

DOMESTIC VIOLENCE RULES COMMITTEE

January 11, 2006 – Meeting Minutes

PRESENT:

- Honorable William J O'Neil – Chair
- Honorable Mark Armstrong - telephonically
- Evelyn Buckner
- Ellen Crowley
- Honorable Elizabeth Finn
- Larry Farnsworth
- Bridget Humphrey
- Honorable Carolyn Passamonte
- Lauri Thomas
- Dale Wiebusch
- Brian Yee
- Honorable Benjamin Zvenia
- Clarence Cramer

STAFF:

Konnie Young Neal
Annette Mariani

Administrative Office of the Courts
Administrative Office of the Courts

CALL TO ORDER:

The meeting was called to order at 10:18 am. Signed copies of Administrative Order No. 2005-85 and a copy of the updated Domestic Violence Benchbook were distributed to members.

ANNOUCEMENT

A website for the Domestic Violence Rules Committee is in the process of being created. Konnie Neal asked the Committee to contact her with any input which they would want included into this site. As part of this site, a portion could be created which would only allow the committee members to have access during the process of drafting.

APPROVAL OF MINUTES

MOTION: To approve the minutes reflecting the correction: Meeting was called to order at 1:00 pm.

VOTE: Minutes approved unanimously

Review Domestic Violence Procedures in Place

Judge O'Neil gave a brief presentation on the format of how business on domestic violence orders is conducted in the State of Arizona. How can Domestic Violence orders be addressed?

- ✓ Administrative Order
- ✓ Rules
- ✓ Judicial Code Section

The Supreme Court's view was that the Benchbook was not an appropriate rule. A benchbook that could be modified internally without public comment is not a good rule. Committee's direction is to decide what needs to be done.

Judge O'Neil asked the Committee to keep in mind when discussion begins, how best can the Committee serve the public.

Define the Problem

- From Law Enforcement perspective, some judges may not ask the questions needed in hearings.
- On Orders of Protection - there doesn't seem to be sufficient due diligence.
- The Benchbook is not followed or checked.
- The issuances of Orders of Protection are contrary to the standing decree.
(Law enforcement may not know which order to work off of)
- Where would the bench book be placed?
- There needs to be a proactive stance rather than a re-active.
- Administrative Orders are not direct enough.

Benchbooks -

- ✓ Are seen as scripts.
- ✓ One of the difficulties is that it is 170 plus pages.
- ✓ A "true" bench book is needed.
- ✓ This is accessible to the public and they depend on it.

It was suggested that the script be taken out and the rest be kept as a resource book. Training would be needed across the board on its use.

Konnie Young Neal gave information on where Project Passport is in regards to the implementation of the First Page on an Order of Protection. A date in Fall of 2006 was discussed.

To be Tabled:

The question of whether or not judges should be allowed to access CPOR (Court Protective Order Repository) or LPOR (Law Enforcement Protective Order Repository) prior to issuing an order had been discussed in prior CIDVC meetings and will be tabled for the next meeting. Information from CPOR goes to NCIC (National Center for Investigation of Crimes). These are seen as court records. Judge O'Neil asked the

Committee to think about whether this something worth exploring with new technology, and is it ethical?

Judge O'Neil asked the Committee what the goal is.

- Uniform practice regarding issuances of protective orders.
- To protect the public.

Determine the Scope of the Project

- Separate the scripts and the checklist from the Benchbook and the balance would be the Domestic Violence Resource Book.
- Administrative Orders are not direct enough
- Have a reference in the Administrative Order to the *Arizona Rules of Family Law Procedure (ARFLP)*
- Rules should not go into the Supreme Court Rules – it was suggested that they should go in a place where practitioners will look (*Family Law Rules* and in the *Civil Rules*)
- What parts should go into the Rules – limit to procedural aspects and aimed at litigants.
- When coming up with procedural rules, it would be wise to put in *Civil Rules* and *Family Law Rules*.
- Is the protective order part of civil law or family law – is it separate from both of these? This would need to be answered for both judges and litigants.
- Should statutes be amended to have statements?
- Main text should be part of the *Civil Rules*.
- Cover judges' actions or litigant's actions.
- What about Rules directing clerks how to handle DV procedures?
- What happens when orders become custodial orders? What steps should be taken? What processes should be put in place?
- Include the Resource Book in Rule 95.

After discussion it was the consensus of the Committee that the direction to be taken will be the crafting of Rules with potentiality of having Administrative Orders that will make reference to the Resource Book.

Rules of Evidence

In *Civil Rules* the *Rules of Evidence* apply, no hearsay to introduce documents you have to bring in a custodian of documents

In *Family Law Rules* a relaxed standard of evidence applies. This is used for administrative hearings. Hearsay is allowed, no custodian of documents is needed.

There is an opt in and opt out provision in the rules.

Discussion:

Most of the protective orders litigants are *pro se* parties, so the Committee may want to look at using a relaxed standard.

Relaxed rules can be helpful in these settings – must keep in mind the defendant’s due process rights are not set aside.

Would also have to keep in mind the difference between the Superior Courts where the judge is an attorney, and the Limited Jurisdiction Courts where the judge may not be an attorney.

Orders of Protection are very limited by their scope.

MOTION: To have the same relaxed evidentiary standards as introduced in the *ARFLP* with the understanding that there would not be an opt in and opt out provision.

Seconded: By Brian Yee

VOTE: Motion approved unanimously

MOTION: To have the Rules not be stand alone and mirror rules in Civil Law and Family Law Rules.

Seconded: By Brian Yee

VOTE: Motion approved unanimously

Judge O’Neil posed the question as to how extensive should the rules be.

- Seeing that they will be in both Civil Law Rules and Family Law Rules certain provisions are not needed.
- Will they govern the clerk’s actions, the judge’s actions?
- How do people file them in?
- What would be the procedural aspects of the rules?
- Should form shopping be limited?

Workgroups will be developed to look at certain sections as to what is needed, what can be discarded, and what could be added. These workgroups can be set-up in categories.

Lauri Thomas	Clerks – Rules that guide filing. Lauri will speak to Michael Jeanes regarding some line of rules that give better direction for the clerk’s statewide.
Larry Farnsworth	DV BB Section 10 – Firearms, Weapons
Judge Armstrong	DV BB, Sections 4,6, 7 & 8
Clarence Cramer	Mediation – DV Issues
Brian Yee	Mediation – DV Issues
Commissioner Passamonte	DV BB, Section 11 & Priorities of Orders, multiple orders
Judge Zvenia	Pro Se Viewpoint
Ellen Crowley	DV BB Sections 5 & 9
Bridget Humphrey	DV BB Sect. 1,2, & 3 & Outline

MOTION: To make the recommendation to the Committee on the Impact of Domestic Violence and the Courts that the Resource Book be separated out from the Domestic Violence Benchbook.

Seconded

VOTE: Motion approved unanimously

CALL TO THE PUBLIC:

No public members were present.

NEXT MEETING:

The next meeting is scheduled for February 8, 2006 at the Arizona Courts Building from 2:00 – 5:00 pm in Conference room 119A/B. Judge O’Neil asked that the Committee work on the tasks for which they volunteered and to bring their product to the next meeting.

ADJOURNMENT:

The meeting adjourned at 12:47 pm.

DOMESTIC VIOLENCE RULES COMMITTEE

Meeting Minutes

February 8, 2006 2:00 PM – 5:00 PM

State Courts Building, Conference Room 119 A&B

Conference Call Number: (602) 542-9003

DV RULES MEMBERS PRESENT

Honorable William J. O’Neil, Chair

Honorable Mark Armstrong

Honorable Kyle Bryson

Evelyn Buckner, MSW

Clarence Cramer M.A., LPC

Ellen Crowley

Larry D. Farnsworth

Honorable Elizabeth R. Finn

Bridget Humphrey, Esq.

Honorable Carolyn K. Passamonte

Lauri Thomas

Dale R. Wiebusch

Brian W. Yee, PhD

Honorable Benjamin Zvenia

STAFF PRESENT

Konnie Young Neal, Committee Specialist

Kim Ruiz, Support Staff

1. Call to Order

The meeting was called to order at 2:12 pm. Judge O’Neil welcomed all the members and asked to rearrange the agenda (move the discussion of Member Tasks with revising the DV Benchbook to the beginning), because he had to leave early for an unexpected meeting.

2. New Materials

The following new materials were distributed to the members:

- a. *Agenda*
- b. *Revised Membership List*
- c. *Draft Minutes (January 11, 2006)*
- d. *Mission Statement and Goals Draft*
- e. *Rules of Procedure for Protective Orders (Judge Armstrong’s Draft)*
- f. *Rules of Procedure for Domestic Violence Cases (Bridget Humphrey’s Draft)*
- g. *DV Rules—Benchbook I, II, & III*
- h. *DV Rules—Benchbook V and IX (Ellen Crowley’s Draft)*
- i. *Clerk of Court Processes (Lauri Thomas’ Draft)*

Review and Approval of Minutes:

The minutes of the January 11, 2006 meeting were reviewed and approved with no discussion.

3. Mission Statement and Goals

Judge O'Neil asked that the members review the proposed mission statement and goals for discussion at the next meeting.

4. Discuss Members Tasks

a. DV Benchbook Sections IV, VI, VII & VIII (Judge Armstrong)

Judge Armstrong presented the changes he made to the above sections of the *Domestic Violence Benchbook*. He explained that the four sections encompassed most of the procedural requirements in the Benchbook.

The following are the changes he made:

- Changed all references of “should” to “shall”. “Should” is not rule or legislative language. If it should be “should”, it shouldn't be in the rules.
- Converted all the “notes” to “Committee Comment” to keep with the Rules format.
- Added the “Rules of Evidence for Hearings” on page one. They are an edited version of the current *Arizona Rules of Family Law Procedure*. They may not be in the correct place, but he wanted to preserve the relaxing of the Rules of Evidence, although they don't contain the “opt-in” option. They will need to be revised before they go into the Family Law Rules.

Judge Armstrong recommended creating a small workgroup to review these sections with focus on:

- Paring them down;
- Removing provisions that don't belong in Rules, and
- Addressing the references made to attachments and exhibits.

Judge Armstrong didn't want to remove too much on his first draft, which is why he kept the references to statutes. Discussion ensued about whether a correlation table should be created for the statutes. It was decided that a summary of statutes should be included in the DV Benchbook and DV Resource Manual.

Workgroup Members (RULES)

Hon. Mark Armstrong, Chair

Hon. William O'Neil

Hon. Kyle Bryson

Clarence Cramer

Larry Farnsworth

Bridget Humphrey

Brian Yee

Hon. Benjamin Zvenia

Judge Armstrong stated that when most courts and agencies devise rules, they rarely place any restrictions on themselves. They usually place restrictions on those who come before them. This does the opposite; it places restrictions on the court, which we should be aware of during this process.

b. DV Benchbook Sections I, II & III and Outline (Bridget Humphrey)

Bridget Humphrey's outline for the Domestic Violence Rules follows the *ARFLP* outline, which may not be necessary. Following are the changes she made to the sections:

- Removed Statute references, and
- Struck all the resource language and rewrote brief summaries for:
 - Scope of Rules
 - Definitions: OP, EOP, IAH and IAWH
 - Applicability of Other Rules
 - Pleadings allowed

ACTION: Ellen Crowley will email the reformatted versions of Sec. I-III to Judge Armstrong so he can insert them into his Rules of Procedure (the new formatted version from Ellen Crowley) and circulate it to the workgroup.

c. DV Benchbook Sections V & IX (Ellen Crowley)

Following are the changes Ellen Crowley made to these sections:

- Deleted portions that were repetitive elsewhere in the Benchbook;
- Omitted various notes, and
- Created new section headings.

ACTION: Ellen Crowley will email her new versions of Sec V & IX to Judge Armstrong for review from the workgroup.

d. DV Benchbook Section X (Larry Farnsworth)

ACTION: Due to personal crises' over the past month, Larry Farnsworth will bring his changes to the next meeting.

e. DV Benchbook Sections XI & XII and Priorities of Orders and Multiple Orders (Hon. Carolyn Passamonte)

Commissioner Passamonte deleted Section XII, because it duplicated information in Section IV.

ACTION: Commissioner Passamonte will email Judge Armstrong her new version of Section XI, so he can insert them into his Rules of Procedure (the new formatted version from Ellen Crowley) and circulate it to the workgroup.

