

Mike Palmer
18402 N. 19th Ave., #109
Phoenix, AZ 85023
mikepalmer_arizona@fastmail.fm

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND
RULE 1.D.4., ARIZONA
RULES OF PROTECTIVE ORDER
PROCEDURE

Supreme Court No. R-12_____

**Petition to Amend Rule 1.D.4.,
Arizona Rules of
Protective Order Procedure**

Pursuant to Rule 28, Rules of the Supreme Court, Mike Palmer respectfully petitions this Court to adopt amendments to Rule 1.D.4. of the Arizona Rules of Protective Order Procedure, governing the unlawful seizure of a litigant during a civil action in a courtroom.

I. Background and Purpose of the Proposed Rule Amendment

I petitioned the Court about this constitutional violation two years ago. (See R-10-0013.) Under the general heading of "Court Security" in the Arizona Rules of Protective Order Procedure is Rule 1.D.4 which says, "Following a hearing, the court may direct [i.e. order] the defendant to remain in the courtroom for a period of time after the plaintiff is excused." Note that this general rule makes no distinction between Title 13 criminal Orders of Protection vs. Title 12 civil

Injunctions Against Harassment, both which are lumped together and incorrectly comingled in the ARPOP.

But criminal vs. civil is a critical distinction. So, in light of a recent federal court ruling here in Arizona on unlawful Fourth Amendment seizure, which validates the arguments I made two years ago¹, coupled with another recent real world observation, I renew my petition to repeal or amend this Rule as unconstitutional.

As with my original petition, I recently observed another cat fight between two women which eventually found its way to court. As with my original petition, a woman did not like what another had said about her. The former sought and obtained an ex parte Injunction Against Harassment against the other. The latter challenged the injunction in court. Unlike the story in my original petition, this particular lady lost and the injunction was sustained. (Now under appeal.)

Upon losing, the trial judge ordered that EVERYONE in the courtroom remain while the plaintiff was excused.

Clearly this was overreach by the judge and therefore, judicial misconduct. Overlooking the Fourth Amendment's protection against unlawful seizure, a plain

1 Affirming my arguments on *Terry v. Ohio* too.

reading of Rule 1.D.4. allows a court to seize only the defendant. Not an entire courtroom of spectators.

I offer this vignette so the Justices can know what goes on in the real world under the guise of your internal rules.

In any event, had the judge followed the Rule, he still would have seized the defendant, ordering her to remain in the courtroom until the plaintiff had been excused.

To ward off an argument in a previous comment that this "direction" by a judge is only a "request"(i.e. "asking," as distinguished from an order), that argument was unavailing then and is unavailing now. This particular judge and this particular lady defendant had already been at odds in this action. The judge had already threatened the defendant with contempt of court earlier in the proceeding. It is certain that the defendant took this judge's "direction" as an order of the court, as I, and the rest of the spectators did also. I did not believe I was "free to leave," one of the tests for seizure. Had I stood up to exercise my Fourth Amendment right, I would have been threatened with contempt of court. And likely jailed.

But focusing on the defendant and the Rule, there was no probable cause for the judge to seize her. This wasn't a criminal trial. It was a civil action.

Now, just before the 2011 December holidays, a federal judge ruled that not even Sheriff Joe could seize citizens for civil violations. In his ruling, the federal

judge said "Seizing a civilian . . . absent reasonable suspicion of criminal activity violates the Fourth Amendment." (See *Ortega-Melendres v. Arpaio*, CV-07-2513 in the District Court of Arizona, Order, Doc. 494 at 8:8.)

A previous comment cited *Terry v. Ohio*, which I responded was off point by definition in civil injunctions. So did the federal judge. I shouldn't have to argue this, as I have to believe the Justices are not ignorant and know all about *Terry*. Yet, because the Justices refused to repeal this Rule last time, I quote the federal judge that *Terry* only allows seizure without probable cause "on reasonable suspicion that 'criminal activity may be afoot.'" (Id. at 5:21)

By definition, in a civil injunction, there can be no criminal activity afoot.

Further, it is insulting to suggest a hapless defendant, who is forced to defend herself in court against an unsubstantiated ex parte claim, is a criminal and would harm a plaintiff. This is especially true, as I argued two years ago, for the defendant who is vindicated at hearing. It's insulting—not to mention wrong—to detain a litigant a court has declared "not guilty."

But it's as insulting—and wrong—later, if, on appeal, the injunction is found to be meritless. (Say, because the plaintiff lied to the judge at petition, as often happens in the real world.²)

2 Since there are no practical consequences for lying to a judge in injunctions.

As I noted two years ago, there are already enough laws to ensure order in the court. We already have laws regarding assault. There is already A.R.S. § 13-2810 which further addresses behavior in the courtroom. A judge can ask a peace officer be present. There is no need for more law, and thought-crime law at that.

Not to mention that Rule 1.D.4. is not supposed to be a law in the first place. It is merely an internal procedural rule. But because it has the force of law and violates the Fourth Amendment, it is a doubly unconstitutional “law” at that.

When it comes to the courts violating the Constitution and the rights of litigants, Chief Justice Shirley S. Abrahamson of the Wisconsin Supreme Court observed, "A lack of confidence in the integrity of courts rocks the very foundations of organized society, promotes unrest and dissatisfaction, and even encourages revolution." My sense is that we're not very far away as citizens are forced to defend the Constitution themselves.

Therefore, to mitigate public unrest and dissatisfaction with the courts, this Rule should be repealed or modified as below.

II. Contents of the Proposed Rule Amendment

Following a hearing, if a criminal order of protection in a domestic violence case is sustained by the court, the court may order ~~direct~~ the defendant, and only the defendant, to remain in the courtroom for a short period of time after the

plaintiff is excused so as to aid a "no contact" provision, if there is one, in a domestic violence order of protection.

SUBMITTED this 10th day of January, 2012

By s/ Mike Palmer
Mike Palmer
18402 N. 19th Ave., #109
Phoenix, AZ 85023