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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO REPEAL
RULE 6. E. 4. e. 2. OF THE
ARIZONA RULES OF PROTECTIVE
ORDER PROCEDURE

Supreme Court No. R-12-0007

**Reply of Petitioner on his
Emergency Petition
to Repeal Rule 6. E. 4. e. 2. of
the Arizona Rules of
Protective Order Procedure**

Petitioner Michael Roth replies to the opposing comments made by the Court's Committee on the Impact of Domestic Violence (CIDVC) and the Arizona Prosecuting Attorneys' Advisory Council (APAAC). But first, two caveats:

1) On its face, a comment made by the Court's CIDVC is a sham. I mean, the Court telegraphed that it's not interested in repealing this Rule when it suggested amending Rule 6.E.4.e.2. on its own in August 2012.¹ Given that message, who in a committee of the Court is going to jeopardize their job or their rank by standing up and telling the Emperors they have no clothes? Naturally the CIDVC is going to agree with the justices.

As such, the CIDVC's input is useless. The Court should summarily

¹ See Order dated 8/30/2012.

disregard comments by its own committee.

2) By replying to the comment by the APAAC, I am not condoning the "misappropriation" (theft) of government property. Here's the problem:

According to the APAAC's website, the APAAC is a quasi-governmental agency that "receives no state general fund revenues, and depends on a continuing appropriation through the Criminal Justice Enhancement Fund (CJEF) as its source of funding." Now, the "Author" information in the APAAC's PDF document lists the author of the document as Thomas Stoxen. But Mr. Stoxen is not a staffer of the APAAC. (According to its website.) He is an employee of the Yavapai County Attorney's Office, run by Sheila Polk, the Yavapai County Prosecutor.

As such, it's reasonable to believe that Sheila Polk, Chair of the APAAC, directed her subordinate Mr. Stoxen, a public employee, to create a document for her private use — at Yavapai County's expense. If that's the case, I ask that the Court rule the APAAC's comment inadmissible for being illegally obtained.

Reply to CIDVC

In its latest comment, the CIDVC makes a fallacious argument. It argues that 1) because the Legislature specifically authorized a judicial officer to "grant any relief" necessary to protect the plaintiff, AND 2) because the CIDVC's own

Rule interprets the phrase "any relief necessary" to include revocation of the Second Amendment, then a judge who deprives an individual of their Second Amendment right is "acting within the authority granted by the Legislature."

But that's circular reasoning. It's wrong because the CIDVC's conclusion assumes the premise in its own Rule!

But let's say the CIDVC's spin is correct, that the Legislature meant to give judges the authority to revoke a constitutional right in a civil Injunction. Even if that were true, it's still wrong. For quite simply, the Legislature cannot deprive citizens of a constitutional right in a civil action.

This should be obvious. Judge Snow, a federal judge (and a former member of this Court) sees it. He ruled in March of this year that part of A.R.S. Section 12-1809 — the very statute we're discussing here — was unconstitutional!

Specifically, in *United Food & Commercial Workers Local 99 v. Ken Bennett et al.*, Judge Snow ruled that new language the Legislature added to Section 12-1809 a couple years ago — which could have deprived Arizonans their First Amendment rights in an Injunction — was "unconstitutional."² The same must hold true then for any language in A.R.S. Section 12-1809 that infringes on

² See 2013 WL 1289781 (D.Ariz.), Section III(C)(9) .

the Bill of Rights, be it the First, Second, Third, Fourth, Fifth Amendment.³

So, even if the Legislature meant to allow for the revocation of one's Second Amendment right in A.R.S. Section 12-1809, that part of the statute would be unconstitutional and this Court cannot sustain it. So the CIDVC's argument fails.

Reply to Arizona Prosecuting Attorneys' Advisory Council

The APAAC is responding to the wrong issue here. (Whereas the CIDVC got this part right.) My petition was to repeal Rule 6.E.4.e.2. Not to amend it. To amend it was the Court's own idea, which does not resolve the issue here. Rather, it makes it worse.

