

Honorable Wendy Million
Tucson City Court
103 E. Alameda
Tucson, AZ 85701
Telephone: (520) 791-3260
Chair, Committee on the Impact
of Domestic Violence and the Courts
Staff: kradwanski@courts.az.gov

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	Supreme Court No. R-23-0010
)	
Petition to Amend Rule 25(e) of the)	Comment in Opposition to
Arizona Rules of Protective Order)	Petition R-23-0010
Procedure)	
_____)	

The Committee on the Impact of Domestic Violence and the Courts (CIDVC) has authorized the Honorable Wendy A. Million, chair, to file this comment in opposition to Petition No. R-23-0010 on the committee’s behalf.

DISCUSSION

Petitioner seeks to recharacterize Rule 25(g), Arizona Rules of Protective Order Procedure (ARPOP), as seizure of property according to A.R.S. § 13-4305, in order to raise the threshold for prohibiting a defendant subject to an Injunction Against Harassment (IAH) from possessing, purchasing, or receiving firearms. Rule 25(g) applies to an IAH, a civil protective order issued according to A.R.S. § 12-1809. A.R.S. § 13-4305 governs when property subject to forfeiture under Title

13, Chapter 39, may be seized for forfeiture. An IAH does not render a person's firearms "property subject to forfeiture." It therefore follows that a firearms prohibition under Rule 25(g) is not a "seizure for forfeiture" and should not be treated as one. An IAH does not fall within the realm of A.R.S. § 13-4305, and a firearms transfer directed by an IAH is not a seizure of property. Rule 25(g) is consistent with existing statutory framework for ensuring that the court can grant relief necessary to protect an IAH plaintiff and any designated persons. Therefore, Petition R-23-0010 should be denied.

A.R.S. § 13-4305 requires that a peace officer seize property for forfeiture either with process, including a seizure warrant, according to the Rules of Civil Procedure; after obtaining a search warrant issued according to A.R.S. §§ 13-3911-13-3915; or without court process if there is probable cause to believe the property is subject to forfeiture and other conditions are met.

Rule 25(g), ARPOP, states, in part, that if it is necessary to protect a 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 rule is derived from A.R.S. § 12-1809(F)(3), which authorizes a judicial officer to "grant relief that is necessary for the protection of the plaintiff and other specifically designated persons and that is proper under the circumstances."

No part of an IAH is a warrant that authorizes a peace officer to seize—or even search for—a firearm. A.R.S. § 13-3602(G)(4), the Order of Protection (OP) statute, prohibits a defendant from possessing or purchasing a firearm for the duration of the order if the court finds that the defendant is a credible threat to the physical safety of the plaintiff or other specifically designated persons. If a court invokes A.R.S. § 13-3602(G)(4), the defendant is directed to transfer any firearm owned or possessed to a designated law enforcement agency within 24 hours of service of the order. The law enforcement agency retains the firearm until the order is dismissed or expires. For a firearms prohibition on an IAH, a judicial officer typically follows the same protocol set out in the OP statute and directs the defendant to transfer any firearms to a specific law enforcement agency.

The legislature made no changes to A.R.S. § 13-3602(G)(4) when it amended the seizure-for-forfeiture statutes. This supports the conclusion that the legislature does not view an order to transfer firearms under A.R.S. § 13-3602(G)(4) as a seizure for forfeiture. Therefore, the standard for prohibiting firearms for the duration of an IAH should remain unchanged.

With either an OP or an IAH, the court does not issue a warrant authorizing a peace officer to search for or seize firearms. Transfer of the firearms for the duration of the order is dependent on the defendant's willingness to comply with the court's order and is not a seizure of property pursuant to A.R.S. § 13-4305.

CONCLUSION

For the reasons stated above, CIDVC respectfully asks the Court to deny
Petition R-23-0010.

Respectfully submitted this 11th day of April, 2023.

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

cc: Mike Palmer, Petitioner
Via e-mail at mikepalmer@aol.com