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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-09-0045  
Petition to Repeal Rule 6(E)(4)(e)(2) )  
of the Arizona Rules of Protective ) Comment to Petition to Amend  
Order Procedure ) Rule 6(E)(4)(e)(2) of the Arizona  
) Rules of Protective Order Procedure  
)  
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**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-09-0045 on the committee's behalf.

### **DISCUSSION**

Petitioner has asked the Arizona Supreme Court to declare a procedural rule that it adopted -- Rule 6(E)(4)(e)(2), ARPOP -- unconstitutional and to repeal it immediately.

Petitioner has provided reasons for his position; however, his reasoning is flawed because his interpretation of the law is incorrect.

Petitioner states that the federal Brady disqualification (18 U.S.C. § 922(g)(8)) is codified in A.R.S. § 13-3602. Brady is not codified in Arizona law, and the statutes are dissimilar in two important respects. The federal and state laws contain neither the same relationship tests nor the same procedural due process requirements. The two laws operate independently of each other.

First, the relationship tests in the federal and the state statutes are significantly different. Brady applies only to a plaintiff and a defendant who are "intimate partners" as defined by 18 U.S.C. § 921(A)(32). Intimate partners are present or former spouses, persons who have a child in common, or persons who are present or former cohabitants. 18 U.S.C. § 921(A)(32). By contrast, A.R.S. § 13-3601, which sets out the relationships for petitioners who may request an Order of Protection pursuant to A.R.S. § 13-3602, is substantially broader. Under Arizona law, the relationship test for an Order of Protection includes persons married now or in past, persons residing in the same household now or in the past, parents of a child in common, one party who

is pregnant by the other, parties who are related by blood or court order (parents, grandparents, children, grandchildren, brothers or sisters, parents-in-law, grandparents-in-law, stepparents, step-grandparents, step-children, step-grandchildren, brothers-in-law, or sisters-in-law), a child victim living in the same household as an unrelated defendant, and persons involved now or in the past in a romantic or sexual relationship.

Second, Brady contains due process requirements that are not mirrored in state law. The Brady firearms disqualification applies only when the parties have met the federal “intimate partner” test and only if the protective order was issued at a hearing of which the defendant received actual notice and in which he or she had an opportunity to participate. 18 U.S.C. § 922(g)(8). Therefore, Brady cannot apply to an *ex parte* hearing. The Arizona firearms prohibition, found at A.R.S. § 13-3602(G)(4), has no requirement that the defendant receive notice or participate in a hearing before the Order of Protection is issued. Therefore, the Arizona firearms prohibition can apply to a protective order that was issued at an *ex parte* hearing. If the defendant objects to entry of the protective order, the defendant can request a hearing, at which time the judicial officer will conduct a contested proceeding.

Relying on his misunderstanding of the relationship between the federal and state laws, Petitioner argues that the DVRC erred by developing a procedural rule that exceeds a judicial officer’s authority. We disagree. A.R.S. § 12-1809(F)(3) authorizes a judicial officer to “[g]rant relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances.” Therefore, the Legislature has authorized a judicial officer to grant any relief that the judicial officer deems necessary to protect the plaintiff. The state’s Injunction Against Harassment statute is independent of any federal law. Rule 6(E)(4)(e)(2) requires a judicial officer to ask the petitioner about the defendant’s use or access to weapons or

firearms. The rule then gives the judicial officer discretion to prohibit the defendant from possessing, purchasing, or receiving firearms for the duration of the Injunction Against Harassment. A judicial officer who prohibits a defendant from possessing weapons while under an Injunction Against Harassment is acting within the authority granted by the Legislature.

Petitioner's reliance on District of Columbia v. Heller, 128 S.Ct. 2783 (2008), has no application to the procedural rule at issue. The Heller case addressed the District of Columbia's citywide ban on possession of handguns and the requirement that legally possessed weapons, such as long guns, be rendered inoperable. In Heller, the U.S. Supreme Court noted that the Second Amendment right to bear arms is not unlimited and acknowledged that there are situations in which that right can be affected. Heller, 128 S.Ct. at 2816-2817. Prohibiting a defendant from possessing firearms for the duration of an Injunction Against Harassment (one year, at most) to protect the safety of the plaintiff and other protected persons is an appropriate situation in which a court can limit a defendant's rights.

### **CONCLUSION**

For the reasons stated above, CIDVC respectfully requests the Court to reject Petition No. R-09-0045 in its entirety and to leave Rule 6(E)(4)(e)(2), ARPOP, intact as currently written.

Respectfully submitted this xxth day of May, 2010.

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