

**COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS**

**Meeting Minutes**

February 19, 2003

10:00 AM – 2:00 PM

State Courts Building

Conference Room 119 A&B

Phoenix, AZ

**CIDVC Members Present**

Hon. Karen O'Connor, Chair  
Hon. Chris Wotruba, Vice Chair  
Jerry Bernstein  
Lt. Mark Carpenter  
Martha Fraser Harmon  
Donna Irwin  
Bob James  
Hon. Ronald Karp  
Robert M. Lehner  
Hon. Denise Lundin  
Hon. Mary Helen Maley  
Hon. Mark Moran  
John Pombier, Esq.  
Tracey Wilkinson

Patricia Klahr  
Dr. Teresa Lanier  
Sheri Lauritano

**Members RSVP (unable to attend)**

Hon. George Anagnost (LJC)  
Margaret Bentzen  
Allie Bones  
Hallie Bonger-White, Esq.  
Hon. Sherry Geisler (LJC)

**Guests**

David Berg, Information Technology  
Division, AOC  
Karen Kretschman, Court Services, AOC  
Susan Pickard, Court Services, AOC  
Dianne Post, AzCADV

**Members participating by telephone**

Hon. Dana Hendrix  
Dr. Anu Partap

**Members using a Proxy**

**Staff Present**

Catherine Drezak

**Quorum: Yes**

**1. Call Meeting to Order: Judge O'Connor**

The meeting was called to order at 10:20 AM. All those persons present introduced themselves. Guests attending the meeting were welcomed.

## 2. Review of Previous Meeting Minutes: Judge O'Connor

Minutes of the December 11, 2002 meeting were reviewed and no additions or corrections were offered.

**Motion:** Approve December 11, 2002 as presented.  
**Vote:** Pass  
**Tasks:** None

## 3. Workgroup Reports: Workgroup Chairs

### A. Criminal DV Benchbook Workgroup: Judge Moran

Several suggestions were received and are being incorporated into the draft. Among the changes are the inclusion of a Batterer Accountability Program recommendation section, a revised Introduction and the Department of Behavioral Health Approved DV Treatment facilities list. The change recommendations were received too late to be included in the Criminal Benchbook section of the CIDVC agenda. The Criminal Benchbook will be an agenda item for the April meeting.

### B. CPOR Policy workgroup: Judge Moran

A meeting was held on February 7, 2003 with law enforcement representatives to specifically discuss the issue of law enforcement access to unserved protection orders. After much discussion on the pros and cons of the issue, the workgroup recommends that CIDVC approve a policy that allows access to unserved protection orders by law enforcement. The workgroup feels this is in the best interest of and protects the safety of both victims and officers. Specific implementation steps were not identified; however, the AOC has the ability to incorporate such a process into the Court Protective Order Repository (CPOR). A point of interest was noted. In the business process there is sometimes an asynchronous flow of the certificate of service paperwork. Currently the business process functions on the following assumption: 1) order is issued, 2) order is served, 3) certificate of service is returned to the court, 4) the court forwards the certificate to holder of record (HoR), and 5) the HoR enters the service information into the National Criminal Information Computer (NCIC). However, sometimes the certificate of service reaches the HoR before reaching the court. An example of this occurrence is when a sheriff's officer serves the order and the same sheriff's office is the HoR. Sending the certificate of service to the court and then having the court return the certificate of service back to the sheriff's office can take a week. Meanwhile there is a valid, enforceable order "on the street" that law enforcement cannot act upon due to the fact that the order is still listed as "unserved" and therefore inaccessible to law enforcement. As such, CIDVC should at least consider granting access to unserved orders to the Holders of Record. The workgroup meeting minutes are available upon request. There is also a list of remaining policy issues which need to be discussed and the compiled list is available on the CPOR Policy Workgroup web page. A formal recommendation package will be presented for approval at the April 16, 2003 meeting. An undecided issue: Whether to approve this position now.

### C. DV Forms Workgroup: Mr. James

Many people have worked hard and participated in the discussions on the forms and the DV Forms workgroup wanted to focus on the content of the language on the forms. The

workgroup has created three new forms: Order of Protection (OP), Injunction Against Harassment (IAH) and Injunction Against Workplace Harassment (IAWH). All of these forms are one page in length to streamline the order and clarify the language. The most dramatic change is in paragraph two of the OP form. A complete “logic” change was introduced. Instead of listing all of the actions the defendant is allowed to do, the new proposal is to prohibit everything and instead list the exceptions. The logic change produces a clearer, more enforceable order that limits the defendant’s ability to “creatively circumvent” the order. The “civil standby” paragraph was revised to allow judicial discretion. Instead of numbering the paragraphs, the workgroup inserted “headings” on each paragraph to enhance the use of a dynamic document which can be printed from a computer program. The PCO codes will be automatically printed at the bottom of the form. The IAH and IAWH has similar changes. It was noted, however, that the forms do not conform to Rule 10 D, in regard to the Superior Court margin requirements. CIDVC, however, did not vote on approval of the forms; to be placed on the April agenda. A draft of a “generic” petition form was created. The workgroup envisions using one form to petition for any Protective Order. Some of the changes suggested by CIDVC include:

- 1) Move the Brady flag section from the bottom of the form to a line above the signature line.
- 2) Bold and underline “exempt” in “No Contact” paragraph.
- 3) Remove “cell phone” from “No Contact” paragraph.
- 4) Change language in the middle section of the heading box to provide more flexibility. Suggested language: “You may be arrested and prosecuted for crimes you may have committed in disobeying this order.”
- 5) Last sentence of “Notice”: start with the sentence with “Report...” and strike “should be reported.”
- 6) Need to have the “counseling” option returned to the order.
- 7) IAH expand “No Crimes” section to include other crimes such as, aggravated harassment and using the phone to terrify, etc.

#### **4. Meeting Business: Judge O’Connor**

##### **A. Web Page Instruction: Susan Pickard**

Susan has developed and demonstrated two options for CIDVC. The committee chose the format and placement members felt was most responsive to their needs. On-line discussion areas have been developed for those times when workgroups cannot meet and collaborative work must be done. The CIDVC workgroups are the only ones using the discussion areas for their work product at this time. CIDVC members were positive regarding the web site development.

##### **B. Procedural Review: Karen Kretschman**

The Court Programs Unit has been reviewing all of the committees with the intent of enhancing the impact of each committee in their respective tasks. CIDVC is charged to study and make recommendations on the impact of DV issues on courts throughout the state. Although CIDVC focuses on the courts, CIDVC recognizes that victims and the community have to be a part of the overall solution to domestic violence. In a variety of ways the members expressed a feeling of a disconnect between CIDVC and other committees, the AOC, courts and the community. This presentation focused on the strengths and weaknesses of CIDVC. While the committee has been active and produced many products, such as

mandatory DV Forms, DV Benchbook and informative training materials, the committee has not been effectively conversing with the Arizona Judicial Council (AJC). Developing a regular schedule of interaction with AJC will enhance CIDVC's ability to impact court policies. CIDVC agreed that a quarterly "report" to AJC is in their best interests. Also a discussion was held regarding a request by Agnes Felton, Director, Education Services, to change the format (script issue), revision schedule and rename the DV Benchbook. Ms. Felton is recommending that the DV Benchbook be renamed to DV Manuel. The committee felt strongly that they need to maintain control of the publication content, format and name. CIDVC requested copies of the "benchbook" publications produced by Education Services for their review. CIDVC will make a decision on the requested changes at the April meeting.

#### C. Strategic Plan Review: Catherine Drezak

CIDVC members have been busy but it appears that the committee has gone "off track" becoming a reactive rather than a proactive body. Four categories of responsibilities were identified as activities which the committee should center their resources. These activities, prioritized from most to least important from its strategic planning of March 2001, are:

1) Education - CIDVC discussed contacting Education Services regarding trying to integrate some DV training into the agenda for the Judicial Conference. Dianne Sweeney wants the DV Education workgroup to submit a short proposal for subject matters and length of time. This proposal would be forwarded to the Planning Committee. Diane believes that we may propose to organize the DV section of the "Potpourri" for the limited jurisdiction judges currently set for two and one-half hours. An alternate idea is to target judges other than limited court judges by integrating a specific proposal into the present all-day domestic relations presentation. The two areas CIDVC would like to be addressed are: Batterer-Providers, and the Effects of DV on children. The contact person for that would be Catherine Drezak. The Education Workgroup will solicit ideas for specific topics since time is short. Judge Moran will field these ideas and then go over them to try to come up with a proposed program. We are responsible for putting together faculty and materials for any program we propose. Diane Sweeney will update Judge Moran on the deadline for submission of proposals, and also provide him with a copy of the materials currently used to teach DV training for new judges at the limited court level. Another suggestion was to develop a web or computer based education session that judicial officers can access as they are able.

