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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:	)	
	)	Supreme Court No. R-24-0038
Petition to Amend Rule 38(e),	)	
Arizona Rules of Protective	)	Comment to Petition to Amend
Order Procedure	)	Rule 38(e) Arizona
	)	Rules of Protective Order Procedure
_____	)	

The Committee on the Impact of Domestic Violence and the Courts (CIDVC) has authorized the Honorable Wendy A. Million, CIDVC chair, to file this comment to Petition No. R-24-0038 on the committee’s behalf.

**DISCUSSION**

Similar to the requests Petitioner made in 2010 in R-10-0013 and 2012 in R12-0023, objects to Rule 38(e), ARPOP, which gives a judge the discretion “to direct a defendant to remain in the courtroom for a period of time after the plaintiff is excused.” Petitioner cites the Fourth Amendment of the U.S. Constitution as the basis for his objection, basing his reasoning on a mistaken notion that there are “Title 13 *criminal* Orders of Protection” and “Title 12 *civil* Injunctions Against Harassment” (emphasis added). Petitioner objects that a defendant in an Injunction Against Harassment case was directed to remain in the courtroom while Plaintiff

exited, and he further objects that courtroom observers, including himself, were directed to remain as well.

While the procedure for filing for an Order of Protection pursuant to A.R.S. § 13-3602 is found in Title 13, the order itself is civil in nature.<sup>1</sup> Filers use the same Supreme Court-approved general petition for all protective orders, regardless of whether they are requesting an Order of Protection or an Injunction Against Harassment. The petition, as in other civil actions, is filed by a person to protect private rights, unlike a criminal action, which is an offense against the public. Upon the issuance of an Order of Protection or an Injunction Against Harassment, the court makes no finding of guilt or innocence against the defendant. Rather, the purpose of either type of order is to restrict the conduct of the defendant toward the plaintiff.

The Arizona Constitution gives the Supreme Court the authority to make rules relative to all procedural matters in any court. Ariz. Const. art. 6, § 5(5). Among the rules promulgated by the Supreme Court is the Code of Judicial Conduct. All Arizona judges are bound by the Code of Judicial Conduct, pursuant to Rule 81, Rules of the Supreme Court of Arizona. Canon 2, Rule 2.8(A), mandates that all judges “require order and decorum in proceedings before the court.” Judicial performance standards measure how effectively judges manage their courts in all proceedings.

The Supreme Court has long recognized the inherent authority of a judge to manage the courtroom. “We believe the trial judge has the primary responsibility for controlling the conduct of spectators in the courtroom and the courthouse.” State v. Bush, 149 Ariz. 325, 330 (1986). “The judge has the primary ... responsibility to insure that those who come into the courtroom

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<sup>1</sup> “A person may file a verified petition, as in civil actions, with a magistrate, justice of the peace or superior court judge for an order of protection for the purpose of restraining a person from committing an act included in domestic violence.” A.R.S. § 13-3602(A).

behave properly.” Id. at 331. In Bush, the Supreme Court recognized not only the judge’s authority to control the conduct of those in the courtroom but also to exclude them entirely under certain circumstances.

Rule 38(e) ARPOP, is a tool a judge can use to carry out the duty imposed by Canon 2. Regardless of whether the proceeding is a hearing for an Order of Protection, described in Title 13, or an Injunction Against Harassment, described in Title 12, the judge still has the duty and the authority to control the courtroom and the conduct of all persons within it. The duty to maintain courtroom decorum – commanding the respect of the public for the judicial system – applies in all courtrooms and in all proceedings, whether they be criminal, civil, traffic, family, juvenile, and so on.

Furthermore, the procedural rule at issue is neither a search nor a seizure within the meaning of the Fourth Amendment. It is a discretionary rule a judge may employ to maintain order and decorum in the court, and no “probable cause” is required for a judge to enforce the rule. A judge who directs a defendant – or any other person present – to remain in the courtroom while the plaintiff exits is not “seizing” them. They are not in custody and are not being held as part of an investigative police stop.

Emotions and tensions can run high at protective order hearings, regardless of the outcome of the case. The judge, having conducted the hearing, will be aware of those feelings and must act accordingly to control the courtroom and those persons in it. While some persons may be inconvenienced by having to remain in the courtroom a little longer, they are not being punished. The judge simply is exercising his or her inherent duty to maintain the security and decorum of the court.

## **CONCLUSION**

For the reasons stated above, CIDVC respectfully requests that the Court reject Petition No. R-24-0038 in its entirety and to leave Rule 38(e), ARPOP, intact as currently written.

Respectfully submitted this 23<sup>rd</sup> day of April, 2024.

/s/  
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Hon. Wendy A. Million  
Magistrate, Tuscon City Court