ACTION: Priorities of Orders and Multiple Orders will be brought to the next meeting after Commissioner Passamonte and Dr. Yee have time to review the issues.

f. Clerks and Rules that Guide Filing (Lauri Thomas)

Lauri Thomas distributed a handout explaining the processes for Clerk of Court with OP's and IAH's, but explained they are specific to Superior Court of Maricopa County and don't have much cross-over with other counties or other level courts. Chair O'Neil asked Judge Finn if she could provide the same information for Limited Jurisdiction Courts. Discussion ensued regarding the political issues involved in standardizing courts processes and the effect it will have on the courts. Judge Finn felt it was important to establish a workgroup to frame the following issues:

- Difference of processes between Superior Courts and Limited Jurisdiction Courts;
- Service issues and request for hearing processes that differ among same level courts;
- Answer if it is possible to standardize the different courts processes;
- Answer if we want to present a position or is the issue too political, and
- Answer if we just want to provide different processes for the different levels.

Judge O'Neil recommended that the workgroup should get feedback from Clerks' Association and other affected groups. Judge O'Neil decided it was important for the work of this workgroup to be separate from the work of the RULES Workgroup.

Workgroup Members (PROCESS ISSUES)

Hon. Elizabeth Finn, Chair

Evelyn Buckner

Larry Farnsworth

Lauri Thomas

Dale Wiebusch

Patricia Wuensche

g. Mediation and DV Issues (Dr. Brian Yee and Clarence Cramer)

Dr. Yee said that mediation seems to preclude victims of domestic violence, and we need to preserve the Opt-out provision. He said there are conflicting responses from the bench regarding which Order trumps in a Superior Court visitation Parenting Time Order vs. an OP. Discussion ensued. Judge Finn explained that she always holds an OP over visitation for the safety of the children. Dr. Yee explained that there is confusion from all parties involved, including the litigants, and there needs to be clarification; the DV Rules need to do that.

ACTION: Dr. Yee will present next meeting.

h. Pro Se Viewpoint (Judge Benjamin Zvenia)

Judge Zvenia said the goal is to make it easier for *Pro Se* litigants, so he is thinking about creating a flow chart for a visual instruction.

ACTION: Judge Zvenia will present next meeting.

5. Court DV Issues.

A. Limited Jurisdiction Courts Retention of Protective Order Records

Konnie Neal summarized the discussion that had ensued in the CIDVC meeting prior to this meeting, and stated that CIDVC had recommended that limited jurisdiction courts maintain the five year retention of protective order records. The members asked why this was before them, and Konnie Neal explained that Melinda Hardman, who is staffing an LJC Records Retention Subcommittee, requested that this issue be vetted around to CIDVC and DV RULES for input. Discussion ensued with concerns about what happens to cases that are open longer than three years, and one member stated that the OP is destroyed and case is dropped. Judge Finn also raised concerns about relying on electronic retention of protective order records because there are a fixed number of spaces per field on a free form, which means not all the data from the physical OP is retained. She wouldn't allow an electronic form to come into court in lieu of the original document. LJC warrants are not served, so there is a much greater chance of having someone violating a Court Order at LJC level, without that Order having been served. She recommended that we wouldn't have to keep the original document if we could produce an optically imaged document that retained the integrity of the original document with the Judge's signature etc, so it satisfied the Rules of Evidence.

MOTION: Motion to recommend that the five year retention of records for limited jurisdiction courts is maintained.

SECONDED/

NO DISCUSSION

VOTE: Unanimous

B. Judicial Accessibility to Protective Order Court Records (CPOR/LPOR & DV Case Look-up)

Robert Roll gave a presentation on DV Case Look-up, which is an application they created as a view into CPOR for all the Protective Orders, no matter what court they were filed in. They established a database that can pull-up an Order by the names of anyone named anywhere in the Order.

Konnie Neal summarized the history of why this issue has come up and explained it is being brought before CIDVC, DV RULES, COSC, LJC and other committees for information gathering. Some questions posed:

- If courts could communicate regarding protective orders requested, denied, granted and quashed, would it be beneficial?
- What are the ethical implications of courts communicating and judges reviewing court records prior to issuing or denying a protective order?
- Would it be advisable for judges or courts to look and see if OP's have been requested, issued, quashed, etc.?
- Since they are public records, would it be considered investigation?

Discussion ensued. Judge Finn referenced a criminal case that says you can't take judicial notice of your own prior convictions and shouldn't be doing those kinds of investigations. She felt there were ethics point of release conditions for a judge in this situation. Judge Zvenia asked what the problem was with having a clerk verify what is

out there. Judge Finn said there was no difference whether it is a judge or a clerk doing the investigating. Judge Armstrong felt it was information a judge should have access to, because there weren't ethical implications with all of it. Any court should be able to review these records and use them within the bounds of the Rules of Evidence and ethics, other than at time of initial application. Commissioner Kyle Bryson referenced a statute that gives wide latitude for what a judge can consider and feels this falls within that latitude. Judge Finn felt that it does still affect judgment, and it is using information other than what is on the petition.

Konnie Neal read from page 17 of the DV Benchbook:

N. Limit on Number of Protective Orders

There is no limit on the number of times a party may request a protective order. The number of times a protective order has been dismissed does not provide a basis for denying a request for protective relief. Each time a petition for protective relief is filed, the JO must make an independent determination whether there is reasonable cause to believe that the applicable statute has been violated (A.R.S. §§ 13-3602(E), 12-1809(E) and 12-1810).

ACTION: Judge Finn and Judge Armstrong recommended that Judge O'Neil, on behalf of CIDVC, ask Keith Stott for an opinion from the Ethics Advisory Council whether it is appropriate to consider the issuance, denial, or ultimate dismissal of a request for an Order of Protection in determining whether to grant an Order of Protection on a new request.

It was concluded that further discussion is necessary and the Committee agreed to move this item to the next meeting's agenda.

6. Call to the Public

No public members were present

7. Next Meeting

The next meeting is scheduled for March 1, 2006, at the State Courts Building from 10:00 am – 2:00 pm in Conference Room 119A/B.

8. Adjournment

Judge Armstrong (acting Chair in Judge O'Neil's absence) adjourned the meeting after the motion was made and passed unanimously at 4:04 pm.

**DOMESTIC VIOLENCE RULES COMMITTEE
MINUTES**

Wednesday, March 1, 2006
10:00 am to 2:00 pm
State Courts Building
1501 W. Washington, Room 119A/B
Phoenix, AZ 85003

MEMBERS PRESENT:

Honorable Kyle Bryson
Clarence Cramer
Ellen Crowley
Larry D. Farnsworth
Honorable Elizabeth R. Finn
Bridget Humphrey

Honorable William J. O'Neil
Honorable Carolyn K. Passamonte
Laurie Thomas
Dale Wiebusch
Dr. Brian W. Yee
Honorable Benjamin Zvenia

MEMBERS ABSENT:

Honorable Mark Armstrong
Evelyn Buckner

STAFF:

Ms. Konnie Neal
Ms. Kim Ruiz

I. CALL TO ORDER

A. WELCOME AND OPENING REMARKS

Judge William O'Neil, chair, called the March 1, 2006 meeting for the Domestic Violence Rules Committee to order at 10:22 am.

B. APPROVAL OF MINUTES FROM February 8, 2006

Minutes for the February 8, 2006, Domestic Violence Rules Committee meeting was presented for approval. Changes were made to clarify statements in Sections 4(g) and 5(A)(B).

MOTION: Motion was made and seconded to approve the February 8, 2006 meeting minutes as amended. Motion passed unanimously. 12-0-0. DVRULES-06-003

II. MISSION STATEMENT AND GOALS

Points discussed included:

- It was suggested to change the title to Protective Order Rules, because it captures both workplace and family violence.

- It was agreed to change “domestic violence cases” to “protective orders” throughout the document.
- It was questioned whether B(8) should be “Relax” or “Clarify”, and it was discussed that it should remain “Relax” to match the Family Law Rules, or change it to “Develop”.
- It was suggested that B(12) be removed, because it is not part of the Domestic Violence Rules Committee’s Administrative Order to change legislation or propose amendments. That should be left to CIDVC. The members agreed.

The Mission and Goals Statement is a fluid document that is open to change. It will be on the next meetings agenda for the purpose of the final report.

III. PROJECT PASSPORT UPDATE

Konnie Neal gave a brief update summary from a recent National Center for State Courts Passport WebEx, of where we are with Project Passport and our New Protective Order forms. Arizona is seen as a forerunner of this project and is being used as a model for other states. Some highlighted changes to the Protective Order form were:

- Added “Defendant/Plaintiff Relationship” line;
- Added “Estimated Date of Birth” box, for if the exact birth date isn’t known;
- Added the line, “If you feel the plaintiff should not contact you, you have the right to request an order of protection,” to accommodate SB1097, currently in legislation and expected to pass.

It was requested that Dale Wiebusch lobby to have added to SB1097 that the implementation deadline be some date after the rollout of the Project Passport forms, to avoid changing forms multiple times which causes confusion and costs the courts extra time and money.

IV. JUDICIAL ACCESSIBILITY TO PROTECTIVE ORDER COURT RECORDS

This is an item brought forward from the last meeting for further discussion.

The following discussion ensued:

- Judge O’Neil spoke with Keith Stott, who reminded him that they do not provide expedited opinions. They release their opinions about once a year, and they would be happy to consider the issue under that timeline. In this case, he was not comfortable giving a verbal opinion.
- One ethics opinion states that a judge can consider departmental reports, etc. in determining release conditions.
- There is a case that states a judge cannot take judicial notice of their own records, even a file in their own court, for enhancement purposes.
- Given the way the statute is worded, can we legally consider the fact that someone has had an order in the past when considering the order that is in front of us? What would the benefit be of looking up other orders they’ve filed? There is a real disconnect.
- Is this not opening the door to another way to deny an order of protection?

- It is Judge O'Neil's view that this is a very limited committee and that the response be referred to CIDVC. He stated that this committee acknowledges it is a good question, but we this committee was not established to give recommendations or opinions; that is more for CIDVC.
- The consensus of this group is to refer this matter to CIDVC, noting ethical, evidentiary and legal concerns defined by statute.
- One point to consider: if part of the mission of this committee is to refer to scripts, then this will be a situation that will need to be covered. Is it appropriate or not for a judge to look at prior history, and when they can take it into consideration? This committee will have to deal with it eventually.

V. WORKGROUP REPORTS

A. RULES WORKGROUP

- Judge Armstrong submitted the draft that the Rule Workgroup already completed to the Committee in the meeting materials.
- Update and discussion from the workgroup will be moved to the next meeting's agenda, after the workgroup has had a chance to meet.
- Their meeting is scheduled for Friday, March 17, 2006, 10:30 am to 12:00 pm.

B. PROCESS ISSUES WORKGROUP

Members of the Process Issues Workgroup met Monday, February 27, 2006 via teleconference. Judge Finn summarized what was discussed in the meeting.

They determined there were two key issues for them to address:

1. Discrepancies between Superior Courts' and Limited Jurisdiction Courts' processes for notifying the plaintiff of a hearing. It was determined that they would create a survey that would be sent to the 15 Presiding Superior Court judges and Presiding Justices of the Peace for larger counties. The survey asks the respondents when the defendant requests a hearing, who is responsible for notifying the plaintiff of the hearing in Superior Court, Municipal Courts and Justice Courts. Also, what proof of service is sufficient. Plaintiffs and defendants should be operating under the same set of rules whether they are in limited jurisdiction court or superior court and whether it is an injunction or an order. The purpose is to find out if there is still a problem.

Points discussed were:

- In Pima County, the Clerk's Office makes the call and there is a notation at the bottom of the page they initial, confirming they placed the call and the results of the call (made contact, left a message or no contact). This would be the preferred form of notification, with the exception of Superior Court. The workgroup wants the court to be responsible for notification.
- In Superior Court, the Superior Court cannot tell the Clerk's Office that is a function of their office.

- In Maricopa County, the Family Violence Prevention Center accepts the responsibility of notifying the plaintiff via mail and phone.
 - It was recommended that a line be added to each option for if the court is responsible, and what method they use. Under methods “phone” needs to be added.
 - It was recommended that lines for comment be added to the end of the survey.
 - It was recommended that it be clarified that the respondent is answering for all the courts of their jurisdiction. Judge Finn will retool it.
 - The surveys will be sent to Konnie Neal, for the AOC to distribute to the Presiding Superior Courts Judges and Presiding Justices of the Peace, then collect for data analysis.
 - It was recommended that the survey also be sent to the Clerks of the Superior Court. It was decided that Konnie Neal will send it to Laurie Thomas and she will send it out to all the Clerks of the Superior Court.
2. There is a problem with Superior Court orders being served by law enforcement other than the sheriff’s office, especially now that there are a number of satellite facilities. Judge Finn gave a brief history of Judge Heilman’s bill that would have required service by any law enforcement agency. It was killed.

