

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Minutes

February 11, 2004, 1:00 PM – 2:20 PM

State Courts Building, Conference Room 230

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
Evelyn Buckner
Mark Carpenter
Larry Farnsworth
Hon. Elizabeth R. Finn
Martha Fraser Harmon
Hon. Danna Hendrix
Bob James
Hon. Ronald I. Karp
Patricia Klahr
Julianna Koob
Mary Ann Lanzilotta, Ph.D
Sheri Lauritano, Esq.
Hon. Michelle Lue Sang
Hon. Mary Helen Maley
Richard McLane
Hon. Mark Moran
John Pombier, Esq.
Tracey Wilkinson

Members using a Proxy

Hon. Denise I. Lundin (Judge William
O'Neil, Proxy)
Anu Partap, M.D. (Bertha Martinez, Proxy)

Members Not Present

Hallie Bonger-White, Esq.
Hon. Sherry Geisler
Donna Irwin

Staff Present

Konnie K. Young
Karen Kretschman
Elizabeth Portillo

Guests

Todd Adkins, Legislative Specialist
Xochitl Orozco, Legislative Intern
Commissioner Carolyn Passamonte
Doug Pilcher, Phoenix Municipal Court
Robert Roll, IT Division, AOC

Quorum: Yes

1. Call Meeting to Order:

Judge O'Neil called the meeting to order at 1:00 PM. All those present introduced themselves. Guests attending the meeting were welcomed. Many members had just attended the STOP Violence Against Women events at the capitol prior to attending the CIDVC meeting, and Judge O'Neil commented that the presentation at the capitol was a huge success.

2. New Materials:

The following new materials were distributed to the members:

- a) *Revised Membership List*
- b) *Workgroup Membership Lists*
- c) *Meeting Schedule for 2004*
- d) *Draft Minutes (November 20, 2003)*
- e) *DV Benchbook & DV Criminal Benchbook*
- f) *Legislative Handout (Presented by Todd Adkins & Xochitl Orozco)*

The members were each given binders for the CIDVC meetings and instructed to discard any previous membership lists. Judge O'Neil stressed that it was important to keep email addresses confidential and that the addresses were for internal use; he instructed members not to share the addresses with anyone without that individual's permission.

3. CPOR/LPOR Project Update:

Robert Roll gave an update on the status of CPOR/LPOR which went into full production on January 22, 2004. This process will allow all the holders of records to query CPOR/LPOR and improve the process of using LPOR for NCIC acceptance of protective orders. Since the roll-out date, there have been approximately one million queries that have come through LPOR.

The Department of Public Safety (DPS) would like to move this into full functionality as soon as possible so that the holders of records will be able to accept protective orders and make them available for statewide query.

Konnie Young asked Robert to briefly explain CPOR (Court Protective Order Repository) and LPOR (Law Enforcement Protective Order Repository), since there were many new members present. Robert explained that CPOR has been around for about two years and that it is retrieving the actual protective order data from the courts to JUSTIS, which is the data warehouse. LPOR was just implemented on January 22, 2004. Data is extracted from CPOR and sent to a separate server, to which law enforcement has access; holders of record can query upon orders and accept them.

4. Workgroup Membership Lists:

Konnie circulated the membership lists for the various workgroups and asked the members to review them to ensure that the information was correct and to indicate if they wanted to be off of a workgroup list or wanted to join any of the workgroups.

Judge Moran, the Chair of the Education Workgroup, stated that the workgroup was regrouped last year for the specific purpose of presenting at the judicial conference. He said that these workgroup members had gotten more involved in the creation and revision of the DV Benchbooks. At this time, there are no new projects to report.

5. Approval of Minutes:

Judge O'Neil discussed the minutes and asked if there were any additions or corrections. Judge Moran stated that there was a typo on page four of the minutes under section six on the second paragraph from the bottom where Judge Finn presented the Brady Issue. Instead of "incredible" threat it should read "credible" threat. It was noted and will be changed. With no further comments, the minutes were approved as submitted.

6. Workgroup Reports:

DV Benchbook Workgroup (Evelyn Buckner, Chair):

Evelyn stated that many dedicated hours from the workgroup and staff went into updating and strengthening the benchbook. Evelyn stated that she is very confident that this benchbook will serve as a relevant tool for judges who make decisions related to protective orders for victims of domestic violence.

Judge Lu Sang stated a correction was needed on page 115 under the "How long must I stay away from my house" question because the answer is incorrect. It implies that a defendant needs to request within five days, and a hearing must be set within five days of his/her request; but the request itself does not need to be made within five days. Allie Bones also noted that it is not if the order is issued, that it is effective for a year; rather, it is if the order is issued it is effective one year from when it is served. Another member stated the sentence that says, "You must stay away from the property for the full one year period," needs to be deleted. Konnie stated that these changes will be noted and made prior to the Benchbooks being distributed.

Motion: To adopt the Domestic Violence Benchbook, with the suggested corrections

Vote: In favor-Unanimous (verbal vote)

A member stated that on page 135, the second entry for Autumn House's phone number should be: 480-835-5555, not 602-835-5555. She stated that some of the other numbers should be verified, including Vista Del Camino Social Services, which should read as: 480-312-2323 (instead of 480-994-2323). Another member also noted that on page 150, Southeastern Arizona Behavioral Health Services' phone number was incorrect. She will check the other numbers as well.

DV Criminal Benchbook Workgroup (Judge Mark Moran, Chair):

Judge Moran thanked all the Committee members and AOC staff for their expertise and input for the DV Criminal Benchbook.

Motion: To adopt the final draft as the new Domestic Violence Criminal Benchbook
Vote: In favor-Unanimous (verbal vote)

Judge O'Neil stated that both benchbooks will be delivered to the various judges by CD-rom and others by hard copy, if necessary, throughout the state.

DV Forms Workgroup (Bob James, Chair):

Bob James pointed out to the members the *General Petition* and *Guide Sheet for Orders of Protection and Injunctions* and the *FAQ's: General Petition for Protective Orders & Guide Sheet*. Effective February 1, 2004 the first two pages were mandated for use by all Arizona courts dealing with protective orders. The newest document is the *FAQ's: General Petition for Protective Orders & Guide Sheet* which is the product of the AOC staff after receiving feedback from the various courts throughout the state and addressing recurring questions. Bob stated that at this point in time, the workgroup is on hold, but he will be getting the group back together to decide the next strategic direction for the workgroup to continue working on protective order forms.

