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(FIRM STATE BAR NO. 00032000)**

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(STATE BAR NUMBER 005379 )**

**ARIZONA SUPREME COURT**

**PETITION TO AMEND Rule 25(e),  
Arizona Rules of Protective Order  
Procedure.**

R-23-0010

MARICOPA COUNTY ATTORNEY'S OFFICE  
COMMENT IN OPPOSITION

Petitioner seeks to raise the standard of proof for a court to grant an injunction against harassment under Rule 25(e), Arizona Rules of Protective Order Procedure, if the court intends to restrict the defendant's access to firearms under subsection (g) of that Rule. Petitioner proposes such a change to conform to changes made recently to Arizona's civil forfeiture laws.

In making this proposal, Petitioner overlooks one glaring difference between civil forfeiture and the restrictions in Rule 25(g). Namely, Rule 25(g) does not forfeit firearms in any manner. Rather, the court only limits a defendant's access to them for the term of the order. Moreover, the court has discretion to do this based on the facts and circumstances that led to the granting of the order—it is not mandatory.

Arizona Revised Statute §12-1809 governs injunctions where there is not a domestic relationship between the parties. Subsection (E) contains similar

language to Rule 25(e). Should the language of the Rule change, it would be in conflict with the language of the statute.

Similarly, if there is a domestic relationship between the parties, Title 13 applies and §13-3602 (G)(4) contains language similar to current Rule 25(g). A change to the Rule would result in a conflict between the statutory language and the language in the Rule. In fact, §13-3602(G)(4) actually allows the court to order that a defendant turn his/her firearm(s) over to local law enforcement for the duration of the order of protection, whereas Rule 25(g) says only that a defendant cannot possess, purchase or receive firearms for the duration of the order.

Moreover, regardless of what Arizona statute or rule states, it is still against federal law for an individual to possess or receive a firearm while there is an active injunction or protective order against them if the issuing state met the federal guidelines for such orders. 18 U.S.C. 922(d)(8) and (g)(8). In fact, the language in Arizona's statutes and rule ensure that the requirements of the federal law, passed as part of the Brady Act, are complied with. Although only a memorandum decision, the Court of Appeals walks through this process in *Quezada v. Servin*, No. 1 CA-CV 20-0014 FC, 2020 WL 6834323, \*2, ¶ 8 (Ariz. Ct. App. Nov. 19, 2020) (Brady prohibition relies upon the trial court finding the person represents a credible threat to the physical safety of the intimate partner or child), as well as another memorandum decision, *Derrig v. Alexander*, No. 2 CA-CV 2019-0193, 2020 WL 7488178, \*4, ¶ 20 (Ariz. Ct. App. Dec. 18, 2020) (Brady prohibition proper if the court makes either a credible threat finding or the terms of the order prohibit the "use, attempted use, or threatened use of physical force").

In short, in a civil forfeiture an individual may be deprived of property permanently and our Legislature chose to increase the burden of proof before such a permanent deprivation can occur. In the context of Rule 25(e) and (g), however, the court is only temporarily restricting access to a firearm after the court makes specific findings that comply with both Arizona and federal laws.

Another important distinction is that the civil forfeiture is unrelated to the safety of another individual. The property subject to forfeiture is tied to the commission of a criminal act and, unless it also involved a weapon, has nothing to do with whether a victim or another individual was the possible target of future violence by the defendant. In the context of an injunction against harassment or order of protection, however, it is the exact opposite. The firearm restriction has nothing to do with whether the property was tied to the fruits or commission of a crime and has everything to do with the future safety of an individual.

There are reasons that support the firearm restriction imposed by Arizona and federal laws. Studies have shown that firearm restrictions, particularly in domestic violence situations, reduce future violence, *See* April M. Zeoli, et al., “Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Association with Intimate Partner Homicide,” *American Journal of Epidemiology* 187, no. 11 (2018); The Educational Fund to Stop Gun Violence, “Domestic Violence and Firearm;” and Giffords Laws Center to Prevent Gun Violence, “2020 Annual Gun Law Scorecard”.

The context, public policy, and other factors between civil forfeiture and the temporary restriction to firearm access in the context of Rule 25 are completely different. It is neither sensible nor appropriate to apply the requirements of one to the other.

For these reasons, Petitioner's proposals should be denied.

Respectfully submitted this 19<sup>th</sup> of April, 2023.

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