Michael Roth
PO Box 422
Quartzsite, AZ 85346
928-927-8888
mrotha1@aol.com

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of: PETITION TO REPEAL RULE 6. E. 4. e. 2. OF THE ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE	Supreme Court No. R-12-0007 **Reply of Petitioner on his Emergency Petition to Repeal Rule 6. E. 4. e. 2. of the Arizona Rules of Protective Order Procedure**

BACKGROUND

On January 4, 2012 I had asked the Supreme Court to immediately repeal Rule 6.E.4.e.2. of the ARPOP because it is plainly unconstitutional on its face (especially ex parte) and has no foundation in state statute.[1] Even though no one

[1] In fact, when you think about it, the ARPOP, in the main, is unlawful and should be repealed.

While the Court is allowed to make "rules of procedure" under Title 28 to administer itself and its members, it is not allowed to make rules that go beyond administration of itself and its members.

So, for example, when the ARPOP states, as Rule 6.E.1, that "A series of acts means at least two events," that "rule" is not an administrative rule of procedure as compared to mandating an extra copy of a Rule 42(f) Notice be filed with the Presiding judge. "Rule" 6.E.1. is really stating current case law, interpreting what the Legislature left ambiguous in its statute. It is not a "rule." (At best it should be a comment.)

Similarly, ARPOP rules that impact citizens outside the court, especially when ex parte, like Rule 6.E.4.e.2 are not administrative. They are substantial law. (Continued on next page.)

has proved me wrong, the Court has not acted on an emergency basis to repeal this Rule.[2] (I dispatch Judge Ronan's and the Bar's comments in my End Note.) I ask the Court to do so now. To continue to drag this out continues irreparable harm.

For example, as a result of this Court's inaction, I just dodged another metaphorical bullet where I could have lost my gun rights as before. (See my petition, p2.) Once again another crazy person in Quartzsite recently tried to get an Injunction Against Harassment against me because—like Councilman Joe Winslow last time—they didn't like what I called them. (Once.) I tell you these Injunctions Against Harassment are being used to harass. Despite the clear instruction from the court of appeals in *Lafaro v. Cahill* ((App. Div.1 2002) 203 Ariz. 482, 56 P.3d 56), judges aren't using any common sense (or the law) as they liberally hand them out.

REVIEW

So how did the Court get into this mess? From Mr. Palmer's excellent research in his two comments, the party responsible is the CIDVC. And, as I found, it has a sinister motive.

(Cont'd) As it is now, the ARPOP gives these mere administrative rules the color (if not the force) of law. Indeed, Judge Slaughter used it to justify her firearm prohibition against me.

[2] If I erred by not filing a "separate request" to consider my petition on an expedited basis (per Rule 28(G)(1)), please consider this such a request.

From Palmer's research we learned that, over the years, the Court's own Committee on the Impact of Domestic Violence on the Courts (CIDVC) has been incrementally changing civil injunction rules into domestic violence rules. It was doing this even up to the time of this petition, when it was planning internally to add even more verbiage from criminal DV law to civil IAH.

Mr. Palmer was not able to discover how the progenitor of Rule 6.E.4.e.2. came to be. The first instance he could find in the record was in the November 2006 DV Benchbook as one sentence, pure dicta, in the section discussing Brady Law and Domestic Violence. "Note: In an IAH, the JO may have discretion to prohibit firearms."

But there was absolutely no statutory basis for that Note, either in a plain reading of the law then or its legislative history then 'til now.

The controlling law for civil Injunctions, A.R.S. §12-1809, became law in 1984. Section (F)(3), the section the State Bar and the Chair of the CIDVC always cite to say they can act to deprive citizens a constitutional right, was added in 1997 and has not changed since. (That is, nothing changed in the law circa 2006 to cause the dicta.) Whatever "whatever" meant then, it could not have meant "prohibit firearms" because the word "firearm" does not appear in the statute. If the Legislature had meant to prohibit firearms, it would have (and MUST have) said so. "When construing a statute, one presumes that 'what the

legislature means it will say.'" (Former Attorney General Terry Goddard quoting *Padilla v. Indus*. Comm'n, 113 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976))

DISCUSSION

You want to know where this all came from? It comes from the anti-gun Brady Campaign. Even today in its pamphlet "Disarming Domestic Violence Abusers"[3] it says, "State restraining orders that do not conform to the federal standard for notice and hearing [such as Arizona's civil injunction law] cannot be included in federal databases used to stop gun sales to prohibited buyers, **so it is critical that states enact such provisions as part of their restraining order process.**" And this is exactly what Rule 6.E.4.e.2. does! It does an end run around the law.