Points discussed were:

- The Statute has a tiered system, but it is silent as to who has a responsibility. It is permissive at certain levels and mandatory at others. All levels need to have mandatory language.
- There are courts that have concerns about accepting the responsibility to fax protective orders to the appropriate agencies to be served. There are both ethical and workload concerns.
- New York currently has a pilot program using electronic means (email) in one county. A designated person in the court was responsible for emailing the orders to the respective law enforcement agency. No results yet.
- They have tried to regionalize the sheriff’s office, but there is no funding in the budget for the necessary staff.
- It was suggested that this should be included in these Rules and let it be debated up the courts. The Rules could authorize the court or mandate the court, upon request of a litigant, to forward just protective orders to a serving agency.
- There is one process for injunctions and another process for orders.
- Dale Wiebusch is meeting with Eric Edwards, the Police Chief’s Association lobbyist, Friday, March 3, 2006. They have given Mr.

Edwards permission to work with Mr. Wiebusch on a resolution for this issue.

- This issue will be on hold until the outcome of Mr. Wiebusch's and Mr. Edwards meeting.

VI. MEMBER TASK UPDATES

A. DV BB SECTION X—FIREARMS AND WEAPONS

Larry Farnsworth

Mr. Farnsworth reviewed the changes he made to section X of the Benchbook. There is currently a hole where the defendant, in a case involving weapons, is ordered to do something with the weapons. There is no follow-up process with it.

Some points and questions discussed were:

- There is no exception for military or law enforcement personnel.
- A hearing would have to be set to determine if someone is in violation of the order. This would increase the hearing load dramatically.
- If these orders were enforced, where would all the weapons be stored? Is there a large warehouse that law enforcement has access to? Is there a process in place for receiving the weapons?
- Mr. Farnsworth stated that all enforcement agencies have to have a property and evidence room of some type, whether it is contracted out or onsite. So there is a method and a means for that to happen.
- At the time of service of the order of protection, does the officer inquire about weapons and confiscate them? When served at the home and one of the parties is made to leave the home, the officer inquires and sometimes confiscate weapons, but when service is away from the home, they do not have access to the weapons.

B. DV BB SECTION XI & XII—PRIORITIES OF ORDERS & MULTIPLE ORDERS

Comm. Carolyn Passamonte

Commissioner Passamonte's changes to sections XI and XII are incorporated in Judge Armstrong's *Rules of Procedure for Protective Orders*. They are now section O. It is open for review and changes and fine-tuning will be done at the March 17th Rules Workshop meeting.

C. MEDIATION AND DV ISSUES

Dr. Brian Yee and Clarence Cramer

Dr. Yee discussed section 4(H) of the original Benchbook, which is now section L and also section O(2) of the new Rules. The purpose of the change is to clarify the issue of multiple orders and provide information to the parties.

Points discussed were:

- In Pima County when a protective order is requested and the children are named as parties, the court hearing the *ex parte* request refers the case to the assigned trial judge that considered the custody issues in the past.
- In section O(1) paragraph 1, are we giving priority to the earlier served order? Do we need to do that because of the conflict of exclusive use of the home? Right now law enforcement makes them both leave, which we might want to just leave alone rather than making a formal agreement that one stays.
- In section O(1) paragraph 3, need to specify it is **protective** orders.
- Do we want to base priority on who filed the order of protection first? This could be abused. The rules could state that both orders are equally valid and require that parties are referred back to the court for hearing. There should only be a hearing if there is a conflict.
- Abusers tend to be a little more sophisticated in their ability to use the court system and use methods such as this over their victims.
- Settling conflicting orders is not a law enforcement function; they need to be resolved through the court, but law enforcement is caught in the middle.
- Both orders are valid, the court upon notice of conflicting orders, should set the matter for hearing, obtain the conflicting order and have the hearing be held on both of them. In the Rules, the responsibility should be on the court.
- What about children, when both parties have an order or protection against the other parent and the children are included in the orders? When the orders are conflicting, where do the children go while it goes to the court for hearing? Should we address this situation in the rules or not?
- Section O(2) is good because it puts the responsibility on the court, but needs to go even further. There should be a duty to transfer it to the court that put the exchange order in place in the first place, to schedule it for hearing. Superior Court needs to take on the responsibility to get the case to a judge for hearing.
- Right now, there is a big disconnect and all transfer orders have no meaning. We need to be able to call the judge directly to calendar it in smaller counties; larger counties need to have a dedicated person in the clerks office to contact for calendaring transfers.
- Lauri Thomas will take the proposal to the next Court Clerks Association meeting to get their feedback and other possible solutions.
- It was suggested that the rules should state that any protective order has priority over a parenting time order. The problem still

exists when each person has an order of protection, and they are considered equal.

- If we put that language in the rules, it might encourage a judge to ignore the line that says, “Orders of protection are not designed to be custody orders.” That may be how it has been done, but now we are going to have a rule that says to ignore custody orders? Shouldn’t they be equally enforced?
- If we create a system for transferring cases and getting them on the calendar how long would it realistically take to be scheduled? In the language, “timely” needs to be defined as 3-5 days.
- Section O(1), paragraph 3, seems to read that there will be a hearing even if there is no conflict. Do we want that? If there are not conflicting provisions there is no need for a hearing. The language needs to be changed to specify a hearing needs to be set if there are conflicting provisions.

Clarence Cramer discussed the issue of mediation in cases with domestic violence. In section 4(E) of the DV Benchbook, domestic violence cases were precluded from mediation. In section I of these Rules they are proposing to incorporate Rules 67 and 68 of *ARFLA*, which opens the possibility of mediation for select aspects (not appropriate for Orders of Protection) of domestic violence cases and emphasize the opt-out option. The goal is to make mediation safe and equal for both parties, rather than taking it away as an option.

Questions and points discussed were:

- What about the view that mediation doesn’t provide a level playing field for the victim and that the abuser is able to control the victim in mediation?
- Many victims are saying they want options and do not want to have certain avenues closed to them because they are a victim of domestic violence.
- There is not a level playing field in any situation, but with well trained mediators you can empower victims of domestic violence in the mediation process.
- Since the publication of the DV Benchbook Superior Court judges are required 6 hours of domestic violence continuing education per year.
- The language of the rule needs to include safeguards.
- Instead of repeating the Family Law rules, just reference them with our current introductory paragraph.
- In the civil law rules, we will need to have the full language.
- This was hotly debated in the *Family Law Rules*, because the concern is that if you open the door you will have judges that will routinely refer domestic violence cases to mediation.
- We can included the ABA mediation rules in a “Comment”.

- This needs to be run through the Coalition for input.

D. PRO SE VIEWPOINT

Judge Benjamin Zvenia

Judge Zvenia presented his information about Pro Se litigants and also a flow sheet system Fresno, CA uses to inform litigants.

Some obstacles a *Pro Se* litigant might encounter in trying to navigate the system:

- Outdated materials in the self-service center;
- Rural counties do not have the “self-generating” system Maricopa County has;
- Information is too large to download;
- There are no visuals to explain to litigants what has happened; how things are done; the timeline for the process;

Maricopa County has a unique “self-generating” system that has staff available to:

- Help people through the computer to get orders and required copies ready;
- See one of the commissioners or necessary person;
- Assist people who are going to fight, request a hearing, etc. through contact.

Next meeting, Judge Zvenia will bring information regarding what other limited jurisdiction courts are doing for *pro se* litigants.

VII. OTHER BUSINESS

A. CALL TO THE PUBLIC

No respondents

B. NEXT MEETING

Wednesday, April 5, 2006**

10:00 am – 2:00 pm

State Courts Building, Conference Room 119 A/B

**Depending on how much information the Rules Workgroup gets through in their March 17, 2006 meeting.

C. ADJOURNMENT

Judge William O’Neil, chair, adjourned the meeting at 2:00 p.m.

**DOMESTIC VIOLENCE RULES COMMITTEE
MINUTES**

Wednesday, April 5, 2006
10:00 am to 2:00 pm
State Courts Building
1501 W. Washington, Room 119A/B
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable Mark Armstrong
Honorable Kyle Bryson
Evelyn Buckner
Clarence Cramer
Ellen Crowley
Bridget Humphrey

Honorable William J. O'Neil
Honorable Carolyn K. Passamonte
Laurie Thomas
Dale Wiebusch
Honorable Benjamin Zvenia

MEMBERS ABSENT:

Larry D. Farnsworth
Honorable Elizabeth R. Finn
Dr. Brian W. Yee

STAFF:

Ms. Konnie Neal
Ms. Kim Ruiz

I. CALL TO ORDER

A. WELCOME AND OPENING REMARKS

Judge William O'Neil, chair, called the April 5, 2006 meeting for the Domestic Violence Rules Committee to order at 10:12 am.

B. APPROVAL OF MINUTES FROM March 1, 2006

Minutes for the March 1, 2006, Domestic Violence Rules Committee meeting was presented for approval.

MOTION: Motion was made and seconded to approve the March 1, 2006 meeting minutes. Motion passed unanimously. 11-0-0. DVRULES-06-004

II. DV SATELLITE BROADCAST

Judge O'Neil gave a brief overview of the March 23, 2006, broadcast: "Domestic Violence: Its Impact on the Courts."

- Dr. Richard Toon and Bill Hart from the Morrison Institute for Public Policy presented their study, "Layers of Meaning: Domestic Violence and Law Enforcement Attitudes in Arizona."

- Judge O'Neil moderated panels of experts who discussed and answered questions about the impact of domestic violence and the courts.
- Dr. Neil Websdale, from NAU, gave a presentation about fatality review teams.

III. MISSION STATEMENT AND GOALS

Konnie presented the current Mission Statement and Goals that were revised from recommendations from the last meeting.

Judge O'Neil stated that the Mission Statement is important for him, because when he writes the petition to amend the various rules, it will be utilized as a format to forward the reasoning behind the changes. Because of this, it would be very helpful to have all the members review it carefully.

Konnie reviewed the changes that have been made since the last meeting:

- Replaced “domestic violence cases” to “protective orders” throughout the document;
- Separated the Mission Statement into two parts;
- Changed grammatical errors
- Removed the last goals pertaining to legislative changes.

Recommendations for further changes were:

- Change the language “domestic violence cases” in number three to “protective orders”;
- Number six should not have the word “serious” included, because all domestic violence cases are serious, and
- There is also a problem in goal number six—prioritizing cases: if this is a goal, how do we prioritize domestic violence cases against each other? Also, to what extent do we have a duty to create that priority list? If our goal is that domestic violence cases as a whole should have priority over all other cases, that is what number six needs to reflect.

The Mission Statement and Goals is a fluid document that is open to amendment.

IV. RECENT SUPREME COURT DECISION

The United States Supreme Court issued a troubling opinion out of Georgia that might impact us and might not. (*Georgia v. Randolph*, 04-1067). A very fractured court determined that both occupants of a home have the constitutional right to deny entry to their castle, with neither one having override power. Chief Justice Roberts' wrote a dissent acknowledging the domestic violence ramifications and the lack of practical guidance for the officers in the field. The ruling opinion by Justice David A. Souter stated that this case has no bearing on domestic violence cases. It is potentially very troublesome.

V. LEGISLATIVE UPDATE

Dale Wiebusch gave the following updates:

SB1097: This has become a strike everything amendment and is now a human egg donor bill. This was the bill that would have added another line to our current proposed Order of Protection that would have “warned” the defendant that if they felt they needed to get their own Orders of Protection, then they should do so.

SB 1147: Went through; this is the bill that makes it a felony to obstruct the use of a phone to call 911 in domestic violence cases.

SB1164: This has become a strike everything bill and is now school grant bill. Senator Martin decided not to fight it. This was the strangulation bill.

HB2124: This bill protects people in a rental property from eviction for calling 911.

SB1416: They struck domestic violence from the bill and now it has been killed in the House Judiciary. It was a landlord/tenant bill that allowed tenants to break a lease due specific crimes committed against them in their rental.

HB2716: This bill died. The bill would provide protection to judicially appointed mental health professionals by making them immune from sanctions from their licensing boards; if a mental health professional followed through on their duty to report a complaint, but it was found to be fictitious or without merit, the complainant would be responsible for all responsible costs and attorney fees. The proposed bill read, “....The judge shall award these fees.” They should have changed the “shall” language to “may.”

