

Mike Palmer
18402 N. 19th Ave., #109
Phoenix, AZ 85023
mikepalmer@aol.com

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND RULE 25(e)
OF THE ARIZONA RULES OF
PROTECTIVE ORDER PROCEDURE

Supreme Court No. R-__ - _____

**Petition to Amend Rule 25(e) of the
Arizona Rules of Protective Order
Procedure**

Pursuant to Rule 28 of the Supreme Court, Mike Palmer petitions this Court to amend Rule 25(e) of the Rules of Protective Order Procedure to align with recent changes in Arizona law for when the state wants to seize the property of Arizonans.

I. Background

In 2017, the Arizona Legislature amended A.R.S. § 13-4305, titled *Seizure of property*, to raise the standard for seizure of property under "the Arizona rules of civil procedure" to "clear and convincing evidence." (See A.R.S. § 13-4305 (A) (1) & (D), respectively.)

Likewise, in 2021, the Legislature amended numerous statutes to similarly raise the standard to seize property to "clear and convincing evidence."¹

¹ Amending sections 13-2314, 13-2314.01, 13-2314.03, 13-3413, 13-3914, 13-3919, 13-3920, 13-3921, 13-3942, 13-4301, 13-4303, 13-4304, 13-4305, 13-4306, 13-4307 and

The Legislature's intent was clearly stated in an Op-Ed by the bill's sponsor, Representative Travis Grantham: "In 2017, we passed legislation that increased the burden of proof in civil forfeiture proceedings... We hoped that would rein in some of the abuses....[In 2020] we saw more needed to be done..."²

Which brings me here in 2023.

II. Analysis

First, even though all the statutes cited above are under Chapter 39 (*Forfeiture*) of Title 13, the Criminal Code, forfeitures are a civil action/procedure. Consistent with this, "Forfeiture" itself is known as "civil forfeiture." (Per Rep. Grantham, above. See also A.R.S. § 13-4303 (*Venue*).)

Since these forfeitures/seizures are, in the end, civil procedures, the next point is that Injunctions against Harassment (IAH's) are also civil procedures that can result in forfeitures. (Since the controlling statute – A.R.S. § 12-1809 – is under Title 12.)³

Now, as it goes to forfeitures/seizures arising from the civil procedure of an IAH: Although there is nothing in A.R.S. § 12-1809 about forfeiting property, one

13-4308, Arizona Revised Statutes; repealing section 13-4309, Arizona Revised Statutes; amending title 13, chapter 39, Arizona Revised Statutes, by adding a new section 13-4309; amending sections 13-4310, 13-4311, 13-4312, 13-4314, 13-4315 and 41-2407, Arizona Revised Statutes; relating to forfeiture.

² <https://www.azcentral.com/story/opinion/op-ed/2021/02/23/arizona-law-enforcement-can-seize-property-too-easily-reform-needed/4536953001/>

³ Also, Rules of Civil procedure apply to justice courts (from which most injunctions issue). See A.R.S. § 22-211.

of this Court's Rules of Procedure tells judicial officers that they "may prohibit the defendant from possessing, purchasing, or receiving firearms..." (Compare and contrast ARPOP Rule 25(g) with A.R.S. § 12-1809.)

Firearms are property. And prohibiting a defendant from possessing already possessed firearms is a seizure. Keeping their property – even if "only" for a year – is a forfeiture.

This is not theoretical. It happens in practice as a direct result of this Court's Rule of Procedure 25(g). Many Arizonans have had their property seized by police officers/sheriff's deputies via these IAH's.⁴ Usually ex parte, exactly the way that other state actors used to seized the property of many innocent Arizonans during traffic stops before the Legislator raised the standard for seizures.