The Arizona Legislature did not enact "such provisions" for civil Injunctions the Brady Campaign wants. Nor, given the Legislature's recent history, is it likely to. Apparently the CIDVC and the State Bar get their marching orders from the Brady Campaign. Hence this bogus Rule.

The on-going attempt by the Bar, in cahoots with the CIDVC to make civil injunctions criminal, is purely a personal policy decision foisted on the citizens of Arizona by the Bar and the CIDVC. And by extension, this Court. (Reminder to

[3] http://www.bradycampaign.org/xshare/pdf/facts/dom_violence.pdf

all citizens reading this: You can vote judges out of office this November.)

You legal types often talk in the abstract about "irreparable harm." The Ninth Circuit says that "an alleged constitutional infringement will often alone constitute irreparable harm." (*Assoc. Gen. Contractors v. Coal. For Econ. Equity*, 950 F.2d 1401, 1412(9th Cir. 1991)) That ought to settle this matter, since we're not talking about alleged constitutional infringement, but an actual one. (Both 14th and 2nd Amendment.) It's happened to me, and Mr. Palmer, whose Second Amendment right has been revoked ex parte for blogging! So I'm shocked how caviler judges and the Bar are about these actual constitutional infringements, arguing that a judge can deprive a citizen of whatever constitutional right he wants, absent due process rights to boot.[4]

So let's talk about literal irreparable harm caused by this Rule.

There was a story last week about a 14 year old kid in Phoenix who had to shoot an armed intruder in order to defend himself and his younger siblings.[5] Crime happens. So I'm shocked that you are so willing to prevent me or Mr.

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[4] And never mind that unlike federal and state injunctions under Rule 65, there is no security required from the plaintiff to prevent frivolous petitions. And unlike federal injunction law there is no weighing of harm to the defendants. Nor do IAH's automatically expire in 10 days like state injunctions. Nor do Injunctions Against Harassment preserve the status quo, but rather reverse the status quo.

[5] http://www.azcentral.com/community/swvalley/articles/2012/06/22/20120622laveen-police-person-shot-critical-abrk.html

Palmer or countless others from defending ourselves and our loved ones via your lawless administrative rule simply because Councilman Winslow doesn't like being a called a "turd" or because some lady in Quartzsite doesn't like being called a "loser" or because some lady in Prescott doesn't like what Mr. Palmer blogs about her from Phoenix.[6] That's cruel and unusual punishment, especially in a mere civil matter, depriving us our right to defend ourselves and our loved ones. IAH's are not crimes, and they are not crimes of passion. The Legislature recognizes that. You should too. To be killed by a criminal because of your internal Rule would literally constitute irreparable harm.[7]

CONCLUSION

Unfortunately, when a petition to repeal this Rule was filed three years ago, the Court deferred and refused to choose the right. According to Mr. Palmer's federal civil rights lawsuit against you over this Rule, you told him then that

> "the matter has been referred to the State Bar Family Law Practice and Procedure Committee to consider and recommend to the Court standards to guide judges in their decision whether to prohibit possession of firearms during the pendency of an injunction against harassment."

(See Amended Complaint, *Palmer v. Jones, et al.*, F.Supp.2d, 2011 WL 4571673, D.Ariz., October 03, 2011 (NO. CV-11-1896-PHX-GMS))

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[6] He's made a 3 minute video on his case & mine. It's the first hit in a YouTube search for "Michael's Law." http://youtu.be/tcznFkhpOIY

[7] To add insult to injury, our suffering families can't sue you for damages because you've given yourselves immunity.

Please, don't do this again. The CIDVC has already telegraphed that it is not going to uphold the law and constitution. Rule 6.E.4.e.2. is the CIDVC's Poster Child. It's not going to let its baby Brady die. (See Comment from Judge Ronan.) Surely you Justices can figure this one out for yourselves without guidance from some subordinate committee with an agenda. This Rule is purely political. You're supposed to be above politics. You must act and you must act now to repeal your Rule.