Were the Court to arbitrarily copy and paste the "credible threat" language from the Legislature's criminal statute into the Court's rule of procedure for a civil matter, then the Justices would be acting as Legislators. Which you are not allowed to do. It is the sole province of the Legislature to make law. You would be

³ While the federal courts have allowed deprivations of one's Second Amendment right in so-called "Domestic Violence" situations via Brady, those exceptions do not transfer here. First, DV matters are criminal matters, whereas Injunctions against Harassment are civil. Second, the federal courts have (ostensibly) placed safeguards around Brady, requiring a hearing before one's Second Amendment right can be permanently revoked. In fact, as an unfortunate strategy to mitigate potential loses, a police union advises Arizona peace officers to suffer through and NOT challenge ex-parte criminal OOP's. (Because they can't be Brady Disqualified if there's no due process hearing. They could lose their firearms (and their jobs) if they challenge an OOP. Whereas they can't lose if they don't challenge.) Yet the CIDVC says it can do in a civil matter what the feds don't allow in a criminal matter!

traitors to your oath and enemies, "foreign and domestic."

If the Legislature had wanted language from the criminal statute to be in the civil statute (which presumes from the start that the Legislature meant to confiscate firearms in civil injunctions), it would have put that language in. It did not. If you put that language in, you would be guilty of putting words in the Legislature's mouth. Literally.

And even if the Legislature meant to — or should have — put that language in, it is not the role of the Court to correct the Legislature's law, as this Court has acknowledged in numerous cases. (If the Court thinks the Legislature erred, then the Justices should lobby the Legislature to change the statute.) So the Court cannot arbitrarily amend Rule 6.E.4.e.2. as it proposes.

Last, the APAAC asserts that the Court's proposed amendment is consistent with federal and state law. But its assertion is unsupported. Were it true, the APAAC would have rebutted Mr. Palmer's case law. (See his comments in support of my petition.) It did not.

Conclusion

The CIDVC's Rule 6.E.4.e.2. is a made up rule of procedure. As such, it is a constitutional violation on its face (Article III of the Arizona Constitution), is a violation of statute (A.R.S. Section 12-109) and is a violation of this Court's own

case law. (You acknowledged this most recently in 2011. See *Albano V. Shea Homes Ltd. Partnership*, 254 P. 3d 360, paragraph 26.) Three strikes and you're out.

The Court made a mistake years ago letting this Rule sneak by. Some of us have been bold enough to point it out in this forum. Now it's become a political football, perhaps with grant money involved, in a branch of government that's supposed to be apolitical.

For the sake of public confidence in the judiciary (and orderly society), the Court must uphold the law and repeal Rule 6.E.4.e.2. If you don't, some of my fellow citizens may ask, "If they won't obey the law, why should we?"

Respectfully submitted this 1 st day of July, 2013.

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POST SCRIPT

The APAAC tacitly implies that anyone who applies for an IAH is a "victim." My Councilman in Quartzsite was hardly a "victim" simply because I called him a "turd."

And the APAAC claims that Injunctive relief is "extraordinary," as if that makes a constitutional violation okay.⁴ Oh, c'mon. Judges hand these things out like candy. Worse, they disregard the law when doing it. I was slapped with an Injunction simply for being rude to my Councilman one time. (Ignoring the Free Speech issue, there was no requisite "series of acts.") Mr. Palmer reports in one of his comments that he was served an ex parte injunction for blogging on the Internet about someone 100 miles away! (No harassing conduct.) There was a recent story in the newspaper about a judge here who issued an Injunction on someone out of state! Perhaps the most egregious example of disregard for the law so far is *Mahar v. Acuna*, 287 P.3d 824 (2012). O

⁴ So then, it's okay to illegally deprive someone of life & liberty so long as prosecutors don't do it often?