7. Legislative Report:

Todd Adkins, Legislative Specialist, and Xochitl Orozco, Legislative Intern, distributed a handout, and the Committee discussed the following proposed bills:

HB2001-Judges Pro Tem; Domestic Relations (Sponsor: Rep. Yarbrough, et al.):

Parties in a domestic relations case may elect that a judge *pro tem* be assigned. The parties shall agree and pay the *pro tem's* salary upon approval of the court.

SB1160 Domestic Violence; Assessments (Sponsor: Sen. Mead, Bee, Brotherton et al.):

The court imposes an additional assessment, in addition to any other fine or restitution for persons convicted of domestic violence offenses, and the monies get deposited in a Domestic Violence Shelter Fund.

HB2317 Landlord Tenant; Domestic Violence (Sponsor: Rep. McClure):

This proposed bill prohibits rental agreements from including provisions that limit the tenant's right to summon police in response to domestic violence, and a tenant may terminate a rental contract when there is an incident of domestic violence.

SB1196 Protection Orders; Domestic Violence; Reports (Sponsor: Sen. Anderson):

This proposed bill proposes the publishing of a report by the Supreme Court each year that entails demographic statistics on: a) the number of orders of protection issued statewide from each court, b) the number of orders denied, c) the number of orders violated, d) details of the punishment for violations, e) the number of orders that are abandoned, and f) the number of persons killed while the order is in effect. The bill proposes that if the Supreme Court fails to publish this report, the

Court will not receive any monies from the criminal case processing and enforcement improvement fund.

HB2208 Domestic Violence; Diversion (Sponsor: Rep. Tully. Others: Rep. Allen, Gullett, Hubbs, Miranda):

This proposed bill strikes language that authorizes the court to divert a defendant found guilty of a domestic violence offense.

HB2242 Harassment Definition (Sponsor: Rep. Thompson):

“Harassment”, as defined in A.R.S. 12-1809, is changed to mean “conduct” (rather than “a series of events over any period of time”) that would lead a person to be alarmed, annoyed, or harassed.

HB2304 Sexual Assault of a Spouse (Sponsor: Rep. Jayne, Rep. Bradley et. al):

This bill eliminates distinction between marital and non-marital sexual assault.

SB1206 Unemployment Benefits (Sponsor: Sen. Allen):

This bill proposes various statutory changes to unemployment benefits. It prohibits the Department of Economic Security from disqualifying an individual from receiving benefits if the individual is a victim of domestic violence and leaves employment due to a documented case of domestic violence offense.

SB1156 Retroactive Child Support (Sponsor: Sen. Brotherton, Sen. Giffords, et. al.):

This bill allows the court to order up to three years of retroactive child support if the parties lived apart before filing for divorce, legal separation, maintenance or child support.

SB1308 Domestic Relations; Child Custody (Sponsor: Sen. Bee, Allen, et al.):

This bill would prohibit the court from ordering joint counseling for parents with an order of protection or a history of domestic violence, unless the alleged victim of domestic violence consents to meet jointly. It prohibits the court from denying or limiting custody or parenting time to a parent solely because the parent acted, based on a reasonable belief, to report, determine or treat suspected sexual abuse. It also prohibits the court from granting legal custody or parenting time if the person is a registered sex offender or has been convicted of murdering the other parent, unless the court finds no risk to the child and states this in writing. This bill prohibits courts from taking into consideration any recommendations regarding custody from professional personnel and requires additional training for any entity that conducts an investigation or prepares a report concerning custodial agreement.

8. Call to the Public:

There were no comments from the public. An acknowledgement and applause was made to Juliana Koob, who was the driving force in putting together the Stop Violence against Women’s Legislative Day which took place during the morning prior to this meeting and was very successful.

9. Next Meeting:

Konnie announced the next meeting details: May 12, 2004, 10:00 AM – 2:00 PM, State Courts Building, Conference Room 119 A&B.

Konnie also reminded members to look at the workgroup lists that had been distributed, to make any necessary corrections, and to let her or Elizabeth Portillo know of any interest in joining any of the workgroups.

10. Adjournment:

Judge O'Neil adjourned the meeting at 2:20 pm.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Minutes

May 12, 2004, 10:00 AM – 2:00 PM

State Courts Building, Conference Room 119 A&B

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

CIDVC Members Present

Hon. William O'Neil, Chair
Hon. George T. Anagnost (Telephonic)
Allie Bones
Evelyn Buckner
Mark Carpenter
Larry Farnsworth
Hon. Elizabeth R. Finn
Martha Fraser Harmon
Hon. Danna Hendrix
Donna Irwin
Bob James
Hon. Ronald I. Karp
Patricia Klahr
Mary Ann Lanzilotta, Ph.D
Sheri Lauritano, Esq.
Hon. Michelle Lue Sang
Hon. Denise I. Lundin
Hon. Mary Helen Maley
Richard McLane
Hon. Mark Moran
John Pombier, Esq.
Tracey Wilkinson

Members using a Proxy

Julianna Koob (Bill Hart, Proxy)
Anu Partap, M.D. (Bertha Martinez, Proxy)

Members Not Present

Jerry Bernstein, Esq.
Hallie Bongar White, Esq.
Hon. Sherry Geisler

Staff Present

Konnie K. Young
Karen Kretschman
Patricia Wuensche
Elizabeth Portillo

Guests

David Benton, Legislative Officer

Quorum: Yes

1. Call Meeting to Order

Judge O'Neil called the meeting to order at 10:12 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 & Update on Membership*
- b) *Workgroup Membership Lists*
- c) *Meeting Schedule for 2004*
- d) *Draft Minutes (February 11, 2004)*

Revised/Update of CIDVC and Workgroup Membership Lists

Judge O'Neil asked that the members review and make any necessary corrections to the revised CIDVC membership list and stressed that it is important to keep e-mail addresses and member information confidential. Also attached were the committee workgroups (Criminal Benchbook, Forms, Education, and DV Benchbook) membership lists, and Judge O'Neil also wanted the workgroup members to review and make any necessary corrections to those lists. Judge O'Neil said that if a member is interested in becoming a part of a workgroup, to let him, Konnie Young, or Elizabeth Portillo know so that the member could be appointed to that requested workgroup membership list.

Meeting Schedule for 2004

Judge O'Neil reviewed the handout that reflected the dates for future CIDVC meetings and said that these meetings would not be changing. He stressed the importance of utilizing the proxy procedures should a member not be able to attend in person or telephonically.

Review & Approval of February Minutes

The minutes of the February 11, 2004 meeting were reviewed and approved with no further discussion, corrections, deletions, or additions. A motion was not needed to approve these minutes.