But your history suggests you'll be reluctant to act. So I encourage all patriots reading this to act instead. If the Court won't uphold the law and continues to exercise the power of the Legislature (violating Article III of the Arizona Constitution) then all good citizens must take the law into their own hands. Buy a gun and buy one now to defend yourself, your family and your country before a judge, arbitrarily and capriciously, absent law, says you can't. And if you're told to turn your gun over to a Sheriff in a civil injunction, where the law never calls for that (see my End Note), remember that, according to A.R.S. §13-2810 you only have to obey a lawful court order.

Things got crazy here when King George III foisted arbitrary rules on the Colonists. If, then, for no other reason, for the sake of orderly society, this Court must repeal Rule 6.E.4.e.2. of the ARPOP.

END NOTES

Although neither Judge Ronan nor the State Bar mailed hard copies of their comments to me (violating Rule 28(D)(2) since I paper filed), I reply below.[8]

I. Reply to Judge Ronan, Chair CIDVC

Judge Ronan's comments arise from the May 8, 2012 meeting of the CIDVC. Strangely, the minutes of that meeting are not available on the CIDVC website as of this writing. Nevertheless, his comment suffers from two fatal flaws, which I call "The Ostrich argument" and "Pontius Pilate argument."

But first, note that Judge Ronan starts out with a history of the DVRC. The key word in his history is "domestic violence." It is NOT "civil injunction." Really, the DVRC, and its sister, the CIDVC, by their very titles, have no business messing with civil injunction law.

A. The Ostrich argument

Basically, Judge Ronan's argument here is twofold. 1) That because federal law, 18 U.S.C. §922 (g)(8) (which echoes due process requirements) prohibits Brady from "applying to an ex parte hearing, regardless of the parties' relationship," it can't happen; and 2) if one can't prove their name was put on the FBI's NCIC due to a civil IAH, it doesn't happen.

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[8] Is there some reason why Judge Ronan doesn't comply with Rule 28(D)(1) and use 14 pt. font, per ARCAP 6(c)?

This is like sticking one's head in the sand.

Taking the second argument first, the fact is that, until it's too late (after one is arrested for possessing a firearm) it is almost impossible to know when one's name has been put on the NCIC. In fact, the Arizona DPS refused to comply with a subpoena to produce a screen shot of Mr. Palmer's NCIC record for his federal civil right lawsuit challenging this very Rule. See Attachment 1 (used with permission) where the DPS cites A.R.S. § 41-1750 as ground for not complying with a federal subpoena.[9]

Nevertheless, Mr. Palmer was able to discover that his name was put on the NCIC list twice by way of civil Injunctions. (The first after a hearing three years ago, the second time after an ex parte petition.) A six minute audio clip of his phone call to a DPS specialist is on the CD I filed with the court for this reply and is also available at http://youtu.be/Ipj4KigSwao. (The link is case sensitive.) As the audio proves, Mr. Palmer's name was put on the NCIC, listing him throughout the nation as a "prohibited possessor" (i.e., "Brady Positive") on the day he was

[9] And calling the FBI to "review and challenge your file with them" as the DPS suggests in its letter to Mr. Palmer is an exercise in futility. The FBI will not release NCIC information either; and even you could convince them any documentation you sent them is bona fide, the FBI has no challenge mechanism to the NCIC. It's like the TSA's No-Fly list. Once you have a black mark, there's no way to un-do it. Although if Judge Ronan is willing to help me challenge and clear my name, I will stand corrected.

served with an ex parte civil IAH.[10] Since it happened to him, it's reasonable to believe it's happened to me.

Therefore, Judge Ronan's argument that ex parte Brady can't happen, and doesn't happen, fails.

Taking Judge Ronan's first argument next, Judge Ronan got one thing right. Brady cannot apply to civil injunctions. Yet in the real world, it happens. Attached is paperwork from Mr. Palmer's first civil injunction (not a DV matter), where you can see he was plainly listed by the Prescott court as Brady Positive and the court told the Sheriff to put his name on the NCIC. Despite the fact his was a civil Injunction! (Attachment 2, used with permission.)

And not even the Prescott Justice court believes Judge Ronan. Mr. Palmer cited Judge Ronan's assertion three weeks ago when he (Mr. Palmer) filed an Emergency Petition with the Prescott Justice court to rescind his unlawful Brady Disqualification. (Posted at http://suingforjustice.blogspot.com/2012/06/petition-to-rescind-unlawful-brady.html.) Even though Mr. Palmer quoted the Chair of the CIDVC to the Prescott Justice Court, quoting that ex parte Brady violates federal law (not to mention the constitution), the Prescott Justice court has not rescinded the ex parte Brady Disqualification.