2) Technology - The DV Forms workgroup is addressing the technology issues as they revise the DV Forms. The largest concern remains the issue of inadequate funding and personnel resources.

3) Legislation - CIDVC has submitted a legislative package every year. Last session the AJC did not include CIDVC's proposal into the Court's Legislative Package. Perhaps a closer relationship with the other court committees will promote a better understanding of DV issues with AJC.

4) Victim Safety/ Batterer Accountability - CIDVC accepted the Batterer Accountability recommendations developed by the Men's Anti-violence Network and the Governor's DV Technical Subcommittee. These recommendations will be incorporated into the DV Benchbook and the Criminal DV Benchbook.

**5. Old Business: Judge O'Connor**

A. AO 98-66 conversion to ACJA 5-209  
Deferred until the April 16, 2003 meeting.

**6. New Business: Judge O'Connor**

None submitted.

**7. Call to the Public: Public Attending**

Dianne Post, Arizona Coalition Against Domestic Violence, announced an upcoming the "Forging Partnership Conference." It will be held at the Old Town Hotel & Conference Center, Scottsdale from March 30<sup>th</sup> - April 2<sup>nd</sup>. Anyone interested, please contact the AzCADV at (602) 279-2900 or Catherine Drezak at (602) 542-9607.

**8. Next Meeting:** April 16, 2003, 10:00 AM - 2:00 PM, AOC room 119, Phoenix

**9. Adjournment: Judge O'Connor**

The meeting adjourned at 1:00 PM.

# COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

## Meeting Minutes

April 16, 2003

10:00 AM – 2:00 PM

State Courts Building

Conference Room 119

Phoenix, AZ

### **CIDVC Members Present**

Hon. Karen O'Connor, Chair  
Hon. Chris Wotruba, Vice Chair  
Jerry Bernstein, Esq.  
Lt. Mark Carpenter  
Hon. Sherry Geisler  
Martha Fraser Harmon  
Hon. Dana Hendrix  
Donna Irwin  
Bob James  
Hon. Ronald Karp  
Patricia Klahr  
Sheri Lauritano, Esq.  
Hon. Mary Helen Maley  
Hon. Mark Moran  
Dr. Anu Partap  
John Pombier, Esq.  
Tracey Wilkinson

### **Members using a Proxy**

Dr. Teresa Lanier  
Robert M. Lehner

### **Members RSVP (unable to attend)**

Margaret Bentzen  
Allie Bones  
Hallie Bonger-White, Esq.  
Hon. Denise Lundin

### **Guests**

Theresa Barrett, Court Services, AOC  
Karen Kretschman, Court Services, AOC  
Robert Roll, Information Technology  
Division, AOC  
Amy Wood, Court Services, AOC  
Nicole Winiki, AzCADV

### **Members participating by Telephone**

Hon. George Anagnost

### **Staff Present**

Catherine Drezak  
Chris Claxton

### **Quorum: Yes**

#### **1. Call Meeting to Order: Judge O'Connor**

The meeting was called to order at 10:15 AM. All those persons present introduced themselves. Guests attending the meeting were welcomed.

## **2. Review of Previous Meeting Minutes: Judge O'Connor**

Minutes of the February 19, 2003 meeting were reviewed and no additions or corrections were offered.

**Motion:** Approve February 19, 2003 as presented.  
**Vote:** Pass  
**Tasks:** Update web page

## **3. Workgroup Reports: Workgroup Chairs**

### **A. DV Forms Workgroup Report: Mr. Bob James - Vote Item**

DV forms

These forms are the culmination of months of work by the DV Forms Workgroup. This group has a lot of drive and determination to improve the documents. The most fundamental shift is the “no contact” paragraph. Everything is prohibited and exceptions are made to allow limited contact. Currently specific restrictions have to be made and some defendants find ways around the restriction. This change is more enforceable and easier for judges to write. It may result in fewer key strokes if done electronically and less writing if done manually. All five of the documents will be reviewed to get input and ultimately approval from the committee. One goal was to design a set of products that are relevant and sufficient for the typical situation, and to provide the jurisdictions with the flexibility to deal with those situations that are not “typical” Notice there are no numbers. It’s a designed form for two scenarios, 1) dynamic type for computer generated and 2) hand written. Dynamic means that only the parts which are ordered show on the order. These forms have been presented at the Superior Courts Users Group and the Maricopa County Presiding Judges meetings. The following is a summary of the discussion:

#### GUIDE SHEET

This sheet definitely represents a change in process for many jurisdictions. The guide sheet informs the petitioner, but does not convolute the petition. As a separate document, it is used in every case and allows the petitioner to fill in the defendant’s descriptor information. In a manual court, this provides information that staff can put onto the Order of Protection. Technically, there are two pages including the guide. However, the guide does not get served. It is kept at the court and not copied for the Plaintiff. The Judicial officer is not dealing with the guide, just the information needed to decide the case.

#### **CIDVC’s recommendations:**

Children are usually not included on the guideline, but the guideline should show whether there is potential harm to the child, impact on the child, observing a parent being abused, if the defendant commits a violent crime, harms pets, etc., then children should be included.

The committee questioned whether Driver’s License information should be put on the guide and why leave it off military, currently in law enforcement indicators. Do you want this on the Order of Protection?

Counseling - Put additional instruction verbiage on guide.

People don't realize that the petition will be served on the defendant. We need to let the Plaintiff know it is on the guide, possibly bold and /or strengthen verbiage. Also add, "and future judicial proceedings." If they modify the reasons for wanting the petition from the original, it's a "bad thing".

#### PETITION:

The Workgroup took all three petitions for protection and revised them into a single pleading. This petition document is pared down to basic elements of information the judge needs to make a decision on the case. The Plaintiff can check the type of protection requested, define the relationship, explain the need for protection and check the requested reliefs. Once the word phrasing is approved, the Workgroup will develop a second set of documents to comply with Rule 10D for Superior Courts.

This will make the petition two pages long. Adjustments will be made to add writing space for filling in the blanks.

#### **CIDVC's recommendations:**

There is not enough space, while admirably done, it is too condensed. The model should contain enough space to get the job done and provide people enough space to include enough information to convey their meaning. The model should represent the proper format including proper spacing. Bob J. assured the committee that the Workgroup will do everything they can to increase the space on the forms to provide enough room for the petitioner to give clear and coherent information in a format that makes sense.

#2 needs room to add case information, ask if either party arrested. The Plaintiff may not remember all of the information, but they do remember some facts.

Paragraph two could perhaps mislead the plaintiff by stating that the plaintiff cannot discuss matters involving children and parental relationships. At the end of the guide, the Workgroup should add a statement saying that you can still ask the court to include the child in the Order of Protection.

#3 needs more column space for description and add: "You may continue on additional paper." It gives "permission" to the plaintiff to provide as much information necessary to plead the case. The Petition needs to include all of the story which forms the basis for the order. The defendant deserves to get all of the information, not just what can be squeezed into a couple of lines. Otherwise, it defeats the intent of an ex parte hearing

#4 add another line for protected parties; the Plaintiff usually needs to include three or four parties.

#5 need more space, cannot get a complete address in the space allotted.

Keep #7 line in petition, if the Plaintiff asks for counseling at an ex parte hearing, the judge cannot order it. Instead the judge will not grant the Order of Protection and schedule a hearing before granting an order. This can be confusing to the victim, and there is concern that the victim has to face the defendant at the hearing. The Workgroup needs examples of this occurring .

**Action:** Tracey W. and Patricia K. will work on the wording. Tracey W. will provide examples.

The workgroup needs to "beef up" and clarify on the documents that the Plaintiff doesn't have to list his/her address if he/she wants it protected.

