supporting the Court's proposed additional language. The comment will be reviewed at CIDVC's May meeting.

- [R-13-0002](#) – Arizona Supreme Court Rule 123
The petition, filed by the Advisory Committee on Supreme Court Rules 123 and 125, would amend Rule 123 regarding access to public records by identifying which family law minute entries and orders may be published online and by restricting Internet publication of certain protective order case information to safeguard the identity and location of protected persons in compliance with federal statute. The deadline for response is April 1, 2013.

Motion: To file a comment to petition R-13-0002 stating that CIDVC supports the proposed amendments. **Action:** Approve. **Moved by** Judge Carey Hyatt, **Seconded by** Leah Meyers. CIDVC members also authorized Judge Ronan or Judge Million to file the comment to R-13-0002. Motion passed unanimously.

- [R-13-0023](#) – Arizona Supreme Court Rule 123
This petition filed by Mike Palmer from Phoenix would amend Rule 123 for the purpose of encouraging the Court's various committees to post meeting minutes on the Internet within five working days after a public meeting. The deadline to respond is May 21, 2013. Ms. Radwanski explained that standing committees of the AJC are governed by the Arizona Code of Judicial Administration (ACJA), which requires draft minutes to be available for public inspection within 20 working days; Posting minutes on the committees' websites is done as a convenience. Minutes are not archived on the websites until they have been approved by the committees but are available in draft form. Ms. Radwanski will work with the ARPOP Workgroup to prepare a comment in response to the petition. The comment will be reviewed at CIDVC's May meeting.
- [R-13-0029](#) – All ARPOP Rules
The petition filed by Mike Palmer requests repeal of the ARPOP rules in their entirety on constitutional grounds. The deadline for response is May 21, 2013. Ms. Radwanski will work with the ARPOP Workgroup to prepare a comment in response to the petition. The comment will be reviewed at CIDVC's May meeting.

G. Arizona Case Processing Standards – Protective Orders

Cindy Cook, AOC court services specialist and staff to the Arizona Case Processing Standards Steering Committee (Steering Committee), reported that the Steering Committee was tasked to review national time standards and Arizona rules and statutes in order to develop case processing standards for Arizona courts. Ms. Cook described the model case processing time standards as a management tool that provides a reasonable set of expectations for courts, attorneys, and the public, and as the first step toward quick and efficient handling of cases, with achievable goals for courts, necessary timeframes for attorneys, and defined expectations for the public on how quickly a case can be concluded. She explained that the Steering Committee is recommending that Arizona adopt its own standard for protection orders because of significant differences among state laws. The timelines would be measured as follows:

- *Ex-parte* hearings within 24 hours (from filing of protective order to when it is issued, denied, or pre-issuance hearing is set) 99%
- Contested hearing within 10 days (from filing of hearing request to when it is affirmed, modified or quashed). 90%
- Contested hearing within 30 days 98%

The committee is gathering input on establishing Arizona standards, and preliminary recommendations will be posted on the following website starting February 15, 2013, where comments may be submitted: <http://www.azcourts.gov/caseprocessingstandards/home.aspx>. A final draft of the proposed case processing standards will be circulated to stakeholders, including CIDVC, for recommendation to the AJC.

Some members reported scenarios in their counties where an Order of Protection is requested and a case number is assigned but the plaintiff does not proceed to the courtroom for the *ex parte* hearing. The person might or might not return to have it issued (resulting in a dismissal after 30 days in some courts). The question was asked about the appropriate measurement for cases of this kind. Members considered creating a different category for them; lowering the percentages; and measuring the time from the filing of the petition to when the pre-issuance hearing is held or to when a pre-issuance hearing is set (so these cases would not be counted in the measurement). Ms. Cook indicated she would take CIDVC's comments back to the committee.

H. Protective Order Forms – Update

Kay Radwanski and David Withey, AOC chief legal counsel, updated members on a recent opinion, *Mahar v. Acuna (Mahar)*, issued by the Arizona Court of Appeals, Division II, which directly reviewed the language on the Order of Protection (OP) form. The opinion prompted a need for CIDVC to review the OP form again and possibly revise its recommendation from last September to add language to the OP in response to the 9th Circuit's opinion in *U.S. v. Sanchez (Sanchez)*.

Mr. Withey reviewed the *Mahar* opinion, in which the trial court's Notice to Sheriff of Brady Disqualification was vacated because the firearms restriction was either unsupported by the record or legally erroneous. He explained that firearms restrictions are triggered either by a finding of credible threat (A.R.S. § 13-3602(G)(4)) or by a finding of credible threat or by an explicit prohibition of the "use, attempted use, or threatened use of physical force" against an intimate partner that would reasonably be expected to cause bodily injury (18 U.S.C.A. § 922(g)(8)). The Court of Appeals considered the OP a general no-contact order that did not include any explicit prohibition, and as such, did not result in firearms restrictions under federal statute (18 U.S.C. § 922(g)(8)(c)(ii)). Additionally, in order to determine if the defendant poses a credible threat, Arizona statutes and rules require the judicial officer to ask about the defendant's use of or access to firearms and then to follow mandatory procedures for transferring firearms if it is so determined (A.R.S. § 13-3602(G)(4)). The record in *Mahar* did not show evidence of credible threat or that these procedures were followed by the court.

Ms. Radwanski provided previous versions of the OP form to show its evolution over the years and discussed an analysis of the form performed in 2000 by the Bureau of Alcohol, Tobacco, and Firearms. During the Project Passport initiative, which made significant changes to the form that was adopted in 2007, the “No Crimes” language was substituted for the list of specific crimes that constitute domestic violence pursuant to A.R.S. § 13-3601 to conserve space on the form. The legal standard for issuing an Order of Protection also was removed during the Project Passport initiative. Ms. Bones, who participated in the Project Passport initiative, explained that, like the consolidation of the “No Crimes” section, this was done simply to conserve space on the form.

Members discussed the language on the form and Brady criteria. It was noted that Brady comes into play only when there is a contested hearing, and only about 30% of cases go to a contested hearing. The parties also must be intimate partners, and the defendant must have received notice and had an opportunity to participate in the hearing. Members compared language from previous versions of the OP form and proposed modifications to the current form.

Motion: To amend the Order of Protection form by adding the legal standard for issuance of an Order of Protection: “The Court finds reasonable cause to believe that the Defendant may commit an act of domestic violence or has committed an act of domestic violence within the past year (or good cause exists to consider a longer period).” Under NO CRIMES, keep the proposed language that reads: “Defendant shall not commit any crimes, including but not limited to conduct involving the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury” and then add “or harassment or stalking” against Plaintiff or Protected Persons. On the second page of the Order of Protection, retain the proposed addition to the warnings: “However, orders are not automatically granted upon request. Legal requirements must be met.” **Moved by** Leah Meyers, **Seconded by** Allie Bones. Discussion ensued. Additions were made to the original motion. The checkbox that shows that “Defendant received actual notice of this Hearing and had an opportunity to participate” should be retained. An introductory statement should be added in front of “Firearms” on the second page of the Order of Protection form to read “Pursuant to 13-3602(G).” In addition, “bodily injury” should be changed to “physical safety” to conform to Arizona statutory language. **Amended Motion:** To amend the Order of Protection form incorporating the original motion and the additions to the motion, as discussed. **Moved by** Leah Meyers, **Seconded by** Allie Bones. Motion passed unanimously.

I. Workgroup Reports

Workgroup reports were tabled until the Strategic Agenda Workgroup finishes its task.

III. OTHER BUSINESS

A. Call to the Public

No persons from the general public were present.

Chief Campbell reported that public safety announcements (PSAs) about domestic violence are available for downloading. The PSAs were created by the El Mirage Police Department with a grant from Verizon. Other members of the El Mirage community participated in the creation of the PSAs.

B. Next Meeting

May 14, 2013

Conference Room 119A/B

Arizona State Courts Building

1501 W. Washington St.

Phoenix, AZ 85007

The meeting adjourned at 2:28 p.m.

DRAFT

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Date Action Required:	Type of Action Required:	Subject:
May 14, 2013	<input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	SPECIAL REPORT: MAKING THE CONNECTION BETWEEN GUN VIOLENCE AND DOMESTIC VIOLENCE

FROM: The Arizona Coalition Against Domestic Violence

PRESENTER(S): Gloria Galeno

DISCUSSION: Recent mass shootings have resulted in national attention being drawn to gun reform at both the local and national levels. Our systems advococacy department has developed a special report and summarized fact sheet to help make the connection between gun violence and domestic violence.

RECOMMENDED MOTION: Information only.



Press Release: In 2012 there were 116 Domestic Violence Related Deaths in Arizona: 60 Percent were Caused by Gun Violence.

For Immediate Release:

Contact: Jessye Johnson, Deputy Director
Arizona Coalition Against Domestic Violence
p: 602-279-2900 x415
c: 480-242-5328
jj@azcadv.org

In 2012, there were 116 Domestic Violence Related Deaths in Arizona: 60 Percent were Caused by Gun Violence.

