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Superior Court in Maricopa County  
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Chair, Committee on the Impact of Domestic Violence and the Courts

**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:	)	
	)	Supreme Court No. R-10-0013
Petition to Amend Rule 1(D)(4)	)	
of the Arizona Rules of Protective	)	Comment to Petition to Amend
Order Procedure	)	Rule 1(D)(4) of the Arizona
	)	Rules of Protective Order Procedure
_____	)	

**BACKGROUND**

The Domestic Violence Rules Committee (DVRC) was established on November 17, 2005, by Administrative Order 2005-85 to “research other statewide domestic violence rules, study the issues relevant to domestic violence procedural matters in Arizona, and consider alternatives to Rule 96, Domestic Violence Benchbooks in the *Arizona Rules of Family Law Procedure* which may include statewide domestic violence rules.” The committee convened and during the next year developed a stand-alone set of procedural rules for protective order cases. On June 29, 2007, the Hon. William J. O’Neil, DVRC chair, submitted a petition under Rule 28, asking the Arizona Supreme Court to adopt the Arizona Rules of Protective Order Procedure (ARPOP). The Arizona Supreme Court adopted the ARPOP on September 5, 2007, making the rules effective on January 1, 2008. The DVRC, having fulfilled its purpose, was disbanded by Administrative Order 2008-08 on January 23, 2008.

The Committee on the Impact of Domestic Violence and the Courts (CIDVC), realizing that no formal committee remained to address modifications to the ARPOP, established the ARPOP Workgroup on November 10, 2009. The workgroup met to discuss the petition referenced herein and provided a draft response to CIDVC on May 11, 2010. CIDVC members, by a majority vote, have authorized the undersigned, the Honorable Emmet J. Ronan, CIDVC chair, to file this response to Petition No. R-10-0013 on the committee's behalf.

### **DISCUSSION**

Petitioner objects to Rule 1(D)(4), ARPOP, which gives a judicial officer the discretion "to direct a defendant to remain in the courtroom for a period of time after the plaintiff is excused." He cites the Fourth Amendment of the U.S. Constitution as the basis for his objection and compares the court's request for a defendant to temporarily remain in the courtroom to an unlawful seizure.

The Fourth Amendment prohibits *unreasonable* searches and seizures, not *all* searches and seizures. Terry v. Ohio, 88 S.Ct. 1868 (1968). The Fourth Amendment provisions that guard against unreasonable search and seizure are usually in the context of a law enforcement officer stopping a person to conduct an investigative inquiry. The procedural rule at issue is neither a search nor a seizure within the meaning of the Fourth Amendment. It simply is a discretionary rule that a judicial officer can employ to maintain security and decorum in the court.

Arizona's judicial officers are bound by the Code of Judicial Conduct, pursuant to Rule 81, Rules of the Supreme Court of Arizona. Canon 2, Rule 2.8, mandates that all judges "require order and decorum in proceedings before the court." Judicial performance standards measure

how effectively judges manage their courts. The ARPOP rule is a tool a judge can use to carry out the duty imposed by Canon 2.

A judicial officer who asks a defendant to remain in the court while the plaintiff exits the building is not “seizing” the defendant. The defendant is not in custody and is not being held as part of an investigative police stop. Because of the nature of protective order hearings, emotions and tensions can run high, regardless of the outcome of the hearing. Even if the weight of the evidence may have been insufficient to sustain the protective order, feelings of animosity can still exist between the parties. The judicial officer, having conducted the hearing, will be aware of remaining tensions between the parties and has the authority to act accordingly to control any continuing conflict. While a defendant may feel inconvenienced if asked to remain in the court for an additional time, the defendant is not being punished. The judicial officer simply is exercising his or her inherent responsibility to maintain the security and decorum of the court.

### **CONCLUSION**

For the reasons stated above, CIDVC respectfully requests the Court to reject Petition No. R-10-0013 in its entirety and to leave Rule 1(D)(4), ARPOP, intact as currently written.

Respectfully submitted this \_\_\_\_\_ day of May, 2010.

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Hon. Emmet J. Ronan  
Judge of the Superior Court  
Superior Court in Maricopa County