Attest - It may also need the judge's signature and court clerk line.

**ORDER OF PROTECTION:**

The Workgroup believes this order reflects a professional, legal document. Changes include format, content and logic. A second set of forms for use by Superior courts will be developed to conform to Rule 10D to address concerns about margins. The Workgroup incorporated changes from last CIDVC meeting. The previous Order of Protection has no restrictions against contact with other protected parties. It now mirrors the language in the Plaintiff paragraph to allow restrictions. Counseling is considered an option on the order since it is not used in most orders, as these cases are ex parte. The logic is to have it included in the other Orders section.

**CIDVC's Recommendations:**

The middle section of the heading, "being arrested and prosecuted for crimes" needs to be changed.

Paragraph 4 on the Petition has Date of Birth for Other Parties, but it's not on the Order of Protection. This is because it's not necessary for the order. It's needed for NCIC and captured on the petition. It should be entered into the repository and not transferred to the Order. This will minimize the amount of personal information provided to the defendant,

Superior Court Clerks asked for a line for Court Reporter, whether the witness was sworn and room for the Deputy Clerk's name on the Superior Court version of the order. It is inappropriate for this order. A minute entry is generated for these purposes

**Action:** Staff: Investigate why they want this information on the order.

The language is different for protected persons, "no direct or indirect contact." There is no reason why it's not in there. Contact is only allowed "as checked". It needs to be specific because the defendant will look for any little loophole. Perhaps insert "no contact... and any protected persons". This is a problem in cases where children are involved. You have to keep it separate.

**IAH:**

The top right corner was changed to indicate a dating relationship - so law enforcement does not charge for service. A quick reference for process servers. The defendant description is out, notice the language mirrors the Order of Protection.

**CIDVC's Recommendations:**

Punctuation problem - "Injunction" should be capitalized.

**IAWH**

There were no major changes.

It was suggested that the Workgroup present the forms as a "healthy draft" and request input.

**AZTEC/IT Impact: Amy Wood and Robert Roll**

The presentation was divided into two sections, the Automation impact and the AZTEC impact.

**AUTOMATION IMPACT:**

The major impact is the reversed logic from "do not do something" to "do not do anything, except." This poses a challenge to the automation segment. A secondary problem is the systems will be

required to maintain and support the two versions of the forms until the transition is completed in all courts. Several systems will be affected beside the AZTEC system, such as: revision of the printed form format, removal of some data fields, adding other data fields on both the screens, and the printouts, (such as "Civil Standby"). CPOR and data warehouse will require changes and insure the PCO codes will match and transfer over to the DPS system.

High level estimates are needed for the conversion based on the proposed forms. From the AZTEC side, it will take 200 hours of programming changes, including screen updates, database modification, form printing capability. CPOR and data warehouse are more flexible and built to accept input from various types of systems. About 100 hours of reprogramming time is needed to insure the Repository will accept data from both types of forms and the new type of data coming into the warehouse.

Non-ACAP systems have their own systems which require their own programmers and/or contracted consultants. These include: Maricopa Superior Court, Gilbert Municipal Court, Paradise Valley. They too will have to maintain and support the use of both the old and the new forms within their systems. They will also be required to reconfigure their systems to meet the new specifications. No timetable exists for non-ACAP conversion. This will depend on the type of system they have, how it was programmed and their resources. An email was sent out to several of these courts to get estimates and the impact on their systems by converting to these forms. During and after programing, there will need to be close coordination with law enforcement to ensure that they account for the differences. CPOR for example, when it goes live, will allow DPS to see the data information at their terminals. They will have to be notified that the data could be in either the old or the new form. Coordination with the non-ACAP courts and AOC will take about 80 hours. This includes planning the changes and analysis of how the new data will be sent to us.

### AZTEC IMPACT

There are currently 182 courts statewide 145 courts are on the AZTEC system. The balance around the state will have to work on the impact of the forms implementation on their own. There will be a lengthy implementation period on the AZTEC system. AZTEC programming comes first, then training for the Aztec screens. We have yet to hear about the non-ACAP time table. It will be based on the number of people available to reprogram and train. A number of issues that have been brought up by others include the tension between manual vs automated use of the forms and PCO codes. This leads to questions of whether we should focus on getting data into the system first and then make use of the data and reprinting costs to reproduce new forms. As we go through the committees, we will make it clear that if the forms are approved, there will not be an immediate implementation because there are a number of steps that have to be taken first before the forms are released for use by the courts.

Implementation testing for AZTEC will be about 400 hours, thus will include going through the screens, print outs, and maintaining the integrity of the old orders. Testing CPOR will need 60 hours of additional programming time. Training on the new AZTEC system will take 360 hours, primarily due to the change in the logic and familiarization on the data entry changes. There will be some training for law enforcement on the logic change. Training by non-ACAP courts on their system requirements is undetermined at this time. Both ACAP and non-ACAP projects can be done simultaneously. Repository and warehouse can be done parallel also because we know the structure and elements we will be getting. The gross estimate to complete the Aztec training and testing is roughly \$40,000.

**Motion:** Bob James: "I move that CIDVC approve the concepts of the presented documents and allow members of the DV Forms Workgroup to present those concepts to relevant court committees with the endorsement of the CIDVC."

**Vote:** Pass

Note on dissenting opinion:

One of the primary purposes of this data warehouse concept is to create a repository of a variety of elements, yet the current proposal seems to have truncated that effort. This is particularly relevant since not all courts will have the same demographics or issues. A complete and accurate data set requires the participation of all courts. This would be an obvious necessity for allocation of funds and resources. To exclude data from the inception of the warehouse threatens the integrity of the data collected, as well as its future application. An initial inclusivity may always be later adjusted when trends support those changes. Without this critical inclusivity, the initial purpose of the data warehouse seems statistically drastically compromised. If other courts (i.e. Superior Courts) are unwilling to use the proposed form, should not time be spent addressing those concerns first?

Finally I firmly believe that the military issues must be properly addressed, as the DV topic is very pertinent on US military installations. Given our community relationship to active and reserve military personnel, these are critical issues on base, especially for those in law enforcement. USAF sources have already indicated a growing need in this area to address DV issues. In light of these critical issues, I cannot support the DV form as currently proposed, and therefore cast a vote against its use.

**Tasks:** Schedule as agenda item on committees

## **B. DV Education Workgroup Report: Judge Moran**

A number of committee members are donating time at the Judicial Conference on June 19, 2003. The morning session will be presenting DV Education. It is a three fold concept 1) Children and DV, 2) Accountability Lethality and Evaluation, and 3) Round Table on Current DV Issues. The workgroup specifically will try to present information other than information on Orders of Protection and get issues that are on hot topics around the nation. DV and children is one of the hottest. Materials on DV that Limited judges currently get were offered to the committee for review. Topics that will be covered include: Data information, Safety issues, Custody and Visitation, practical issues and advise for crafting orders, what judges need to look for, and how to reduce trauma.

Dr. Partap's group really thought about the relevant issues to the group and present information they can take away. Dr. Partap and Dr. Lanier will be co-presenting to speak both as physicians and to relate experiences they had have with victims of DV. Sid Buckman, who works with child custody evaluations in Coconino County, will also be presenting. He is very bright, informative, and provides good presentations. His side will provide a neutral party to bounce ideas off as well as providing information on what evaluators look for and the issues they deal with in evaluations so that judges can prepare for that aspect of domestic relations cases.

The Batterers' intervention program sessions include: abuser accountability, lethality assessment, crafting orders, evaluation and recommendations, custody & visitation, "in camera," and civil issues. We have professionals in this area to provide their insight and expertise. It is intended to

give judges the concepts of the programs available and what judges need to be looking for when sentencing an offender to DV counseling, including lethality assessments, custody and requests by attorneys for the judge to interview children caught in the middle of a custody dispute. This is a volatile situation not just from a legal standpoint, but from the child's perspective.

Round table includes: Firearms, Failure to protect, Legislative update, Probation & budget and Allegations. Participants will also get feedback from the first two sessions regarding any issues brought up at the conference. Judge Moran will be the moderator. We will be providing practical materials for participants to take with them. The workgroup will have a couple of meetings to finalize the materials and presentations.

