

# COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

## Minutes

Tuesday, November 17, 2015

10:00 a.m. to 2:00 p.m.

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

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**Present:** Judge Wendy Million (chair), Judge Keith D. Barth, Judge Carol Scott Berry, Ellen R. Brown, Diane L. Culin, Joi Davenport, Patricia George, Esq., Dorothy Hastings, Judge Stacia D. Hendrix, Patricia Madsen, Dana Martinez, Shannon Rich, Amy Robinson (proxy for Amy St. Peter), Rebecca Strickland, Tracey J. Wilkinson

**Telephonic:** Deborah Fresquez, Anna Harper-Guerrero, Judge Wyatt J. Palmer, Judge Patricia A. Trebesch

**Absent/Excused:** Judge Marianne T. Bayardi, Carla F. Boatner, Lynn Fazz, Gloria E. Full, Captain Jeffrey Newnum, Deputy Chief Andrew R. Reinhardt, Assistant Chief Sandra Renteria

**Presenters/Guests:** Christine Groninger (Arizona Bar Foundation), Judge Kerry Passey (Ft. McDowell Yavapai Nation), and Merri Tiseth (Arizona Coalition to End Sexual & Domestic Violence)

**Administrative Office of the Courts (AOC):** Denise Lundin, David Withey

**AOC Staff:** Kay Radwanski, Julie Graber

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## I. REGULAR BUSINESS

### A. Welcome and Opening Remarks

The November 17, 2015, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:01 a.m. by Judge Wendy Million, Chair. Judge Million welcomed members and introduced new members, Deborah Fresquez from Coconino County Victim Witness Services, and Amy St. Peter from the Maricopa Association of Governments.

### B. Approval of Minutes

The draft minutes from the May 12, 2015, meeting of the CIDVC were presented for approval.

**Motion:** To approve the May 12, 2015, meeting minutes, as presented. **Action:** Approve, **Moved by** Judge Keith D. Barth, **Seconded by** Patricia George. Motion passed unanimously.

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. Expanding the Role of Lay Legal Advocates

Christine Groninger, Arizona Bar Foundation, and Merri Tiseth, Arizona Coalition to End Sexual & Domestic Violence (ACESDV) reviewed the role of lay legal advocates

(LLA) in areas of family law, housing and protective orders. They discussed the efforts to expand the current education and supportive role and its scope of assistance to improve access to justice for victims of domestic violence, provide more services for self-represented litigants, reduce document preparation in legal aid programs, and increase efficiency in the courtroom. Ms. Groninger described the proposed 24-month pilot project that would be low cost, work within the current system, have oversight and evaluation components, and allow an LLA to become a certified legal document preparer (CLDP). Participants would have to meet training requirements and agree to be supervised by legal aid attorneys. She discussed the project's impact and possible rule changes regarding the unauthorized practice of law and certification for legal document preparers. The greatest challenge for rural counties and non-profit organizations is the \$650 fee to become a certified legal document preparer.

Ms. Tiseth defined the LLA's training requirements and reviewed the basic, expanded and prohibited services. LLAs would be able to select, complete and review basic forms upon certification for CLDP; sit with the client at the litigant table; provide notes to litigants when and where necessary; and accompany a client in conferences in a supportive role only. However, LLAs would be prohibited from providing legal analysis or legal advice; representing the client in court, or disclosing information in violation of a court order or rule.

The presenters reviewed comments received from other stakeholders. The Arizona Commission on Access to Justice assigned a workgroup to look at all non-lawyer activity and how it could be implemented. The Commission on Victims in the Courts raised possible issues of liability and presumption of role if the LLA sits at the table with the client.

During discussion, a question was raised about whether there would be ongoing issues with conflicts. While the LLA is working under the supervision of a legal aid attorney, the conflict check system used by Legal Aid would be used. After the supervision period is over, the LLA would not be subject to Legal Aid's conflict check and would be able to help anybody. Members also inquired about the impact on the legal profession.

#### **B. Discussion: Domestic Violence Offender Treatment**

Judge Million updated the committee on the progress of the Domestic Violence Offender Treatment Workgroup, which was established to develop minimum standards for courts when approving domestic violence offender treatment programs not otherwise approved by the Department of Health Services (DHS), a probation department, or the Department of Veterans Affairs (VA) for persons convicted of a misdemeanor domestic violence offense. The law allows courts to approve these programs, subject to rules created by the Arizona Supreme Court, and takes effect on January 1, 2016. The workgroup drafted a proposed code section that was modeled after DHS rules but was less stringent for non-intimate partners and allowed for non-DHS certified treatment providers. Judge Million presented the workgroup's proposal to the Committee on Limited Jurisdiction Courts (LJC), which only supported the program in concept. The LJC felt that the standards did

not sufficiently address the logistical challenges in rural counties and suggested alternative delivery programs, such as distance learning and mail order programs.

CIDVC members raised a concern about the delivery of an offender treatment program without a monitoring component because it could lead to more risk.

### **C. Amended ARS § 13-3967 and Lethality Assessment**

Ellen Brown, Pima County Attorney's Office, provided background information regarding amendments to ARS § 13-3967, which requires judges to consider the results of a risk or lethality assessment when setting bonds and conditions of release for a person arrested on domestic violence charges to better determine the risk to the community and to domestic violence victims. Ms. Brown reported on revisions that Pima County made to Form 4(a) in the Rules of Criminal Procedure. Pima County's version of the form incorporates 12 lethality assessment questions based on the Maryland Model Lethality Assessment Protocol (LAP) that are asked of the victim. She explained when a lethality assessment is initiated, how the LAP works for law enforcement and victim advocates, and its goals to build rapport, increase awareness of danger, educate, and encourage victims to obtain services. Law enforcement in Pima County started using a release questionnaire based on the form for felony and misdemeanor domestic violence arrests after July 3, 2015; however, the results have been inconsistent, and additional training will be necessary to address the issues.

