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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of: PETITION TO AMEND RULES 23, 24, 25 & 26 OF THE ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE	Supreme Court No. R-__-_____ **Petition to Amend Rules 23(a), 24(b)(2), 25(a) & 26(a) of the Arizona Rules of Protective Order Procedure**

Pursuant to Rule 28 of the Supreme Court, Mike Palmer, writing on behalf of the Coalition to Stop Abuse of Civil Harassment Law,[1] petitions this Court to amend Rules 23(a), 24(b)(2), 25(a) & 26(a) of the Rules of Protective Order Procedure to make it clear to judges that they do not *have* to issue criminal Orders of Protection or civil Injunctions Against Harassment when petitions are defective on their face.

I. Background

This petition arises out of real world observations of how judges in Arizona

[1] The Coalition is a loose collection of Arizona residents (including a Law Enforcement officer) who have been abused by civil Injunction law. (I.e., who have been vindicated on appeal, but whose reputations will forever be tarnished, much like what happened to U.S. Supreme Court Justice Brett Kavanaugh when he was falsely accused.)

handle petitions for either criminal OOP's or civil IAH's.

To review, in Arizona, all protective orders commence with a filing of a verified petition with the clerk of the court. (ARPOP Rule 16.)

The first order of business for a judge should be to determine if, on its face, a petition meets the minimum requirements to issue an order. (That is, a "prima facie" test.)

For example, to issue a civil Injunction Against Harassment, the law requires a "series of acts." (Which this Court has said is "two or more acts.") But from what we have observed, plaintiffs often document only one act of (alleged) harassment, rendering their petition defective on its face.

In theory, if a petitioner does not document more than one act of harassment, then that should be the end of the matter because the petition is meritless, not having met the requirements of the law. Think traffic tickets and how they're routinely dismissed for defect.

As such, a hearing over it is pointless. (Not to mention a waste of valuable court resources.)

But this is not what happens in practice in the world of protective orders.

In practice what really happens is that judges tell the petitioner that their petition is defective, why it is defective, and then *judges counsel the petitioner about how to cure the defect* so as to obtain their Injunction! (Often by going on a fishing expedition with the plaintiff to string new catches onto the petition.)

This Court would never know that any of this goes on under the covers

because, as we'll show, petitions are often amended by plaintiffs at the direction of judges in a "backdated" manner to cure defects. As such, everything looks proper to casual observers. But we must look closer.

There is an old saying about laws and sausage: it is better not to see either being made. But here we need to see how protective orders really are made. And the only way to see is to either attend a hearing in person or to listen to the audio from hearings, as below.

So, to show the Court how the System really works, we have uploaded a seven minute audio file (.mp3) of short audio clips, taken from a 1.5 hour long real world ex parte hearing to issue a civil IAH. (To play the audio, type "tiny.cc/civil_IAH_audio" , without the quotes, in a web browser. (Note the caps and underscores in the hyperlink.[2]))

Here is a brief narrative of the audio: The judge begins by acknowledging the law, that an Injunction *has* to be based on the written petition. Nevertheless, she tells the plaintiff that if, during plaintiff's testimony, the plaintiff adds anything verbally over and above what is written in the petition, then the plaintiff should add these new allegations—in backdating fashion—to the petition!

Then, in the next audio clip, the judge concedes that the instant petition is defective because it lists only one act of (alleged) harassment. (This should have ended the hearing. Actually, it should never have gone to a hearing at all, since it

[2] The full link is https://jumpshare.com/v/YLf29GNBG5Mn4u34D5Ci

didn't pass the *prima facie* test.)

Nevertheless, the judge tries to help the plaintiff make her case by going on a fishing expedition with the plaintiff. (That is, suborning new "evidence" of harassment from the plaintiff, evidence that was NOT in the petition.)

Next, we hear the plaintiff say that she has video of the alleged harassment. But that she did NOT enter it into evidence for the petition hearing. Nor did the plaintiff mention any video in her petition.

But again the judge counsels the plaintiff as to how to game the System, telling the plaintiff to mention the video in the petition so that the judge can lawfully consider it.

Then, once again, the judge admits that, as the petition currently stands, there is not enough evidence to issue an Injunction. (Saying it is "close.") So, in a Judy Judy-like way, the judge solicits even more testimony from the plaintiff and counsels the plaintiff how to close the gap to get an Injunction. (Specifically, by adding embellishments to the petition about how many times the plaintiff told the defendant to stop the alleged harassment. (We add here that there was never any harassment. The injunction was vacated on appeal. See Epilogue.))

At the 2 minute mark, the judge reads the law on Harassment again, again noting that there must be a "series of acts." But that plaintiff's petition only alleges one act, on one date. (At the same place and time.)

Undaunted, the judge presses on, asking the plaintiff if she has ever told the defendant to stay away from her. The plaintiff answers "No." So again, there was

no reason for the judge to continue this hearing.

The judge even says so at the 3 minute mark, calling this matter "borderline," acknowledging that the plaintiff is bringing up new things that are not on the petition, but as the petition currently stands, there is not enough.

Then, based on what the judge thinks might happen in the future, she tells the plaintiff that "I need just a little more on *paper*."

The judge indicates that she needs this not only to issue an Injunction, but also to bolster petitioner's case in anticipation of a challenge hearing or appeal by the defendant!

The judge counsels the plaintiff to add more acts of harassment during the last year, specifically citing times.

