

Honorable Wendy Million
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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:)
)
PETITION FOR ADOPTION) Supreme Court No. R-15-0010
OF AMENDMENTS TO THE)
*ARIZONA RULES OF PROTECTIVE) **Reply to Comment in Opposition to***
*ORDER PROCEDURE AND THE) **the Adoption of Proposed Rule 25(g)***
*ARIZONA RULES OF FAMILY LAW) **of the Proposed Amended Arizona***
*PROCEDURE) **Rules of Protective Order Procedure***
_____)

The Committee on the Impact of Domestic Violence and the Courts (CIDVC), by a consensus of its members, has authorized the Honorable Wendy A. Million, CIDVC chair, to file this reply to a comment regarding CIDVC’s Petition No. R-15-0010.

DISCUSSION

In January 2015, CIDVC filed Petition R-15-0010 requesting that the current Arizona Rules of Protective Order Procedure (ARPOP) be repealed in their entirety and replaced with a restyled version that is simplified, clarified, and reorganized. The rule that is the subject of Victoria Timm’s comment is the proposed Rule

25(g), which is similar to the current Rule 6(E)(4)(e)(2). Ms. Timm has filed her own Rule 28 petition (R-15-0016), in which she seeks repeal of Rule 6(E)(4)(e)(2). CIDVC has filed a comment in opposition to R-15-0016 and has asked the Court to deny that petition.

As proposed in CIDVC's petition, Rule 25(g) reads:

Firearms. The judicial officer must ask the plaintiff about the defendant's use of or access to firearms. If necessary to protect the plaintiff or any other specifically designated person, the judicial officer may prohibit the defendant from possessing, purchasing, or receiving firearms for the duration of the order.

The only substantive difference between the language in the proposed Rule 25(g) and the current Rule 6(E)(4)(e) is that the words "weapons" and "ammunition" have been removed, thus actually narrowing the scope of the court's inquiry and reach.

In her comment in opposition to CIDVC's petition, Ms. Timm makes reference to two different cases, State v. Serna, 235 Ariz. 270 (2014) and Savord v. Morton, 235 Ariz. 256 (2014).

Ms. Timm laid out her challenge based on Serna in her Petition R-15-0016. But as CIDVC noted in its comment in opposition to R-15-0016, filed May 13, 2015, "The Supreme Court has set clearly defined limitations on the application of the holding in Serna. 'Our holding governs only those circumstances in which the police wish to search a person with whom they are engaged in a consensual

encounter.’ Serna at 276. With the narrow parameters established by the Supreme Court, Serna is inapplicable to Injunctions Against Harassment.”

The petitioner’s second argument relies on her interpretation of Savord. Savord involved a domestic violence Order of Protection issued pursuant to A.R.S. § 13-3602. The language quoted by Ms. Timm regarding gun prohibitions referred to both federal Brady law and the standard set in A.R.S. § 13-3602 for prohibiting firearms in domestic violence protective orders. Neither of these standards is applicable to a civil Injunction Against Harassment.

Current Rule 6(E)(4)(e)(2) has withstood two prior attacks (R-09-0045 and R-12-0007) on Second Amendment grounds, and the minor changes to the new proposed Rule 25(g) do nothing to invalidate the reasoning behind the rule and its constitutional soundness.

Proposed Rule 25(g) requires a judicial officer to make a finding that it is “necessary to protect the plaintiff or any other specifically designated person” before imposing a firearms restriction upon the defendant. This language comports with A.R.S. § 12-1809(F)(3), which allows a judicial officer to “grant relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances.”

Along with the requirement of a specific finding by the judicial officer, the defendant's constitutional rights are safeguarded by an absolute right to request and receive a contested hearing on any order issued *ex parte*.

CONCLUSION

For the reasons stated above, CIDVC respectfully asks the Court to grant Petition R-15-0010, including Rule 25(g), as proposed by CIDVC.

Respectfully submitted this 24th day of June, 2015.

/s/ _____
Honorable Wendy A. Million
Magistrate, Tucson City Court