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8 **IN THE SUPREME COURT**
9 **STATE OF ARIZONA**

10 PETITION TO REPEAL RULE
11 6(E)(4)(e)(2) OF THE ARIZONA
12 RULES OF PROTECTIVE ORDER
13 PROCEDURE

Supreme Court No. R-12-0007

**Comment of the State Bar of
Arizona on Petition to Repeal Rule
6(E)(4)(e)(2), Ariz. R. Protective
Order P.**

14
15 Petitioner was the subject of an *ex parte* injunction order that was issued on a
16 questionable basis. The rules permit the recipient of such an order a hearing within
17 ten days to determine whether the *ex parte* order will stand or be dismissed for lack
18 of grounds; and the rule at issue prohibits a person from possessing, purchasing, or
19 receiving firearms and ammunition upon issuance of the *ex parte* order.

20 Petitioner seeks to repeal that provision, contending that it violates the Second
21 and Fourteenth Amendments to the Constitution unless and until a hearing is held and
22 the matter has been determined on its merits. He asserts that the Sheriff placed his
23 name in a local and national crime database, essentially identifying petitioner as a
24 criminal prior to the hearing, in violation of due process. A question remains as to
25 whether his name may be removed from those databases where the *ex parte* order was
26 ultimately dismissed—as it was in this case—or whether prejudice may ensue from
law enforcement's negligent failure to remove his name from the database.

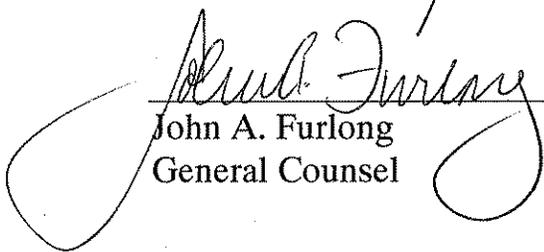
1 The rule makes it mandatory that, upon issuance of an *ex parte* order of
2 injunction against harassment, the court enter an order prohibiting the respondent
3 from possessing, purchasing, or receiving firearms and ammunition. This term is
4 intended to be obviated in the event the order is set aside following hearing, and will
5 stand in the event that no hearing is requested or the order of injunction is upheld
6 following the hearing. Although the provision at issue does implicate both Second
7 Amendment and Fourteenth Amendment concerns, the rule is intended to further
8 public safety through a cooling-off period of ten days, during which the respondent is
9 prohibited from possessing, purchasing, or receiving firearms and ammunition.

10 Balancing public safety issues against Constitutional guarantees, the ten-day
11 period at issue appears reasonably related to state interests of public safety. The
12 petition should therefore be rejected.

13 **Conclusion**

14 For the reasons discussed above, the State Bar of Arizona opposes the
15 petition.

16 RESPECTFULLY SUBMITTED this 18th day of May, 2012.

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19 
20 John A. Furlong
21 General Counsel

22 Electronic copy filed with the Clerk
23 of the Supreme Court of Arizona this
24 18th day of May, 2012,

25 By: Kathleen A. Lundgren
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