SB1145: This bill is being held-up with all the difficulties associated with it. It is another castle doctrine bill, and it changes the burden of proof for self-defense to the state instead of the person doing the action. The original intent of the bill was to add car-jacking to the current statute, but they are trying to turn this upside-down. Rumor is it is an NRA bill.

Dale Wiebusch’s summary of his meeting with Eric Edwards was that law enforcement is willing to move a little bit if the courts are willing to move a little bit. An example is if the Courts are willing to expedite an order to law enforcement (via fax); then law enforcement is more willing to accept orders at locations other than the downtown location. He still needs to meet with the Sheriffs’ Association, because Eric Edwards is just affiliated with the Police Chiefs’ Association.

VI. CLERKS' ASSOCIATION UPDATE

The Policies Workgroup and Staff had determined that the survey on hearing notification procedures would be sent from the AOC to Presiding Superior Court Judges with copies sent to Clerks and Court Administrators. Results will be provided at the next meeting.

Lauri Thomas emailed the clerks a question regarding how they handle transfer protective order cases from lower courts. Based on the responses she received, it appears they are all, in one way or another, immediately notifying their divisions of the transfers. She did not hear from Pima, so she does not know their process, but based on the information gathered, it seems to be a Maricopa County issue. She recommended that it is a Maricopa County Clerk's Office issue that can be addressed outside of the committee, to make the process smoother.

VII. RULES WORKGROUP REPORT

Judge Armstrong reviewed the work of the Rules Workgroup since the last meeting. The document is not ready for the committee presentation and approval process yet, but hopefully by the next meeting we will have a product. Following are some of the noted changes:

- These rules are comprised of the procedure policies that were in the *Domestic Violence Benchbook*. They will be codified into rules, which will have the effect of law.
- Initially, the protective order rules were formatted into Rules 96-99 Section XIV of the *Arizona Rules of Family Law Procedure*. Rule 100 is reserved for forms, which we will not be address here.
- Most of the provisions in the policy that were discretionary ("should" language) have been changed to directory ("shall" language).
- The workgroup added a number of definitions to Rule 96(B), to avoid repetitive language throughout the rules.
- Rule 96(D) relaxes the rules of evidence and disclosure for hearings on protective orders. It is consistent with the Family Law Rules, with the exception of Rule 2 which allows the parties the discretion to opt out of relaxed version and into the formal rules of evidence. These rules do not allow that, and the standard would be the same as at administrative hearings.
 - Relevant evidence is admissible unless its probative value is outweighed by the considerations listed in 96(D)(1).
 - Records of regularly conducted activities are admitted if they meet certain criteria.
- Rule 96(G) regarding mediation needs to be discussed further. We need to determine if we want to expand this to include all ADR and if so, then we would reference or mirror the rules in *ARFLP*. The main rule, in terms of protective orders, is that protective orders themselves are not subject to mediation.

- Rule 96(L) is an area that language has been added and is still under revision. We still need to resolve the issue of conflicting orders and how they are enforced. It is proposed to have mandatory hearings for conflicting orders and the judges of the conflicting orders will confer with each other to determine who has the most familiarity with the case and has time on their calendar to hear the case. We will put in recommendation language.
- The remainder of the Rules closely tracks what was in the *DV Benchbook*.
- The Committee still needs to clean up the references to appendices that were in the original DV Benchbook.

Discussion ensued about where the rules would be best utilized. Points discussed:

- Some members suggested that the protective order rules do not necessarily need to be in the *Arizona Civil Rules of Procedure (ARCP)*; having them in *Family Law Rules* is where they will be utilized the most, because, for the most part, protective orders are a class of order that are family-related (with the exception of injunctions).
- Other members pointed out that the main concern and the reason it is important to have them in the *ARCP* is that Justices of the Peace and Municipal Court Judges do not use the *Family Law Rules* at all. Superior Court is really the only court that uses *Family Law Rules*.
- The Committee reached consensus that these rules probably need to be stand alone rules and not integrated into an existing set of rules.

VIII. PROCESS ISSUES WORKGROUP REPORT

The survey was amended a few times and was sent out to the 15 presiding judges from the AOC, March 31, 2006. The purpose of the survey was simply to gather information on how the counties notify defendants of a hearing. Konnie and Kim created a matrix to track the responses currently have four judges who have responded. The Policies Workgroup, with Judge Finn as Chair, will evaluate the information in the next meeting after all the responses have been tracked.

It is interesting to note that of the four judges who have responded, all said it is the court's responsibility to notify the defendant, and they notify defendants by mail. This is not consistent with what some members have heard from victims.

IX. CALL TO THE PUBLIC

Mr. John Titus, a member of the public, presented his experience with conflicting orders to the Committee. He was divorced five years ago. In the divorce decree it specified curbside pick-up and drop-off of the children. He was served with an Order of Protection stating he violated the earlier Superior Court Order that stated the children should be dropped off at curbside, because he drove into the driveway to drop them off. Previously, in a divorce post-decree modification, the

Superior Court judge adopted the recommendation by the family court advisor that Mr. Titus be allowed to drop the children off in the driveway. He was then served with another Order of Protection. He requested a hearing, but prior to the hearing he drove on the property to drop off the children. He was contacted by the police for violating the Order of Protection. He was not criminally prosecuted due to a technicality, but he is still concerned about whether the stipulations of a Superior Court order can be overruled by an Order of Protection. If so, he asked the Committee to consider which order has priority in the interim, before the hearing, and address this issue in the new Protective Order Rules.

This case is in direct relation to past discussions of the Committee regarding:

- Transferring cases from LJC to Superior Court, so only one court handles the entire process;
- Orders of Protection having priority over other orders;
- Massaging the language in the Rules to address imminent risk and situations where there is not pending cases, and
- Creating a defendant guide sheet similar to the plaintiff's guide sheet, so they are informed of their options.

X. ADJOURNMENT

Judge William O'Neil, chair, adjourned the meeting at 12:20 p.m.

NEXT MEETING

Wednesday, May 3, 2006

2:00 pm – 5:00 pm

State Courts Building, Conference Room 345 A/B

**DOMESTIC VIOLENCE RULES COMMITTEE
MINUTES**

Wednesday, May 3, 2006
2:00 pm to 5:00 pm
State Courts Building
1501 W. Washington, Room 345A/B
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable Kyle Bryson
Clarence Cramer
Ellen Crowley
Larry D. Farnsworth
Honorable Elizabeth R. Finn
Bridget Humphrey

Honorable William J. O'Neil
Honorable Carolyn K. Passamonte
Laurie Thomas
Dr. Brian W. Yee

MEMBERS ABSENT:

Honorable Mark Armstrong
Evelyn Buckner
Dale Wiebusch
Honorable Benjamin Zvenia

STAFF:

Ms. Konnie Neal
Ms. Kim Ruiz

I. CALL TO ORDER

A. WELCOME AND OPENING REMARKS

Judge William O'Neil, chair, called the May 3, 2006 meeting for the Domestic Violence Rules Committee to order at 2:10 pm.

B. APPROVAL OF MINUTES FROM March 1, 2006

Minutes for the April 5, 2006, Domestic Violence Rules Committee meeting were presented for approval.

MOTION: Motion was made and seconded to approve the April 5, 2006 meeting minutes as presented. Motion passed unanimously. 10-0-0. DVRULES-06-005

II. MISSION STATEMENT AND GOALS

The Committee members were asked to review the final draft of the Mission Statement and Goals and e-mail any proposed changes or comments to Konnie Neal and/or Kim Ruiz. Our deadline is prior to the November 1st deadline for filing the petition for adoption of *ARPOP*.

III. PROJECT PASSPORT AND PROTECTIVE ORDER FORMS

Judge O'Neil reviewed the changes CIDVC made to some of the protective order forms for the purpose of meeting technology needs. Some of the changes made to the forms were:

- Additional information was provided to the plaintiff on the *Plaintiff's Guide Sheet*. Some suggestions for additional language included:
 - Plaintiffs should carry the Protective Order with them at all times
 - Plaintiffs need to keep the court informed of any address changes
- Minor changes were made for field populations in the electronic module
- A *Defendant's Guide Sheet* was created

The forms were presented to the Domestic Violence Rules Committee for information and review.

IV. CALL TO THE PUBLIC

Mr. John Titus, a member of the public who spoke at the April 5 meeting, returned to the Committee with further developments in his case. Mr. Titus filed a Motion to Dismiss the Order of Protection. Upon finding out about the Superior Court case, the municipal court judge informed Mr. Titus that the court did not have jurisdiction to hear the Motion to Dismiss and stated that the case needed to be transferred to the Superior Court calendar. Mr. Titus has been waiting a month for the hearing to be scheduled and in the interim he is not sure which order has priority. He asked if the Order of Protection is still in effect while waiting for the hearing to dismiss.

Committee members responded with the following points:

- It is in the statute that even if there is a pending matter, the limited jurisdiction court can still proceed with the hearing, and transfer the case after. So there is not a loss of jurisdiction.
- The Rules Committee has discussed recommending that in instances of transfer, the Superior Court time limits are in effect for all courts involved. If there is exclusive use, then the hearing would have to be within five business days; for all other situations, the hearing would have to be within ten business days.

Olga Chaikheeva, General Manager of the Shield Foundation, presented two issues to the Committee:

- The process of granting of an Emergency Order of Protection (EOP) is slowed down if the plaintiff does not speak English. The court is required to have an official interpreter from official Interpreter Services present. If one is not available, the hearing for an EOP is held until an interpreter is available. Ms. Chaikheeva recommends:
 - The court makes the exception for "Emergency Interpreters" for EOPs. Emergency interpreters should be allowed to interpret via telephone, or non-court personnel should be accepted interpreters in the court.

- The *Rules of Protective Order Procedure* should consolidate reported acts of violence of the same parties into one hearing, so one judge can see the pattern. Currently, each reported incident is treated as a single act, with an independent hearing, so the judge is not necessarily aware of the multiple violations.

V. PROTECTIVE ORDER RULES OUTREACH

Konnie Neal prepared a schedule of the Committee meetings and presentations for the modified Protective Order forms and the *Rules of Protective Order Procedure (ARPOP)*. Konnie emphasized the following:

- The forms are being presented on an informational basis, because there are no substantive changes to the documents;
- *ARPOP* is being presented to AJC, COSC and LJC on an informational basis at the June meetings, but will request approval at the October meetings;
- The schedule helps determine our timeline for the approval process; the Committee must file a petition and draft of *ARPOP* by the November 1st deadline, if that is still the goal of the Committee for *ARPOP*;
- If we file the petition by the November 1, 2006 deadline, the earliest effective date for the Rules would be January 1, 2008, unless we request an expedited process;
- We need input from the Committee for outreach ideas to get out the word that the Rules are coming, and
- The release of the Project Passport protective order forms will most likely be combined with the release of *ARPOP*; they are a dual effort.

VI. PROCESS ISSUES WORKGROUP REPORT

Judge Finn gave an update on the survey results regarding Superior Courts' processes for notifying the plaintiff of a hearing. She reported the results of the survey showed that all reporting courts said it was the court's responsibility, not the defendant's, to notify the plaintiff of hearing. Discussion about how to address the issue of hearing notification ensued:

- It needs to be stated in the Rules that it is the court's responsibility to get out hearing notices. Otherwise there will be a court in the future that makes it the defendant's responsibility, if left unstated;
- It should be the same rule for all protective orders, not just Orders of Protection. Some courts have different notification processes for Orders of Protection and Injunctions within the same court. It should be the court's responsibility to get out hearing notices for all protective orders;
- This should improve court appearance rates which reduces court expenses (e.g. rescheduled hearings), and
- The Rule needs to specify that it is the court's responsibility to make an attempt to notify the plaintiff.

Judge O'Neil concluded the discussion by opening the motion for amendment to the Committee.