3. DV Conference Report

Judge O'Neil stated that the Governor funded a couple of the judges to attend the conference in Chicago on Domestic Violence. He said that the conference was excellent and intensive. Judge O'Neil said that one of the topics they discussed was Practical Applications where they presented factual situations, and participants worked through them in groups. There were also a lot of reading materials distributed on domestic violence. Judge O'Neil stated that he would share with the Committee some educational opportunities, like working through the factual situations to further understand what the victims go through. Judge O'Neil stated that he would like to approach Chief Justice Jones and ask that there be mandatory DV training for judges as they require in the Dependency areas.

4. Report from DV Automation Trainer (Patricia Wuensche)

Patricia Wuensche introduced herself and stated that she has been with the AOC for about a month and half and came from Phoenix Municipal; prior to moving to Phoenix, Pat was a magistrate in Michigan. Pat stated that she has been visiting various courts in the county of Maricopa. Pat's role is to provide training where training is needed and to increase the data accuracy of the orders that are entered so that they will be accepted in the National Center for the Investigation of Crimes (NCIC) for state and nationwide queries by law enforcement. In Patricia's visits to the courts it was discovered that there have been more data transmission errors between databases versus data entry errors from the clerks. Patricia will begin statewide training at the end of June or early July.

Judge O'Neil wanted Pat to elaborate more on the data entry issues that have been problems; Patricia said that the data does not seem to be picked up by CPOR properly from the databases at the justice level courts and the non-AZTEC courts. The data entry by the clerks is fine; but the CPOR system is missing entire fields (for instance, protective order codes for several orders or the parties do not appear for several orders). Pat said that she has alerted the DataWarehouse Manager of these error issues. Pat does not know the reason for these problems occurring. She is not sure if it is transmission on the lower courts side or the AOC/CPOR side not receiving the transmission properly. These issues are currently being investigated for a resolution and correction.

Konnie Young stated that Pat Wuensche will also be participating in the management of the DV web discussion site. The plan for the site is for judges to communicate about protective order matters. Also available will be a FAQ's sheet for frequent issues or questions regarding protective orders. Pat indicated that the DV discussion website is also available for clerks, as well as judges.

ACTION: Judge O'Neil suggested that the DV web discussion site information be provided at the Judicial Conference.

5. Air Force Policy on the Implementation of the Lautenberg Amendment

Judge O'Neil stated that he received some information from an Air Force reservist by the name of Gerald Williams, who is the staff attorney for the Commission on Judicial Conduct. The information that was submitted was an update on the Air Force policy on the implementation of the Lautenberg Amendment. This was sent to Judge O'Neil for informational purposes only; discussion was not necessary at this time. Konnie distributed a couple of copies of this information to the members and stated that a copy could be provided to anyone who requests one.

6. Violence Against Women Act (Donna Irwin)

Donna Irwin provided a PowerPoint presentation on the Self Petition Process for Immigrants Who Are Victims of Domestic Violence.

One of the Committee members asked Donna Irwin what specifically was being done to arouse public awareness; Donna responded that they are educating professionals to raise awareness of individuals who may be eligible for this service. The Governor's Office would like to encompass the entire state.

7. Order of Protection Form Proposal (Bob James, Judge Elizabeth Finn, & Judge Anagnost)

Bob James addressed the following three types of forms: a) Order of Protection, b) Injunction Against Harassment and c) Injunction Against Workplace Harassment in draft form.

Motion: Reaffirm the Committee's past position that the Protective Order modifications be made

Vote: In favor-Unanimous (verbal vote)

Judge O'Neil will be appointing a small group to approach the aspect of how to bring about the implementation of the forms themselves.

8. Workgroup Reports

DV Benchbook Workgroup (Evelyn Buckner, Chair):

Evelyn Buckner gave a brief update and wrap-up of the DV Benchbook following the approval at the last CIDVC meeting. The DV and Criminal benchbooks were presented to the Committee on Superior Court on February 13, 2004 and the Limited Jurisdiction courts on February 25, 2004. Both of these benchbooks were made available on CD-ROM to judges, courts and CIDVC members. Konnie Young also presented and provided copies to the Conciliation Court Roundtable on April 2, 2004 and at the Judicial Staff Training in Tucson on April 7, 2004. The overwhelming response has been very positive. Evelyn recognized the expertise and hard work of the DV Benchbook Workgroup who signed up to complete minor work and substantial changes in order to eliminate duplications between it and the Criminal Benchbook and to strengthen it by ensuring that it was very concise and beneficial to judges who sit on the bench and make difficult decisions about the lives of victims on a daily basis. In addition to the recognition of the workgroup, she also acknowledged the AOC Staff who worked diligently on the project, as well.

DV Criminal Benchbook Workgroup (Judge Mark Moran, Chair):

Judge Moran stated that the DV Criminal Benchbook needed to be updated due to two legislative changes that have occurred. The first change is due to SB 1222, under the chapter for victims' rights which requires the bench to read a script for victims at the beginning of a criminal docket. The second change is due to HB 2208 which eliminated 13-3601(M) as a Diversion option at time of sentencing for the court. Judges will need to be warned that this option is no longer available after a specific date, but for crimes committed prior to that date, it will still be an option at time of sentencing for the judge. The workgroup held a telephonic meeting, and Konnie Young has distributed a draft of the new language for Chapter 12 to the workgroup. It will be reviewed and presented to the Committee so that it can go into the benchbook. Judge Moran would like to educate the judges by presenting them with the material at the Judicial Conference in June.

DV Forms Workgroup (Bob James, Chair):

By affirmation from the Committee the Forms Workgroup will review the three protective order forms and make sure to include what is needed in the forms. With the Chair's consent, Captain Larry D. Farnsworth and Patricia Wuensche will be added to the Forms Workgroup. Bob stated that the Forms Workgroup also needed to review a number of documents related to the domestic violence process through the courts in Arizona to see if there are any changes that are necessary and said that if any of the members wanted to assist in this task, they would be welcomed.

DV Education Workgroup (Judge Mark Moran, Chair):

Judge Moran stated that there has not been any training done by the Education Workgroup with the new Petition and Guide Sheet forms since the last part of 2003. He said that he needs to get them up to speed and get an agenda together. He would like to have the legislative updates at the judicial conference and establish a website for the frequently asked questions for orders of protection. Judge Moran said that there is an educational opportunity for a training conference called, "Ending Domestic Violence in Arizona." Martha Fraser Harmon is Chair of the Planning Committee for this conference which is sponsored by the Men's Anti-Violence Network (MAN). This conference will be held on August 31, 2004 at the Westin Kierland Resort in Scottsdale. The fee for this conference is \$35.00. COJET, Bar, and post credits will be available. Sarah M. Buel, J.D., a Texas prosecutor, will be a national speaker. There will be break-out groups which will focus on law enforcement concerns, prosecution and judicial issues.

