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**IN THE SUPREME COURT**
**STATE OF ARIZONA**

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| In the Matter of:<br><br>PETITION TO AMEND RULE 1(D)(4), ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE | Supreme Court No. R-12-0023<br><br>**Reply regarding Petition to Amend Rule 1(D)(4), Arizona Rules of Protective Order Procedure** |

Petitioner asked this Court to amend ARPOP Rule 1(D)(4) primarily to limit its application to only criminal orders of protection, where seizure of a defendant might be considered reasonable. (As opposed to defendants in civil Injunctions Against Harassment, where seizure is never reasonable.)

Naturally, the creator of this Rule, the CIDVC, objects. This reply corrects numerous errors in Judge Ronan's Comment to my petition line by line.[1]

## DISCUSSION

Judge Ronan begins by confusing the issue in this instant petition (as distinct from my petition of two years ago) which here seeks to Amend Rule 1(D)(4) to

1 Judge Ronan is chair of the CIDVC, the Committee who made this unconstitutional Rule.

limit its application only to Criminal Domestic Violence (Orders of Protection) actions. (Distinct from Civil Injunctions Against Harassment.)

Judge Ronan suggests there is no distinction between Title 13 Orders of Protection versus Title 12 Injunctions Against Harassment, saying that "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." And he quotes off-point dicta in the statute that "a person may file a verified petition, **as in civil actions** . . . [for a Title 13] order of protection" as if that negates the fact that OOP's are under Title 13 and IAH's under Title 12.

Really, do I have to explain the grammar of the phrase?[2] The Legislature is simply helping us understand that, unlike normal criminal matters, which are initiated by sworn informations or indictments, criminal DV matters are initiated by sworn ex parte petitions by private parties instead.

Regardless of how criminal DV matters are initiated, or whether an action that protects the rights of a private person should be classified as criminal, DV matters are still under Title 13, which is plainly titled "Criminal Code."

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2 This exemplifies the problem, that the Domestic Violence Committee sees everything through Domestic Violence glasses.

Despite his obfuscation at first, Judge Ronan acknowledges, for a short time, there is a distinction between OOP's and IAH's. (Third paragraph of his page 3.[3])

Nevertheless, Judge Ronan also makes a circular argument, that because the CIDVC elected to use the "one form fits all" approach for criminal OOP and civil IAH matters, they must be the same! (Of course, the CIDVC could not have erred here.) Ironically, Judge Ronan passes the buck to the Supreme Court, saying it's YOUR fault you rubber stamped the "one form fits all" approach the CIDVC gave you, which is the proximate cause for this petition.

Next, Judge Ronan enlarges his ridiculous argument from two years ago and makes it doubly convoluted, folding the Arizona Constitution into the mix. (Ironic, since we're talking about a constitutional Fourth Amendment seizure here.) He argues that because the Arizona Constitution allows the court to make rules of (internal) procedure for itself, and because the Code of Conduct is an internal rule which requires judges to maintain decorum in the court, an internal rule can have

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3 While it's technically true that in criminal DV situations the court makes no finding of "guilt or innocence," that's a distinction without a difference. Any defendant who's had an OOP upheld against them feels he's been found guilty by a judge. And certainly his rights have been curtailed (Second Amendment via Brady, for example) and he is being punished, just as if a judge used the word "guilty." To say there is no finding of guilt or innocence is sophistry.

external application. That the Constitution gives the Code the power to violate the constitutional rights of people in the courtroom![4]

So then, taking that "logic" to the ridiculous to make the point, if the Code of Conduct, in the interest of decorum, mandated that no male judge could have shoulder length hair, then you can make a Rule that men with shoulder length hair are not allowed in the courtroom? No.

I don't deny Judge Ronan's point that a judge is allowed to control the conduct of spectators in the courtroom in the sense of *Bush* (cited by Judge Ronan) which allows judges to "exclude" some people from his court room.

But that is about kicking people out of the courtroom. NOT keeping them in, as here! So *Bush* is inapposite.

Judge Ronan is doubly wrong when he describes Rule 1(D)(4) as a "procedural rule" that is not a "seizure within the meaning of the Fourth Amendment." First, just because Rule 1(D)(4) is called a "Rule of . . . Procedure" doesn't make it so. The Rule oversteps its bounds, going beyond administration of the court. Therefore, it is outside procedural rule. (Is outlaw.)