There was a request that the training team and materials be used to train the DR committee. They are discussing important issues regarding child and DR that will impact victims and their children in Arizona. Areas of great concern need the input by CIDVC. **There was a request that the Chair ask to be placed on the DRC agenda for a educational presentation on children and child custody.**

### **C. Criminal Benchbook Workgroup Report: Judge Moran- Vote Item**

Judge Moran presented the proposed DV Criminal Bench book which is published on the web and available on the web site. Some had a problem providing feedback on the site. The Workgroup did a lot of work on this document. Please review it.

#### **CIDVC's recommendation:**

Incorporate part of the Appendix G into portions of Offender treatment area of the main document; specifically in Chapter X Sentencing, Section F: Sanctions. A couple of things would be possible to incorporate into the Counseling section, specially the number of weeks (26) recommended and encouraging the judges to collaborate with the offender treatment counselors or probation officer. The group which formulated the recommendations have the information on the offender and best possible sanctions and can advise the judge. Recommendations are based on research.

#8 of recommendations: There are currently no official guidelines on length of treatment by the Department of Behavioral Health (DBH). Also there is very little connection between judges and service providers. In passing, the recommendations CIDVC gave approval of the length of treatment time. It could conflict with contracts between cities and contracted providers in which the provider is given the discretion on the length of treatment needed. This is a recommendation to give judges an idea of appropriate treatment times.

Sanctions for non-compliance for offenders who do not show up for treatment: The Bench Book has a section on probation revocation and how to handle those cases. There is no section regarding orders to show cause after the fact for compliance problems. This is short of probation revocation and for those jurisdiction which do not have probation, sort of like a contempt chapter on how to deal with a defendant who has not complied with court orders. There is one in the Regular Criminal Bench book, but it is not tailored to DV. A chapter can be developed.

Section on Evidence (evidence based prosecution), p32, discusses rule 804 exceptions, but nothing on rule 803 exceptions. The majority of time you will use 803 exception rather than 804, particularly regarding excited utterance, present sense impression, and confrontation clause. The

Workgroup needs to include 803 section, check D. It needs more case law, and to expand this section.

**Task: Sheri Lauritano send 803 info to Catherine Drezak:** Diversion not accurate, Chapter 10, p. 38 sounds like the judge is required to send the offender into a counseling program. Statute doesn't require this much, and the law does not require anything regarding counseling. Rewrite into paragraph to highlight eligibility. There needs to be the discussion on waiver (victim invite) OP section. Defense teams use the fact that the victim invited the defendant to violate the order. It is the number one defense for a defendant violation. This needs to be added to the Bench Book but try to maintain neutral language which is consistent with the DV forms.

**Task: John Pombier: Send info to Catherine:** In Death penalty cases the victim has the right to address the court at time of sentencing. The victim shall not be treated as a witness and cannot be cross examined as a witness regarding request for restitution. Since there is often a restitution hearing conducted at the time of sentencing, the judge will have to separate the two hearings. Otherwise the judge cannot ask the victim about the basis for the restitution costs.

P.9 Medical records: HIPPA requirements met? Preemption argument of Fed over State. Will look at **Task: Judge Moran**

New case: A Court held that plea agreement was tantamount to a contract, e.g. 10 days jail time, but 9 days suspended upon completion of counseling. If defendant fails to complete counseling, then the judge is required to order the defendant to complete jail time. Include this in the Bench Book, perhaps in the Chapter on Contempt.

**Task: John P. email to Catherine Drezak. Catherine Drezak will email to CIDVC.** Committee can review.

P9-1: The statement of belief of impending death is incorrect. These statements can be used in a variety of ways.

**Task: Jerry B. will rewrite.**

P9-2. Aggravated offenses. Rewrite to comply with 13-2921.01.

**Task: John P. volunteered to get information to Judge Moran.**

Section aggravated/mitigation: If children are present, the prosecutor has a charging decision to make a charge more serious. True at felony level, but not misdemeanor level. Make a distinction in Bench Book. It is an aggravated in sentencing, not charge a more serious offence.

**Criminal Benchbook Workgroup: Look at it.**

P9-14 rules of evidence. Remove "present a winning case"; "if victim recant.....can use expert to show statement...." Actually it is up to the jury.

**Motion:** None

**Vote:** None

**Tasks:** Defer vote on Bench Book until next meeting. Committee look at web site read and prepare.

**D. CPOR Policy Issue: Judge Moran- Vote Item**

1) Access to Unserved Orders CPOR- access to law enforcement of Order of Protection data.

**Motion:** Judge Moran: I move that CIDVC vote to approve the recommendation to allow law enforcement officers access to unserved protection order information.

**Vote:** Pass

**Tasks:** Staff refer to Dave Byers.

#### **E. DV Benchbook Report: Judge Moran- Vote Item**

Education Services (ES) made three requests: 1) renaming their two Benchbooks to Manuals; 2) reformatting the style to present a uniform appearance and 3) make the update schedule the same time frame as Education Services. Ed. Svs. has a different style for a “manual” and bench book” and their point is that the CIDVC Bench book is closer in appearance to a manual than a Bench Book. A Bench Book is more terse, names the issue, indicating the statutes, types of services available, burden of proof, and provides a script. Ed. Svs. would like the formatting for these types of books to be uniform in appearance. They suggest renaming the DV Bench Book to DV Manual and DV Criminal Bench Book to DV Criminal Manual. All will be available on the internet web site entitles “Benchbooks”. Ed. Svs. is not interested in changing content, but are interested in getting the Bench Book on ES update schedule for December publication. CIDVC accepted the update time-line schedule.

CIDVC members don’t want to change the names of their two products. In particular, the judicial officers members feel that “manual” is somehow “less than” and not as important as the term “benchbook.” They believe a manual gets put on a shelf and is not used on a daily basis. A bench book is something they keep on their bench and use continually, and that is how they view their two bench books. They are also concerned about the amount of training it would take to re-educate and reinforce the use of these materials if they were changed to “manuals”. The committee agrees to the update/revision schedule as updates are not a problem. But on the benchbook issue, the point that all of these products will be maintained on the intranet on the “Bench book and Manual” page, they felt buttressed their position. The DV Bench book will be published on the web and on a CD Rom for distribution.

**Motion:** None

**Vote:** None

**Tasks:** **Defer vote on acceptance until June agenda #1 item**

#### **4. Meeting Business: Judge O’Connor**

Karen went through minutes and discovered several items remaining unresolved.

##### **A. Unfinished issues: Judge O’Connor**

1) Renaming DV Benchbook -  
Discussed in DV Benchbook section.

2) Committee on workplace violence-  
CIDVC volunteered to do the form to ensure consistency and got stuck with the issues and questions on the statue. A letter from Judge Moran requesting the issue be moved to Human Resources was found. Copy the letter and follow it up but do not revive.

3) Regional Practice Discrepancies-

This is the victim turn away issue highlighted by some instances occurring in Pima County. While the Bench Book allows transfer within one mile to assist in workload issues, sometimes courts will use this exception to divert cases to another court. No new related issues were brought to the committee. Members are to check their counties to see if this occurring and report back to CIDVC. AzCADV will check with presiding judges /clerks /advocates in Pima and ask if this is still an issue. Bring it up as a report at a later meeting. Perhaps training has been effective. Also use of video technology may have reduced this problem.

4) DV Quarterly-

Committee agreed last year to develop an informational newsletter to educate judges and one issue was published. It is a very labor intensive undertaking. It was designed to appeal to judges by providing changes to statutes, new case law and education scenarios. Although judges get lots of DV info every month, nothing out there is specifically targeted to the judges. Get a copy to members. Poll judges at conference to get feedback. The committee still interested in doing it.

5) Definition of "material injury"-

Meeting time elapsed, remaining matters will be on the June agenda.

6) Spanish forms for the Web issue-

Meeting time elapsed, remaining matters will be on the June agenda

7) Ethics opinion-

Meeting time elapsed, remaining matters will be on the June agenda.

8) Service of Orders of Protection-

Meeting time elapsed, remaining matters will be on the June agenda.

9) Brady issues (some courts won't remove)-who is going to do what?-

Meeting time elapsed, remaining matters will be on the June agenda.

**B. Lunch-flat \$10 or pro rata of the total cost?**

Meeting time elapsed, remaining matters will be on the June agenda.