For the record, Martha stated that the conference will be co-hosted by MAN and the Governor's Office. She stated that Konnie Young is on the Steering Committee as well as Judge Moran. There will be approximately five national speakers, and the Steering Committee members will determine the break-out sessions.

Konnie Young stated that she is managing the DV website along with the assistance of Patricia Wuensche. Konnie encouraged the members to be on at least one or more workgroups which is the bulk of the work of the Committee.

Judge Moran would like to have a regular spot on the Judicial Conference agenda on domestic violence issues. Bob James would also like periodic trainings and conferences available for the judicial officers of the state. He would like to develop training through the Committee or the branch for frontline staff via conference or some COJET class whether is through satellite or in person. Judge Elizabeth Finn approached COJET managers reminding them that it is mandatory to offer DV training two times a year for judges or staff or both. She also suggested publishing quarterly newsletters or use of the website for the various domestic violence issues that are requested. She also discussed the inconsistencies in the training not offered or controlled by COJET standardization. As a goal, Judge O'Neil would like CIDVC to focus on education and training.

9. Legislative Reports (David Benton, Legislative Officer)

David Benton, Legislative Officer, and the Committee discussed the following proposed bills:

BILLS STILL MOVING THROUGH THE PROCESS:

HB2348-Domestic Relations; Child Custody (Sponsor: Sen. Bee, et al.)

This proposed bill restricts judicial discretion in child custody and parenting time decisions when domestic violence is alleged. Additional training is required on domestic violence and substance abuse for any entity that conducts an investigation or prepares a report that concerns a custodial agreement. *This bill is waiting Senate 3rd Read.*

HB2317-Landlord Tenant; Domestic Violence (Sponsor: Rep. McClure)

This proposed bill prohibits rental agreements from including provisions that limit the tenant's right to summon police in response to domestic violence, and a tenant may terminate a rental contract when there is an incident of domestic violence. *This bill has already gone to the Governor.*

HB2304-Sexual Assault of a Spouse (Sponsor: Rep. Jayne, et al)

This bill eliminates distinction between marital and non-marital sexual assault. *This bill is waiting Senate Rules.*

SB1156-Retroactive Child Support (Sponsor: Sen. Brotherton, et al)

This bill allows the court to order up to three years of retroactive child support if the parties lived apart before filing for divorce, legal separation, maintenance or child support. *This bill was transmitted to the Governor on 4-29-04.*

BILLS NO LONGER MOVING:

SB 1196-Protection Orders; Domestic Violence; Reports (Sponsor: Sen. Anderson)

This proposed bill proposes the publishing of a report by the Supreme Court each year that entails demographic statistics on: a) the number of orders of protection issued statewide from each court, b) the number of orders denied, c) the number of orders violated, d) details of the punishment for violations, e) the number of orders that are abandoned, and f) the number of persons killed while the order is in effect. The bill proposes that if the Supreme Court fails to publish this report, the Court will not receive any monies from the criminal case processing and enforcement improvement fund. *This bill failed in Senate judiciary.*

HB2001-Judges Pro Tem; Domestic Relations (Sponsor: Rep. Yarborough)

Parties in a domestic relations case may elect that a judge *pro tem* be assigned. The parties shall agree and pay the *pro tem*'s salary upon approval of the court. *This bill will utilize Rule 53 of the Rules of Procedure Special Master Rule.*

BILLS FILED INTO LAW:

SB1222-Victim's Rights; Statement by Judge (Sponsor: Sen. Brotherton, et al)

This bill requires the superior court judge, at the commencement of the regular criminal docket, to read a short statement advising crime victims of their rights under Arizona law. *Laws 2004, Ch. 131*

HB 2208-Domestic Violence; Diversion (Sponsor: Rep. Tully, et al)

This bill strikes language that authorizes the court to divert a defendant found guilty of a domestic violence offense. *Laws 2004, Ch. 52*

Bill Hart of the Coalition Against Domestic Violence stated that HB2317 (that specifies the conditions under which a tenant may terminate a rental contract) is no longer part of the bill that was submitted to the Governor. The only provision would be if the victim in domestic abuse situation calls 911, and the police arrive, the victim would be afforded protection from certain crime and drug free addendums which become a “one strike and you’re out” policy in many cases.

The provision in HB2348 would prohibit face-to-face meetings between parties if domestic violence is in the history. Per David Benton, this portion has been modified and cut out. The other provisions were no custody or unsupervised parenting time for registered sex offenders and the prohibition of custody or unsupervised parenting time for someone who is convicted of first degree murder of the other parent common children.

The Committee would like to have a DV Legislative Workgroup which would meet with the legislature and provide feedback to CIDVC. Judge O’Neil stated that a workgroup or subcommittee that looks at the impact of proposed legislation on the courts and various aspects of the law enforcement as it relates to DV is well within the province of CIDVC. Due to the interest in having a legislative subcommittee from the various members, Judge O’Neil approved this. He stated if there is interest in being on this subcommittee to send a written directive to Konnie Young. Konnie asked for clarification if this was a subcommittee or a workgroup, and Judge O’Neil stated that it was a workgroup.

10. Discussion on Next Year’s Committee Goals

Judge O’Neil asked the members what they thought should be the Committee goals for next year. Following are the topics that were proposed as goals for next year:

- Education and Training
- Treatment aspect. Follow up on treatment to see if it is working. Family conferencing. Development of treatment and rehabilitative resources
- Accountability, Best Practices, working with COJET, monitoring courts
- Collaboration
- Data Collection

Allie Bones stated that she would like to be on the next CIDVC agenda for the August meeting to discuss the state plan.

Konnie reminded the members that if they wanted to be on any of the workgroups, including the new workgroup (the Legislative Workgroup), to let her know. The Education Workgroup will be meeting within the next couple of weeks. The DV Criminal Benchbook is out on the web.

As clarification, Judge O'Neil iterated to the members that the vote that was done earlier for the proposed Order of Protection was not a new vote; rather, it was reaffirmation of an action item on which the Committee had already voted. This gives Judge O'Neil direction as Chair but was not a formal action.

11. Call to the Public:

There were no comments from the public.

12. Next Meeting:

Konnie announced that the next meeting is on August 18, 2004, 10:00 AM – 2:00 PM, State Courts Building, Conference Room 119 A&B.

