

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Draft Minutes

September 13, 2016; 10:00 a.m.

Arizona State Courts Building

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (chair), Judge Keith D. Barth, Judge Marianne T. Bayardi, Judge Carol Scott Berry, Carla F. Boatner, Lynn Fazz, Dorothy Hastings, Judge Statia D. Hendrix, Bonnie Lawrie-Higgins, Kellie MacDonald-Evoy, (proxy for Shannon Rich), Patricia Madsen, Dana Martinez, Judge Wyatt J. Palmer, Assistant Chief Mary Roberts, Amy Jo Robinson, Rebecca Strickland

Telephonic: Patricia George, Deborah Fresquez, Captain Jeffrey Newnum, Judge Patricia A. Trebesch

Absent/Excused: Diane L. Culin, Gloria Full, Anna Harper-Guerrero, John R. Raeder, Tracey J. Wilkinson

Presenters/Guests: Judge George T. Anagnost, John Goodman, Judge Sherri Rollison, Alison Ferrante, Joan Bundy

AOC Staff: Kay Radwanski, Karla Williams

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The September 13, 2016, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:04 a.m. by Judge Wendy Million, chair.

B. Approval of Minutes

The draft minutes from the February 9, 2016, CIDVC meeting were presented for approval.

Motion: To approve the February 9, 2016, meeting minutes, as presented. **Moved by** Judge Keith Barth, **Seconded by** Judge Carol Scott Berry. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. The Link Between Animal Cruelty and Human Violence

Joan Bundy, Esq., and Alison Ferrante, assistant prosecutor, City of Gilbert, presented on the link between animal abuse and domestic violence. Animal cruelty statutes and prosecution of animal cruelty cases were discussed as well as the use of Orders of Protection to protect animal and human victims of domestic violence. An examination of the link between animal cruelty and domestic violence and the manner in which abusers use animals to exert power and control over the human victims were covered. Case studies demonstrating the connection between animal abuse/neglect and human abuse/neglect were presented as well as pet custody agreements.

Ms. Ferrante explained that Arizona Orders of Protection can include adults, children and animals (A.R.S. § 13-3602 (G)(7).) She noted that a victim is more likely to seek shelter and leave the abuser if the animal is included in the Order of Protection. Although animals can be included in the existing petition, deciding ownership of the animal can be difficult for judges.

B. Protective Order Petition

Judge George T. Anagnost, presiding judge, Peoria Municipal Court, proposed an alternate version of the protective order petition and asked for CIDVC support of its use in a pilot project. The pilot would test whether the alternate is a potential improvement over the existing form. This same form was presented to the Committee on Limited Jurisdiction Courts (LJC). LJC passed a motion supporting a possible CIDVC decision to use the form as a pilot in one or two of Arizona's limited jurisdiction courts.

Judge Anagnost noted that:

1. This proposed form is universal and meets the margin requirements for both superior courts and limited jurisdiction courts.
2. It uses the same text, with minor changes, and the same sequence of paragraph numbers. In essence, it double spaces the caption and opens up the paragraphs. It does replace the "black box" with a more explanatory phrase.
3. This is still a one-page document.
4. This proposed form is fully consistent with objectives to improve readability and understanding for pro per litigants. It also comports with suggested format under the Americans with Disabilities Act.
5. The actual protective order is unaffected. All data captured is the same.

Judge Sherri Rollison, presiding judge, Wickenburg Town Court, and pro tem judge in Peoria, added that current forms are not user friendly, particularly for petitioners under stress. She supported Judge Anagnost's proposal as she deals with these forms on a daily basis. John Goodman, victim assistance coordinator for the City of Peoria Prosecutor's Office, commented that the proposed forms are easier for victims to navigate.

During the summer, Kay Radwanski, AOC, met with the CIDVC Forms Workgroup to review an earlier version of Judge Anagnost's proposal. The workgroup developed another version that was shared with CIDVC members. Ms. Radwanski explained that Dave Byers, AOC administrative director, is authorized by ACJA § 5-207 to approve changes to the protective order forms. Courts may not change or alter the protective orders without AOC permission. Mr. Byers relies on recommendations from standing committees like CIDVC and LJC in making changes to the forms. The decision on Peoria's pilot project lies with him.

Member Comments

- The font on the Peoria version would be easier for persons with limited vision to read.
- A suggestion was made to proceed with the pilot and actively seek input from users.
- Judge Anagnost was asked to gather public feedback from Mr. Goodman and Judge Rollison.
- Parents who are applying on behalf of minors are sometimes granted injunctions instead of Orders of Protection. The current petition does not have the option to identify the minor as the victim, only as a protected person.
- Judge Anagnost said he is willing to report more frequently than 12 months as originally proposed.

Motion: To support the pilot project presented by Judge Anagnost with amendments to paragraphs 3, 4 and 5. **Moved by** Lynn Fazz. **Seconded by** Judge Statia D. Hendrix. Motion passed unanimously.

C. Proposed Amendments to ACJA § 5-207: Orders of Protection and Injunctions Against Harassment

Ms. Radwanski discussed ACJA § 5-207, which authorizes the AOC administrative director to approve changes to the mandated protective order forms that are used statewide. In its current form, ACJA § 5-207 contains a hyperlink that is no longer functional. The Forms Workgroup proposes that the link be removed and general directions to the forms be provided to the courts and the public. Also, the code refers to two court identification numbers that must appear at the top of each form; however, the templates for the Plaintiff's Guide Sheet and the Defendant's Guide Sheet do not indicate where these numbers should appear. As these forms are for the parties' use and are not part of the official case record, it is proposed that exceptions should be made for them. Other minor changes—such as changing “shall” to “must”—are proposed to improve clarity and readability.