**5. Old Business:** Judge O'Connor

**A. AO 98-66 conversion to AJCA 5-209**

Meeting time elapsed, remaining matters will be on the June agenda.

**6. New Business:** Judge O'Connor None submitted

Walk for DV. Please sign up or volunteer. Patricia has sign up brochures. John P. will be running and has a team.

**7. Call to the Public:** Public Attending

None brought forward by public attending.

Judge O'Connor announced that she will resign as Chair of the Committee. A scheduled assignment rotation will take her off the Family Court bench and move her to the Criminal bench. Anyone interested in applying for the Chair position please contact Catherine Drezak at (602) 542-9607.

**8. Next Meeting:** June 19, 2003, 1:30-4:30, Chaparral Room, Doubletree-Scottsdale Paradise Valley Resort, 5401 N. Scottsdale Rd., Scottsdale, Arizona 85250, Phoenix

**9. Adjournment:** Judge O'Connor

The meeting adjourned at 2:00PM.

**COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS**

**Meeting Minutes**

June 19, 2003

1:30 - 4:30 PM

North West Forum (downstairs)  
Doubletree Scottsdale Paradise Valley Resort  
5401 N. Scottsdale Rd.  
Scottsdale, Arizona

**CIDVC Members Present**

Hon. Chris Wotruba, Vice Chair  
Allie Bones  
Lt. Mark Carpenter  
Hon. Dana Hendrix  
Donna Irwin  
Hon. Ronald Karp  
Dr. Teresa Lanier  
Sheri Lauritano, Esq.  
Robert M. Lehner  
Denise Lundin  
Hon. Mark Moran  
John Pombier, Esq.  
Tracey Wilkinson

**Members using a Proxy**

Hon. Karen O'Connor, Chair  
Patricia Klahr  
Dr. Anu Partap

**Staff Present**

Catherine Drezak

**Quorum: Yes**

**1. Call Meeting to Order: Judge O'Connor**

The meeting was called to order at 1:45 PM. All those persons present introduced themselves. Guests attending the meeting were welcomed. Judge Mark Moran was appointed to conduct the meeting by the Chair, Judge O'Connor.

**Guests**

Theresa Barrett, Court Programs Unit, AOC  
David Berg, IT Consultant, AOC  
Evelyn Buckner, Governor's Office

**Members RSVP (unable to attend)**

Jerry Bernstein, Esq.  
Hallie Bonger-White, Esq.  
Martha Fraser Harmon  
Bob James

**Members Not Present**

Hon. George Anagnost  
Margaret Bentzen  
Hon. Sherry Geisler  
Hon. Mary Helen Maley  
Robert Roll, IT Division, AOC

## **2. Review of Previous Meeting Minutes: Judge Moran**

Minutes of the April 16, 2003 meeting were reviewed. Bob James requested that Dr. Lanier's name be included in the dissenting opinion of the DV Forms proposal.

**Motion:** Approve the April 16, 2003 minutes as amended.  
**Vote:** Pass  
**Tasks:** Make requested change.

## **3. Workgroup Reports:**

### **A. Criminal Benchbook**

There are still several changes which need to be incorporated into the document. They include revised HIPPA requirements, Rule 803 of the Az Rules of Evidence and DV advocate confidentiality items. The workgroup will hold a meeting to review the document, make changes and get the criminal Benchbook re-posted to the web. The Workgroup was reminded of the December deadline to have the approved Benchbook posted on the Web. Members are strongly encouraged to read the Benchbook and submit proposed changes to Catherine.

### **B. DV Forms Workgroup (CIDVC)**

The Workgroup presented to and received support for the forms "in concept" from the Arizona Judicial Counsel and the Committee on Superior Courts. CIDVC members want to invite the Chair of the Court Automation coordination Committee (CACC) to the August meeting to discuss prioritization of the forms changes in AZTEC. CIDVC members also want a Spanish version of the DV forms to be posted on the DV website. The workgroup will reconvene to discuss proposed changes.

### **C. DV Benchbook Report (CIDVC)**

The DV Benchbook Chair decided to re-convene the workgroup to finalize the document to further clarify Brady prohibition procedures and to add a script to provide guidance to judicial officers on the required fields for data collection. The Workgroup was reminded of the December deadline to have the approved Benchbook posted on the Web. Catherine will highlight the changes to the Benchbook on the web page. Members are strongly encouraged to read the Benchbook and submit proposed changes to Catherine.

## **4. Meeting Business: Judge Moran**

### **A. Spanish translation of DV Forms on Web**

The committee discussed the issue and decided to offer a Spanish version of the DV forms on the CIDVC web page.

**Motion:** Post a Spanish version of the current DV Forms on the CIDC web site.  
**Vote:** Pass  
**Tasks:** Get a Spanish version (from Maricopa Superior)

## **B. Service of Orders of Protection**

This is a follow up item from a previous meeting. The committee requested Assistant Chief Lehner to poll the Arizona Chiefs Association on the each agency's policies for serving protection orders and invite 3-5 jurisdictions to the October meeting for a discussion on "service" policies, handling foreign orders and cross jurisdictional issues. Tracey Wilkerson will contact the Arizona Coalition Against Domestic Violence and other victim service agencies to gather information on service issues from a victim's viewpoint. Both will report back to the committee. A copy of a CPOR exception report will be provided to the CIDVC members at the August meeting.

**Motion:**        **Include in the October meeting**

**Vote:**           **Pass**

**Tasks:**        **Assistant Chief Lehner to poll the Arizona Chiefs Association to gather information.**

**Tracey Wilkerson will contact the AzCADV Violence and other victim service agencies to gather information.**

**Catherine will provide a copy of a CPOR exception report at the October meeting.**

## **C. Brady Issues**

Various members expressed concerns regarding the proper application of the Brady firearms prohibition on protection orders. Despite a variety of training opportunities, benchbooks and letters, there appears to be a large variance among judicial officers in the application of the Brady flag. Eric Epstein from the Phoenix Division of the ATF has a laminated card for firearms prohibition procedures. This card should be posted on the web. The DV Benchbook needs to be clearer on the issue.

**Motion:**        **Post Brady prohibitions on the CIDVC web page.**

**Vote:**           **Pass**

**Tasks:**        **Catherine will obtain a copy and permission to post the AFT firearms Benchcard and get copies for the committee members.**

**Bob James will insure the DV Forms clarify the Brady application procedures.**

## **5. New Business: Judge Moran**

### **A. CIDVC Chair**

The application package for the Chair Position was submitted to the Chief Justice for approval. There are two candidates, 1) Judge O'Neil from the Superior Court of Pinal County and 2) Judge Majestic from Tempe Justice Court.

### **B. Legislation: suggested fee clean-up**

#### **(HIGH VISIBILITY ITEM)**

CIDVC was disturbed by the decision of the Court of Appeals, Division One in determining that the 12- 2107 appeal fee prohibition fee did not apply to them. Division One stated in an opinion that the fees in 12-2107 applied to superior courts appeal actions.

A.R.S. §12-2107(B)states: “A filing fee shall not be charged to an appellant for filing an appeal, or to an appellee filing a cross appeal in the same case, to the court of appeals or to the supreme court from ...a protection order....”

There is a larger issue in that charging fees in protection order cases will disqualify the state from receiving Violence Against Women grant funds.

1) CIDVC voted to request the Chief Justice to send a letter to all presiding judges emphasizing that there are NO FEES for orders of protection or injunctions against harassment in dv cases. Furthermore CIDVC wants the CJ to admonish courts to not charge any fees for appeals of DV protection order cases. CIDVC will draft a copy of the proposed letter at the August meeting.

2) And CIDVC requested representatives of the Governor’s office to discuss the issue with the Governor and urge her to issue a letter to all city managers and city counsels discouraging them from passing rules to impose local fees on protection orders.

CIDVC will review the fee schedule and submit a legislative proposal to close loopholes which allow fees to be charged in protection order cases. John Pombier volunteered to chair the workgroup to review possible legislation.

**Motion: Request the Chief Justice to send a letter to all presiding judges emphasizing that there are NO FEES for protection orders in dv cases.**

**Vote: Pass**

**Tasks: Draft a letter for review by the committee.**

## **6. Call to the Public: Public Attending**

### **A. CPOR Policy Issue (CIDVC)**

David Berg asked CIDVC to move forward on the approved recommendation to allow law enforcement officers access to unserved protection order information.