MOTION: **Motion was made and seconded to include in the *Arizona Rules of Protective Order Procedure* the Court's responsibility to attempt to notify the plaintiff of hearing for all protective order cases. Motion passed unanimously. 10-0-0. DVRULES-06-006**

VII. RULES WORKGROUP REPORT

Judge O'Neil gave a brief review of the initial intent of *ARPOP* and how it was determined these rules will best serve as stand alone rules. The product provided at the meeting was the overall format and substantive information that will be the final Rules. It is not the final product, but is a fair representation of what we will move forward with for approval. There will be some minor editing, but other than that the Committee should recommend approval today on the substantive information of *ARPOP*. The following discussion ensued:

- We still have not addressed the transfer procedures issue. The Rules need to really clarify the problems courts are currently having with the transferring of cases and how they slip through the cracks;
- Only Rule (1) has been fully reviewed. We need to complete a detailed review of the remaining Rules before voting;
- There are many repeated provisions through out the Rules and the Committee needs to decide if the repetition is necessary;
- There needs to be another full review for "stand alone" language vs. part of other rules language, and
- The Committee needs to address whether ADR should be included in the Protective Order Rules, because mediation generally is not an option for Orders of Protection.

It was concluded that a complete review of the document is necessary before the Committee could approve it.

The Rules Workgroup proceeded to draft new language for the following sections:

- Change the title to have it mirror other Rules formats:
Arizona Rules of Protective Order Procedure (ARPOP);
- Rule (1)(B)(1)(c), "Protected Persons" definition and statute reference;
- Rule (1)(E) Alternative Dispute Resolution;
- Rule (1)(I) Transfer Procedures, and
- Rule (1)(K) Record of Hearings.

VIII. ADJOURNMENT

Judge Elizabeth Finn, Acting Chair, adjourned the meeting at 4:30 p.m.

NEXT MEETING

Wednesday, June 7, 2006

10:00 am – 2:00 pm

State Courts Building, Conference Room 230

**DOMESTIC VIOLENCE RULES COMMITTEE
MINUTES**

Wednesday, June 7, 2006
10:00 am to 2:00 pm
State Courts Building
1501 W. Washington, Room 230
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable Mark Armstrong
Honorable Kyle Bryson
Clarence Cramer
Ellen Crowley
Larry D. Farnsworth
Honorable Elizabeth R. Finn

Bridget Humphrey
Honorable William J. O'Neil
Honorable Carolyn K. Passamonte
Laurie Thomas
Honorable Benjamin Zvenia
(telephonically)

MEMBERS ABSENT:

Evelyn Buckner
Dale Wiebusch
Dr. Brian Yee

STAFF:

Ms. Konnie Neal
Ms. Kim Ruiz

GUESTS:

Julie Ahlquist
Pat Wuensche
Robert Roll

I. CALL TO ORDER

A. WELCOME AND OPENING REMARKS

Judge William O'Neil, Chair, called the June 7, 2006 meeting for the Domestic Violence Rules Committee to order at 10:07 am.

B. APPROVAL OF MINUTES FROM May 3, 2006

Minutes for the May 3, 2006, Domestic Violence Rules Committee meeting were presented for approval.

MOTION: Motion was made and seconded to approve the May 3, 2006 meeting minutes as presented. Motion passed unanimously. 10-0-0. DVRULES-06-007

II. DOMESTIC VIOLENCE (DV) TRAINER'S REPORT

Pat Wuensche gave a presentation on the DV issues she has gathered while training judicial staff and clerks across the state. The training is arranged in a question and answer format covering the following reoccurring confusing issues in the courts:

- Specific aspects of the Brady and Lautenberg statutes;
- How to serve minors when they are named as the defendant;
- The rules for naming minors as defendants or plaintiffs;
- The qualifiers of the Brady relationship test;
- Whether LJC can issue orders when a Superior Court case is pending;
- The details of Protective Order (PO) such as the number of PO's a plaintiff may request, when a PO expires and the number of plaintiffs/defendants per PO;
- Whether a defendant's attorney may accept service for his client;
- The qualifiers for firearm prohibition and the differences between Brady, Lautenberg and state statute, and
- DV Resources.

She and Konnie Neal also gave a brief update on Project Passport and the new Defendant Guide Sheet (DGS).

- All the forms will be presented to various committees for their input. The DGS is the only form for which we are seeking AJC approval, the others did not have substantive changes, so they do not need to go through the approval process.
- Pilot testing of the new forms in AZTEC will occur in September; a court has not been selected for the pilot test. Judge Finn's court was suggested for the pilot court because the large number of cases they process.

Pat presented the following transfer issues currently causing problems in CPOR and courts:

- The current Transfer Order form works and has no problems. We have problems with CPOR and Jurisdictional issues.
- When a limited jurisdiction court issues and transfers a protective order to Superior Court or another limited jurisdiction court, CPOR shows it as two separate Orders. Robert Roll confirmed that the new DV Module will also help. As long as both case numbers are recorded in the DV Module, CPOR will be able to link up to both cases and treat them as one.
- If the receiving court makes a change to the Order they need to send it back to the originating court to make the change in their database.
- The holder of record does not recognize the two records as being the same case.
- The receiving court of a transfer order should create a new case number and send a notice to the sheriff's office of the transfer and new case number.
- There are counties that transfer orders are not being sent to sheriffs' offices.

- Any court that transfers a case to another court shall send notice of transfer to the sheriff's office. This is currently addressed in *ARPOP*.
- Any Superior Court taking action on a matter from any LJC should include both case numbers on their paperwork that is sent to the sheriff's office.
- The problems with modifying or quashing transferred orders in CPOR cannot be answered in the Rules; it is a training and database issue. The Rules need to acknowledge the problem is there. (Language was drafted for a Committee Comment in the Rules).
- Transfer procedure is important enough to have its own section in the rules. Rule 1.I(1)(d) should be made its own section (Rule 1.J.) and re-letter the rest of the Rule.
- Language was drafted for the new Rule 1.J. Transfer of Protective Orders.

MOTION: Motion was made and seconded to approve the language drafted for the new Rule 1.J. Transfer of Protective Orders. 10-0-0. DVRULES-06-008

III. PROTECTIVE ORDER FORMS IN *ARPOP*

Konnie Neal asked the Committee if the Protective Order forms should be included in *ARPOP*. The following points were discussed:

- The AOC legal services department advised, when drafting *ARFLP*, that if the forms are mandatory they need to be included in the Rules.
- The problem with including the forms in *ARPOP* is that every time there is a change to a form, the rules then need to be changed and opened to the comment period. We should just refer to the forms in *ARPOP*.
- In *ARFLP* the forms are included, but the rule that references the forms provides that they may be amended by Administrative Order of the Supreme Court. This is not completely ideal, because the forms on the Supreme Court website might differ from the forms in the West publication.
- The forms and Plaintiff and Defendant Guide Sheets should be included, but not the Orders. They can be included in Rule 9. Forms.
- The most important form for which we want compliance is the Order of Protection, and that is the form we are keeping out of the Rules, so there is no point in having any of the forms in the Rules. This is different than *ARFLP* because they had suggested forms for pleadings, but we do not have forms for pleadings. There is no reason to include any forms in *ARPOP*.
- We cannot mandate a form, then not provide it. The Orders should also be included in *ARPOP*.
- We cannot include the Orders because we should not make them readily available to the public and risk the possibility of reproduction. Plus the Order forms are slightly different for Limited Jurisdiction Courts and Superior Court.
- Rule 9 sums up everything we need to say about the forms without including the forms. There is also no language in the text of *ARPOP* that

references specific forms, like *ARFLP* does. That distinguishes these Rules from Family Law Rules. Therefore, we do not need to include them.

MOTION: Motion was made and seconded to not include the forms in *ARPOP*. Motion passed unanimously. 10-0-0. DVRULES-06-009

IV. RULES WORKGROUP

The changes made in the earlier discussions regarding transfer issues and protective order forms were incorporated in *ARPOP*.

The following recommendations were made to *ARPOP*:

- Language was drafted and added to Rule 8, creating a new section B. Notice of Hearing, stating that the court shall notify the plaintiff of a hearing;
- Rule 7.C. Inter-Jurisdictional Modification, was removed since it was already addressed in the new Rule 1.J and Committee Comment;
- The time limit for holding a hearing on a transferred case, in Rule 4.A(5)(c) was changed to five days, to match the language of the statute;
- Anyone presenting *ARPOP* to groups after today's meeting needs to highlight the changes made in the meeting, and
- Anyone speaking to groups about *ARPOP* needs to make them aware of the public comment period and website, so we can incorporate changes before it is submitted with the petition.

MOTION: Motion was made and seconded to adopt *ARPOP* with the recommended changes made in today's meeting. Motion passed unanimously. 10-0-0. DVRULES-06-010

V. JUDICIAL CONFERENCE PRESENTATIONS

Judge Finn will be presenting *ARPOP*, Protective Order forms and Guide Sheets at the Judicial Conference. She will present the updated, adopted version of *ARPOP* from this meeting, highlighting the changes made today. In her PowerPoint presentation she highlighted focus areas for judges to pay particular attention.

Konnie Neal expressed the importance of making people aware of the comment form website already active. If people are aware of it now, the Committee might be able to incorporate changes before the petition is filed. The Committee brainstormed on how to get the word out. The following recommendations were made:

- Have Dale Wiebusch circulate *ARPOP* through the coalition;
- Konnie Neal (and anyone else with interest) will present it to the Arizona State Bar;
- Judge Armstrong will take *ARPOP* to Family Law Practice and Procedure Committee, and
- Develop a review workgroup, similar to the one created for *ARFLP*, that will review all the comments and bring back to the Committee proposed changes.

VI. ARPOP APPROVAL PROCESS TIMELINE

Konnie Neal gave a brief review of the proposed timeline for the *ARPOP* approval process. Key dates of interest are:

- October 12, 2006: AJC approval
- November 1, 2006: Rule 28 petition to adopt *ARPOP*
- December 20, 2006: Circulation of petition and *ARPOP*
- May 20, 2007: Expiration of the comment period
- June 20, 2007: Deadline to respond to comments
- September 2007: Justices' Rules Agenda
- January 1, 2008: Proposed effective date for *ARPOP*

VII. ADJOURNMENT

Judge O'Neil proposed canceling the July meeting and waiting until August to meet again. The Committee was in agreement.

Judge O'Neil, Chair, adjourned the meeting at 1:00 p.m.

NEXT MEETING

Wednesday, August 9, 2006

2:00 pm – 5:00 pm

State Courts Building, Conference Room 345A/B

**DOMESTIC VIOLENCE RULES COMMITTEE
MINUTES**

Wednesday, August 9, 2006
2:00 pm to 5:00 pm
State Courts Building
1501 W. Washington, Room 345
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable Mark Armstrong
Honorable Kyle Bryson
Evelyn Buckner
Ellen Crowley
Larry D. Farnsworth
Honorable Elizabeth R. Finn
Bridget Humphrey
Honorable William J. O'Neil, Chair
Honorable Carolyn K. Passamonte
Lauri Thomas
Leah Meyer proxy for Dale R. Wiebusch
Honorable Brain Yee

MEMBERS ABSENT:

Clarence Cramer
Honorable Benjamin Zvenia

STAFF:

Ms. Konnie Neal
Ms. Kim Ruiz
Ms. Lorraine Nevarez

GUEST:

Pat Wuensche

I. CALL TO ORDER

A. WELCOME AND OPENING REMARKS

Judge William O'Neil, Chair, called the August 9, 2006 meeting for the Domestic Violence Rules Committee to order at 10:10 am.

B. APPROVAL OF MINUTES FROM June 7, 2006

Minutes for the June 7, 2006, Domestic Violence Rules Committee meeting were presented for approval.

MOTION: Motion was made and seconded to approve the June 7, 2006 meeting minutes as presented. Motion passed unanimously. 11-0-0. DVRULES-06-008

II. RECAP of Relevant Segments of CIDVC Meeting

Judge O'Neil gave a brief overview of the recommend changes CIDVC made to the *Arizona Rules Of Protective Order Procedure* (ARPOP). Judge O'Neil asked the Committee to review the changes and give further input. The Committee reviewed ARPOP as a group, and Committee consensus was reached on the following items:

A. RULE 1: GENERAL ADMINISTRATION

- It was agreed that statute A.R.S. § 12-1810 be added to Section A(1) in replacement of A.R.S. §12-1809 which is not governed by workplace harassment.
- It was agreed to add statute A.R.S. § 12-1810 to Section B(2)(c) in replacement of A.R.S. §12-1809 which is not governed by workplace harassment.
- It was agreed in Section C(3) to clarify "at all times" to mean "during normal operating hours" and to add the following sentence to explain emergency orders of protection: "For emergency orders of protection after normal operating hours see Rule 6(D)."
- It was agreed upon that the language within Section C(3) referring petitioners to "a law enforcement agency" does not apply to this section.
- It was suggested and agreed upon in Section J to add a time frame of "within 24 hours" and to change the order of the words by moving the clause "the Sheriff's Office" in front of "in writing."
- It was agreed upon in Section K(1) to delete the words "to believe that the..." and replace with the word "under" adding the words "protective order" and deleting the words "has been violated."
- It was agreed in Section N(6) to delete the word "conformed" and change the words "Order of Protection" to "Protective Order."
- It was agreed in Section Q(2)(b) that the words be changed from "Order of Protection" to "Protective Order."
- It was agreed upon to delete Section J under the Committee Comments.