(Phoenix, AZ)-

Recent high profile mass shootings have resulted in the national conversation to shift to gun violence. This has caused considerable public debate and a demand for policy solutions at both state and federal levels.

According to a nationwide and state survey by the National Network to End Domestic Violence (NNEDV), in one day in 2012, domestic violence programs in Arizona provided safety to 1,487 victims of domestic violence and their child(ren). While these victims were able to find refuge and safety in their times of crisis, there were 152 victims who sought shelter, advocacy and other vital services and were turned away due to insufficient funding that resulted from budget cuts. Appropriating funding for programs is also a necessary step our state legislature needs to consider in order to prevent the deadly consequences so often common in situations involving domestic violence.

Research shows that firearms and domestic violence are a deadly combination. In 2012, there were a total of 116 domestic violence related deaths in Arizona. 70 of those deaths were a result of gun violence. Those that choose to abuse and who gain access to firearms pose a lethal threat to both their victims and the wider community. Allie Bones, Executive Director of the Arizona Coalition Against Domestic Violence (ACADV), said "There is a common misconception that domestic violence and gun violence are not connected, when clearly, the statistics show that the link between the two is undeniable". Even with existing federal and state laws aimed at disarming individuals who choose to abuse and preventing them from purchasing new firearms, there is an absence of effective implementation within the criminal justice system.

Given the dangerous combination of firearms and domestic violence, our Systems Advocacy Department has developed a special report and a summarized fact sheet "Making the Connection Between Gun Violence and Domestic Violence", in our efforts to elevate the conversation and keep firearms out of the hands of those that choose to abuse. Should the Arizona State Legislature take action this year on the firearm legislation that has been introduced this session, this report should add the context of domestic violence relationships.

To read the full report visit:

<http://www.azcadv.org/domestic-violence-info/downloadable-resourc/statistics-reportsa/specialreportmakingtheconnectionbetweengunviolenceanddomesticviolencehomicides>

To view the summarized factsheet, visit:

<http://www.azcadv.org/domestic-violence-info/downloadable-resourc/statistics-reports-a/fact-sheets/makingtheconnectionbetweenfirearmsanddomesticviolencefactsheet>

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arizona coalition against domestic violence making the connection between domestic violence and gun violence

The Facts on Firearms and Domestic Violence

Firearms and domestic violence are a deadly combination. Those that choose to abuse and who gain access to firearms pose a lethal threat both their victims and the wider community. Under Federal law, the Gun Control Act prohibits certain individuals charged with a domestic violence offense from purchasing or possessing a firearm. In Arizona, a person convicted of a domestic violence offense or subject to a domestic violence protective order is prohibited from possessing a firearm only when the defendant was given notice and an opportunity to appear in court. In addition judges have discretion to order the surrender of guns to law enforcement. Even with existing federal and state laws aimed at disarming individuals who choose to abuse and preventing them from purchasing new firearms, there is an absence of effective implementation within the criminal justice system placing survivors of domestic violence and the broader community at risk of serious injury or even death.

- ❖ Domestic violence is the leading cause of injury to women, even more so than car accidents, muggings and rapes (Uniform Crime Reports, Federal Bureau of investigation, 2011).
- ❖ Nearly one-third of all women murdered in the United States in recent years were murdered by a current or former intimate partner. In 2000, 1,247 women, more than three a day, were killed by their intimate partners(Violence Policy Center, 2004).
- ❖ Of females killed with a firearm, almost two-thirds were killed by their intimate partners (US Department of Justice, 2003).
- ❖ Access to firearms increases the risk of intimate partner homicide more than five times more than in instances where there are no weapons, according to a recent study. In addition, abusers who possess guns tend to inflict the most severe abuse on their partners(Campbell et at, 2003).
- ❖ In Arizona, the link between domestic violence and the threat to use firearms is undeniable. Between 2008 and 2012, over 60% of all domestic violence related homicides were committed with a firearm (Arizona Coalition Against Domestic Violence, 2012).

Policy Implementation: Keeping Firearms Out of the Hands of Those That Choose to Abuse:

These trends suggest the need to continue to keep firearms out of the hands of persons that choose to abuse and those with protective orders against them in order to increase victim safety. We support the following policies to keep survivors of domestic violence and their children safe from gun violence.

- ❖ Requiring a background check for every gun sale
 - Background checks for gun sales keep guns out of the hands of those that choose to abuse, reduce violence against women and save lives. However, even when background checks are performed, prohibited purchasers are not always denied because NICS is missing the necessary domestic violence records. Therefore, it is necessary to require the enforcement of law and federal agencies to report the names of dangerous people to the background check system.
- ❖ Closing the “private sale loophole”
 - Domestic violence offenders who are federally prohibited from purchasing guns can avoid a background check by buying guns from unlicensed “private sellers”, often at gun shows or through anonymous online transaction, who are not required by federal law to conduct background checks on potential buyers.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Date Action Required:	Type of Action Required:	Subject:
May 14, 2013	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Arizona Case Processing Standards

FROM: Cindy Cook

PRESENTER: Judge Steven McMurry, Presiding Justice of the Peace - Maricopa County, Encanto Justice Court

DISCUSSION: Model case processing time standards provide a reasonable set of expectations for courts, lawyers, and the public. The Arizona Supreme Court's Case Processing Standards Steering Committee has gathered input and feedback from all key justice partners regarding the establishment of case processing standards for Arizona courts. The steering committee has completed a review of the national time standards, Arizona rules, and statutes, and a recommendation for case processing standards has been developed. These recommendations are being presented to CIDVC for approval. The final recommendations will be presented to the Arizona Judicial Council on October 24, 2013.

RECOMMENDED MOTION: Motion that the members of CIDVC approve the case processing standards being recommended by the Arizona Case Processing Steering Committee for protection orders.

**CASE PROCESSING STANDARDS ANALYSIS
FAMILY LAW - PROTECTION ORDER CASES**

National Center for State Courts Model Time Standards:

100% of *ex parte* hearing to be held and orders issued in compliance with state law (Intermediate Standard)
90% within 10 days
98% within 30 days

Measurement: Filing of initial petition through disposition (entry of judgment)

Arizona Family Law – Protection Order Cases

The Arizona Case Processing Standards Steering Committee recommends that Arizona adopt its own standard:

Ex Parte Hearing:
99% within 24 hours.

Measurement: The date the petition for protective order is filed to the date the protective order is issued or denied.

✓ Injunctions Against Harassment and Injunctions Against Workplace Harassment are included.

Contested Hearing:
90% within 10 days
98% within 30 days

Measurement: The date the request for hearing is filed to the date the protective order is affirmed, modified or quashed.

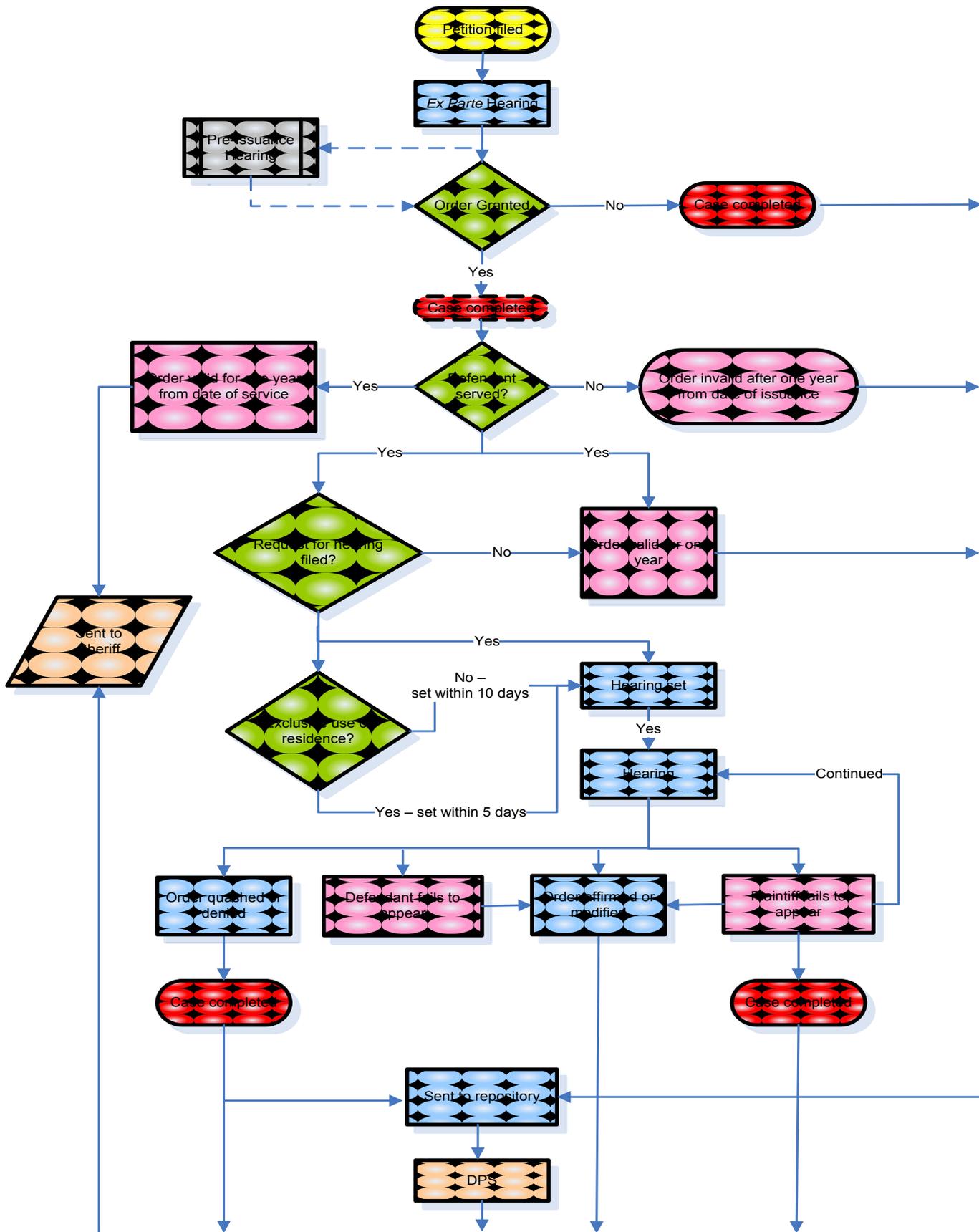
Ex parte hearings typically are conducted on the same day the plaintiff files the petition. At the close of the *ex parte* hearing, regardless of whether the request is granted or denied, the case is completed. However, the law allows the court to schedule a pre-issuance hearing in situations where the judge feels there is inadequate information on which to base the order and wants to hear from both parties. Statute requires pre-issuance hearings to be scheduled within 10 days with reasonable notice to the defendant. As pre-issuance hearings are permitted by state law, Arizona courts should be able to meet the standard for *ex parte* hearings unless pre-issuance hearings are being scheduled farther out than 10 days.