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4 Judge Ronan cites Canon 2, Rule 2.8(A). But its sister, Rule 2.8(B) makes it clear that a judge's authority in requiring decorum is limited to "lawyers, court staff, court officials," etc.

Second, as I quoted two years ago, despite what Judge Ronan says, the U.S. Supreme Court says, "A person is 'seized' within the meaning of the Fourth Amendment only when, in light of all the surrounding circumstances, a reasonable person would believe that he or she was not free to leave."[5]

When a judge tells you to remain seated, whether he has that authority or not, a reasonable person is going to be believe she is not free to leave. Thus, it IS a seizure within the meaning of the Fourth Amendment, Judge Ronan notwithstanding.[6]

At least Judge Ronan didn't suggest this time that such an order from a judge was merely a request.[7] He acknowledges that a judge "directs" a person to remain in the courtroom. But still he insists that being "directed" to remain in the courtroom by a judge is not a seizure. As I said in my petition, not even Sheriff Joe is allowed to detain people on a hunch, without probable cause. More so since the SCOTUS ruled on SB 1070.[8]

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5 U*nited States v. Mendenhall*, 446 U.S. 544, 554 100 S.Ct. 1870, 64 Led. 2d 497 (1980); *State v. Young*, 135 Wn.2d 498, 509, 957 P.2d 681 (1998).

6 Where does this end? I attended one hearing where the judge "ordered" the person to leave the multi-use building (not just the courtroom) and drive out of the public parking lot. So it reaches to your car?

7 "asks"

8 Really, can't the Court find a better chairman?

Last, the chair of the CIDVC admits that its Rule is really a public policy matter, something the CIDVC thinks is good for us. (As opposed to a matter of law.)

I cited A.R.S. § 13-2810 A(1) two years which is the controlling law here. "A person commits interfering with judicial proceedings if such person knowingly engages in disorderly, disrespectful or insolent behavior during the session of a court which directly tends to interrupt its proceedings or impairs the respect due to its authority." This law already makes it a crime to act up in court. And we already have laws to punish assault. That is the law you have. And it is all the law you need.[9]

But Judge Ronan ends by saying you need to keep his Rule because "emotions and tensions can run high at protective order hearings." (Funny. He says he doesn't need probable cause for seizure but then supplies one.)

Even if true, so what? Emotions and tensions can run high at any trial. That is not cause to detain people in a court room. Emotions run high during public protests. The police don't prevent those even though it might prevent some assaults.

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9 If you're really so concerned for the safely of a party, then offer to have the bailiff or a security officer stand next to them in court and walk them out to the exit if that's what they want.

Emotions and tensions ran high during the high profile criminal trial of James Arthur Ray last year. (Sweat lodge trial.) Mr. Ray was charged with involuntary manslaughter. The dead people's families attended the trial and were very emotional. Nevertheless they were not told to remain in the courtroom until Mr. Ray left.

Nor is anyone ever held back in cases involving money (like Bernie Madoff), arguably which the love of is a root of more evil than crimes of passion.[10]

Even if the ends justified the means (and it does not), Judge Ronan returns to lumping criminal domestic violence matters with mere civil injunctions against harassment, as the Committee on Domestic Violence always does. But again, there's a distinction.

While I understand the reality that DV situation are often tense (ask any police officer which is more dangerous – responding to a bank robbery or a DV call), my petition distinguishes DV matters from civil IAH's. Since IAH's are not domestic by definition, they do not have the same level of emotional involvement

10 1 Timothy 6:10

(if any) that DV matters might.[11] Therefore, application of Rule 1(D)(4) can be distinguished between criminal DV and civil IAH, as I proposed.

Last, this "Rule" is prejudicial on its face. It's all about what people "might" do. That makes assumptions about the parties in IAH situations—which violates the Code of Conduct's requirement that judges be impartial. That is, to apply this Rule requires a judge make a partial (i.e. biased) decision about a party based on a hunch.

You already have laws to punish us if we act up, which already act as deterrents. You're not our parents. It's not your job to make us "play nice." We're grownups. Stop treating us like children.

We're not all DV criminal offenders. Please amend this Rule so as to preserve the rights—and dignity—of defendants of civil Injunctions Against Harassment.

SUBMITTED this 30th day of June, 2012

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11 Except that defendants are usually ticked off because they are dragged into these things after exercising their free speech rights when, for example, they call a councilman a "turd." (See Michael's Law video at youtu.be/tcznFkhpOIY)