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Chair, Committee on the Impact of Domestic Violence and the Courts

**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:	)	
	)	Supreme Court No. R-12-0007
Emergency Petition to Repeal	)	
Rule 6(E)(4)(e)(2) of the Arizona	)	Comment to Emergency Petition
Rules of Protective Order Procedure	)	to Amend Rule 6(E)(4)(e)(2) of the
	)	Arizona Rules of Protective Order Procedure
_____	)	

**BACKGROUND**

The Domestic Violence Rules Committee (DVRC) was established in 2005 by Administrative Order 2005-85 to “research other statewide domestic violence rules, study the issues relevant to domestic violence procedural matters in Arizona, and consider alternatives to Rule 96, Domestic Violence Benchbooks in the *Arizona Rules of Family Law Procedure* which may include statewide domestic violence rules.” The committee developed a stand-alone set of procedural rules titled the Arizona Rules of Protective Order Procedure (ARPOP), which were adopted by the Arizona Supreme Court and made effective on January 1, 2008. The DVRC, having fulfilled its purpose, was disbanded by AO 2008-08 in 2008.

The Committee on the Impact of Domestic Violence and the Courts (CIDVC), realizing that no formal committee remained to address modifications to the ARPOP, established the ARPOP Workgroup in 2009. The workgroup met to discuss the petition referenced herein and

provided a draft response to CIDVC on May 8, 2012. CIDVC members, by a majority vote, have authorized the undersigned, the Honorable Emmet J. Ronan, CIDVC chair, to file this response to Petition No. R-12-0007 on the committee's behalf.

## **DISCUSSION**

Petitioner has asked the Arizona Supreme Court to immediately repeal a procedural rule – Rule 6(E)(4)(e)(2), ARPOP – that it adopted in 2007. Petitioner has provided reasons for his position; however, his argument is based on a misunderstanding of federal and state law. It is not CIDVC's purpose to debate the merits of the IAH that was issued against the petitioner. Rather, we seek to clarify important points about which he is mistaken and to request that Rule 6(E)(4)(e)(2) remain intact as written.

**Brady.** Petitioner asserts that while an Injunction Against Harassment (IAH) was in effect against him, he was disqualified from possessing firearms under the federal law known as Brady (18 U.S.C. § 922(g)(8)).

The Brady firearms disqualification applies only to protective orders in which a plaintiff and a defendant are “intimate partners” as defined by 18 U.S.C. § 921(A)(32). Intimate partners are present or former spouses, persons who have a child in common, or persons who are present or former cohabitants. Id. If the parties to the protective order do not have any of these relationships, Brady is not applicable. Brady also has due process requirements that must be met. Brady applies only if the protective order was issued at a hearing of which the defendant received actual notice and in which he or she had an opportunity to participate. 18 U.S.C. § 922(g)(8). Therefore, Brady cannot apply to an *ex parte* hearing, regardless of the parties' relationship.

The petitioner states that he and the councilman do not have a domestic partnership. (Petition, page 3). He states that he was out of town when the councilman sought an *ex parte* order. (Petition, page 2). Nothing on the copies of the IAH the petitioner provided in his exhibits indicates that the Brady disqualification was invoked against him. Based on the information provided, the petitioner's argument that he was under "a Brady disqualification" fails.

However, the Injunction Against Harassment statute at A.R.S. § 12-1809(F)(3) authorizes a judge to "[g]rant relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances." Therefore, the Arizona Legislature has authorized a judge to grant any relief the judge deems necessary to protect the plaintiff. The state's IAH statute is independent of any federal law. Rule 6(E)(4)(e)(2) requires a judge to ask the petitioner about the defendant's use or access to weapons or firearms. Once this information has been obtained, the judge, under the broad power of A.R.S. § 12-1809(F)(3), may grant such necessary relief, which could include a prohibition against possessing firearms for the duration of the IAH, to protect the plaintiff.

A judge who prohibits a defendant from possessing weapons while under an IAH is acting within the authority granted by the Legislature. Prohibiting a defendant from possessing firearms for the duration of an IAH (one year, at most) to protect the safety of the plaintiff and other protected persons is an appropriate situation in which a court can limit a defendant's rights. The U.S. Supreme Court has acknowledged that Second Amendment rights can be restricted. "Like most rights, the right secured by the Second Amendment is not unlimited." D.C. v. Heller, 128 S.Ct. 2783, 2816 (2008).

**NCIC.** Petitioner also states that when an IAH was issued against him in 2011, his name was entered into the FBI's National Crime Information Center (NCIC) database and that he was

listed as a “criminal ‘Domestic Violence Offender.’” He also notes that when the IAH was dismissed, the judge “faxed the Sheriff so my name should be removed from the NCIC.”

Sheriffs’ offices do more than transmit data about protective orders to NCIC. State law requires the sheriff of every county to maintain a central repository of protective orders so the existence and validity of orders can be verified. A.R.S. § 12-1809(K). *See also* Order of Protection, A.R.S. § 13-3602(L); Injunction Against Workplace Harassment, A.R.S. § 12-1810(J). Therefore, courts are required to forward copies of served protective orders to the county sheriff within 24 hours of receipt of proof of service. *Id.* Likewise, courts also forward copies of quashed orders to the county sheriff so records can be updated.

While the sheriffs’ offices maintain local repositories, they also forward data to NCIC. NCIC, under the authority of the Federal Bureau of Investigation (FBI), maintains 19 databases, including 7 property files and 12 person files.<sup>1</sup> Among the databases is the Protection Order File (POF), which contains records for individuals who are subject to court-issued orders to prevent violent or threatening acts, harassment, or to restrict contact or communication with another person. The POF includes temporary and final orders issued by civil and criminal courts across the nation. Issuance of a civil protective order against a person is not a conviction.

Not all protective orders are accepted by NCIC. Certain personal identifiers, such as the defendant’s date of birth and other demographic information, are required by NCIC, and if not all of the required data is provided, the order will be rejected by NCIC. NCIC records are also updated accordingly when protective orders are modified or quashed. In the POF, the person

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<sup>1</sup> [http://www.fbi.gov/about-us/cjis/ncic/ncic\\_files](http://www.fbi.gov/about-us/cjis/ncic/ncic_files). Property files contain records for articles, boats, guns, license plates, securities, vehicles, and vehicle and boat parts. Person files include the Convicted Sex Offender Registry, Foreign Fugitive, Identity Theft, Immigration Violator, Missing Person, Protection Order, Supervised Release, Unidentified Person, U.S. Secret Service Protective, Violent Gang, Known or Appropriately Suspected Terrorist, and Wanted Person files.

against whom a protective order has been issued is not labeled as defendant, respondent, offender, felon, criminal, etc. The code for the person restricted by the order is NAM, meaning quite simply “name.”

Rule 6(E)(4)(e)(2) should remain intact as written because it gives a judge the ability to determine whether additional measures should be employed to protect a plaintiff. Once that determination has been made, the judge can use the authority of the law, in this case A.R.S. § 12-1809(F)(3), to order such relief as is necessary for the protection of the plaintiff.

### **CONCLUSION**

For the reasons stated above, CIDVC respectfully requests that the Court reject Petition No. R-12-0007 in its entirety and to leave Rule 6(E)(4)(e)(2), ARPOP, intact as currently written.

Respectfully submitted this 18th day of May, 2012.

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Hon. Emmet J. Ronan  
Judge of the Superior Court  
Superior Court in Maricopa County