Arizona's protective order laws are significantly different than those of most other states. First, Arizona law allows the plaintiff up to a year to have the order served on the defendant. Some orders are served immediately, others weeks or months later, and others never. Second, in Arizona, there is no final hearing automatically scheduled at the time the initial order is issued. Most states require both parties to appear in court within a relatively short time (10-15 days) at which time testimony is taken and the court decides whether to keep the order in place for an extended time. Under Arizona law, a second hearing occurs only if the defendant asks for one. The defendant can make this request at any time while the order is in effect. If the defendant does request a hearing, it must be conducted within 5 or 10 days, depending on whether exclusive use of the parties' residence is at issue. With this statutory timetable, Arizona courts should be able to achieve disposition of 98% of its protective order cases within 30 days unless continuances are extended beyond this time period.

Arizona Rules and Statutes	Timelines under Statute and Rule
<p>Ex Parte Hearing Rule 6(B), ARPOP¹</p>	<p style="text-align: center;">(Measurement Starts Here for Ex Parte Hearing)</p> <p>Priority for Protective Orders: A judicial officer shall expeditiously schedule an <i>ex parte</i> hearing for a protective order involving a threat to personal safety even if previously scheduled matters are interrupted.</p>
<p>Pre-Issuance Hearing A.R.S. §§ 12-1809(E), 12-1810(E), 13-3602(F) Rule 6(C)(7), 6(E)(5), 6(F)(5), ARPOP</p>	<p>Denial of an Order of Protection, Injunction Against Harassment, or Injunction Against Workplace Harassment: If after the <i>ex parte</i> hearing, the judicial officer has insufficient information to grant the order, the judicial officer may deny the request or set a hearing within 10 days with reasonable notice to the defendant.</p> <p style="text-align: center;">(Measurement Stops Here for Ex Parte Hearing)</p>
<p>Service of Process A.R.S. §§ 12-1809(J)-(K), 12-1810(I)-(J), 13-3602(K)-(L) Rule 1(M)(5), ARPOP</p>	<p>Service: A copy of the petition and the order must be served on the defendant within 1 year from the date the order is signed. An order that is not served on the defendant within one year expires. A modified order is effective on service and expires one year after service of the initial order and petition.</p> <p>Return of Service: Server (private process or law enforcement) has 7 business days to return proof of service to the court.</p> <p>Notice to Sheriff: Court has 24 hours to forward proof of service to the holder of record (usually the county sheriff).</p>
<p>Hearing A.R.S. § 13-3602(I) Rule 8(A)(1)(a), 8(A)(1)(b), ARPOP</p>	<p style="text-align: center;">(Measurement Starts Here for Contested Hearing)</p> <p>Contested Hearing: At any time during the period during which the order is in effect, a party who is under the protective order is entitled to one hearing on written request. The hearing must be held within 10 days from the date requested unless the court finds good cause to continue the hearing. If exclusive use of the home is awarded, the hearing must be held within 5 days from the date requested.</p>

¹ Arizona Rules of Protective Order Procedure

Arizona Rules and Statutes	Timelines under Statute and Rule
<p>Motions Rule 7(A), ARPOP</p> <p>Rule 7(B), ARPOP</p>	<p><u>Dismiss or Quash:</u> A plaintiff may request that a protective order be dismissed or quashed at any time during the term of the order. If the plaintiff and defendant appear jointly on a Motion to Dismiss or Quash, the judicial officer may interview the plaintiff separately only when the defendant has been served but has not requested a hearing. If the plaintiff requests that an order be dismissed and the defendant is not present, the judicial officer may take action without notice to the defendant. Within 24 hours of the dismissal, the court must notify the sheriff in the county where the order was issued.</p> <p><u>Modify:</u> A plaintiff may request that a protective order be modified at any time during the term of the order. The judicial officer may interview the plaintiff separately only when the defendant has been served but has not requested a hearing. A motion to modify made after a hearing cannot be granted without setting a hearing and giving notice to the defendant. Within 24 hours of service of a modified order, the court must forward a copy of the order and proof of service to the sheriff in the county where the order was originally issued.</p> <p style="text-align: center;">(Measurement Stops Here for Contested Hearing)</p>
<p>Orders Rule 1(I)(1)(c), ARPOP</p> <p>Rule 4(A)(4)(a), ARPOP</p> <p>Rule 1(I)(1)(c), ARPOP</p>	<p><u>Conflicting:</u> If different judicial officers issue protective orders that grant conflicting relief involving the same parties, these orders shall be set for hearing within 5 days after the judicial officers discover the conflict.</p> <p><u>Transferred between LJ and GJ:</u> Within 24 hours of being notified of a pending family law case, the LJ court shall transfer all case documents to the superior court where the action is pending.</p> <p><u>Transferred between any courts:</u> The originating court transferring a protective order shall within 24 hours notify its sheriff's office in writing of the transfer and update information in that court's protective order repository.</p>



ARIZONA CASE PROCESSING STANDARDS

Cindy Cook,
Court Services Division

Arizona Supreme Court
Administrative Office of the
Courts





Model Time Standards

FOR STATE TRIAL COURTS



Arizona Case Processing Standards Steering Committee

Committee Charge:

- ▣ Review national model time standards.
- ▣ Develop and recommend state case processing standards for Arizona based on statutes, court rules, court jurisdiction and any other relevant factors.



ARIZONA CASE PROCESSING STANDARDS

Judge Steven McMurry
Presiding JP
Maricopa Justice Court



Arizona Supreme Court
Administrative Office of the Courts

Protection Orders

The Steering Committee recommends that Arizona adopt its own standard:

Ex Parte Hearing: (Intermediate Standard)

99% within 24 hours.

- Injunctions Against Harassment and Injunctions Against Workplace Harassment are included.

Contested Hearing:

90% within 10 days

98% within 30 days



Measurement

- ▣ Ex Parte Hearing: The date the petition for protective order is filed to the date the protective order is issued or denied.

- ▣ Contested Hearing:
The date the request for hearing is filed to the date the protective order is affirmed, modified or quashed.

Protection Order Cases



Arizona Judicial Council

Recommendations to be presented on

October 24, 2013

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Date Action Required: May 14, 2013	Type of Action Required: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: El Mirage Order of Protection Service Pilot Project
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FROM: Steven W. Campbell, Chief of Police, City of El Mirage

PRESENTER: Steven W. Campbell

DISCUSSION: The El Mirage Police Department will present an overview of their Order of Protection Service Pilot Project. The project was derived out of the efforts of the O'Connor House Order of Protection Task Force. The project goal is to streamline the process of removing the plaintiff from the responsibility of getting protective orders served upon the defendant. This is accomplished by utilizing electronic delivery between issuing courts and the law enforcement agencies serving the orders. The El Mirage Police Department and Municipal Court began working together to develop this seamless process. Additionally, the project continues to work in conjunction with the Glendale Protective Order Service Coordinator on orders needing special assistance.

