

Hon. Emmet J. Ronan
Superior Court in Maricopa County
Southeast Court
222 E. Javelina
Mesa, AZ 85210
Telephone: (602) 506-0438
Facsimile: (602) 506-1848
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.

In January 2012, Petitioner asked the Arizona Supreme Court to immediately repeal a procedural rule – Rule 6(E)(4)(e)(2), ARPOP – that it adopted in 2007. On August, 30, 2012, the Court issued an Order Reopening the Petition for Comment. The Court proposed its own amendment to the rule and reopened the petition for comment until May 20, 2013.

The workgroup met to discuss the Court’s proposed amendment and provided a draft response to CIDVC on May 14, 2013. CIDVC members, by a majority vote, have authorized the undersigned, the Honorable Emmet J. Ronan, CIDVC chair, to file this comment to Petition No. R-12-0007 on the committee’s behalf.

DISCUSSION

A.R.S. § 12-1809(F)(3) authorizes a judicial officer to “[g]rant relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances.” Therefore, the Legislature has authorized a judicial officer to grant any relief that the judicial officer deems necessary to protect the plaintiff. The state’s Injunction Against Harassment statute is independent of any federal law. Rule 6(E)(4)(e)(2) requires a judicial officer to ask the petitioner about the defendant’s use or access to weapons or firearms. The rule then gives the judicial officer discretion to prohibit the defendant from possessing, purchasing, or receiving firearms for the duration of the Injunction Against Harassment. A judicial officer who prohibits a defendant from possessing weapons while under an Injunction Against Harassment is acting within the authority granted by the Legislature.

Inclusion of a “credible threat” standard is not identified in A.R.S. § 12-1809. However, a standard already exists in the law by which a judicial officer may grant relief necessary for the protection of the plaintiff and other protected persons. That standard is relief that is “proper under the circumstances.”

In District of Columbia v. Heller, 128 S.Ct. 2783 (2008), the U.S. Supreme Court noted that the Second Amendment right to bear arms is not unlimited and acknowledged that there are situations in which that right can be affected. Heller, 128 S.Ct. at 2816-2817. Prohibiting a defendant from possessing firearms for the duration of an Injunction Against Harassment (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.

CONCLUSION

For the reasons stated above, CIDVC respectfully requests the Court to keep ARPOP Rule 6(E)(4)(e)(2) intact as currently written.

Respectfully submitted this 17th day of May, 2013.

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

cc: Michael Roth, Petitioner
Via e-mail at mroth1@aol.com