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[10] Record check starts at 2:30. Result at 3:00. Confirmation of Brady Disqualification at 4:00, and again at 5:50 in the audio.

Again Judge Ronan's argument fails. Just because federal law says Brady can't apply in IAH's, it does. No thanks to the CDIVC.

B. The Pontius Pilate argument

Judge Ronan goes on to wash his hands of the NCIC mess, saying he's not responsible for what happens. But at the same time, he says it's his job to hand over defendants in civil injunctions to the authorities for execution – arguing that it's his job to send unlawful firearm prohibition orders to a Sheriff. This argument was offered long ago in history and still does not hold up on judgment.

First, Judge Ronan is wrong in describing of what is supposed to happen by law when a Sheriff's Department receives civil injunction paperwork. Quoting A.R.S. § 12-1809(K), "On receiving these copies, the sheriff shall register the injunction. Registration of an injunction means that a copy of the injunction and a copy of the affidavit or certificate of service of process or acceptance of service have been received by the sheriff's office." Period. That is all that's supposed to happen.

There is nothing in law, as Judge Ronan incorrectly states, requiring Sheriff's to forward data to the NCIC for civil injunctions. Once again, Judge Ronan, the CIDVC, and the entire judiciary in Arizona fail to distinguish Orders of Protection (which arise ONLY out of criminal domestic violence situations) from civil injunctions. You all lump them together because you wouldn't listen to

Judge Karp, who warned you this would happen when you chose to use the same form for criminal and civil matters.

Judge Ronan trivializes this, essentially saying "It's no big deal." May I suggest he ask Judge Donahoe what it's like to have one's reputation forever smeared?[11]

When one's name is put on the NCIC as Brady Positive, one has effectively the same gun rights as a convicted felon. As far as the FBI and law enforcement officers all over the nation are concerned, one has been "convicted" federally (via a state civil matter) and is a prohibited possessor. No matter why. Judge Ronan has no idea when an NCIC Brady will show up on a background check or what effect it will have. Or how a police officer will act during a routine traffic stop when he sees on his computer screen that his contact is considered a domestic violence offender by the FBI. (Cops will tell you that DV situations are the most dangerous, which arguably puts my life in greater danger.)

II. The State Bar

The State Bar misstates my petition. I am not challenging the lawfulness of Rule 6.E.4.e.2. ONLY when invoked ex parte, but ALL THE TIME. There is no statutory basis for the Rule—ever! Nor is it ever right to revoke a constitutional

[11] "'Thirty years of trying to build a good reputation, it's gone because of their conduct." http://www.azcentral.com/news/articles/2011/10/05/20111005thomas-case-judge-Donahue-testifies-about-bribery-case.html

right absent arrest and/or a criminal trial.[12]

Look, the nation (and the world) was shocked when a judge in Ohio threatened Mark Byron with jail if Mr. Byron did apologize to his ex-wife on Facebook.[13] At the time, Mr. Byron had a criminal domestic violence protective order against him (later quashed), so he represents the worst case scenario. (As compared to someone with only a civil injunction against him.)

Yet several constitutional lawyers suggested, and I'm sure the Bar knows, that forcing one to say something against their will is a violation of the First Amendment.[14] In addition, the judge arguably violated Mr. Byron's Fifth Amendment right (in spirit) by extorting a confession out of him under threat. (The SCOTUS says technically that's a 14th Amendment issue. See *Chavez v. Martinez*, 538 U.S 760, 123 S. Ct. 1994 5 (2003)) And threatening his Fourth Amendment right, threatening jail if he didn't. Mr. Byron got such an outpouring of support that he stopped apologizing and is appealing the judge.

Now, if absent law, a judge cannot revoke a criminal domestic violence

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[12] The Bar also misstates the Rule. The rule does NOT make it "mandatory that, upon issuance of an ex parte order of injunction against harassment, the court enter an order prohibiting" firearms. Wrong as the Rule is, it only says "may."

[13] http://www.news.com.au/technology/no-facebook-apology-no-jail-time-for-scorned-ex-husband/story-e6frfro0-1226305297494

[14] "one important manifestation of the principle of free speech is that one who chooses to speak may also decide what not to say." *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc. .,* 515 U.S. 557, 573 (1995).

offender's constitutional rights, then neither can a judge revoke a civil injunction "offender's" constitutional rights.

Last, the Bar's statement that Rule 6.E.4.e.2. "is intended to further public safety through a cooling-off period of ten days" is totally specious.