RECOMMENDED MOTION: No action

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Date Action Required: May 14, 2013	Type of Action Required: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: Tucson City Court - Domestic Violence Court Project
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FROM: Tucson City Court

PRESENTER: Judge Wendy Million

DISCUSSION: Tucson City Court received a three-year Court Development grant from the Department of Justice, Office of Violence Against Women. The grant funds the development of a dedicated Domestic Violence Court and education for judges and court staff on issues of domestic violence. The grant also funds Community Outreach Program for the Deaf and Emerge! Center Against Domestic Abuse to work with the court on providing domestic violence trained ASL interpreters to deaf victims and to educate the deaf community and deaf teens in the areas of domestic violence and teen dating violence.

RECOMMENDED MOTION: For information only.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Date Action Required: May 14, 2013	Type of Action Required: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: OVW Grant and Educational Updates
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FROM: Julee Ewy Bruno, Education Services

PRESENTER: Julee Ewy Bruno

DISCUSSION: Ms. Bruno will provide an update on the 2013 DV Summit and share progress on DV workbook and webcast, as well as other grant-related items.

RECOMMENDED MOTION: Information only.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Date Action Required: May 14, 2013	Type of Action Required: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: Legislative Update
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FROM: Kay Radwanski

PRESENTER: Amy Love, AOC Legislative Liaison

DISCUSSION: Ms. Love will provide an update regarding legislation of interest to CIDVC.

RECOMMENDED MOTION: Information only.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

<p>Date Action Required:</p> <p>May 14, 2013</p>	<p>Type of Action Required:</p> <p><input checked="" type="checkbox"/> Formal Action/Request</p> <p><input type="checkbox"/> Information Only</p> <p><input type="checkbox"/> Other</p>	<p>Subject:</p> <p>Comments to Petitions to Amend ARPOP or Other Related Rules</p>
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FROM: Kay Radwanski

PRESENTER: Kay Radwanski

DISCUSSION: Three Rule 28 petitions relating to protective orders were filed in the most recent rules cycle, and one petition was continued from 2012. Petition R-12-0007, affecting ARPOP R. 6(E)(4)(e)(2), was continued, with another version under consideration. R-13-0002 and R-13-0023 affect Rule 123, Rules of the Supreme Court. R-13-0029 requests repeal of the entire set of ARPOP. Except for R-13-0002, comment periods end on May 21, 2013. The comment period for R-13-0002 ended on April 1, 2013, and CIDVC authorized Judge Wendy Million to file a comment in support on behalf of CIDVC. The ARPOP Workgroup met in April to draft comments to the other three petitions. The workgroup will present its drafts to CIDVC for approval.

RECOMMENDED MOTION: Approve the comments as drafted by the ARPOP Workgroup and authorize Judge Emmet Ronan, CIDVC chair, to file the comments on the committee's behalf.

ATTACHMENT¹

Arizona Rules of Protective Order Procedure

Rules 1-5 [No change in text.]

Rule 6. Rules of Procedure for Issuing Protective Orders

A. - D. [No change in text.]

E. Injunction Against Harassment. The judicial officer shall conduct an individual hearing with each plaintiff who requests an Injunction Against Harassment.

1. - 3. [No change in text.]

4. *Issuance of Injunction Against Harassment*

a. *Findings Required.* The judicial officer shall issue an Injunction Against Harassment if there is a finding of reasonable evidence of harassment of the plaintiff by the defendant during the year preceding the filing or that good cause exists to believe that great or irreparable harm would result to the plaintiff if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition. *See* A.R.S. § 12-1809(E).

1) If the judicial officer is going to issue the Injunction Against Harassment at the *ex parte* hearing, the judicial officer must find specific facts attesting to the plaintiff's efforts to give notice to the defendant or reasons supporting the plaintiff's claim that notice should not be given.

2) If the judicial officer denies issuing an Injunction Against Harassment at an *ex parte* hearing, the judicial officer may set a hearing within 10 days with reasonable notice to the defendant.

b. *No Contact Orders.* The judicial officer may prohibit all contact with the plaintiff or other protected parties, except as otherwise specifically ordered in writing by the court. *See* A.R.S. § 12-1809(F)(2).

c. *Prohibited Locations.* The judicial officer may also order that the defendant shall not go near the residence, place of employment or school of the plaintiff or other protected parties. The judicial officer may include other specifically designated location(s) in the Injunction Against Harassment. *See* A.R.S. § 12-1809(F)(2).

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

d. *Protected Persons.* The judicial officer may grant relief that is necessary for the protection of the plaintiff and other specifically designated persons and that is proper under the circumstances. See A.R.S. § 12-1809(F)(3).

e. *Other Relief:*

1. The judicial officer may grant relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances. A.R.S. § 12-1809(F)(3).

2. The judicial officer shall ask the plaintiff about the defendant's use of or access to weapons or firearms. This inquiry shall be made to determine if the defendant poses a credible threat to the physical safety of the plaintiff or other protected persons. If the judicial officer determines that the defendant poses such a threat, ~~the~~ the judicial officer may prohibit the defendant from possessing, purchasing or receiving firearms and ammunition for the duration of the Injunction Against Harassment.

5. [No change in text.]

F. [No change in text.]

COMMITTEE COMMENTS

[No change in text.]

Rules 7-10 [No change in text.]

Comments to R-12-0007

11/01/2012 6:41 PM

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Since some here claim to "live in the real world," I offer that Mr. Roth's petition to repeal ARPOP Rule 6(E)(4)(e)(2) is no longer an academic exercise. It's now become very real.

To wit, I got a call a few weeks ago from a desperate Phoenix police officer. (He found me via Google when he searched for civil injunctions and the Second Amendment.) He's about to permanently lose his job of 12 years as a proximate result of an unlawful, unconstitutional revocation of his Second Amendment right via a civil injunction. (As a cop, no gun = no job.)

The issue here is not the injunction per se. The issue is the lawless revocation of a constitutional right, unconstitutionally promulgated as substantive law by this Court's ARPOP Rule 6(E)(4)(e)(2). (The ARPOP being a mere Rule 28 rule of (internal) administration for the Court, not binding as law on all Arizonans.)

Specifically, after a hearing for a civil injunction against workplace harassment [FN 1], one of the judiciary's "fine and highly respected group of professionals"--a bounced around pro tem JP-- issued a criminal domestic violence "Brady Disqualification" against our cop, causing his name to be placed on the FBI's NCIC database as a domestic violence prohibited possessor! [FN 2] But this wasn't a DV situation. (No intimate partner.)

As I have repeatedly said in this forum, the Arizona Legislature did not authorize a judicial officer to revoke one's Second Amendment constitutional right (let alone any constitutional right) in a civil injunction. The word "firearm" is not in A.R.S. §§ 12-1809 and 1810. (Injunction Against Harassment and Injunction Against Workplace Harassment, respectively.) Moreover, the statute for Workplace Harassment has specific verbiage from the Legislature that used to be in §12-1809, that "This section does not [p]ermit a court to issue a temporary restraining order or injunction that prohibits speech or other activities that are constitutionally protected . . ." § 12-1810 (K)(2).

Even though that language is no longer in §12-1809, according to FN 7 in *LaFaro v. Cahill*, 203 Ariz. 482, P.3d 56 (App. 2002), that statute likewise does not permit a court to issue an injunction that prohibits constitutionally protected activities. [FN 3]

Despite being educated about the law in a motion to reconsider (after the officer was forced to hire an attorney to defend his constitutional rights), the JP in our "professional and impartial court system" refuses to uphold the constitution or the law by vacating her unlawful Brady Disqualification. As a result, the cop is about to be fired.

A Notice of Appeal has been filed and I'm hopeful this instant error will be corrected. Unfortunately, the officer (who is burning up vacation time) will be terminated a month from now (December 1) and will be irreparably harmed (he and his wife will lose their house) unless this matter can be remedied in four weeks. Which isn't likely. (Especially considering the Thanksgiving Holiday.)

Sadly, part of the problem here is promulgated by the CIDVC's "one form fits all" approach to petitions for civil Injunctions Against Harassment, which lumps criminal DV Orders of Protection with civil IAH's on one form, failing to distinguish that the Second Amendment Firearm restriction checkbox on the form can, by law, ONLY be checked off in a criminal DV situation.

Better in the first place if this Court didn't posture through the ARPOP that a judicial officer could revoke a constitutional right in a civil injunction. And better if this Court would insist on two separate forms for petitions for criminal OOP's vs civil IAH's, since they're not the same but distinct. (Criminal vs. civil.)

FN 1 - Not the cop's workplace. Rather, the workplace of some foes his wife is suing in a federal civil rights lawsuit. The foes have offered (in writing) to withdraw the injunction against our cop in exchange for his wife withdrawing her federal lawsuit. (Arguably extortion.) As I've said elsewhere, "Harassment law is being used to harass."