13. Adjournment:

Judge O'Neil adjourned the meeting at 12:48 pm.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Minutes

August 25, 2004, 10:00 AM – 2:00 PM

Judicial Education Center (JEC), Silver & Turquoise Conference Rooms

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

CIDVC Members Present:

Hon. William O'Neil, Chair
Hon. George T. Anagnost (Telephonic)
Allie Bones
Mark Carpenter
Larry Farnsworth
Hon. Elizabeth R. Finn
Martha Fraser Harmon
Hon. Sherry L. Geisler
Donna Irwin
Bob James
Mary Ann Lanzilotta, Ph.D
Sheri Lauritano, Esq.
Hon. Michelle Lue Sang
Hon. Denise I. Lundin
Hon. Mary Helen Maley (Telephonic)
Richard McLane
Hon. Mark Moran
John Pombier, Esq.

Members Represented by Proxy:

Jerry Bernstein (Proxy: Sheri Lauritano)
Hon. Danna Hendrix (Proxy: Hon. Mark Moran)
Hon. Ronald Karp (Proxy: Hon. William O'Neil)
Evelyn Buckner (Proxy: Allie Bones)

Members Not Present:

Hallie Bongar White, Esq.
Patricia Klahr
Dr. Anu Partap
Tracey Wilkinson

Staff Present:

Konnie K. Neal
Theresa Barrett
Robert Roll
Janet Scheiderer
Dave Byers
Elizabeth Portillo

Guests:

David Benton, Legislative Officer
Carolyn Passamonte, Commissioner
Sergeant Dave Norton, Phoenix Police Dept.
Rick Rager, Tempe Municipal Court
Hon. Joe Heilman, Superior Court
Dale Wiebusch, AZ Coalition Against Domestic Violence

Quorum: Yes

1. Call Meeting to Order/Welcome and Introductions

Judge O'Neil called the meeting to order at 10:11 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 & Update on Membership*
- b) *Workgroup Membership Lists*
- c) *Meeting Schedule for 2004*
- d) *Draft Minutes (May 12, 2004)*
- e) *Legislative Updates*
- f) *State Plan on Domestic Violence*
- g) *Orders of Protection (Sergeant Dave Norton's PowerPoint handout)*
- h) *Proposed NEW Protective Order Forms*
- i) *Proposed DV Criminal Benchbook Revisions*
- j) *PATCHS Program Handout (Dr. Anu Partap)*

Revised/Update of CIDVC and Workgroup Membership Lists

Judge O'Neil asked that the members review and make any necessary corrections to the revised CIDVC membership list and noted to the Committee that Juliana Koob has left the Committee resulting in a vacancy. There are approximately four open positions on the Committee that need to be filled, and Judge O'Neil stated that he would let the Committee know who was available for appointment for these positions as soon as he is informed by e-mail. Judge O'Neil also directed CIDVC members to review and update the workgroup membership lists. Judge O'Neil said that to be a member of a workgroup the individual does not need to be a member of the Committee. Workgroups are open to different appointments by Judge O'Neil.

Meeting Schedule for 2004

Judge O'Neil reviewed the handout that reflected the dates for future CIDVC meetings and stated that there is only one more meeting left for 2004 which is on November 10. It will be at the Supreme Court Building at 1501 W. Washington. He also stressed that if a committee member could not make the meeting either in person or telephonically he or she needed to utilize the proxy process. The CIDVC meeting dates for 2005 will be sent to members via e-mail once Judge O'Neil obtains these.

Approval of February Minutes

The minutes of the May 12, 2004 meeting were reviewed and approved with no further discussion, corrections, deletions, or additions.

3. Legislative Report (David Benton, Legislative Officer)

David Benton gave a brief summary of some of the issues that were raised during the last legislative session.

HB2348-Domestic Relations; Custody; Abuse (Sponsor: Rep. Johnson, Rep. Allen, Rep. Hart, Rep. Laughter and Rep. Quelland) Signed by Governor June 3, 2004; Chapter 320:

- Requires custody evaluators be trained in areas of child abuse and domestic violence. Domestic Relations Committee (with expanded membership) shall develop minimum training standards in these areas.
- Prohibits sole or joint legal or physical custody of a child to parent who is a registered sex offender or convicted of 1st degree murder of child's parent. The Court may consider that the convicted parent was a victim of domestic violence.

HB2317-Landlord Tenant, Domestic Violence (Sponsor: Rep. McClure, Rep. Biggs, Rep. Bradley, Rep. Hubbs, Rep. Huffman, Rep. O'Halleran, Rep. Prezelski) Signed by Governor May 11, 2004, Chapter 222:

- Prohibits rental agreements from containing any provision that either waive or limit the tenant's right to summon a peace officer or other emergency assistance in response to domestic violence, or mandates a tenant to agree to monetary or other penalties for summoning a peace officer or other emergency assistance in response to domestic violence.

HB2208-Domestic Violence; Diversion; Repeal (Sponsor: Rep. Tully, Rep. Allen, Rep. Gullett, Rep. Hubbs, Rep. Miranda) Signed by Governor April 7, 2004; Chapter 52:

- Strikes language that allows the courts to suspend disposition of defendant, post conviction, and order deferment of defendant to probation.
- Upon successful completion of probation conditions, the court could dismiss all proceedings.

HB2440-Unemployment Insurance (Sponsor: Rep. Hanson, Rep. Allen, Rep. Gray, Rep. Konopnicki) Signed by Governor May 20, 2004; Chapter 251:

- Deals primarily with unemployment insurance matters, but prohibits DES from disqualifying a victim of domestic violence from receiving unemployment benefits if the victim becomes unemployed because of domestic violence.
- Benefits awarded pursuant to this provision cannot be charged against the employer's account. SB1206 was headed in the same direction.

David also discussed the following bills that were not on the handout only because they did not go anywhere in the last session, and he believes that they will come back in the next session:

- SB1160-Domestic Violence Assessments
- SB1196-Reporting Requirements for the AOC regarding Orders of Protection
- HB2242-Redefine the term of Harassment
- HB2304-Assault of a Spouse

David indicated that the Coalition will likely present legislation. However, no details are available at this time.

Judge O'Neil stated that John Pombier has agreed to be the Chair of the DV Legislative Workgroup and asked David Benton to join in the discussions of the workgroup. Also, if members

are interested in joining the DV Legislative Workgroup, they should contact John Pombier, Konnie Neal, or Judge O'Neil.