At the 4 minute mark, the judge gets more specific and tells the plaintiff the defect in her petition: That petitioner has not shown that the (alleged) harassment has been continuous and, at this point in time, the judge *still* cannot issue an Injunction.

Next, the judge counsels the plaintiff to burn the video to CD for an anticipated challenge hearing. (Whereas no judge told the defendant to do the same with his video evidence for his challenge hearing.)

At 5 minutes, the plaintiff says that she will follow her attorney's ... err, the judge's advice, and will "add" more items to the petition. Again the judge counsels that plaintiff that she must make an airtight case on her petition or else the Injunction will not stand when challenged by the defendant. Specifically, the judge

tells the plaintiff "*we* need to have more there to show that you're being harassed, that he's singling you out." (Who is the "we" here?)

And with that, the judge "orders" the plaintiff to "add on paper" to the petition. The judge says she will take a recess to allow the plaintiff time to cure her defective petition, and even offers the plaintiff a government issued pen and paper to do so! (The judge also tells the plaintiff to put hearsay in the petition, namely the plaintiff's version of what her not-entered-into-evidence video allegedly shows.)

At 6 minutes, the judge again reinforces to the plaintiff that she (the plaintiff) must add to her petition to make this an airtight case because the judge "almost guarantees" that the defendant will request a challenge hearing. That the challenge hearing will be based on what is written in the (soon to be amended in accordance with the judge's advice) petition. Then the judge reminds the plaintiff "Dates. Try to do your dates."

At the end of the excerpt, at 6:30, after a recess, the judge claims that, "in the interest of justice," she has allowed the plaintiff to add to her petition in order to get an Injunction.

Of course this totally ignores justice for the defendant.

You're the attorneys, so you tell us. Is it lawful for a judge to consider facts not entered into evidence? (That is, not stated in a complaint or petition?) Is it lawful for judges to go on fishing expeditions to try to find new evidence to hang a defendant? Is it lawful for judges to aid a plaintiff to enlarge a criminal or civil complaint in order to make a case against a defendant?

Even if all these acts by judges are lawful, they can't be right because they are inherently prejudicial. Judges are essentially acting as pro bono attorneys for plaintiffs, advising them how to make their case against their (perceived) adversaries. So in addition to judges acting as "judge, jury and executioner," we can add "legal counsel for plaintiff" to the list. No wonder so many Injunctions are granted. Judges are granting their own petitions!

II. Purpose

While the audio above is only a sample of one, it is the Coalition's observation that it is representative of the norm in Arizona. For whatever reasons, many judges feel that they need to issue protective orders whenever petitioned, regardless of the initial merits of a petition.

This must stop.

Apparently the state of Minnesota has faced a similar problem with its judges feeling obligated to issue protective orders, because Minnesota statute says "Nothing in this section shall be construed as requiring a hearing on a matter that has no merit."

And so we propose adding the same language to Rules 23(a), 24(b)(2), 25(a) & 26(a) of the ARPOP that Minnesota has in its statutes. And amplifying that language as below.

III. Contents of the Proposed Rule Amendment

<u>Nothing in this section shall be construed as requiring a hearing on a matter that has no merit. If a petition is meritless, the judge shall not hold a hearing and</u>

shall dismiss the matter sua sponte. Furthermore, if a petition is meritless, a judge is prohibited from advising a petitioner how to cure their petition.

This language needs to be added to all four Rules (as opposed to one place in Rule 16) because, as we have seen in the past in this forum, judges don't read or remember all of the ARPOP. So this language needs to be associated with each individual Rule so that judges will see this instruction when considering any particular type of order.

As there is no downside to including these instructions to the Rules, we ask in the interest of *equal* justice that this petition be granted.

To the best of our knowledge, no one has filed a similar petition within the past five years.

SUBMITTED this 10th day of January 2020.

By /s/ Mike Palmer

EPILOGUE

For inquiring minds who want to know, here is the story behind the Injunction. (It is instructive to see how plaintiffs have learned to turn Injunctions Against Harassment—what was meant to be a shield—into a sword, ironically, to harass others.)

The plaintiff is a small town newspaper reporter/publisher in Quartzsite. At the time, her husband was a town Councilman in Quartzsite. As such, she is part of the Establishment.

One night at a town hall meeting, the defendant, who is known by the locals for speaking out against the Establishment, was speaking to the Council during a Call to the Public. When the defendant said something to the Council that the plaintiff didn't like, the plaintiff, who was sitting in the audience, made the "cut him off" gesture to her husband who was sitting on the Council. (She ran her thumb across her throat.)

After this, during a break in the meeting, the defendant approached the plaintiff and calmly asked her a few times why she had done this to him.

A Quartzsite police officer witnessed the entire event, but refused to intervene (even when asked by plaintiff) telling the plaintiff that the defendant was not harassing her but merely exercising his First Amendment right.

Despite what the eyewitness law enforcement officer told her that night, the plaintiff ran to a judge the next day crying "Harassment!" (Ironic because this newspaper publisher/reporter has probably "harassed" people herself by asking questions to get a story.)

The Injunction was eventually vacated on appeal. But not without a few months of the Sword of Damocles hanging over defendant's head, since the punishment for allegedly violating an Injunction Against Harassment is instant jail, no judicial discretion. And a subsequent criminal record for life. (No expungement

in Arizona.)

The final irony was that the Injunction was vacated because it did not meet the "series of acts" requirement for Injunctions.

(And the Appeals court also said that even if it had been a series of acts, no reasonable person would have been in fear of the defendant calmly asking questions about what the plaintiff had done to him.)