Comments to R-12-0007

FN 2 - Initially, he was told to turn over his gun in an ex parte action and had to stop working immediately. A patent violation of his Fourteenth Amendment right to due process.

FN 3 - Ironically (and interestingly), ARPOP Rule 6(F)(4)(d), the Workplace Harassment equivalent of Rule 6(E)(4)(e)(2), does not mention firearms. Rather, it simply quotes the pertinent statute without adding to it. So even though the ARPOP is not law, this JP can't even cite the ARPOP as good faith basis to invoke a firearm restriction in this Injunction against Workplace harassment.

11/07/2012 9:48 AM

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Great. I petitioned you to repeal your unconstitutional rule. Instead, you double down and want to amend it to make it worse.

Well, go ahead. Amend your rule all you want. Violate your oath of office. Don't uphold the constitution. Why not go all the way and amend your rule to put citizens in jail in civil injunctions simply because one citizen swears (without consequence for lying) that another is a "credible" threat?

Yours is a Rule 28 administrative rule. It doesn't apply to me because I'm not a "judge, an attorney or judicial staff." So I will not abide by your rule. I will abide by law - the Constitution. (Both U.S. and Arizona.) I encourage citizens everywhere reading this to do the same and not give up their rights.

As judges, you might say what I suggest is "illegal." Or even "anarchy."

But the Founders (and I) say what you suggest is illegal. Or even "tyranny."

12/10/2012 5:59 PM

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=====

Division 2 of the Arizona Court of Appeals gets it.

In an Opinion dated October 18, 2012, the Court of Appeals stated that civil injunction law (A.R.S. § 12-1809) does not authorize orders concerning firearms in civil harassment actions.

The case is *Mahar v. Acuna* (2012 WL 5055125 (Ariz.App. Div. 2)) available at www.apltwo.ct.state.az.us/Decisions/CV20120060Opinion.pdf.

While that case was about a CRIMINAL domestic violence action (vacating an unjustified deprivation of a citizen's constitutional (Second Amendment) right via that action), the court touched on civil injunction harassment law in its Opinion.

In paragraph 20, the court said,

Comments to R-12-0007

"Our statutes do not authorize [orders concerning firearms] to discourage people from yelling or engaging in 'harassment' of the type proscribed by A.R.S. § 12-1809(R)." [FN1]

So, this ruling should end ARPOP Rule 6(E)(4)(e)(2). As the Court of Appeals correctly noted, there is no statutory authority for judicial officers to issue orders prohibiting firearms in civil actions under A.R.S. § 12-1809, even if a judge finds "harassment."

As such, the Arizona Supreme Court cannot be telling judicial officers (via the ARPOP) that they have authority to prohibit firearms under civil harassment law.

The rule of law requires ARPOP Rule 6(E)(4)(e)(2) be repealed.

[FN1] Further, the Court of Appeals went on to say, "Nor do our statutes authorize the use of firearms restrictions to provide incentives for positive behavior or to teach people a '[l]esson' about civilized conduct."

01/24/2013 5:41 PM

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The Court has replaced my first post, my original petition, with a petition of its own.

Since my original petition told my colorful story about Quartzsite Councilman Joe Winslow using this Rule to get my 2nd Amendment right revoked (after I exercised my 1st Amendment right), and since my story is still germane to this matter, I'm attaching my original petition to keep the record intact.

01/25/2013 12:53 PM

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As I learn more about man's law and learn your jargon, I see that I (and Mr. Roth) have been wrong as to form, incorrectly calling ARPOP Rule 6(E)(4)(e)(2) a "Rule 28" rule of administration. [FN 1]

Rather, this ARPOP Rule is being promulgated as a rule of procedure, purportedly under Article 6, Section 5 of the Arizona Constitution.

But this doesn't change the substance of the problem and Mr. Roth is still correct when he writes that your rule "does not apply to me." For, as this Court itself has said in an earlier time, "Any rule of court that operates to lessen or eliminate [a constitutional right] is of no legal force."

The full quote found in *Marsin v. Udall*, 78 Ariz. 309, 312, 279 P.2d 721, 723 (Ariz. S. Ct. 1955), where there (as here), a judge sought to deprive a litigant of a constitutional right citing a rule of procedure.

Comments to R-12-0007

But "Neither this [supreme] court nor the superior court can by rule of procedure deprive a party of the opportunity to exercise this [a constitutional] right."

Moreover, "Courts cannot enact substantive law."

But that's what this Court is doing with Rule 6(E)(4)(e)(2), since there's no statutory authority for the Rule. (Nor could there be.)

And here's the clincher:

"A court is limited to passing rules which prescribe procedure for exercising the right. Any rule of court that operates to lessen or eliminate the right is of no legal force."

So Mr. Roth is correct. Since Rule 6(E)(4)(e)(2) operates to eliminate the Second Amendment constitutional right, it has no legal force. Since the rule has no legal force, law abiding citizens are not bound by it and must uphold the real law.

"It has even been held by the Supreme Court of the United States that under some circumstances a procedure that had such effect offended the due process clause of the Federal constitution." Q.E.D.

Rule 6(E)(4)(e)(2) offends the constitution and must be repealed.

FN 1 I in my comment of 11/01/2012. Mr. Roth in his comment of 11/07/2012. I admit to being functionally illiterate (a product of our public school system) when I initially read the text of Rule 28. Sorry.

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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND
RULE 123 OF THE RULES OF THE
SUPREME COURT

Supreme Court No. R-13-_____

Pursuant to Rule 28, Rules of the Supreme Court, Mike Palmer, a member of the public deeply concerned about justice,¹ petitions this Court to amend Rule 123 which governs access to the judicial records of the State of Arizona. The purpose of this petition is 1) to encourage the Court's various committees to post meeting minutes on their Internet pages within five working days after a public meeting, 2) to encourage judicial officers not to micro-manage record request and, 3) to encourage judicial offices not to gouge the public with usurious interpretations of statutory public record request fee schedules.

I leave it to the Court how best to communicate these goals to its officers/employees via Rule 123.

¹ Per Amos 5:15 in the Bible: "Hate evil, love good. Maintain justice in the courts."

I. Background and Purpose of the Proposed Rule Amendments

Rule 123(c)(1), titled *Open Records Policy* starts off on the right foot saying, “Historically, this state has always favored open government and an informed citizenry. [Amen!] In that tradition, the records in all courts and administrative offices of the Judicial Department of the State of Arizona are presumed to be open to any member of the public for inspection or to obtain copies at all times during regular office hours at the office having custody of the records.”

It's a good policy, although, for the Court's information, I've had to “educate” Court staff a few times about Rule 123 when trying to inspect records in a timely fashion.

I have three suggestions to make Rule 123 even better.

First, last year, while I was commenting in this forum about Rule 6(E)(4)(e)(2) of the Arizona Rules of Protective Order Procedure, I frequented the CIDVC website trying to be an “informed citizen,” looking to read its latest meeting minutes. For some reason, the CIDVC went “dark” while I was commenting in the forum, in the sense that the current meeting minutes were not posted for quite some time. (About six months, if I recall correctly.) While, since that time, the minutes are back up, I suggest the following:

State agencies are governed by A.R.S. 38-431.01(D), which says, “The minutes or a recording of a meeting shall be available for public inspection three working days after the meeting except as otherwise specifically provided by this article.” My experience is that many state agencies do this one better, posting their meeting minutes on the web in very short order.

In this day and age of the Internet, it would be helpful if the Court would encourage its committees to follow the example set by our state agencies and post their meeting minutes on the Internet also, say, within five working days of a meeting.

Second, it's been my experience that some small town judges insist on micro-managing record requests. That is, they insist on approving every record request made, even for simple visual inspection of the record. Would the Court please put a “Thou shall not micro-manage record requests or do anything that would impede the public's Rule 123 record requests” in Rule 123?

Last, the fees for records for some types of court are set by statute. For example, A.R.S. § 22-404 is a fee schedule showing the fees for a Municipal Court.

The “minimum clerk fee” is \$17 and it costs \$17 for “research in locating a record.” The fee for a paper copy of a record is \$0.50, which is the same in a Justice Court.

Now, it's been my experience that a person can walk into a clerk's office at most courts, inspect a record and get a copy of papers for 50 cents a page.

But in the Quartzsite Municipal Court, Judge Larry King insists the minimum fee for doing same is \$34. That's \$17 for "research" (even if you know the case you want to inspect) and \$17 for a minimum fee, which apparently, he views as a cover charge.

This should not be. (Especially in Quartzsite, where the locals can't afford it.)

I've asked around and found this is within the "discretion" of the judge.

Can the Court please put some language into Rule 123 that, in the spirit of open records and an informed citizenry, judges shall not require a cover charge to inspect a record? Perhaps also some type of court ombudsman is needed to oversee these aberrations?