4. State Plan on Domestic Violence (Allie Bones)

Allie Bones made a presentation on the State Plan on Domestic and Sexual Violence. The concept for the State Plan came about in the year 2000, and the legislature developed a task force to develop a state plan on domestic violence and sexual assault. However, over the course of a couple of years the task force was unsuccessful in developing the document. When Governor Napolitano took office and brought together the Commission to Prevent Violence Against Women, she gave them the task of producing the state plan on domestic and sexual violence. The vision for the document is to have a reduction in the incidences of domestic violence and sexual assaults in Arizona. The group put forward six guiding principles around the development of the plan that the recommendations followed.

Six subcommittees were formed to develop the components of the plan. The subcommittees met from June through December 2003 to develop the recommendations contained within the state plan. In the prevention/early intervention, the focus was mainly on areas of prevention and early intervention by identifying those at risk of violence at an early stage. The Victim Services/Crisis Response was divided into two categories: Direct Services and System Changes. Direct Services which focused on areas that impact the victim at the victim level. System Change focused on those things that are on a systems level with impact on victims' services and crisis responses. Allie reviewed the sections of the plan document with the Committee, and Judge O'Neil encouraged the members to review this document.

5. Orders of Protection (Sergeant Dave Norton, Phoenix Police Department)

Judge O'Neil introduced Sergeant Dave Norton of the Phoenix Police Department and said that Sergeant Norton had asked to make a recommendation and suggestions for revising domestic violence statutes and protective order forms from a law enforcement perspective. Sergeant Norton stated that he was speaking from a perspective of someone who deals with orders of protection constantly and realizes that there are some problems. He has served on the DRC, Child Support Committee, and the Family Court Advisory Council. Sergeant Norton also invited Judge Joe Heilman to help speak on this topic as well. Judge O'Neil stated to the members that they each had Sergeant Norton's Power Point presentation to follow along as Sergeant Norton discussed his presentation.

Sergeant Norton stated that *ARS* 13-3601 through 13-3602 were initially passed in 1998 and have been revised annually through 2004. Judge O'Neil pointed out to the members that the statutes of 13-3601 through 13-3602 are also in the State Plan Document on page 77. Sergeant Norton discussed the following problems in detail: definitions, exemptions, possession of a residence, and service of orders. After the presentation Sergeant Norton asked for any suggestions or feedback.

Sheri Lauritano, City of Phoenix Prosecutor, stated that there should not be a "pocket veto," because often the victims (which the majority are women) will invite the offenders to come back for various reasons; this causes an unintentional consequence of fewer people obtaining protection

orders. Sheri also said that giving victims five days on the issue of property is sufficient time for victims to relocate.

Judge Ellie Finn said that on the issue of service, the language that was in Sergeant Norton's presentation was the kind of language that she and Judge Heilman wrote last week at a west valley Chiefs of Police meeting. On the subject of the exclusive use of the household, Judge Finn did not see a problem in this area; however, from a training standpoint, a judge can limit the exclusive use to be five to seven days. Judge Finn stated that law enforcement needs to forward these matters to the prosecutor's office when they determine orders have been violated.

Judge O'Neil asked Judge Joe Heilman to submit his proposal to the Legislative Workgroup and invited Judge Joe Heilman to join the workgroup as well.

Martha Harmon asked Sergeant Norton if this was being brought forth officially on behalf of Phoenix Police Department and City of Phoenix or from a group of concerned professionals. Sergeant Norton stated that he is bringing this forward as the statewide law enforcement representative on the Domestic Relations Committee (DRC) and he is making a presentation on this to DRC next month for feedback; he will work through the legislative efforts for DRC.

6. PATCHS Program

Judge O'Neil stated that Dr. Partap was not present at today's meeting to present on the PATCHS Program but encouraged all the members to review the handouts that reflected her program.

7. DV Automation Trainer Report

Pat Wuensche was not present to deliver DV Automation Trainer Report, but Judge O'Neil stated that all the work that she has done is appreciated. She has worked diligently in the "front lines" of the courts working through problems and issues with protective orders to ensure the information is passed on properly to CPOR.

8. Workgroup Reports

DV Education Workgroup (Judge Mark Moran, Chair):

Judge Moran reported that his workgroup wants to determine those court issues that the Committee identifies as necessary training for all judges. These issues could be for New Judge Orientation and the Annual Judicial Conference; given the excellent participation in the past, CIDVC should continue to provide domestic violence training at the Arizona Judicial Conference. The DV Education Workgroup proposed the following other specific ideas:

- 1) To formalize a list of frequently asked protective order questions for both new and old judges;
- 2) To update present training materials and
- 3) To update the pamphlet (a purple booklet issued by the AOC in 2001) this is very popular with the litigants.

The DV Education Workgroup also solicited some ideas from other judges, courts, and service providers. One of the suggestions was to put together a master quiz for judges, and Judge Klatt from Tucson's City court shared his list of top 30 questions or dilemmas for judges in orders of protection cases. The Education Workgroup identified two specific education issues on forms: one is the certificate of service, and the other involves concerns with AZTEC courts having the box on the bottom of the form which says "Brady applies," confuses some judges.

Judge Moran stated that another issue, with which he is not too familiar, is the Video Victim Services which is not available in his county. He invited discussion on this option for victims who cannot physically go into the court to obtain an order of protection; instead of physically appearing, victims may appear via video, and judges can review evidence for the victims and issue necessary orders. Judge Moran would like to disseminate this video option statewide as that would be better for the victims who physically cannot go into court. Allie Bones indicated that she is surveying some of the rural shelters, advocates and courts to find out if the video victim service would be helpful to them, particularly in the more remote areas where one may have to travel far distances to go to court in order to obtain an order of protection. Judge Moran stated that this would be great for the victim, especially if the victim is in the hospital. Judge O'Neil agreed that this would be a great service for victims.

DV Criminal Workgroup (Judge Mark Moran, Chair):

Judge Moran pointed out to the members that they each had a packet of the proposed revisions to the Criminal Domestic Violence Benchbook necessitated by the changes in the law. The first was the Victims' Rights Statement to be read by judges at the beginning of the docket which is effective as of today, August 25, 2004.

The second change is in Chapter 12, section A which reflects the repeal of 13-3601(M) provision formerly the diversion provision that judges had the authority to use at the time sentencing; under this provision, the defendant could undergo treatment and successfully obtain a dismissal a domestic violence conviction or case. This has been repealed effective today.

Judge Moran stated that the Workgroup needed to rework the language, put a period after 2004 strike a judicial officer, and indicate that a prosecutor may offer diversion prior to filing charges.

