

Mike Palmer, Head
Coalition to Stop Abuse of Civil Harassment Law
18402 N. 19th Ave., #109
Phoenix, AZ 85023
mikepalmer_az@yahoo.com

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND
RULE 38(g), ARIZONA RULES OF
PROTECTIVE ORDER PROCEDURE

Supreme Court No. R-__-_____

**Petition to Amend Rule 38(g),
Arizona Rules of
Protective Order Procedure**

Pursuant to Rule 28, Rules of the Supreme Court, Mike Palmer, writing on behalf of the Coalition to Stop Abuse of Civil Harassment Law,¹ petitions this Court to amend Rule 28(g) of the Rules of Protective Order Procedure as follows.

I. PREFACE

Before considering this instant petition, the Court should first consider our petition to abrogate ARPOP Rule 25(g). We make this petition only if the "Justices" refuse to abrogate Rule 25(g).

Please know that by filing this petition, we are in no way condoning this

¹ The Coalition is a loose collection of Arizona residents (including a Law Enforcement officer) who have been abused by civil Injunction law. (I.e., who have been vindicated on appeal, but whose reputations will forever be tarnished - much like what happened to U.S. Supreme Court Justice Brett Kavanaugh.)

Court's decision to prohibit firearms in civil Injunctions Against Harassment.

And so this is like when the Pharisees asked Jesus if it was okay to divorce. (See Matthew 19:8 in the Bible.) Jesus told the Pharisees that it was never God's will that they divorce. But because of their hard hearts, Moses gave them rules for divorce, to protect those harmed. He was not condoning what the Pharisees were doing. He was just trying to mitigate the damage.

So in the same way, if this Court is going to continue to sin by unlawfully making defendants in civil IAH's prohibited possessors, then, to mitigate the damage, we ask that the Standard of Proof for Contested Hearings be raised from a "preponderance of the evidence" to "clear and convincing evidence."

II. BACKGROUND

After last year's Parkland School shooting, Governor Ducey proposed a Super-sized type of civil Injunction Against Harassment that he called a Severe Threat Order of Protection. (STOP.) It was a civil action that could be contested, just like a normal sized civil IAH.

One of the two main purposes of STOP was to get guns out of the hands of a potential school shooter. The Governor proposed to do this by using his Super-sized civil IAH to make certain defendants prohibited possessors.

Seizing firearms from citizens in civil IAH's and making them prohibited possessors has serious Fourth and Second Amendment Constitutional implications (not to mention implicating parallel rights guaranteed by the Arizona Constitution),

as observed by two high ranking Legislators. (See Exhibits 1 & 2, posted as separate PDF's.)

Realizing this, Governor Ducey put some safeguards in his Bill to try to protect our constitutional rights. Among them was to require "clear and convincing evidence" before making someone a prohibited possessor.

Unfortunately, our Legislature, in its non-infinite wisdom, failed to codify in its statute what the Standard of Proof should be in civil IAH's. So this policy decision falls to the Court.

III. PURPOSE

As it stands now, this Court says that a judicial officer can make a citizen a prohibited possessor for a year in a civil IAH based on "a preponderance of the evidence." That's in contrast to Governor Ducey's proposed higher standard of "clear and convincing evidence" to make a citizen a prohibited possessor.

That's not right.

Since the Executive branch thought that the standard to infringe on Constitutional rights had to be at least "clear and convincing evidence," so then should the Judicial.

Additionally and similarly, last year the Legislature passed HB 2477. That Bill changed the Standard of Proof for prosecutors to seize assets. (I.e., civil forfeiture.) The new standard to seize property is now "clear and convincing evidence."

Making someone a prohibited possessor and ordering them to surrender their firearms is a seizure. (No matter how "short" - per *Michigan v. Sitz*. (Although it would be a year in a civil IAH. And a year is not "short."))

Now that the Legislature has changed the Standard of Proof for civil forfeitures, we now know that it's the Legislature's intent that prosecutors have to have "clear and convincing evidence" before they can seize property.

A seizure is a seizure. And property is property. Since it is the Legislature's intent that prosecutors have "clear and convincing evidence" before seizing property in civil forfeitures, then it is also the Legislature's intent that judges have clear and convincing evidence before seizing property (here, firearms) in civil Injunctions.

To conclude otherwise is tantamount to saying that judges are above the law.

And so we petition the Court to adopt the Legislature's Standard of Proof for civil seizures by amending ARPOP Rule 38(g), to say "For a protective order to remain in effect as originally issued or as modified at a hearing, the plaintiff must prove the case with clear and convincing evidence ~~by a preponderance of the evidence.~~"

The Coalition also asks the Court, as an informal petition here, to adopt a new Rule, to add the same "clear and convincing evidence" standard - if not "probable cause" - sua sponte for ex parte hearings. This because ex parte hearings, being one sided, are inherently unjust. They need a very high standard before taking action.

And also because civil IAH's can really be thought of as pseudo-criminal, in

the sense that after a civil injunction is issued, a mandatory arrest hangs over the head of the defendant if they should violate the Injunction, no matter how innocently. Please see our story about Rick Baily's arrest for saying "Thank you" in our Petition to Amend Rule 25(b).

If the Court wants a precedent for "probable cause" as the standard in ex parte civil hearings, Hawaii - arguably one of the most Liberal states in the union - uses probable cause as its standard in its ex parte hearings for Injunctions to Restrain Harassment. (See HRS § 604-10.5(f).)

SUBMITTED this 10th day of January 2019.

By /s/Mike Palmer