MOTION: Motion was made and seconded to approve and forward Rule 1 General Administration as amended. Motion passed unanimously. 11-0-0. DVRULES-06-009

B. RULE 2: FEES AND COSTS

- It was agreed to delete statute A.R.S. § 13-3602(D) in Section B(1) because it does not apply; the court can not defer or waive a fee that cannot be charged.
- It was agreed upon to delete the words “and Injunction Against Workplace Harassment” because this does not apply to Section B(2).
- It was agreed to add statute A.R.S. § 12-1810(N) to Section C(1).

MOTION: **Motion was made and seconded to approve and forward Rule 2: Fees and Costs as amended. Motion passed unanimously. 11-0-0. DVRULES-06-010**

C. RULE 4: FAMILY LAW CASES

- There was a grammatical change to Section A(2). A colon was added after the word “either” to correct this error.

MOTION: **Motion was made and seconded to approve and forward Rule 4: Family Law Cases as amended. Motion passed unanimously. 11-0-0. CIDVC-06-006**

D. RULE 5: RULE OF EVIDENCE AND DICLOSURE FOR PROTECTIVE ORDER HEARINGS

- Rule 5 was deferred to the DV Rules Rules workgroup to revisit again. At the same time, the workgroup will take a look at other rules of evidence and include any that should to be included.

E. RULE 6: RULE OF PROCEDURE FOR ISSUING PROTECTIVE ORDERS

- Members discussed whether to change or leave the word “immediately” in Section C(5)(d)(1)(b). Committee members decided to leave the word “immediately.”
- It was agreed in Section E(4)(a) to add a subheading: “Findings Required” and to Section E(4)(d): “Protected Persons” to be in conjunction with the other subheadings.
- It was suggested and agreed upon to delete the word “conformed” in Section C(5).
- There was a grammatical change under the Committee Comments Rule 6(D) to add the word “an” after the word “issue” and delete the “s” off the word “Protection.”

MOTION: **Motion was made and seconded to approve and forward Rule 6: Rule Of Procedure For Issuing Protective Orders as amended. Motion passed unanimously. 11-0-0. DVRULES- 06-011**

F. RULE 7: MOTION TO DISMISS, QUASH OR MODIFY

- It was agreed to add and change language to Section A(3) deleting the word "without" and changing it to "and" and deleting the word "being" and changing it to "is not."
- It was agreed to add statutes A.R.S. §§ 12-1809(J) and 12-1810(I) at the end of Section B(4). These statutes refer to injunctions against harassment and the workplace harassment.
- It was agreed to add statutes A.R.S. §§ 12-1809(K) and 12-1810(J) to Section B(5). These statutes refer to filing of an affidavit.

MOTION: **Motion was made and seconded to approve and forward Rule 7: Motion To Dismiss, Quash Or Modify as amended. Motion passed unanimously. 11-0-0 DVRULES-06-012**

G. RULE 8: CONTESTED HEARING PROCEDURES

- It was agreed upon to delete Section A(1)(c).
- It was agreed to change "*ex parte* and full hearings" to "all hearings" in Section E.

MOTION: **Motion was made and seconded to approve and forward Rule 8: Contested Hearing Procedures as amended. Motion passed unanimously. 11-0-0. DVRULES-06-013**

H. RULE 9: FORMS

- It was agreed to change words "are required" to "will" in Section B and to delete the second sentence within the paragraph.
- In the Committee Comments Section Rule 9(D) it was suggested and agreed upon to include "(C)" before the "(D)."

MOTION: **Motion was made and seconded to approve and forward Rule 9: Forms as amended. Motion passed unanimously. 11-0-0. DVRULES-06-014**

III. CALL TO THE PUBLIC

No public members were present.

IV. ADJOURNMENT

Judge O'Neil, Chair, adjourned the meeting at 3:30 p.m.

NEXT MEETING

Wednesday, October 4, 2006

Noon– 2:00 pm

State Courts Building, Conference Room 230

**DOMESTIC VIOLENCE RULES COMMITTEE
MINUTES**

Wednesday, September 6, 2006
10:00 am to 2:00 pm
State Courts Building
1501 W. Washington, Room 119 A/B
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable Mark Armstrong
Honorable Kyle Bryson
Evelyn Buckner
Ellen Crowley
Larry D. Farnsworth
Honorable Elizabeth R. Finn via teleconference
Bridget Humphrey
Honorable William J. O'Neil, Chair
Honorable Carolyn K. Passamonte
Kathy Whittiker proxy for Lauri Thomas
Dr. Brian Yee
Honorable Benjamin Zvenia

MEMBERS ABSENT:

Bridget Humphrey

STAFF:

Ms. Konnie Neal, Committee Specialist
Ms. Lorraine Nevarez, Support Staff

GUEST:

Artt Smasch – Shield Foundation
Olga Chaikheeva –Shield Foundation

I. CALL TO ORDER

A. WELCOME AND OPENING REMARKS

Judge William O'Neil, Chair, called the September 6, 2006 meeting for the Domestic Violence Rules Committee to order at 10:10 am.

B. APPROVAL OF MINUTES FROM August 9, 2006

Minutes for the August 9, 2006, Domestic Violence Rules Committee meeting were presented for approval.

MOTION: **Motion was made and seconded to approve the August 9, 2006 meeting minutes as presented. Motion passed unanimously. 12-0-0. DVRULES-09-015**

II. CALL TO THE PUBLIC

Members of the public were present. Olga Chaikheeva introduced herself representing the Shield Foundation. She wished the Committee luck in reviewing the rules.

III. SATELLITE BROADCAST: ARPOP & PROJECT PASSPORT

Konnie Young gave a brief overview of the pre-taping of the broadcast. The broadcast will go out to 32 different sites. The pre-taping also included the forms with anticipated effective date of January 1, 2007. The forms cannot be mandated until all AZTEC courts have received training on the implementation of the forms. The broadcast will be aired on September 12, at 2:00 pm. A copy will be given to each court for future use in training.

IV. VOLUNTEERS FOR FAMILY LAW JUDICIAL CONFERENCE

Konnie Young gave a brief overview of the rough draft schedule for the Family Law Judicial Conference which will be focused on Custody Evaluations. The Committee is set to do a presentation on October 19. Konnie is requesting volunteers from the Committee to help plan the session.

V. DOMESTIC VIOLENCE RULES- RULES WORKGROUP REPORT

Judge Armstrong gave a brief overview of the changes the DV Rules Rules Workgroup made to the *Arizona Rules of Protective Order Procedure (ARPOP)*. The changes were made based on the anonymous memo received from a judicial officer, Judge Finn's Comments and the Rules of Evidence. There were five main changes made: (1) clarified the use of the word "See", (2) added a section on Applicability of Other Rules, (3) simplified the reference to 'other requesting parties' by including that under plaintiff or practitioners, (4) made changes to ADR paragraph, and (5) simplified the treatment of evidence. Judge O'Neil asked the Committee to review the changes and give further input. The Committee reviewed ARPOP as a group, and Committee consensus was reached on the following items:

A. RULE 1: GENERAL ADMINISTRATION

- It was agreed that another subdivision A(2) be added entitled "Applicability of Other Rules."
- In rule 1(B)(1)(2)(b) changes to the language "or other appropriate requesting party" was added and is a thread that runs throughout the rules.
- It was agreed to add language in reference to the meaning of the word "see" in the comment section of Rule 1(A).

- It was agreed in rule 1(D) to add the word “Court” to the title and added language at the end of the sentence “during the court process.”
- It was agreed upon to move paragraph E(2) to E(3) and make rule 1(E)(2) to read “If the court determines alternative dispute resolution (ADR) is appropriate in a protective order case that is not an order of protection, the court may refer the case to ADR. The court shall assure policies are in place to protect the parties from harm, harassment or intimidation during ADR.”
- It was suggested and agreed upon to add a new subdivision to Rule 1(E) which would make it Rule 1 (E)(4), which will read as follows: “An ADR provider shall reject or terminate ADR whenever the provider determines ADR is inappropriate because of domestic violence or harassment.”
- It was agreed upon in paragraph G to add the sentence “A judicial officer shall not issue a protective order that restricts the conduct of the plaintiff.”
- It was agreed in paragraph M to change the beginning sentence and update the statutes that apply.
- It was agreed in paragraph N to add an introductory sentence that reads, “This paragraph is intended to provide information to the plaintiff.”
- It was agreed upon in paragraph N to change the words “the plaintiff” to “Each party” and add the language, “Although not required, plaintiff should also consider carrying a copy of proof of service of the protective order.”
- It was agreed upon in paragraph N to add a subdivision 6 that reads “The parties may obtain further information from the *Plaintiffs Guide Sheet for the Protective Orders* and *Defendant’s Guide Sheet for Protective Orders.*”
- It was agreed to change the wording “The plaintiff” to “Each party” in paragraph Q.

MOTION: Motion was made and seconded to approve and forward Rule 1 General Administration as amended. Motion passed unanimously. 12-0-0. DVRULES-09-016

B. RULE 9: Appeals

- It was agreed to make Rule 9 Appeals and make the Forms paragraph Rule 10.

MOTION: Motion was made and seconded to approve and forward Rule 9: Appeals as amended. Motion passed unanimously.

12-0-0. DVRULES-09-017

VI. CALL TO THE PUBLIC

Olga Chaikheeva from the Shield Foundation made recommendations to the Committee about changes to rule 1 paragraph N(5). Olga recommends the Committee consider adding the language "The plaintiff should carry a copy of the proof of service." Olga also recommended the Committee consider adding language to paragraph O to prevent public on-line access of protective orders before they are served.

V. ADJOURNMENT

Judge O'Neil, Chair, adjourned the meeting at 12:30 p.m.

NEXT MEETING

Special meeting added to approve *ARPOP*:

Wednesday, October 4, 2—6

11:30 am to 2:00 pm

State Courts Building, Conference Room 230

Teleconference Line: 602-542-9003

Wednesday, November 1, 2006

2:00 p.m. – 5:00 p.m.

State Courts Building, Conference Room 119 A/B

**DOMESTIC VIOLENCE RULES COMMITTEE
MINUTES**

Wednesday, October 4, 2006
12:00 pm to 2:00 pm
State Courts Building
1501 W. Washington, Room 230
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable Mark Armstrong
Honorable Kyle Bryson
Evelyn Buckner
Clarence Cramer
Ellen Crowley, Esq.
Captain Larry D. Farnsworth
Honorable Elizabeth R. Finn
Bridget Humphrey, Esq.
Honorable William J. O'Neil, Chair
Honorable Carolyn K. Passamonte
Lauri Thomas
Dr. Brian Yee
Honorable Benjamin Zvenia via teleconference

STAFF:

Ms. Konnie Young
Ms. Lorraine Nevarez

I. CALL TO ORDER

A. WELCOME AND OPENING REMARKS

Judge William O'Neil, Chair, called the October 4, 2006 meeting for the Domestic Violence Rules Committee to order at 11:30 am.

B. APPROVAL OF MINUTES FROM September 6, 2006

Minutes for the September 6, 2006, Domestic Violence Rules Committee meeting were presented for approval.

MOTION: Motion was made and seconded to approve the September 9, 2006 meeting minutes as presented. Motion passed unanimously. 13-0-0. DVRULES-10-018

II. CALL TO THE PUBLIC

No one from the public was present.

III. DISCUSS RECOMMENDED CHANGES TO ARPOP

Judge O'Neil gave a brief overview of the changes the Committee on the Impact of Domestic Violence and the Courts (CIDVC) made to the *Arizona Rules of Protective Order Procedure (ARPOP)*. Judge O'Neil asked the Committee to review the changes and give further input. The Committee reviewed ARPOP as a group, and Committee consensus was reached on the following items:

A. RULE 1: GENERAL ADMINISTRATION

- It was agreed in paragraph G to add the language "based on the plaintiff's petition" along with the correct VAWA language.
- In paragraph L it was agreed to change the language "de novo" to "new" and add the language "at the trial court."