MOTION: To rework the language of the amendment in that specific aspect and adopt of the corrections to the Domestic Violence Criminal Benchbook

VOTE: In favor-Unanimous (verbal vote)

DV Benchbook Workgroup (Allie Bones on behalf of Evelyn Buckner):

Allie Bones spoke on behalf of DV Benchbook Workgroup Chair Evelyn Buckner, who was not able to attend the CIDVC meeting. Allie stated that Evelyn wanted the group to know that she wanted to have a meeting between now and the end of the year to address any revisions that are needed to the DV Benchbook and to add the new order of protection forms once they are approved. Evelyn will be sending out an e-mail to have the meeting scheduled.

9. Proposed New Protective Order Forms (Bob James & Judge Elizabeth Finn)

Prior to Bob James' New Protective Order Forms presentation, Judge O'Neil apologized to the Committee stating that it was anticipated that the actual crafting of the forms would not be difficult and that the forms would be in everyone's hands long ago; however, the final forms were just printed out yesterday, and that is why the members did not get the proposed forms until today's meeting. The delay was not intentional, but the workgroup got into further discussion of other problems and had to work through additional protective order issues that arose.

Bob James also expressed his apologies to the committee members and stated that his workgroup by no means meant to "thrust" their work upon them at the very last minute. Following is Bob's discussion on the proposed new protective order forms:

ISSUES:

- 1.) The concern regarding the improper use of the "After Hearing" box in the top right caption of the Order of Protection. There was confusion that if that box happened to be checked, regardless of anything else, it would somehow invoke a Brady application to that order.
- 2.) Another issue raised by a judge, is related to case law from a 2001 case from the Circuit Courts of Appeal of the United States Federal Courts system. This issue caused a lot of discussion among workgroup members, but the issue has been addressed, and the protective order forms have been modified to reflect those changes.

REVIEW OF MAIN CHANGES TO THE ORDER OF PROTECTION FORM:

1.) After Hearing Box & Additional Data Information Lines:

At the top far right box where the title of the current Protective Order the "After Hearing Box" has been removed. The workgroup could not find any significant value added to keep it. Next, the three lines that reflect the following information: ORIGINAL COURT: _____, DATE ISSUED: _____ & SERVED: _____, and FORMER CASE #: _____ are brand new to the document. This has been a response to concerns that were heard from the Holders of Record throughout the State of Arizona; the concerns relate to being able to track when an order of protection is transferred to two different scenarios. When an order of protection is transferred from a Limited Jurisdiction Court to a Superior Court because of a pending Title 25 action, it is very difficult for the Holders of Record to find the original order because the effectiveness date of the order in place after the transfer relates to service of the original order. The information provided on these three lines gives the Holders of Record that linkage; this comes into play when a court modifies an order of protection which requires tracking procedures.

2.) Defendant Description Box:

There is a slight change to the "Defendant Description Box." Various courts and staff reported that in some situations, social security numbers, driver license numbers, and the issuing state are being obtained, and law enforcement officials stated this was very helpful

information in creating positive identifications for the enforcement of the protection orders. Bob James stated that these were NOT MANDATORY form fields.

Note: Dave Byers stated to Bob James that Congress will most likely be passing a bill that will prohibit the courts from providing this type of information on forms because of privacy issues.

3.) Notice Section Paragraph:

There is a substantial change in the Notice Section of the document. There is a 5th Circuit Court of Appeals, United States Federal Court Systems case that deals with an interpretation of the Brady Law and states that there are some conditions where a court can issue an order, restraining conduct that does not rise to the level of invoking Brady Law. Under the document that is in production right now, the first order paragraph is constructed in such a manner that if it is not altered by a judicial officer, it invokes Brady automatically. Judge Finn said that she spoke with Fannie Hasselbacher, who is the Assistant Chief Counsel for the FBI overseeing Brady. She faxed over the proposed order, and Fannie stated that to avoid invoking Brady, the word “stalk” would have to be removed because our stalking statutes have elements that deal with force and threats of death.

4.) Commit No Crimes Issue:

John Pombier stated that the section that reads, “The defendant shall not commit any other of the acts of domestic violence....” should read, “The defendant shall not commit any crimes,” to include all crimes against the Plaintiff. Judge Finn said that was fine, but we should still include the parenthetical phrase to warn the judges that the paragraph will invoke Brady.

5.) No Contact Section:

The “No Contact” section is a direct result of listening to law enforcement in the field, victims, and victims’ advocates. We need to more clearly define for the defendant how they are restricted; instead of providing an opportunity for defendants to manipulate a protective order, the perspective has been changed so that all contact will be restricted between the defendant and the plaintiff with the exception of anything being checked by the judge. This will be a more feasible order to enforce out in the field. The extra bold line in the form will be removed.

6.) Protective Person:

This section was just streamlined by providing a little bit more room for the name and DOB. Hopefully this will encourage more appropriate data collection for the NCIC.

7.) Civil Standby:

The language was changed in various ways.

8.) Possess No Weapons:

The sentence “poses a credible threat of bodily injury” *will be changed to* “poses a credible threat to the physical safety.”

Judge O'Neil provided the history and explanation of AZTEC impact for new members. He suggested that we not only need uniform, statewide protective order forms, but the forms also need to be user friendly so litigants, victims, offenders, and other affected by protective orders fully understand them.

MOTION: To proceed with the recommended modifications to the Protective Orders

VOTE: In favor-Unanimous (verbal vote)

Judge O'Neil asked Bob James why there is a rush to having these changes done, and Bob James responded that there were a couple of reasons. The changes that were discussed apart from the *Emerson* related changes have been in the works for over a year and half, and they are indirect response to the needs of the courts and law enforcement to actually get better, more enforceable orders out in the community; the sooner the forms are revised, the better they will be. More pressing is the issue regarding the judicial discretion that was identified in the *Emerson* decision. If these forms are reviewed by the necessary committees now, the earliest that courts would use these mandated forms would be mid 2005. If we wait until the next cycle, they would be effective at the end of 2005 or the beginning 2006 to reasonably expect all courts to be required to be in the new format.

Judge Finn added that these forms were finished a year ago February, and at that point, had gone to every committee and received a unanimous approval "in concept" from every committee. There are numerous judges from all around the state asking when these forms will be available for use.

10. *Gonzales v. Castle Rock, Colo.* – Enforcement of OP's (Judge Anagnost)

Judge Anagnost encouraged the members to review the 10th Circuit Federal case that is about a 90 page opinion. This was just for informational purposes.

TASK: Konnie will place this on the CIDVC website.