**Motion: CIDVC Chair should bring the issue forward to the AJC for approval.**

**Vote: Pass**

**Tasks: Get this item on the AJC October agenda.**

### **B. DV Education Workgroup(CIDVC)**

The DV education presented at the Annual Judicial Conference was a huge success. The topic, The Impact of DV on Children, was a well chosen. Education Services had to “open up” the size limit to include the 81 participants who wanted the training. On the day of the training more people arrived than had signed up for the classes. There were approximately 100 participants. The group actively participated in various lively discussions and many expressed appreciation for the high caliber of the faculty.

**Tasks: Informational only**

### **C. Data quality**

CIDVC wants judicial officers to be trained on the mandatory “fill fields” in AZTEC to provide judicial oversight in data collection.

### **D. Batterer Woman’s Testimony Project Report**

A member of the committee requested that CIDVC review the Battered Women’s Testimony Project conducted and published by the Arizona Coalition Against Domestic Violence (AzCADV). The report was made available at the Judicial Conference today. The committee debated the pros and cons to preparing a response to the report. Perhaps the issue can be placed on the agenda for further discussion after the members have read the report.

**7. Next Meeting: August 20, 2003 10:00 – 2:00 PM, AOC Conference room 119 A&B, Phoenix, AZ**

**8. Adjournment: Judge Moran**

The meeting adjourned at 3:07 PM.

**COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS**

**Meeting Minutes**

August 28, 2003

10:00 AM – 2:00 PM

State Courts Building

Conference Room 119

Phoenix, AZ

**CIDVC Members Present**

Hon. William O'Neil, Chair

Jerry Bernstein, Esq.

Evelyn Buckner

Lt. Mark Carpenter

Bob James

Dr. Teresa Lanier

Sheri Lauritano, Esq.

Robert M. Lehner

Hon. Denise Lundin

Hon. Mark Moran

John Pombier, Esq.

Tracey Wilkinson

**Members using a Proxy**

Hon. George Anagnost (Bob James, Proxy)

Martha F. Harmon (John Pombier, Proxy)

Patricia Klahr (Tracey Wilkinson, Proxy)

Hon. D. Hendrix (Hon. M. Moran, Proxy)

**Staff Present**

Catherine Drezak

Konnie Young

Karen Kretschman

Chris Claxton

**Quorum: Yes**

**1. Call Meeting to Order: Judge O'Neil**

The meeting was called to order at 10:00 AM. All those present introduced themselves. Guests attending the meeting were welcomed.

**Members RSVP (unable to attend)**

Margaret Bentzen

Hallie Bonger-White, Esq.

Allie Bones

Hon. Sherry Geisler

Martha Fraser Harmon

Patricia Klahr

Anu Partap, M.D.

Hon. Chris Wotruba

**Members Not Present**

Hon. George Anagnost

Hon. Sherry Geisler

Hon. Danna Hendrix

Hon. Mary Helen Maley

**Guest**

Robert Roll, IT Division, AOC

## 2. Review of Previous Meeting Minutes: Judge O'Neil

Minutes of the June 19, 2003 meeting were reviewed.

**Motion: Minutes be accepted**

**Vote: Unanimous (verbal vote)**

**Tasks: None**

## 3. Workgroup Reports:

### A. Criminal Benchbook

Judge Moran gave a report on the status of the Criminal Benchbook. Staff reminded the Committee that December 1 is the deadline for providing the transcript to Education Services, AOC, for publication on the web and on CDs. Judge Moran asked for an updated CIDVC membership list. The subcommittee met last month to work on changes. A lot of the changes were cleaning up language and eliminating language that did not belong in a Benchbook. The subcommittee did elicit from certain committee members additional sections to be included. This would include a section proposed by Judge Moran on *Orders to Show Cause* regarding failure to comply with batterer programs.

They also looked at the HIPPA regulations to see if they have changed what the judge needs to do in criminal domestic violence cases in regard to evidence. The subcommittee concluded that HIPPA does not really affect the present state of the law which is stated in the Benchbook. Some language in the Benchbook which the prosecution side had submitted really was not appropriate. Much of that was deleted. The subcommittee feels they have gone as far as possible without input from the Committee. All proposed changes to date are in the version posted to the AOC website. Suggested comments from the committee include:

1. Section 4-7: New case needs to expand on *Lynn v. Reinstein*, involving the right of a victim to address the jury in homicide case.
2. Section G is not an accurate statement of current law; additional background on recent legislation is needed.
3. Regarding Section J, 13.004, SB 1267 is much broader than what is represented in the Benchbook, in that any proceeding in which a victim has a right to speak is not discoverable to the court, the state, or the defense. This needs to be rewritten to include all aspects of SB 1267 (handed out to members).
4. A section on contempt needs to be defined; reference is to a special prosecutor being needed/judge removes him/herself in this proceeding. Judge Moran indicated this was on page 11-9 and Appendix C, regarding the ethics opinion.
5. Some unnecessary language needs to be omitted (i.e., "**Then follow through.**" on page 4-6).
6. The section regarding dying declarations and terms of probation needs to be clarified.
7. Judge O'Neil asked if there was anything in the Benchbook regarding how to advise people that the law is not concrete and that what happened five years ago might not be applicable to date. Judge Moran said there was nothing like this represented at the present time and suggested that this could be incorporated in the introduction page.

8. Page 11-9: John Pombier cited a case where a judge compared a plea agreement to a contract, and when the defendant did not comply, he made the defendant adhere to the terms of the contract. (John will send this case to Konnie Young in order that it may be included.)

After a discussion about the importance of SB 1267, John Pombier asked if SB 1267 needs to be addressed in a future legislative session. It has *Brady* implications. Judge O'Neil suggested obtaining an AG opinion on the subject; then CIDVC needs to address this issue at a later date.

Members were urged to lodge their written comments on the web site. An updated, hopefully final, version will be posted on the web site prior to the next CIDVC meeting; changes will be highlighted in yellow. A workgroup meeting for the DV Criminal Benchbook will be set up so the final changes can be made. The October meeting is the last meeting in which this Benchbook may be formally approved by CIDVC prior to December 1 (see subsequent minute's entry re: meetings).

Judge O'Neil complimented workgroup members on the product and indicated the DV Criminal Benchbook is a great accomplishment.

**Motion: Review DV Criminal Benchbook; take a vote at October 15 meeting regarding approval or disapproval of the Benchbook.**

**Vote: Unanimously approved**

### **B. DV Forms Workgroup**

Bob James gave a report on the product of the DV Forms Workgroup. He explained that with the AOC and the court system's focus on the development of the FARE program, and its implications and demands on IT, the workgroup recommends that only DV forms which require IT/AZTEC programming be addressed by the DV Forms Workgroup until a later time. Consequently, Bob James presented the *General Combined Petition* and *Order of Protection and Injunction Guide Sheet*, both of which have no IT/AZTEC programming implications to resources and IT staff. The two forms will be presented to LJC, COSC and AJC. The forms will be presented in Rule 10(d) format, ARCP. Two minor changes were suggested and made to the forms.

**Motion: *General Combined Petition and Order of Protection and Injunction Guide Sheet* be approved**

**Vote: Unanimously approved**

### **C. DV Benchbook Report**

Catherine Drezak reported that the last version has been posted to the web site and that to her knowledge, all suggested changes and updates have been made. Catherine reminded the Committee that December 1 is the deadline by which Education Services needs the final version for CD production and posting to the web site and Intranet. This document, as it exists currently on the web site, is outdated and must be addressed quickly.

Discussion ensued; Bob James suggested that other Orders need to be incorporated; he also has other suggestions but wants to visit with Maricopa Superior judicial officers first. He suggested text should be added for *Injunctions against Harassment* and that there are punctuation and capitalization issues which must be addressed, as well. Evelyn Buckner volunteered to chair the workgroup, and staff will set up a meeting to address these issues.