MOTION: Motion was made and seconded to approve and forward Rule 1 General Administration as amended. Motion passed unanimously. 13-0-0. DVRULES-10-019

B. RULE 4: Family Law Cases

- It was agreed in paragraph A(1) to add the language "Superior Court" at the end of the sentence.
- It was agreed in paragraph A(3) to add the introduction sentence "When a presiding judge of the county delegates" and add the word "applies" at the end of the sentence.
- In paragraph B(4) it was agreed to add the language "with whom the defendant has legal relationship."
- In paragraph B(5) it was agreed upon to change the language to read "No protective order which prohibits contact with the plaintiff shall include exceptions that allow the defendant to contact or come near the plaintiff for child custody or parenting time with the children. "

MOTION: Motion was made and seconded to approve and forward Rule 4: Family Law Cases as amended. Motion passed unanimously. 13-0-0. DVRULES-10-020

C. RULE 5: Rules of Evidence and Disclosure for Protective Order Hearings

- It was agreed upon to add a comment to paragraph A(1) that states "This rule is intended to give the court broad discretion in determining whether proffered evidence shall be admissible in any individual protective order hearing."

MOTION: Motion was made and seconded to approve and forward Rule 5: Rules of Evidence and Disclosure for Protective Order Hearings as amended. Motion passed unanimously. 13-0-0. DVRULES-10-021

D. RULE 6: Rule of Procedure for Issuing Protective Orders

- It was agreed upon in paragraph C(4) to add the language “inquire of the plaintiff” and the word “determine.”
- It was agreed upon in paragraph C(5) to make the “no contact “ language consistent throughout the rules.
- It was agreed upon to add the language to add the same language in paragraph C(8) in paragraphs E and F.
- It was agreed upon in paragraph E(4)(b) to make it consistent with the “no contact” language in the other rules.
- In paragraph E(4)(e) it was agreed upon to change the language and the title of the paragraph to “Other Relief” and moving the language to subdivision 2 and adding language to made subdivision 1.
- It was agreed upon to add the “Denial of an Order of Protection” language to paragraphs E and F to make it consistent.
- It was agreed upon to delete language from paragraph F(4)(b) the second sentence.
- It was agreed upon to add language to paragraph F(4)(e) “If an Injunction Against Workplace Harassment is granted,” in the beginning of the paragraph.
- It was agreed upon to add a comment to Rule 6(E) making it Rule 6(E)(1);6(F)(1) and adding the language Injunction Against Workplace Harassment.

MOTION: Motion was made and seconded to approve and forward Rule6: Rule of Procedure for Issuing Protective Orders as amended. Motion passed unanimously. 13-0-0. DVRULES-10-022

E. RULE 7: Motion To Dismiss, Quash, or Modify

- It was agreed upon to add the language “and served” in the first sentence and the language “after the court receives the Certificate or Acceptance of Service” to paragraph B(5).

MOTION: Motion was made and seconded to approve and forward Rule 7: Motion To Dismiss, Quash, Modify as amended. Motion passed unanimously. 13-0-0. DVRULES-10-023

VI. ADJOURNMENT

Judge O’Neil, Chair, adjourned the meeting at 2:00 PM.

NEXT MEETING

Wednesday, November 1, 2006

2:00 to 5:00 PM

State Courts Building, Conference Room 119 A/B

**DOMESTIC VIOLENCE RULES COMMITTEE
MINUTES**

Wednesday, November 1, 2006
2:00 pm to 5:00 pm
State Courts Building
1501 W. Washington, Room 119 A/B
Phoenix, AZ 85007

MEMBERS PRESENT:

Mark Armstrong
Honorable Kyle Bryson
Clarence Cramer
Ellen Crowley
Larry D. Farnsworth (via proxy Daniel Jones)
Honorable Elizabeth R. Finn
Bridget Humphrey
Honorable Carolyn K. Passamonte
Lauri Thomas
Dr. Brian Yee

MEMBERS ABSENT

Evelyn Buckner
Honorable William J. O'Neil, Chair
Honorable Benjamin Zvenia

STAFF:

Ms. Konnie Young
Ms. Lorraine Nevarez

GUESTS:

Leah Meyers
Pat Wuensche

I. CALL TO ORDER

A. WELCOME AND OPENING REMARKS

Judge Finn, acting Chair, called the November 1, 2006 meeting for the Domestic Violence Rules Committee to order at 2:30 p.m.

B. APPROVAL OF MINUTES FROM October 4, 2006

Minutes for the October 4, 2006, Domestic Violence Rules Committee meeting were presented for approval.

MOTION: **Motion was made and seconded to approve the
October 4, 2006 meeting minutes as presented.
Motion passed unanimously. 11-0-0. DVRULES-06-024**

II. CALL TO THE PUBLIC

No public members were present.

III. SUMMARY OF CIDVC MEETING

Staff gave a brief overview of the materials from CIDVC. Some items of interest were the Arizona Coalition Against Domestic Violence Legislative Update which discussed some possible priorities for the next legislative session regarding the protective orders cross-jurisdictional service coalition Initiative. Also from the Governor's Office, the State Agency Coordination Team (SACT) report states that the Governor's Office will explore the development of a task force to address service issues related to domestic violence throughout Arizona. A recommendation was made to have CIDVC propose legislation that the Supreme Court would carry forward that a presiding judge of a county can delegate to a limited jurisdiction court judge the ability to take action on a Protective Order even if a family court matter is still pending and make some proposed legislation also to get some partners to take this issue forward.

Staff also gave an update on a legislative change to 25-817-temporary support orders, temporary custody and parenting time orders presumption of paternity proposed by the Child Support Committee (CSC). Specifically, CSC is in the process of drafting an amendment to statute 25-817- temporary support order statute. Within the statute there are four criteria that a temporary order support may be issued if one of these four criteria of paternity are met before actual paternity is established; the Child Support Committee would like to amend this to also include temporary custody and parenting time orders that may also be entered if one of these criteria are met for paternity. CIDVC had posed the question of whether the existing relationship between the parent and child at the time and provision of 403 must be considered by the court and also, whether there is still the intent of a hearing to follow.

Staff provided an overview of the presentation given to CIDVC about the Morrison Institute Project - the Judicial Attitudes about Domestic Violence Survey. Bill Hart, from the Morrison Research Institute at Arizona State University (ASU), reported that they did a study last year on behalf of the Governor's Commission to Prevent Violence Against Women, AZ POST, and DPS on attitudes and perceptions of domestic violence by first responding police officers and sheriff's deputies throughout the state. About 800 were interviewed and surveyed about their perceptions about domestic violence and whether they felt that domestic violence policies, laws and statutes were being enforced. The study received a lot of interesting results and the Governor's Office has asked the Morrison Institute to continue to develop the study in terms of similar questions addressed to judges, prosecutors, probation officers, victim advocates,

and victims throughout the state. The main goal of the research project is to get a system-wide look at the criminal justice system's response to domestic violence in the state of Arizona. This project is in its second stage, and an advisory committee has been set up to continue the process. The surveys will go out this month to all judges.

Finally, staff gave a brief overview of the presentation given to CIDVC about a proposed court DV statistics tracking system. The presenters, Mark McDermott, and Bert Cisneros, AOC, work in the Caseflow Management Unit specializing in research and statistics. They collect information from the courts and produce a monthly case collection survey, filing and determinations, quarterly revenue survey and a yearly expenditure and personnel survey. The current Case management system AZTEC, which not all courts use, provides information that assists in creating reports and surveys. Currently, the case management project is looking at information that is specific to superior court and limited jurisdiction courts to try and develop event codes that determine the types of events relevant to domestic violence that will be captured. This may also include looking at a possible new statistical package with the new case management software. Currently, the reports are high level statistics which are basically a summary level of statistics. Requests have been made to receive reports on more specific information for different cases. Robert Roll manages the data warehouse that gathers up all the information from the AZTEC system; Robert stated that the National Center for State Courts has a model for a statistical reporting method. It was determined we would use their standard and apply that to Arizona Courts. The statistics being collected will help us determine how many felonies are related to domestic violence. The new statistic sheet will help determine which felonies and misdemeanors are inactive and active and, therefore, which domestic violence events are still pending in the individual courts. This information is used to allocate resources.

Judge Finn gave a presentation on Teaching Domestic Violence to Judges/Mandatory Training; Other States' Approach. Judge Finn was invited to participate in a symposium at the Center for Court Innovation, which is located in New York. There were advocates, judges, coalition members and judicial educators who are looking at the best way to teach domestic violence to judges. The Center for Court Innovation is known as an intermediary court organization that researches information and deploys it to the New York judiciary, and if the pilot program is successful, then it rolls out nationally. Judge Finn gave a presentation on the Arizona Supreme Court's approaches and projects regarding domestic violence. Judge Finn stated her position that CIDVC should become involved in creating mandatory criteria for general jurisdiction judges for new judge orientation. Since many general jurisdiction judges hear about family court matters, she also proposed CIDVC should approach Educations Services division or COJET to request, at minimum, mandatory information/training on domestic violence to be disseminated to judges. Judge Finn further indicated that some states have monitoring policies for non-compliant judicial officers, and

there should be another step in remedying a concern with judicial misconduct. One idea that was presented was to approach the Arizona Supreme Court to come up with an advisory board. This approach would allow someone to bring an issue and meet with a judge in a non-threatening manner to address domestic violence issues; this would not be a formal complaint but would provide an opportunity for domestic violence issues to be discussed.

IV. UPDATE ON *ARPOP* AND PETITION

The Petition for Adoption of *ARPOP* has already been filed, but the Committee will continue to entertain comments. There were comments made by participants at the Family Law Judicial Conference in reference to Rule 4, Family Law Cases. The Committee reviewed the comments regarding *ARPOP* as a group, and Committee consensus was reached on the following items:

A. Rule 4 Family Law Cases

- The Committee agreed to make the following revisions to the Committee Comment paragraph 4(B): to change the word “presented” to “pending” and the word “shall” to “should refer to” and statute reference to “A.R.S. § 25-403 (P)” to “A.R.S. § 25-403.03(F).” This statute reference is important because it specifically addresses domestic violence in family cases.
- The Committee agreed to add the language to paragraph A(5)(c): “...five court business days if exclusive use of the home is involved and within 10 court business days for all other cases. This time period commences on the date the transferred protective order is filed with the receiving court.”
- The Committee agreed to add the following language In paragraph B(5): “...come near or contact the plaintiff in person...” and a second sentence to read, “Courts may allow contact by mail or e-mail for the purpose of arranging parenting time. “
- The Committee agreed to add language at the beginning of paragraph B(1) to read “Except as otherwise provided in the rule,...

The Committee established a workgroup to further discuss the role of the Title 25 judge. This workgroup will be chaired by Mark Armstrong. The workgroup will bring recommendations to the full committee in February.

MOTION: **Motion was made and seconded to amend the changes as presented. Motion passed unanimously. 11-0-0 DV Rules 06-025**

V. ADJOURNMENT

Meeting was adjourned at 5:00 p.m.

A motion was made to cancel next meeting on Wednesday, December 6, 2006.

MOTION: **Motion was made and seconded to cancel the
December 6, 2006 meeting. Motion passed
unanimously. 11-0-0 DV Rules 06-026**

NEXT MEETING

Wednesday, February 7, 2007

2:00 PM – 5:00 PM

State Courts Building, Conference Room 119 A/B

**DOMESTIC VIOLENCE RULES COMMITTEE
MINUTES**

Wednesday, February 7, 2007
2:00 pm to 5:00 pm
State Courts Building
1501 W. Washington, Room 119 A/B
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable Mark Armstrong
Honorable Kyle Bryson (via teleconference)
Evelyn Buckner
Clarence Cramer
Larry D. Farnsworth
Bridget Humphrey
Leah Meyers (via proxy Pearlette Ramos)
Honorable William J. O'Neil, Chair
Honorable Carolyn K. Passamonte
Lauri Thomas
Dr. Brian Yee
Honorable Benjamin Zvenia

MEMBERS ABSENT

Ellen Crowley
Honorable Elizabeth R. Finn

STAFF:

Ms. Konnie K. Young, DV Specialist, Administrative Office of the Courts
Ms. Lorraine Nevarez, Support Staff, Administrative Office of the Courts

I.

A. Welcome and Opening Remarks

Judge O'Neil, Chair, called the February 7, 2007 meeting for the Domestic Violence Rules Committee to order at 2:05 p.m.

B. Approval of Minutes from October 4, 2006

Minutes for the November 1, 2006, Domestic Violence Rules Committee meeting were presented for approval.