SUBMITTED this 10th day of January, 2013

By /s/ Mike Palmer
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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO REPEAL
THE ARIZONA RULES OF
PROTECTIVE ORDER PROCEDURE

Supreme Court No. R-13-_____

Pursuant to Rule 28, Rules of the Supreme Court, Mike Palmer, a member of the public deeply concerned about justice,¹ petitions this Court to repeal/unadopt the Arizona Rules of Protective Order Procedure (ARPOP) in their entirety. The ARPOP is an unconstitutional cancer that has already begun to metastasize within judicial officers of this Court, infecting the public as well. The existence of the ARPOP frustrates the public, and therefore undermines public confidence in the judiciary.

I. Background and Purpose of the Proposed Rule Amendment

The ARPOP is relatively new to the Court, adopted in September 2007, becoming effective in January 2008. According to the petition for adoption by the

¹ Per Amos 5:15 in the Bible: “Hate evil, love good. Maintain justice in the courts.”

Chair of the DVRC, the ARPOP was sold to the Court “to resolve the pervasive confusion and conflict over the applicability of other procedural rules in protective order cases.”

Whether there actually was pervasive confusion, I can't say. Given the history, there shouldn't have been.

Before the ARPOP, there was the DV Benchbook. (Which, despite its name and the name of the Committee that spawned it, appropriated jurisdiction over civil Injunctions Against Harassment as well. As if criminal and civil matters were the same.²)

The ARPOP grew out of the DV Benchbook, and you can still see the close resemblance today. (The ARPOP is organized better.) Since the DV Benchbook stated essentially the same things as the ARPOP at the time of adoption, it's difficult to understand how the ARPOP could have resolved confusion if the Benchbook hadn't.

If anything, things have gotten more confusing. The CIDVC chose to lump criminal DV matters (Orders of Protection) with civil Injunctions against Harassment (IAH) matters and used a “one form fits all” approach in petitions for

² While the CIDVC is incrementally working to make civil IAH's the same as criminal domestic violence OOP's, they are not the same.

OOP's and IAH's. And now judges and clerks throughout Arizona refer to these distinctly separate matters as one, referring to them indistinctly as “protective orders.” Talk about confusion – a Phoenix police officer is fighting to keep his job because his Second Amendment right was unconstitutionally revoked in a civil injunction against workplace harassment³ thanks to the CIDVC and the ARPOP.

If there had truly been any confusion over truly procedural rules in the DV Benchbook, the confusion could have been eliminated simply by stripping out the extra-legal propaganda in the Benchbook, splitting it up into a separate “DV Benchbook” and a “IAH Benchbook” and promoting the two guides as separate and distinct (perhaps different color covers) among judicial officers.

Which is exactly the solution for today. As a minimum, the ARPOP needs to be demoted back to a guide from which it came, split in two, and instead of calling itself a Rule of Procedure, call it a Benchbook like it used to be called. And judicial officers need to be reminded it is only a guide. That they should refer to the law for final authority.

We already have well tested rules of criminal and civil procedure (criminal for DV matters, civil for IAH's) to protect defendants' constitutional rights. There's

³ The workplace was not his police department, but where his wife used to work. It's a long story about someone using an IAH to harass.

no need to promulgate a new “procedure” which doesn't.

Why do we need to do this? Well, let's start with the Court's statement from an earlier time in our history, *Marsin v. Udall*, 78 Ariz. 309, 312, 279 P.2d 721 (Ariz: Supreme Court 1955).

In considering the abuse of a judicial officer in denying a litigant a fundamental constitutional right (the right to a fair trial) this Court said,

The right to a fair and impartial trial before a fair and impartial judge is a valuable substantive right originating in the common law and recognized by statute in both criminal and civil cases. **Neither this court nor the superior court can by rule of procedure deprive a party of the opportunity to exercise this right. Courts cannot enact substantive law. A court is limited to passing rules which prescribe procedure for exercising the right. Any rule of court that operates to lessen or eliminate the right is of no legal force.** It has even been held by the Supreme Court of the United States that under some circumstances a procedure that had such effect offended the due process clause of the Federal constitution.

Now, the ARPOP purports to exist under the Court's constitutional authority, per Article 6, Section 5 of the Arizona Constitution. (“The supreme court shall have the power to make rules relative to all procedural matters.”) That is, the ARPOP purports to be procedural law.

Per *Marsin*, “[a] court is limited to passing rules which prescribe procedure for exercising [constitutional] right[s].” And, “[n]either this [supreme] court nor

the superior court can by rule of procedure deprive a party of the opportunity to exercise [a constitutional] right.”

But consider Rule 5 of the ARPOP, titled “Rules of Evidence and Disclosure for Protective Order Hearings.” Under A. Admissible Evidence, the rule of procedure claims:

1. All relevant evidence is admissible, except the court may exclude evidence if:
 - a. the probative value is outweighed by the danger of unfair prejudice;
 - b. the evidence results in confusion of the issues;
 - c. admitting the evidence may result in undue delay;
 - d. a needless presentation of cumulative evidence would result, or
 - e. the evidence lacks reliability.

And,

2. Any report, document, or standardized form required to be submitted to the court may be considered as evidence if either filed with the court or admitted into evidence by the court.

With the stroke of a pen, this rule of procedure wipes out a defendant's constitutional right to a fair and impartial trial. With the stroke of a pen, the ARPOP wipes out the constitutional protections embodied in the Arizona Rules of Evidence. It makes the Rules of Evidence totally arbitrary and capricious!

So then, any ordinarily inadmissible evidence can be admitted. Like hearsay—and that's a biggie in these ex parte actions. (A plaintiff/victim can lie

and lie and lie because there's no one there to confront them.)⁴ Or fabricated or doctored “evidence” (computer edited voice mails). Almost anything can be admitted unchallenged into evidence by a plaintiff. And relying on a judicial officer's discretion is of no comfort since the judge already considers the plaintiff a “victim,” as detailed later.

Further, Rule 5B of the ARPOP, titled “Disclosure” says,

The disclosure requirements set forth in Rule 26.1, Arizona Rules of Civil Procedure, and Rules 49 and 50, Arizona Rules of Family Law Procedure, do not apply to hearings on Orders of Protection, Injunctions Against Harassment and Injunctions Against Workplace Harassment, unless otherwise specifically ordered by the court.

So once again, with a stroke of the procedural pen, the APROP wipes out a defendant's constitutional right to a fair trial, which was heretofore procedurally guaranteed in part by Rule 26.1. This isn't right. You can't defend yourself not knowing what you've been accused of or not knowing what evidence will be used against you at trial.

From *Marsin*, speaking about the right to an impartial and fair trial, “Neither this court nor the superior court can by rule of procedure deprive a party of the opportunity to exercise this right. . . . Any rule of court that operates to lessen or

⁴ Also, the hearsay tends to be extremely inflammatory and prejudicial.

eliminate the right is of no legal force. **It has even been held by the Supreme Court of the United States that under some circumstances a procedure that had such effect offended the due process clause of the Federal constitution.**

The ARPOP offends the due process clause of the Constitution. Hence, the ARPOP is unconstitutional. It must be repealed. There's no need for it. The Court got along fine without it for years. The Court can get along fine without it now.

Further, as I alluded to above, the ARPOP calls plaintiffs "victims." From Rule 1(B)(1)(d), "**Victim.** As used in these rules, the term 'victim' is used interchangeably with 'plaintiff.'"

You can't get any more prejudicial than that. Especially since the other side hasn't been heard. We don't even know if there really is a victim. It goes against American jurisprudence.⁵

Marsin says "The right to a fair and impartial trial **before a fair and impartial judge** is a valuable substantive right originating in the common law and recognized by statute in both criminal and civil cases. **Neither this court nor the superior court can by rule of procedure deprive a party of the opportunity to exercise this right.**" But the Court, by this Rule, has constructively deprived

⁵ "The first to present his case seems right, till another comes forward and questions him." Proverbs 18:17

defendants of the right to an impartial trial! Why would any defendant go to a trial knowing a court already considers the plaintiff a “victim?”⁶

Next, the APROP is being (mis)used to make substantive law. This Court has acknowledged the obvious in *Marsin*, that “**Courts cannot enact substantive law. A court is limited to passing rules which prescribe procedure for exercising the right.**”

But consider ARPOP Rule 6(E)(4)(e)(2), which has been a topic in this forum for a few years now.⁷ With a swipe of a pen, Rule 6(E)(4)(e)(2) tells judicial officers, absent any statutory authority, that they can revoke the Second Amendment constitutional right of a defendant in a civil IAH under A.R.S. §12-1809.⁸

6 I argued against this Rule years ago in this forum. But my petition fell on deaf ears. (R-10-0014)

7 Use the search function in this forum to find R-09-0045 and R-12-0017.

8 This despite case law from the Arizona Court of Appeals that 1) “Our statutes do not authorize [orders concerning firearms] to discourage people from yelling or engaging in 'harassment' of the type proscribed by A.R.S. § 12-1809(R),” and 2) regarding A.R.S. § 12-1809, “. . . **we do not attribute to the legislature any intention to authorize unconstitutional injunctions.**” ¶ 20, *Mahar v. Acuna*, 2012 WL 5055125 (Ariz.App. Div. 2)) and FN7 in *LaFaro v. Cahill*, 56 P. 3d 56 - Ariz: Court of Appeals, 1st Div., Dept. B 2002, respectively. See also the constitutional safeguard in A.R.S 12-1810(K)(2), which, cleverly, the ARPOP does not cite.