III. Purpose

These civil forfeitures/seizures are the constitutional violation that the Legislature intended to stop when it amended the laws above. As then-Governor Ducey said when he signed the bill into law, "Arizona's Constitution provides broad protections for personal rights and **property** — broader so than the US Constitution."⁵

Specifically, the Legislature raised the standard needed for the state to seize property to "clear and convincing evidence." This to stop state actors from seizing

⁴ Here is one example: <https://www.saf.org/arizona-navy-vet-gets-guns-back-thanks-saf/>

⁵ https://azgovernor.gov/sites/default/files/signing_letter_hb2810_05.05.2021.pdf

property from Arizonans whom the state merely suspected of committing a crime.
See Rep. Grantham, FN 2.

Judicial officers are state actors.

But defendants in IAH's are not suspected of committing a crime.

Even though the Legislature's new standard for seizure law has been in force for more than a year now, as ARPOP Rule 12(e) currently stands, a defendant's property can be seized merely on "good cause," or "reasonable evidence." This because Rule 25(e) does not make a distinction when seizures of firearms are invoked in civil IAH's by way of this Court's Rule of Procedure 25(g).

Therefore, to align with the Legislature's intent – if not its law – ARPOP Rule 12(e) needs to be amended. This Court must raise the standard for Injunctions with ARPOP Rule 25(g) seizures.

It's especially necessary that this Court amend Rule 12(e) to raise the standard because Arizonans in civil Injunctions against Harassment **are not even suspected of a crime.** (IAH's being a civil procedure, not criminal.) The Legislature intended to protect Arizonans who had been suspected of a crime from suffering at the hands of the state. How much more should this Court protect Arizonans who have not been suspected of a crime?

Although the statute governing civil Injunctions against Harassment specifically states the standards to issue an IAH are "good cause" or "reasonable evidence" (see A.R.S. § 12-1809(E)), this Court should feel free to add "clear and

convincing evidence" to Rule 25(e) as below. This since, as precedent, this Court has already felt free to add words not stated in law to create ARPOP Rule 25(g).

Alternatively, if this Court abrogates AROP 25(g) sua sponte, eliminating seizures of property in civil IAH's, then the changes below would not be required.

The Legislature cannot be expected to amend § 12-1809(E) to protect against these seizures, since the Legislature never provided for seizures of property in IAH's in the first place. The cure for this lies exclusively at the feet of the Court.

IV. Conclusion

Even if the Legislature's changes to civil forfeiture law are not on point for this petition, the Legislature's intent is still clear. (Above and below.) If this Court insists on seizing property (in the form of firearms) from Arizonans via civil IAH's, then this Court should act to align itself with the Legislature's intent.

As Rep. Grantham said, "In so many areas of our lives, the scales are tipped against individuals. This is one area where we can bring things back into balance." (FN 2.) And so it is here.

V. Contents of the Proposed Rule Amendment

(e) Findings Required.

(1) If the judicial officer does not invoke Arizona Protective Order Rule of Procedure 25(g) to prohibit the defendant from possessing, purchasing, or receiving firearms, then the judicial officer must issue an Injunction Against

Harassment upon finding:

(A) reasonable evidence that the defendant has committed a series of ...

... [no change]

(B) that good cause exists to believe that great or irreparable harm ...

... [no change]

(2) If the judicial officer invokes Arizona Protective Order Rule of Procedure 25(g) to prohibit the defendant from possessing, purchasing, or receiving firearms, then the judicial officer must issue an Injunction Against

Harassment upon finding:

(A) clear and convincing evidence that the defendant has committed a series of acts of harassment or at least one act of sexual violence as defined in A.R.S. § 23-371, against the plaintiff during the year preceding the filing; or

(B) that clear and convincing evidence exists to believe that great or irreparable harm would result to the plaintiff if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition and specific facts attesting to the plaintiff's efforts to give notice to the defendant or reasons supporting the plaintiff's claim that notice should not be given. See A.R.S. § 12-1809(E).

VI. Disclosure

To the best of my knowledge no one has filed a similar petition within the previous five years.

SUBMITTED this 6th day of January 2023.

By /s/ Mike Palmer