Motion: To recommend that CIDVC file a petition to amend ACJA § 5-207 as proposed. **Moved by** Amy Jo Robinson **Seconded by** Judge Wyatt J. Palmer. Motion passed unanimously.

D. Workgroup Reports

1. *Judicial Education:* The Judicial Education Workgroup discussed potential speakers for the 2017 Judicial Conference. Among the suggested presenters are Judge Karen Adam (Ret.), Pima County, who spoke to CIDVC in February 2016 about domestic violence and child custody decisions, and Judge Jerry Bowles, a retired judge from Kentucky who speaks about lethality assessments and risk factors. Ms. Radwanski reported that CIDVC sponsored three domestic violence sessions at the Judicial Conference this past June. Attendance at the three sessions was 178.
2. *Orders, Enforcements and Access:* Judge Berry informed that the workgroup has been working on a protocol and guide for conducting ex parte protective order hearings by video. The process would require secure electronic transmissions between a location (a shelter, for example) and a court. Guidance regarding confidentiality of the petition should be included for advocates and the courts.
3. *Training and Education:* Judge Keith D. Barth reported on a five-step bench card on protective order procedures that is being developed for new judges. Judge Million suggested that it be ready for distribution at the Judicial Conference next June. Additionally, firearms bench cards have been created to assist in determining when a person may be a prohibited possessor under Arizona law and under federal law. About 150 firearms bench cards were handed out at the 2016 Judicial Conference.

E. Full Faith and Credit and “Registration” of Orders of Protection

Ms. Radwanski discussed full faith and credit regarding protective orders. When a court issues a protective order, the order is enforceable by law enforcement in other states and jurisdictions as if it had been issued in that state.

ARS § 13-3602(S) provides full faith and credit to protective orders issued by other states. This statute directs Arizona law enforcement to enforce an out-of-state protective order as if it had been issued by an Arizona court, as long as the order is still effective in the issuing

state. The statute also provides law enforcement with immunity if, in fact, the order is no longer valid in the issuing state.

Ms. Radwanski reported some instances where plaintiffs have been sent to Arizona courts by law enforcement to register out-of-state orders. There is no process in Arizona courts for registering out-of-state protective orders because of the existing full faith and credit statute. Despite this statutory provision, some law enforcement agencies believe that out-of-state plaintiffs must first register their orders in Arizona superior courts before law enforcement can intervene and protect the plaintiff from the defendant. Arizona superior courts do not have a procedure to "register" foreign protective orders, which results in confusion, with a plaintiff being sent back and forth between a police department and a court.

It was suggested that law enforcement be trained on the full faith and credit provisions. Amy Robinson, Maricopa Association of Governments, said that MAG has grant funding that may be able to be used for this purpose.

F. Report: Visit with Nepal Judiciary Representatives (taken out of order)

Judge Million reported on a recent visit with Nepal Judiciary representatives. The Nepalese delegation had specifically requested a meeting with Judge Million to discuss the issue of domestic violence. They were primarily interested in the projects that CIDVC works on and how the committee functions. They were given a presentation, and it was very well received.

G. ARPOP Rule Petitions (R-15-0035, R-16-0026)

Ms. Radwanski reported on decisions regarding two petitions to amend the Arizona Rules of Protective Order Procedure. Petitions R-15-0035 and R-16-0026- were filed in the 2016 rules cycle. The Supreme Court justices met on August 29, 2016, to make decisions regarding all petitions that were filed in the current cycle.

R-15-0035 requested amendment of ARPOP 25(b) and 26(b), the rules affecting the contents of petitions for Injunctions Against Harassment and Injunctions Against Workplace Harassment. CIDVC supported this petition but proposed alternate rule language. The court adopted this language.

CIDVC also supported R-16-0026, filed by AOC Administrative Director Dave Byers. The proposal would authorize a court, at a plaintiff's request, to transmit a protective order for service on a defendant to a cooperating law enforcement agency or a private process server under contract with the court. The Supreme Court approved this with a slight change. Instead of being sent for service "at the plaintiff's request," the order can be transmitted for service "with the approval of the plaintiff."

Both of these two rule changes will take effect January 1, 2017.

H. Case Law Update

Ms. Radwanski presented updates on two recent court cases. In State v. Haskie, a Coconino County case, a witness testified as a "cold expert" on the counterintuitive behaviors of domestic violence *victims* and why a victim might recant. The Arizona Court of Appeals found that the expert's testimony was not offender profiling or impermissible vouching of the victim's credibility.

Voisine v. United States, a U.S. Supreme Court case, affirms that a "reckless" domestic assault qualifies as "misdemeanor crime of domestic violence" under Lautenberg. In U.S. v.

Castleman, a 2014 case, the Supreme Court held that a knowing or intentional assault qualifies but did not address a “reckless” assault.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

The following persons addressed the committee during the Call to the Public:

Deborah Giannecchini
Ursula Johnston
Michael Manola

B. Next Committee Meeting

November 1, 2016; 10:00 a.m.
Arizona State Courts Building, Room 119A/B
1501 W. Washington Street
Phoenix, AZ 85007

The meeting adjourned at 1:47 p.m.