On its face, this rule of procedure deprives a party of the opportunity to exercise a constitutional right. Which *Marsin* says a procedural rule cannot do. Therefore, the Court is making substantive law. Which *Marsin*, the Arizona Constitution's Article III Distribution of Powers, and common sense say it cannot do.⁹

But even as of this writing, this continues to make substantive law by way of the ARPOP, even petitioning in this forum to morph civil injunction “law” into criminal law via Rule 6(E)(4)(e)(2). (See comment of Michael Roth, dated 11/07/12 under R-12-0007 under “Arizona Rules of Protective Order” in this forum.

As I said earlier, this cancer has already metastasized. Consider a recent ex parte civil injunction, where a judicial officer unconstitutionally deprived a citizen his Second Amendment constitutional right.

The litigant petitioned the court to rescind the constitutional deprivation, as he had successfully done years ago when this first happened to him. But the cancer has spread since then.

In his Order denying, Mr. Paul Julien, a staffer of the Supreme Court, acting

⁹ As such, per *Marsin*, an Order from a court prohibiting firearms in a civil injunction is of no legal force.

as a pro tem judge in this particular matter, denied the petition. In his Order he wrote “The Court had authority under Arizona law **and rules** to impose such a restriction. See Arizona Rules of Protective Order Procedure 6(E)(4)(4)(2).”¹⁰

In citing the “rules” as authority, he is equating the ARPOP to statutory law! And this guy teaches other judicial officers throughout Arizona! Things will only get worse unless this cancer is eradicated.

And as mentioned earlier, a Phoenix police officer is fighting to keep his Second Amendment gun rights—and consequently his job—because a judge revoked his right in an injunction due to the ARPOP. How many more peace officers must suffer?

Last, the mere existence of the ARPOP hurts the public. There's a mindset in the courts not shared by outsiders. A quote from a CIDVC meeting minutes makes the point. “Consensus among workgroup members was that the Arizona Rules of Protective Order Procedure (ARPOP) be amended, rather than Rule 123, Rules of the Supreme Court. The rationale was that a person looking for information about protective order records would be more likely to look in ARPOP than in the Rules of the Supreme Court.”

¹⁰ *Thomas-Morgan v. Palmer*, 20110410J in the Prescott “Justice” court, Order dated August 29, 2012, Paul D. Julien.

Wrong. This is “Court-think” from those who live in Ivory Towers. For the rest of us unwashed masses (the vast majority of these injunctions are pro se against pro se), when we're hit with an Injunction (or OOP) and want to learn about the law to challenge it, we don't look in the ARPOP. We don't even know the ARPOP exists!¹¹ We go to the law and read A.R.S. §12-1809. And we expect the courts to follow that law and the constitution. But as I've shown, the ARPOP substitutes itself for law in the mind of the courts. This frustrates the public to no end.

In conclusion, the ARPOP is not law. It cannot be law per *Marsin* because this rule of procedure eliminates constitutional rights. Still, it purports to give judicial officers the authority to deprive litigants of those rights. And judicial officers believe it!

The ARPOP must be repealed. Immediately.

End note

If the Justices won't repeal the ARPOP (and given what they've telegraphed to date, they won't), it seems the only remedy for redress of an unconstitutional injunction is a civil action in federal court.

¹¹ Indeed, I only tripped across the ARPOP on the Internet by accident a year and half after suffering through my first civil IAH, trying to figure out how such a thing could happen in the United States of America.

It would be silly to take an unconstitutional Injunction to the Arizona Supreme Court. (If you could get such a Special Action.) For one, if the Justices won't repeal the ARPOP in this forum, it's not likely the Justices would repeal it in court. Second, they would be their own judges. So I submit the federal court is the only path for justice. One would have to sue the Justices of the Arizona Supreme Court, seeking declaratory and injunctive relief to declare the ARPOP (on an individual Rule therein) unconstitutional. By petitioning in this forum without success, the administrative and state remedies will have been exhausted. So the way should be open to go federal. See <http://suingforjustice.blogspot.com>

II. Contents of the Proposed Rule Amendment

~~17B A.R.S. Rules Protect.Ord. Proc.~~ DELETED

SUBMITTED this 10th day of January, 2013

By /s/ Mike Palmer
Mike Palmer
18402 N. 19th Ave., #109
Phoenix, AZ 85023

01/30/2013 5:49 PM

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In addition to the Court's own *Marsin v. Udall* (cited in my petition), there is also A.R.S. § 12-109.

Titled "Promulgation of rules of pleading, practice and procedure; distribution," the statute says:

"The supreme court, by rules promulgated from time to time, shall regulate pleading, practice and procedure in judicial proceedings in all courts of the state . . . **The rules shall not abridge, enlarge or modify substantive rights of a litigant.**"

Since, as detailed in my petition, the Arizona Rules of Protective Order Procedure woefully abridge a defendant's Fourteenth Amendment right to due process/a fair trial and/or modify substantive rights of defendants, the ARPOP as a whole is unlawful on its face and must be repealed.

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6 **IN THE SUPREME COURT**
STATE OF ARIZONA

7 PETITION TO REPEAL THE
8 ARIZONA RULES OF PROTECTIVE
9 ORDER PROCEDURE
10

Supreme Court No. R-13-0029

**Comment of the State Bar of Arizona
on Petition to Repeal the Arizona
Rules of Protective Order Procedure**

11 The Arizona Rules of Protective Order Procedure were proposed by the
12 Domestic Violence Rules Committee (DVRC), a committee which was formed in 2005,
13 following the issuance of an administrative order by the Chief Justice of the Arizona
14 Supreme Court. *See Administrative Order No. 2005-85.* The Committee was
15 specifically established to do three things: 1) to research other statewide domestic
16 violence rules; 2) to look at the relevant issues related to domestic violence procedural
17 matters in Arizona; and 3) to consider alternatives to the procedural policies in the
18 Arizona Rules of Family Law Procedure “Domestic Violence Benchbook.” *Id.* The
19 Committee was comprised of Superior Court judges and commissioners, Municipal
20 Court and Tribal Court judges, attorneys and staff from the Governor’s Office, the
21 Arizona Supreme Court, the Superior Court Clerk’s office, the Maricopa County
22 Sheriff’s Office, the Arizona Coalition Against Violence, and the Office of the Attorney
23 General, along with a psychologist. *Id., Appendix A.* The stated mission of the DVRC
24 was “1) to establish a comprehensive, statewide set of rules of procedure for protective
25 orders aimed at achieving fair, effective, uniform and timely resolution of cases

1 involving protective orders, and 2) enhance enforcement of protective orders and public
2 safety to the extent possible and appropriate.” DVRC *Mission Statement*.

3 DVRC members held ten meetings over a period of 18 months and drafted a set
4 of stand-alone procedural rules which were submitted to the Arizona Supreme Court in
5 June 2007. As reflected in the minutes of the DVRC meetings, substantial discussion
6 and public comment went into developing the set of rules. The rules were approved by
7 the Arizona Supreme Court on September 5, 2007, and became effective January 1,
8 2008. The Rules apply to issuance of orders of protection (A.R.S. § 13-3602),
9 emergency orders of protection (A.R.S. § 13-3624(C), injunctions against harassment
10 (A.R.S. § 12-1809), and injunctions against workplace harassment (A.R.S. § 12-1810).

11 Petitioner herein is seeking the repeal of those approved Rules of Protective
12 Order Procedure. Without explaining how, his main argument appears to be that the
13 Rules of Protective Order Procedure are unconstitutional. Apparently, in support of
14 Petitioner’s argument, the petition contains numerous citations to *Marsin v. Udall*, 78
15 Ariz. 309, 279 P.2d 721 (1955), a prosecution case that involved the propriety and
16 timeliness of filing an affidavit of bias and prejudice against a sitting judge. Petitioner
17 uses language from *Marsin* to then argue that somehow litigants in a protective order
18 hearing are denied a right to a fair trial under the Rules of Protective Order Procedure.
19 Contrary to Petitioner’s argument, however, *Marsin* offers no support for his assertions.