First, it proves Mr. Palmer's point that all this is about legislating from the bench. There is absolutely nothing in the annotated A.R.S. §12-1809 about firearms, let alone a "cooling-off" period for firearms. As the Bar admits, it sees itself in the public policy business, intending to further "public safety." (But not MY safety. The Bar wants to keep ME from defending myself or my wife from criminals.)

Nor is there anything in the CIDVC's own Rule about a ten-day cooling-off period. The only reference to ten-days in A.R.S. §12-1809 is with respect to setting the maximum time to grant a hearing when a defendant challenges an injunction. But that is not a mandatory ten day cooling-off period. If a defendant has the resources and the system moves fast enough, a defendant could challenge an IAH the same day it was issued. Thus, this cooling-off stuff is a totally specious argument by the Bar.[15]

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[15] Nor is there a reason given in the annotated history of -1809 for setting ten days as the maximum time for granting a requested challenge to an IAH. I presume 10 days comes from the realities of court dockets, scheduling and sending notices, as in election challenges, where 10 days is considered expedited.

Both the Bar and Judge Ronan are grasping at straws—to the point of ridiculousness—trying to defend their position because their position is untenable. Please stop them from embarrassing themselves—and the Court—further. Repeal this lawless Rule. Immediately.

RESPECTFULLY DATED this 28th day of June 2012

By 

Michael Roth
PO Box 422
Quartzsite, AZ 85346

(cont'd) Or it could be a half-hearted attempt by the Legislature to mitigate the due process violation inherent in an ex parte injunction which do not, by statute, comport with Arizona Rule 65 regarding injunctions. So the ten days merely mimics the state's Rule 65(d) ten day limit on a temporary injunction. As if that makes everything okay.(Never mind that 10 days is not long enough to get a fair trial, to file pretrial motions, to subpoena witnesses, etc. (Especially for us pro se's.)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

"Courteous Vigilance"

JANICE K. BREWER Governor ROBERT C. HALLIDAY Director

December 8, 2011

Mike Palmer
18402 N. 19th Avenue, #109
Phoenix, AZ 85023

Dear Mr. Palmer:

The Department of Public Safety is in receipt of your Subpoena to produce documents, which is not dated and not signed, in a civil action case number 11-CV-1896-PHX-GMS. The documents being requested are printouts of an NCIC record for Peter Michael Palmer, date of birth 03/18/56. The release of this information by the Arizona Department of Public Safety would be in violation of Arizona Revised Statute §41-1750, which prohibits the release of any information or records obtained from the Arizona Criminal Justice Information System (ACJIS). Therefore the records will not be released to you pursuant to the above mentioned statute.

However, you may contact the Federal Bureau of Investigation at 304-625-3878 to review and challenge your file with them.

If you have any questions please contact me at 602-223-2702.

Sincerely,

Teresa Fuentes

Teresa Fuentes, Documents Custodian
Arizona Department of Public Safety
602-223-2702

Attachment 1

COURTS OF ARIZONA – PRESCOTT JUSTICE COURT – 120 S CORTEZ, ROOM 103

PRESCOTT, AZ 86301 – (928) 771-3300

Melody Bosing Plaintiff	80081217 Case No.	NOTICE TO SHERIFF OF BRADY DISQUALIFICATION
Date of Birth -vs- Peter Michael Palmer Defendant	AZ013063J Court No., NCIC 1303 Court No., DPS	

Notice is hereby given to the Sheriff of this County that the Order of Protection ("protection order") issued in the above-referenced case on (date) 12-17-08 meets the criteria established in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. §§ 922(d) and (g)) and should be assigned a positive Brady Record Indicator in the Protection Order File of the National Crime Information Center database.

The Defendant is disqualified from purchasing or possessing a firearm or ammunition based upon the following:

1. The protection order was issued or affirmed after a hearing of which the Defendant received actual notice and at which the Defendant had an opportunity to participate.

2. The Defendant is a person subject to a protection order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child. As defined in 18 U.S.C. § 921(a), "intimate partner" means with respect to a person, the spouse of a person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

3. The protection order includes a finding that the Defendant represents a credible threat to the physical safety of such intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

The protection order issued by this Court remains in full force and effect and was not modified at the hearing held.

Mary E. Hamm 4-9-09

Judicial Officer Date

faxed + Ian yeso 4-9-09 10:40A

Effective: August 2001

Attachment 2