#### **Member comments:**

- The statute does not differentiate between risk and lethality assessments.
- A victim's responses to an assessment administered by law enforcement are not confidential and could pose a safety risk.
- Law enforcement has not been trained to use this protocol as a way to connect a victim to services. The training should be expanded to judges and others who administer LAPs.

### **D. Discussion: Protective Order and Law Enforcement**

Judge Million discussed establishing a new workgroup to address issues regarding protective orders and law enforcement. Ms. Radwanski reviewed several topics that have come up:

- "Domestication" and full faith and credit: There is no need for protective orders to be domesticated. Law enforcement is supposed to enforce out-of-state protective orders based on the person's word.
- Foot distance requirements: There is no foot distance requirement in the statute. The order indicates that the defendant is to have no contact with the plaintiff.
- Certified order: An order does not need to be certified to be served.
- Service of Orders of Protection not issued by the Phoenix City Court: The policy of the Phoenix Police Department is to have the plaintiff locate the defendant to have the order served in the City of Phoenix. This policy goes against the intent of protective orders to avoid contact situations.

- Tracey Wilkinson will chair the new Protective Orders and Law Enforcement Workgroup.

**E. Pro Bono Attorney List for Sexual and Domestic Violence Programs**

Shannon Rich, ACESDV, and Patricia Madsen, Community Legal Services, explained the need to create a list that connects advocates in shelters with pro bono attorneys who are willing to assist in emergent situations and address issues with confidentiality and privileged communication.

**F. Tribal Court Protective Order Repository (*item out of order*)**

David Withey, AOC Chief Legal Counsel, and Judge Kerry Passey, Acting Chief Judge, Ft. McDowell Yavapai Nation, provided background information regarding tribal court protective orders and the efforts by Judge Passey to make his Project Passport compliant orders available to law enforcement. Judge Passey noted that there are 560 tribes in country, 26 Native American shelters, and most tribal protective orders issued are not entered into the statewide and nationwide databases. Although it is unclear why the Department of Public Safety will not enter or accept tribal protective orders, the situation poses serious safety concerns for both law enforcement officers and the community because officers do not have access to the offender's complete history report, including the offender's current protective orders, prohibited firearms possessor status, and previous domestic violence assaults. He sought advice from CIDVC on how to address these challenges and get the data entered into the statewide and nationwide repositories.

The committee consensus was to refer the matter to Tony Coulson at the NICS Task Force. Mr. Coulson addresses issues with entry of protective orders into NCIC.

**G. Domestic Violence Training for Judicial Officers**

Judge Million discussed the concept of mandatory domestic violence training for judicial officers in light of the requirement in ACJA § 1-302(H)(5)(b) that judges, clerks and staff who process Orders of Protections and Injunctions Against Harassment attend training on these orders on a regular basis. She referred members to the mandatory domestic violence training requirements in California and nationwide.

**Member comments:**

- The committee consensus was that mandatory training, covering the processing of protective orders and domestic violence, should be every other year until the judicial official is no longer assigned in this area. Juvenile court judges should be covered by the rule but excluded if they do not process protective orders.
- Some members noted that the mandatory training could be difficult in some jurisdictions because every pro tem judge handles protective order hearings and domestic violence issues. In addition, there are not many types of domestic violence training available.

**H. Workgroup Reports: (*item out of order*)**

- **Orders, Enforcement and Access**
- **Training and Education**

Orders, Enforcement and Access Workgroup: Judge Carol Scott Berry reported that the workgroup is working on a reference card for agencies and law enforcement to set up remote video conferencing. There is a flowchart on one side and written information on the other to address different learning types. The workgroup needs to reconvene to discuss finalizing the reference card and distributing it.

Training and Education Workgroup: Judge Keith Barth reported on the progress of the bench cards regarding protective order procedures and the alternative methods of disseminating the bench cards to new and existing judges. The workgroup will need to meet to make final updates or clarifications. CIDVC was asked to provide two sessions at the Annual Judicial Conference. Suggestions should be forwarded to Judge Bayardi, chair of the Annual Judicial Conference Workgroup.

Judge Barth joined the Protective Orders and Law Enforcement Workgroup.

**I. Report: ARPOP Rule Petitions (R-15-0010, R-15-0016) (item out of order)**

Judge Million reported that CIDVC's rule petition restyling the ARPOP rules was adopted as submitted with two amendments from the Pima County Attorney that allow victims seeking an ex parte order of protection to be accompanied 1) by advocates, and 2) by their children if the petitioner would otherwise be denied access to the court. The new rules have also been incorporated into the Bench Briefings.

**J. Case Law Update: *Elonis v. United States***

Kay Radwanski updated members on a recent opinion, *Elonis v. United States*, issued by the U.S. Supreme Court. This case focused on lyrics that were posted on a social networking website and whether the comments constituted a threat under 18 U.S.C. § 875(c). The Supreme Court overturned the conviction and held that the defendant's crime required showing that the defendant intended to issue threats or knew that the communications would be viewed as threats, rather than that a reasonable person would regard the defendant's comments as threats.

**K. Update: Bench Briefings**

Bench Briefing No. 6 has been made available to judges and court staff. Bench briefings will be revised to incorporate the new ARPOP rules.

**III. OTHER BUSINESS**

**A. Good of the Order/Call to the Public**

None present.

**B. Next Committee Meeting Date**

Tuesday, February 9, 2016; 10:00 a.m.

State Courts Building, Room 119

1501 W. Washington Street, Phoenix, AZ 85007

The meeting adjourned at 1:53 p.m.