20 The only issue in *Marsin* was whether the procedure for assigning a case to a
21 judge for trial, under the local rules of Maricopa County Superior Court existing in
22 1955, could supersede a litigant’s right to file an affidavit of bias and prejudice against
23 that assigned judge. The Arizona Supreme Court held it could not. *Marsin* was later
24 superseded by statute. See *Hofstra v. Mahoney*, 108 Ariz. 498, 502 P.2d 1317 (1977),
25 *decision vacated*, 108 Ariz. 498, 502 P.2d 1317 (1977). While Petitioner is correct that

1 *Marsin* addresses a party's right to a "fair and impartial trial before a fair and impartial
2 judge," it does so in the context of exercising an affidavit of bias and prejudice. The
3 adoption of local rules by a County court cannot be analogized to the adoption of the
4 Arizona Rules of Protective Order Procedures as outlined herein. Nothing in *Marsin*
5 supports an argument that the Rules of Protective Order Procedures are
6 unconstitutional.

7 In litigation, there is a party who wins and one who loses. Here, Petitioner
8 appears to be aggrieved by an adverse ruling in a protective order hearing. That mere
9 experience, however, cannot form the grounds for the abrogation of a set of procedural
10 rules that were approved by the Arizona Supreme Court after a lengthy, formal, and
11 thorough consideration of the issues that brought the rules into existence. Petitioner
12 presented nothing to suggest that the Arizona Rules of Protective Order Procedure, in
13 their entirety, are unconstitutional and need to be repealed.

14 CONCLUSION

15 The State Bar opposes the propose to repeal the Arizona Rules of Protective
16 Order Procedure.

17 RESPECTFULLY SUBMITTED this 29th day of April
18 2013.

19
20 By John A. Furlong
21 John A. Furlong
General Counsel

22 Electronic copy filed with the Clerk
23 of the Supreme Court of Arizona this
24 29th day of April, 2013.

25 By: Kathleen A. Lundgren

Hon. Wendy Million
Tucson City Court
103 E. Alameda Street
Tucson, AZ 85701
(520) 791-3260

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	
)	Supreme Court No. R-13-0002
Petition to Amend Rule 123,)	
Rules of the Supreme Court)	Comment to Petition to Amend
_____)	Rule 123, Rules of the Supreme Court

The Committee on the Impact of Domestic Violence and the Courts (CIDVC), by a majority vote, has authorized the undersigned, the Honorable Wendy Million, a CIDVC member, to file this comment to Petition No. R-13-0002 on the committee’s behalf. Judge Million is acting in the absence of the Honorable Emmet Ronan, CIDVC chair, who is on medical leave.

CIDVC supports the petition of the Advisory Committee on Supreme Court Rules 123 and 125 to amend Rule 123, Rules of the Supreme Court, to identify those minute entries and orders that can be published online and those that can be made available only at a courthouse.

Federal law, at 18 U.S.C. § 2265(d)(3), prohibits a state, Indian tribe, or territory from making publicly available on the Internet “any information regarding the registration, filing of a petition for, or issuance of a protection order ... if such publication would be likely to publicly reveal the identity or location of the party protected under such order.”

The proposed modification to Rule 123 makes it clear that case information that is made available to the general public by remote electronic access excludes protective order information in civil, criminal, and family law cases. Adoption of the proposed rule change will ensure that, in

these case types, information about the registration, filing of a petition for, or issuance of an order of protection or an injunction against harassment will not be publicly available on the Internet.

For the reasons stated above, CIDVC respectfully requests the Court to adopt Petition No. R-13-0002.

Respectfully submitted this 20th day of March, 2013.

Hon. Wendy Million
City Magistrate
Tucson City Court

cc: Mike Baumstark, Chair
Advisory Committee on Supreme Court Rules 123 and 125

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Date Action Required: May 14, 2013	Type of Action Required: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: Language Access Update
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FROM: Kay Radwanski

PRESENTER: Kay Radwanski

DISCUSSION: On behalf of Carol Mitchell, language access specialist, Ms. Radwanski will provide an update of the progress made on language access planning by Arizona courts over the past two years. Any member who has a question about language access in Arizona courts may contact Ms. Mitchell at 602-452-3965 or by e-mail at cmitchell@courts.az.gov.

RECOMMENDED MOTION: Information only.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Date Action Required: May 14, 2013	Type of Action Required: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: CIDVC's Proposals for the Next Strategic Agenda
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FROM: Kay Radwanski

PRESENTER: Strategic Agenda Workgroup

DISCUSSION: The Arizona Judicial Branch has begun development of its Strategic Agenda 2015-2020. As a standing committee of the Arizona Judicial Council (AJC), CIDVC was invited to participate in the planning process. At its February 12 meeting, CIDVC authorized creation of a Strategic Agenda Workgroup. The workgroup met on March 6 to draft proposals that were circulated to CIDVC members, who individually indicated their approval by e-mail to Ms. Radwanski. Several members suggested additional proposals, which were added to the table that was submitted to the AJC Strategic Agenda Subcommittee on May 8. A copy of the amended proposals that were submitted will be shared with CIDVC members.

RECOMMENDED MOTION: Information only.

Goals and Initiatives	Specific Ideas/Projects
Goal 1: Strengthening the Administration of Justice	
<i>1A: Using Technology Efficiently</i>	Enhance data accessibility and information sharing among statewide justice partners. For example, a prosecutor is unable to charge a defendant with aggravated domestic violence unless the prosecutor has knowledge that the defendant has prior DV misdemeanor convictions. Access to the defendant’s criminal history would provide more thorough information.
<i>1B: Simplifying and Enhancing Systems</i>	
<i>1C: Improving Public Access, Transparency, and Accountability</i>	Prepare materials for self-represented litigants following “plain language” principles. Make these materials accessible to the public by Internet by providing links on the Judicial Branch website. Provide links to other educational materials (such as flowcharts illustrating court procedures) that have been developed by reliable sources.
	Provide interpreters and language services for languages in addition to Spanish.
Goal 2: Maintaining a Professional Workforce and Improving Operational Efficiencies	
<i>2A: Maintaining a Professional Workforce</i>	Add material to the Family Law and Juvenile (Dependency) bench books about domestic violence and the relationship of Orders of Protection and related protective orders to those case types.
	Require all Arizona judicial officers to participate in domestic violence training of at least one CoJET-accredited hour annually. Alternatively, require two hours of training every two years to allow judicial officers to participate in an extended two-hour training session.
	Provide cultural competency training for judicial officers to promote an understanding of domestic violence in specialty populations (e.g., immigrant, refugee, and LGBT communities). Ensure that judicial officers are able to extend their training in cultural competency to all case types.
<i>2B: Improving Operational Efficiencies</i>	Develop best practice security protocols specifically for domestic violence hearings and litigants. For example, provide separate waiting areas for plaintiffs and defendants who are present for protective order hearings. Create protocols so that a plaintiff and a defendant are not left alone together in a courtroom or a hallway. Include the security protocols in the Domestic Violence Bench Book and also make court staff aware of the security protocols.

Goal 3: Improving Communications	
<i>3A: With the Public</i>	
<i>3B: With Other Branches of Government and Justice System Partners</i>	Create a liaison between the courts and the Arizona Department of Health Services to ensure that batterer intervention programs to which defendants are referred are effective programs. Develop a means by which more guidance or consequential information can be provided about defendants at hearing. Develop a procedure for the DHS-licensed programs to share information about defendants' progress, or lack thereof, that can be used by the judge and prosecutor to make decisions about next steps in the case.
Goal 4: Protecting Children, Families, and Communities	
<i>4A: Protecting Vulnerable Children and Families</i>	Complete and distribute the domestic violence manual for court staff as a step toward creating standardized training for court data entry that emphasizes quality control, data integrity, and an understanding of the importance of accurate data entry. This would promote consistency and sustainability of procedure among courts.
	Continue development of domestic violence "bench briefs" that will provide continuing education to judicial officers on issues surrounding Orders of Protection and related protective orders.
	Provide training to court staff who work with petitioners for protective orders to ensure that procedures, which include defined quality-control measures, are consistent in providing a standardized defendant information form that will assist law enforcement in getting the orders served in a safe and efficient manner.
<i>4B: Protecting Communities</i>	Encourage development of specialty domestic violence courts or dockets.
Goal 5: Improving the Legal Profession	
<i>5A: Holding Lawyers Accountable</i>	Encourage the State Bar to offer training on the how-to's of protective order procedure, ensuring that attorneys are educated on the substance of the Arizona Rules of Protective Order Procedure.
<i>5B: Modernizing the Attorney Admission System</i>	

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Date Action Required: May 14, 2013	Type of Action Required: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: Update: Revised Protective Order Forms
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FROM: Kay Radwanski

PRESENTER: Kay Radwanski

DISCUSSION: At its February 12, 2013, meeting, CIDVC proposed additional changes to the Order of Protection form to ensure that the form meets the criteria for Brady (18 USC 922(g)(8)). Ms. Radwanski presented the proposed revisions to the Arizona Judicial Council at its March 28, 2013, meeting. AJC unanimously approved CIDVC's recommendation. Dave Byers, AOC administrative director, signed Administrative Directive 2013-03 on April 17, with revisions to the protective order forms taking effect June 3, 2013.

RECOMMENDED MOTION: Information only.