**Task:** This item needs to be on the October 15 agenda for final approval.

#### **4. Legislation**

Page Gonzales reported about a proposed omnibus victims' rights bill being discussed by a workgroup she is attending. She asked for CIDVC members to assist. Sheri Lautaritano and John Pombier are part of this workgroup. Also, John Pombier reported that Rep. Russell Pearce is likely to propose another bill suggesting the following:

- 1) the need to distinguish between violent and non-violent DV calls;
- 2) the elimination of *ex parte Orders of Protection*; and
- 3) The concept of cross-orders or making any Order issued applicable to both parties.

Other possible legislative actions are possible changes to A.R.S. 13-3601(M) (Pearce proposes to eliminate) and 13-3602(D) (issue is that some jurisdictions will not serve orders from another jurisdiction). Diane Post thought the statute was already clear, but after members' comments she indicated the workgroup would take another look at the issue.

**Issues:** When discussing legislation that an "agency shall serve," look at resources instead and say "shall serve or cause to be served."

Another issue for this workgroup may be that DV Forms, in connection with the *Brady* issue, be changed to remove the *Brady* box and replace with a statement, such as "*Brady* applies if the following 'items' are applied to this Order."

The Battered Mothers' Testimony may also be another issue for CIDVC review.

#### **5. CPOR Data Quality-Exception Reports/Holder of Record-ability to change information**

Robert Roll, AOC IT Division, gave a presentation on the current problems encountered with the quality of data being placed in the datamart (JUSTIS) at the local court level. The following examples were given:

- 1) dates of birth are not entered, even though they appear on the petition;
- 2) party dates of birth are left blank;
- 3) Orders are marked as "served" but not "issued," and
- 4) *Protective Orders* are logged in without associated parties. As a result, the numbers do not "balance," and these data quality issues have led holders of record (largely sheriffs) in Arizona to request authorization to go into the datamart to make corrections from the hard copies they have in hand. Otherwise, DPS will not make the transmission to NCIC on the Orders which

have missing fields or incorrect information. Fields to which they would have access would be limited.

**Motion: Allow Holders of Record to correct *Protective Order* data in CPOR in limited fields only to facilitate transmission to NCIC, allowing law enforcement access to the data.**

**Vote: Unanimously approved**

**Task: Robert Roll will speak to LJC on same topic.**

#### **6. Battered Women's Testimony Project**

Diane Post gave a report on the Battered Women's Testimony Project. A study was done in New York which was funded by the Department of Justice. This study found that fathers were most likely to get visitation when they had an *Order of Protection* against the mother (75%). They were almost as successful in getting visitation when the mother had an *Order of Protection* against them (63%). When there was no *Order of Protection*, the fathers were granted visitation only 50% of the time. The study listed the same findings in regard to custody. The study found that the most violent fathers get the most visitation and custody. Lawyers were interviewed who said they would rather not bring up violence because they thought it would be used against their clients. The presence of domestic violence did not make any difference to the court.

There have been other studies with the same findings. Legislators are getting calls from their constituents who tell them horror stories of what goes on in family court. Diane spoke about several cases all over the country where the children are suing because they were ordered by the court to live with an abusive father. Diane told the Committee that this problem is not going to go away, and that if anyone should be dealing with it, it should be this Committee.

#### **7. Letter from Chief Justice**

Catherine Drezak reported on developments from the last meeting wherein committee members requested the Chief Justice to send a letter to all courts, reminding them that no charges were to be collected for *Orders of Protection* or *Injunctions Against Harassment*. The Chief Justice, however, requests concrete data regarding which courts, if any, are actually doing such charging in spite of statutory language to the contrary. He is reluctant to send out a letter accusing courts of doing something without hard data to back up the position. Members are to check their sources to see which courts, if any, are charging filing fees for these procedures. More specifically, the issue also involves fees charged on appeals in OP cases. Judge O'Neil indicated he would take this issue to the Presiding Judges' meeting in October, 2003.

#### **8. Brady Issues**

Catherine Drezak also reported on current *Brady* issues: Judges are not checking the *Brady* box, even if the case clearly qualifies for *Brady*. Additional education is suggested to further this issue; Judge O'Neil indicated he would take it to the Presiding Judges' meeting in October, 2003.

**9. New Business: Judge O'Neil**

In December, 2003, 14 members will be up for consideration of membership term renewals. Staff will send an e-mail inquiring about these 14 members' interest in renewing their membership and seeking nominations for open positions.

Discussion ensued regarding meeting frequency, given the amount of activity coming out of the various workgroups. Having quarterly meetings was urged, eliminating the June and December meetings on the current schedule.

Additional discussion ensued regarding possibly taking another look at the Ethics Opinion which the Committee has so often contemplated. Judge O'Neil asked that this issue be placed on a future agenda and encouraged members to submit their ideas for strategic planning/ projects for the Committee in the future. Judicial officers who are not on the Committee are also invited to review the Benchbooks and give their comments. September 19, 2003 is the deadline for Benchbook (Criminal) comments.

**Motion: Quarterly meetings beginning in October, 2003; eliminate December and June meetings from current schedule**

**Vote: Unanimously approved**

**Task: Change meeting schedule.**

**10. Call to the Public**

No members appeared.

**11. Next Meeting: October 15, 2003, 10:00 – 2:00 PM, AOC Conference Room 345 A&B, Phoenix, AZ**

**12. Adjournment: Judge O'Neil**

The meeting adjourned at 2:00 p.m.

**COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS**

**Meeting Minutes**

November 20, 2003, 10:00 AM – 2:00 PM

State Courts Building, Conference Room 119

CIDVC Website: <http://www.supreme.state.az.us/cidvc/>

**CIDVC Members Present**

Hon. William O’Neil, Chair  
Hon. George T. Anagnost (Telephonic)  
Jerry Bernstein, Esq.  
Allie Bones  
Hallie Bonger-White, Esq. (Telephonic)  
Evelyn Buckner  
Martha Fraser Harmon  
Donna Irwin  
Bob James  
Hon. Ronald I. Karp  
Patricia Klahr  
Sheri Lauritano, Esq.  
Robert M. Lehner, Assist. Police Chief  
Hon. Mark Moran  
Tracey Wilkinson

**Members using a Proxy**

Hon. Danna Hendrix (Bob James, Proxy)  
Hon. Chris Wotruba (Bob James, Proxy)

**Quorum: Yes**

**Members Not Present**

Margaret Bentzen  
Lt. Mark Carpenter  
Hon. Sherry Geisler  
Hon. Danna Hendrix  
Dr. Teresa Lanier  
Hon. Denise I. Lundin  
Hon. Mary Maley  
Anu Partap, M.D.  
John Pombier, Esq.  
Hon. Chris Wotruba

**Staff Present**

Konnie Young  
Karen Kretschman  
Isabel Gillett

**Guest**

Hon. Mark Armstrong  
Hon. Carey Hyatt  
Hon. Elizabeth Finn  
Robert Roll, IT Division, AOC

**1. Call Meeting to Order:**

Judge O'Neil called the meeting to order at 10:00 AM. All those present introduced themselves. Guests attending the meeting were welcomed.

**2. New Materials:**

The following new materials were distributed to the members:

- a) *Revised Membership List*
- b) *Workgroup Membership List*
- c) *Proposed Meeting Schedule*

For the sake of the members who were present via telephone, Judge O'Neil read off the dates for CIDVC meetings for 2004, which are all on Wednesdays: **02/11/04, 05/12/04, 08/18/04 and 11/10/04.**

**3. Review of Previous Meeting Minutes:**

Minutes of the August 28, 2003 meeting were reviewed. One correction was submitted that was on page 2, section 4 in regard to a change on contempt. The paragraph was correct except that following "page 11-9," there should be a period. The remaining portion of the sentence is not applicable to contempt and, therefore, will be stricken.