MOTION:

Motion was made and seconded to approve the November 1, 2006 meeting minutes as presented. Motion passed unanimously. 11-0-0. DVRULES-07-001

II. Call to the Public

No public members were present.

III. Recap of Relevant Segments of CIDVC Meeting

There was a discussion on the bills that are in front of the legislature. There were seven new members appointed to CIDVC. The workgroups regrouped and discussed goals and upcoming projects for the year. Mesa Municipal Court representatives gave a presentation on the implementation of the new protective order forms in their case management system. Mesa Center against Family Violence gave a presentation of their program specialized for domestic violence cases.

IV. Cross-Jurisdictional Service of Protective Orders Task Force

Evelyn Buckner, Governor's Office - Division for Women, presented information about this task force and stated that many times victims have expressed challenges and issues with getting an order of protection served in a different jurisdiction than the jurisdiction from the issuing court. The Governor's Office has begun to facilitate meetings to address the current system, looking at the broad view, to better the system. Current members include law enforcement, prosecution, courts, and victim service. The goals are to 1) increase law enforcement patrol officer's electronic access to orders, 2) make the transferring of orders between courts easier, 3) improve confidentiality, 4) look at the flow of information into the data collection, and 5) standardize training for law enforcement. The task force has also discussed potential legislation to include dating relationships as one of the relationships that would qualify for plaintiffs to obtain orders of protection.

V. Title 25 Workgroup Proposed Revisions

Judge Armstrong, chair of the DV Rules Title 25 workgroup, gave a brief overview of the changes to Rule 4 - Family Law Cases. Language was drafted to give superior court judges who are handling domestic violence cases some guidelines on drafting protective orders to address issues that typically arise, such as parenting time and visitation, during family court cases. The Committee approved changes to Rule 4 Family Law Cases. Changes were made to:

- Paragraph B(5)(a) and add subdivisions to B(5)(b).
- Paragraph B(6)(a) and B(6)(b) were added.
- Rule 4(B) Committee Comment was revised.

MOTION: To approve the Workgroup recommendations to Rule 4 Family Law Rules. Motion passed unanimously. 11-0-0 DV Rules 07-

VI. Title 25 Workgroup's Recommendation for Mandatory 1 Hour Judicial DV Training

The Committee discussed the Title 25 Workgroup's recommendation that all judges who handle domestic violence cases should participate in one hour of COJET credit on domestic violence cases. Judge Armstrong, Title 25 Workgroup Chair, led the discussion and indicated that the Committee needed to discuss

this further with Educational Services because requiring mandatory training creates impact on accountability and Educational Services. Konnie has invited Marna Murray, Educational Services Director, to the next CIDVC meeting on May 2nd, to discuss possibilities of offering COJET credit for classes directed at this objective.

VII. Review Informal Comments from the *ARPOP* Comment Website

The Committee reviewed current informal comments from the Committee's Comment website and agreed to make changes in the following rules:

- Rule 1(B)(1)(d) - Specified subsection in Committee Comments on Rule 1
- Rule 1(C)(3)
- Rule 1(P)
- Rule 4(A)
- Rule 5(A)(2)
- Rule 6(C)

Konnie stated that the formal comments (on the Supreme Court's Rules Forum Website) for *ARPOP* are open till May 21, 2007. The Committee will address formal and informal comments (from the DV Rules website) throughout the formal comment period.

VIII. Updated Version of *ARPOP*

An updated version of *ARPOP* reflecting all Committee approved revisions (in blue font) will be posted as "2007 Proposed Revisions" on the Committee's website at:

<http://supreme.state.az.us/cidvc/DVRules/default.htm>

IX.

No public members were present.

X. Adjournment

Meeting was adjourned at 5:00 p.m.

NEXT MEETING CHANGED TO:

Wednesday, May 23, 2007

10:00 a.m. – 2:00 p.m.

State Courts Building, Conference Room 119 A/B

(The meeting originally scheduled on May 2, 2007 was rescheduled for May 23, 2007 because the Committee determined it would be better to meet after May 21, 2007, which is the expiration date for public comments on the Petition to Adopt *ARPOP*.)

**DOMESTIC VIOLENCE RULES COMMITTEE
MINUTES**

Wednesday, May 23, 2007
10:00 a.m. to 2:00 p.m.
State Courts Building
1501 W. Washington, Room 230
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable William J. O'Neil, Chair
Mark Armstrong (via proxy Ellen Crowley)
Honorable Kyle Bryson (via teleconference)
Clarence Cramer
Ellen Crowley
Larry D. Farnsworth (via teleconference)
Honorable Elizabeth R. Finn (via teleconference)
Honorable Carolyn K. Passamonte
Pearlette Ramos
Lauri Thomas
Honorable Benjamin Zvenia (via teleconference)

MEMBERS ABSENT

Bridget Humphrey
Dr. Brian Yee

STAFF:

Ms. Theresa Barrett
Ms. Lorraine Nevarez

I. Call to Order

A. Welcome and Opening Remarks

Judge O'Neil, Chair, called the May 23, 2007, meeting of the Domestic Violence Rules Committee to order at 10:10 a.m.

B. Approval of Minutes from October 4, 2006

Minutes for the February 7, 2007, Domestic Violence Rules Committee meeting were presented for approval.

MOTION:

Motion was made and seconded to approve the February 7, 2007, meeting minutes as presented. Motion passed unanimously. 11-0-0. DVRULES-07-003

II. Call to the Public

Patricia Madsen, Family Law Attorney, Community Legal Services, submitted the following comment to the proposed *Arizona Rules of Protective Order Procedure*. She was concerned primarily with those portions of the rules that address children as protected parties on protective orders. Specific issues raised by Ms. Madsen included the following:

A. The issue of children as protected parties seems to be dealt with in two distinctively different ways within the Rules. Rule 1(F) indicates that “no Judicial Officer has the authority to include a child of the defendant in a protective order unless there is reasonable cause to believe: (1) Physical harm has resulted or may result to the child, or (2) the alleged acts of domestic violence involved the child.” While Rule 1(F) appears to comport with the protective order statute, Rule 4(B)(4) significantly limits the applicability of A.R.S. § 13-3602 to minor children and as such makes a major substantive change to what the statute provides. Under Rule 4(B)(4), the statutory grounds for protection are shifted from whether a defendant has or may commit an act of domestic violence against a child to “whether the child will be harmed” by the defendant in the future. The focus shifts from the conduct of the defendant to the plaintiff, who has to prove certain and negative future consequences to the child. The child is no longer entitled to protection by having been victimized in the past. Instead, the plaintiff must show that the child “will” — not “may” — be harmed in the future. Ms. Madsen contended such substantive changes to statutory provisions and intent might be viewed as a separation of powers issue.

MOTION: To approve the proposed changes to Rule(4)(B)(a) and (b) changing the word “will” to the word “may.” Motion passed unanimously. 11-0-0. DV Rules 07-004

B. Rule 1(I)(2) also addresses children as protected parties, with regard to the intersection of protective orders and custody or parenting time orders. Ms. Madsen felt the subsection’s requirement that judicial officers “inquire about the existence of any custody order or parenting plan to avoid entering a protective order that conflicts with the current plan” reads like a blanket prohibition. Furthermore, if this subsection is meant to be a prohibition, intended to steer would-be plaintiffs toward filing “emergency” custody modifications instead, then that would appear to be a substantive change to the protective order statute. If it is not intended to be a blanket prohibition, Ms. Madsen suggested adding a qualifier, such as “inadvertently or unnecessarily avoid entering a protective order that unintentionally conflicts...”

The committee agreed, in reality, if domestic violence or child abuse occurs while a parenting plan is in effect, it may be necessary and appropriate for a court to issue a protective order that conflicts with the current plan.

MOTION: To approve the proposed changes to Rule(1)(I)(2) adding the

word “inadvertently” to the paragraph. Motion passed unanimously. 11-0-0. DV Rules 07-005

C. Regarding Rule 2(C), Ms. Madsen expressed concern that specifically mentioning attorney’s fees in these Rules will encourage the assessment of such fees against victims of domestic violence. She felt since the statutes cited in the Rule already provide for attorney’s fees, mentioning the issue again in the Rule seems unnecessary. Also, her experience suggests, it is the defendant, rather than the plaintiff, who more often secures attorney representation for protective order hearings. Ms. Madsen argued that attorney’s fees in the Rules gives the issue greater prominence and makes it more likely that an attorney representing the defendant would use the request for fees to intimidate a plaintiff to dismiss the order, not attend the hearing, etc.

The committee did not agree to change any language to Rule 2(C) regarding Attorney Fees. The committee felt Rule2(C) is important addition to the Rules.

III. Review Informal Comments

The committee reviewed the remaining informal comments and changes were made to:

- Rule 1(I)(2) adding an additional sentence at the end of the paragraph

MOTION: To approve the proposed changes to Rule(1)(I)(2) adding an additional sentence at the end of the paragraph. The motion passed unanimously. 11-0-0. DV Rules 07-006

The Committee then conducted a page-by-page review of the Rules. No additional changes were identified.

MOTION: To approve the proposed Rules as revised. Second by Clarence Cramer. The motion passed unanimously. 11-0-0. DV Rules 07-007

Judge O’Neil confirmed with Ellen Crowley that the petition would need to be submitted no later than Friday, June 29. Members discussed availability in case a final meeting is needed following presentations to AJC standing committees. Members agreed to meet Friday, June 22, at noon. Staff will notify members in advance if such a meeting is necessary.

IV. Adjournment

Meeting was adjourned at 12:15 p.m.

NEXT MEETING

Wednesday, September 5, 2007

2:00 p.m. – 5:00 p.m.

State Courts Building, Conference Room 119 A/B

**DOMESTIC VIOLENCE RULES COMMITTEE
MINUTES**

September 5, 2007
2:00 p.m. to 4:00 p.m.
State Courts Building
1501 W. Washington, Room 345A/B
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable William J. O'Neil, Chair
Honorable Mark Armstrong
Honorable Kyle Bryson
(via teleconference)
Clarence Cramer
Ellen Crowley
Larry D. Farnsworth
Bridget Humphrey
Lauri Thomas
Dr. Brian Yee
Honorable Benjamin Zvenia

MEMBERS ABSENT

Honorable Elizabeth R. Finn
Honorable Carolyn K. Passamonte

GUEST

Paul Julien, Judicial Education
Officer, AOC

STAFF:

Kay Radwanski
Lorraine Nevarez

I. Call to Order

A. Welcome and Opening Remarks

Judge O'Neil, Chair, called the September 5, 2007, meeting of the Domestic Violence Rules Committee to order at 2:00 p.m. Judge O'Neil gave an update on the ACJA § 1-104, advising that a proxy must be a non-member of the committee. Chief Justice McGregor clarified the proxy policy in a memo provided in the committee members' packets.

B. Approval of Minutes from June 6, 2007

Minutes for the June 6, 2007, Domestic Violence Rules Committee meeting were presented for approval.

**MOTION: Motion was made and seconded to approve the June 6, 2007, meeting minutes as presented. Motion passed unanimously.
DVRULES-07-004**

II. Benchbook Updates

Paul Julien, Judicial Education Officer, AOC, agreed to share the responsibility in updating the Criminal and Civil Benchbooks with CIDVC. The education plan is to revise and update the Benchbooks within the next year.

III. Update on ARPOP and Petition

Judge Armstrong gave an update on the status of the Rules. A few changes were made in the staffing process. They are as follows: (1) corrected Rule 6(F)(5) and changed the title to read "Injunction Against Workplace Harassment" and (2) rewrote Rule 9 clarifying the language. The Rules were approved by the Supreme Court on September 5, 2007, and will become effective January 1, 2008. In its petition, the DVRC had requested a delayed effective date of January 1, 2009.

IV. Strategic Planning

The committee agreed to dissolve as its purpose in promulgating DV rules has been fulfilled. Judge O'Neil will draft a final report of the committee. The committee does recommend continuous domestic violence training for judges a least every three years.

**MOTION: Motion was made and seconded to support mandatory domestic violence training for judges at regular intervals as determined by the Supreme Court. Motion passed unanimously.
DVRULES-07-005**

Some of the members of the committee agreed to be part of a workgroup of CIDVC to review the Rules if necessary.

**MOTION: Motion was made and seconded to approve the recommendation to become a CIDVC workgroup. Motion passed unanimously.
DVRULES-07-006**

V. Call to the Public

No public was present.

V. Adjournment

Meeting was adjourned at 2:55 p.m.

NEXT MEETING: Cancelled.