**Motion: Minutes be accepted**

**Vote: Unanimous (verbal vote)**

**4. Rules for Conducting Committee Business:**

The Committee discussed and approved the following rules for conducting Committee business:

- 1.) **DECISIONS/ACTIONS:** Committee decisions will be made by consensus and/or majority vote (if there is a quorum), and a numerical vote will be recorded unless it is unanimous.
- 2.) **MEETINGS:** The Committee will meet quarterly, eliminating December and June meetings; additional meetings might be necessary, and workgroups will meet more frequently. Following is the CIDVC meeting schedule for 2004: February 11<sup>th</sup>, May 12<sup>th</sup>, August 18<sup>th</sup> and November 10<sup>th</sup>.
- 3.) **QUORUM POLICY:** The minimum for a quorum will be determined by the presence of 50% plus one member. Attendance by all members is expected for all meetings; however, representation by proxies is permissible, and proxies will be counted to comprise a quorum.
- 4.) **PROXY POLICY:** Committee members may send proxies to attend meetings when necessary but written notice must be sent to the Committee Chair and Supreme Court Staff prior to meetings attended by proxies. A CIDVC member

may serve as a proxy for another CIDVC member, but a proxy does not have to be a member of CIDVC. Members who must be absent from meetings must fully inform proxies of Committee business prior to meetings, and proxies may vote on items in the place of the members they represent.

Following are details of the discussion which culminated in the summary of decisions (above):

**Motion: A motion was made that members could utilize other members to vote as proxies for them either written or orally.**

**Vote: In favor-Unanimous (verbal vote)**

**Motion: Another member made a motion to allow a member to utilize a “non-member” as proxy.**

**Vote: Judge O’Neil counted the votes after asking each member/ proxy to state his or her name and voting position; the motion passed 7-5 as a result that non-members could serve as proxies.**

The next proposal that was made was that a member was authorized to utilize one proxy per year; personal attendance would be required 75% of the four meetings.

**Motion: 100% attendance is required either personally or by proxy with the exception of extraordinary circumstances as determined by the Committee Chair.**

**Vote: In favor-Unanimous (verbal vote)**

Notification that members will be using proxies needs to be in writing, but it can be verbal to the Chair or AOC Staff. The members voted in favor of this method. It was voted to utilize an informal written proxy which includes e-mail for proxies.

**Motion: Utilizing an informal written proxy which includes e-mail for proxy.**

**Vote: In favor-Unanimous (verbal vote)**

**TASK: Konnie will revise and distribute a new proxy form to all members.**

The present quorum is one-half of the actual standing membership; it is not one-half of the slots that are available on the Committee.

**Motion: The quorum will be one-half of the appointed members plus one.**

**Vote: In favor-Unanimous (verbal vote)**

Next issue is if proxies properly count towards the determination of quorum.

**Motion: Proxies will be included in the establishment of quorum.**

**Vote: In favor-Unanimous (verbal vote)**

## **5. DV Court (Maricopa) Presentation:**

Bob James invited and introduced two guests who are Judicial Officers from the Superior Court in Maricopa County, Hon. Mark Armstrong and Hon. Carey Hyatt. Judge Armstrong is the presiding judge in the Family Court Department in the Superior Court in Maricopa County; Judge Hyatt is a Domestic Violence Court Judge. These two judges spoke about the development of the Domestic Violence Court, distributed pamphlets about the DV Court, and addressed questions posed by CIDVC members.

## **6. Workgroup Reports:**

### ***DV Forms Report:***

The CIDVC Domestic Violence Forms Workgroup has worked diligently to revise DV Forms and has recently completed two forms which do not have IT implications: 1) the General Petition and 2) a Guide Sheet. The Domestic Violence Forms Workgroup has amended the existing forms to promote the use of uniform and efficient legal forms at all levels of the court system. 1) Injunction against Harassment; 2) Order of Protection and 3) Injunction Against Workplace Harassment. The DV Forms Workgroup also amended the language used on the forms to make the forms easier to understand and complete by *pro se* parties. Furthermore the new Guide Sheet has been drafted to accompany the General Petition for protective orders and enhance comprehension. It replaces the former Petitioner's Confidential Information Sheet. Both the General Petition and Guide Sheet have met the approval of the Limited Jurisdiction Committee, the Committee on Superior Courts, and the Arizona Judicial Council. These two forms will roll out to all courts electronically and Courts will be able to use them immediately or use up existing supplies until mandatory use goes into effect on February 1, 2004.

### ***Brady Issues Report:***

Judge Elizabeth Finn presented a PowerPoint presentation entitled, "Guns," which deals with the state statute and the Brady statute. Judge Finn stated that the Brady law is federal, and Lautenberg is a federal statute that does not have anything to do with orders of protection but does deal with misdemeanor crimes. The state statute allows a judge to prohibit an individual from possessing firearms in an *ex parte* hearing. This is separate and independent from Brady.

Lautenberg does not deal with orders of protection; it deals with being convicted of a misdemeanor crime of domestic violence which is defined as "a force, a threat and use of force" and applies to everyone. The Brady statute states that the order has to be a restraint on conduct or a finding of credible threat. The key to Brady is that it lasts the length of the order; when the order expires, then the Brady statute is over.

Under state statute, protective orders apply, no hearings are required, no relationships are required, and it lasts the length of the order and no exemptions. Under Brady protective orders only, only after a hearing, meet the narrow relationship test, and it lasts the length of the order; there are exemptions for law enforcement and military. Lautenberg applies

only to criminal convictions, and there is a relationship test—same one as in Brady—and lifetime prohibition unless set aside, and no exemptions.

**TASK: Konnie will send an electronic version of Judge Finn's *Guns* presentation to the Committee.**

***DV Benchbook Report:***

A draft version of the DV Benchbook went to the printer on December 1, 2003, and 100 will be printed for Ed. Services and the NJO training in early January. Judge Finn will teach from the draft version at the NJO training and the DV Benchbook workgroup will continue to meet in December and January to finalize and present it to the CIDVC membership in February for final vote. Once this is all completed, it will not be printed in hard copy but rather on CD ROM and sent to all the judges.

***DV Criminal Benchbook Report:***

The vote for approval for this Benchbook has been tabled until February when CIDVC meets again. The draft that is on the CIDVC website does not reflect the changes that were already made to the document. A hard copy was presented to Judge Moran that does reflect the changes that were made. The area of concern was Chapter 12 which is the Batterer Intervention section and what specifics should be changed or incorporated. A meeting for the DV Criminal Benchbook will be planned in December to finalize the incorporation of the items which belong in the Criminal Benchbook from the Civil Benchbook. Also, the updated draft will be posted on the website before the February CIDVC meeting. The Benchbook will also be distributed to the courts on DC ROM after the February CIDVC meeting.

***Legislation Report:***

Judge O'Neil stated that there was nothing to report other than he had presented to the presiding judges on the topic of charging filing fees for protective orders. This problem was more in the lower courts.

**TASK: Judge O'Neil will send out a letter that will go out the first week of December to the presiding judges reminding them of this request.**

***CPOR Report:***

Robert Roll and Konnie Young have presented and received approval from CIDVC, LJC and COSC on two enhancements to CPOR/LPOR that will provide faster, more complete protection for victims of domestic violence and improved nationwide protection as well. The two recommendations are: 1) to enable the Holder of Record to have the ability to supplement electronic LPOR data and 2) to allow the Holder of Record access to unserved protective orders in LPOR. Robert and Konnie will present these two proposed enhancements for AJC approval on December 11, 2003. Robert and Konnie have also coordinated their efforts with DPS which is currently field-testing the CPOR process to clean-up data quality issues. This effort is funded by the STOP Grant, and the new CPOR process will go into effect in participating courts on January 22, 2004.

**TASK: Konnie will send the electronic PowerPoint *CPOR/LPOR Protective Order Presentation* to the Committee.**

**7. Reappointment/Appointment Process Update**

Konnie Young reported that the reappointment and new appointment package was submitted the second week of November with 13 of the 14 CIDVC members whose terms expire on December 31, 2003 expressing an interest in being reappointed. There are also four open positions on CIDVC, and potential new members submitted applications and resumes for appointments in the following categories of membership: two limited jurisdiction judges, one Sheriff's Office representative, and one Arizona domestic violence coalition representative.

**8. Strategic Planning:**

Judge O'Neil stated that there were four areas that he wanted the Committee to focus on: 1) hard copies of benchbooks and the new petition; 2) education; 3) training for clerks and judges and 4) publicizing (i.e., this Committee, this area). Donna Irwin added that an area that needs focus is also education and training for legislators and other community groups.

**9. Call to the Public:**

No members appeared.

**10. Next Meeting:**

February 11, 2004, 10:00 – 2:00 PM, AOC Conference Room 230, Phoenix, AZ

**11. Adjournment:**

Judge O'Neil adjourned the meeting at 2:00 pm.