11. *Lautenberg* – Misdemeanor Records Retention (John Pombier)

John Pombier stated that he was contacted by a member of the Alcohol, Tobacco & Firearms (ATF) about two or three years and again, just recently over the issue that the records retention for misdemeanor convictions of domestic violence is five years in Arizona. If ATF chose to investigate a violation of federal gun law, (a Lautenberg violation) and the records were over five years in the state, ATF would be able to obtain the records they need to prosecute that case. Therefore, ATF has asked that we look at the issue of extending the records retention of domestic violence and misdemeanor convictions beyond the five years so that they have the ability, if they so choose, to do so to prosecute those cases.

John Pombier suggested that retention time for the Domestic Violence case records should be extended to 50 years. Judge Finn stated that from an administrative standpoint that it would be a nightmare, but from a legal standpoint that John was correct.

MOTION: The Committee will recommend that Ted Wilson will go to the committees, as necessary, including the Limited Jurisdiction Committee, to ferret out what is necessary in order to have the law enforced.

VOTE: In favor-Unanimous (verbal vote)

12. CPOR/LPOR Update (Robert Roll & Konnie Neal)

Robert Roll, Arizona Supreme Court, AOC, Information Technology Division, JUSTIS Data Warehouse Manager introduced himself. Robert went over a couple of updates. One of the main updates is that he is meeting with DPS next week to talk about possibly bringing Coconino County into production for CPOR/LPOR. They would get all the full functionality of LPOR that would meet the acceptance of the orders electronically, and those orders would be sent electronically from LPOR through DPS to NCIC, as well. Once that is activated, law enforcement will then have the capability to see at least Coconino County orders that were accepted by the holder of record. Robert stated that Pat Wuensche, DV Trainer, visited all the courts in Coconino County and has also spoken with the Holders of Record to make sure everyone is on the same page on how the orders are supposed to flow.

Robert went over some LPOR and NCIC message samples to show the Committee how much easier and how much formatted it is to read the messages from LPOR. Law enforcement doing queries out in the field will get two responses. They will get the response from NCIC and if there is a protective order in force a response from LPOR as well. As noted in the printouts the NCIC is strung all together with no formatting, compared to the LPOR output which actually gives a breakdown of which PCO code is interacted with it. This will help the law enforcement officers who are in the field with the physical protective order in their hand, if they get the response back from LPOR. What is seen from LPOR is what should be checked on the physical copy. NCIC groups the PCO codes, whereas LPOR keeps it broken out.

Also, Robert pointed out in the packet an update of the numbers of the statistics within CPOR. Robert stated that the error numbers have gone down in areas.

13. Ending Domestic Violence in Arizona Conference:

Martha Harmon talked about the Domestic Violence Conference that will be held on August 31, 2004. According to RSVP's for attendance, there will be a huge turn-out. The Steering Committee has actually had to turn some people away, and over 1,000 people are expected to attend.

14. Call to the Public:

There were no comments from the public.

15. Next Meeting:

The next meeting is on November 10, 2004, 10:00 AM – 2:00 PM, State Courts Building, Conference Room 119 A&B. The teleconference call in number is 602-542-9003.

16. Adjournment:

Judge O'Neil adjourned the meeting at 2:03 pm.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Minutes

November 10, 2004, 10:00 AM – 2:00 PM

119 A/B Conference Rooms

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

CIDVC Members Present:

Hon. William O'Neil, Chair

Jerry Bernstein, Esq.

Allie Bones

Hallie Bongar White (Telephonic)

Evelyn Buckner

Mark Carpenter

Larry Farnsworth

Hon. Elizabeth R. Finn

Martha Fraser Harmon

Hon. Sherry L. Geisler

Hon. Danna Hendrix (Telephonic)

Bob James

Hon. Ronald Karp

Patricia Klahr

Hon. Michelle Lue Sang

Hon. Mary Helen Maley

Richard McLane

Hon. Mark Moran

John Pombier, Esq.

Tracey Wilkinson

Members Represented by Proxy:

Hon. George T. Anagnost (Proxy: Bob James)

Mary Ann Lanzilotta (Proxy: Hon. Danna Hendrix)

Sheri Lauritano (Proxy: Amy Bain)

Denise Lundin (Proxy: Hon. William O'Neil)

Anu Partap (Proxy: Bertha Martinez)

Member Not Present:

Donna Irwin

Staff Present:

Konnie K. Neal, CIDVC Specialist

Elizabeth Portillo, Support Staff

Mike Baumstark, AOC Deputy Director

Karen Kretschman

Robert Roll

Patricia Wuensche

Guests:

Amy Bain, City of Phoenix Prosecutor's Office

Denise Dancy, National Center of State Courts (Video Teleconference)

Bridget Humphrey, Community Legal Services

Eric Jeffery, City of Phoenix Prosecutor's Office

Carolyn Passamonte, Maricopa County Commissioner

Neil Websdale, Northern Arizona University
Dale Wiebusch, Arizona Coalition Against Domestic Violence

Quorum: Yes

1. Meeting Called to Order/Welcome and Introductions

Judge O'Neil called the meeting to order at 10:15 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 Lists*
- c) *2005 Meeting Schedule*
- d) *Draft Minutes (August 25, 2004)*
- e) *Domestic Violence's Reach is Insidious (Arizona Republic, Oct. 17, 2004)*
- f) *Lethality Assessment Tools: A Critical Analysis (and other articles for Dr. Websdale's presentation)*
- g) *Extending Project Passport: Regionally Recognized Protection Orders*
- h) *Legislative Updates*
- i) *Draft Order of Protection form*
- j) *DV Benchbook (revised)*
- k) *DV Criminal Benchbook (revised)*

Revised/Update of CIDVC and Workgroup Membership Lists

Judge O'Neil asked that the members review and make any necessary corrections to the revised CIDVC membership list and workgroup membership lists.

Meeting Schedule for 2005

Judge O'Neil reviewed the handout that reflected the dates for future CIDVC meetings for 2005 and stated that it was very difficult to move the dates around to try to accommodate everyone. Judge O'Neil reminded the members that they needed to utilize the proxy process for any meetings on the 2005 schedule that they could not attend in person or by teleconference.

Approval of August Minutes

The minutes of the August 25, 2004 meeting were reviewed. Bob James requested that the minutes reflect on item 12, the CPOR/LPOR Update, that the system would be accessible to the courts throughout the state by the end of calendar year 2004. With the noted amendment by Bob James and no further discussion, corrections, deletions, or additions, the minutes were approved and seconded as presented.

3. Conference Reports/DV Updates (Judge O'Neil/Committee Members)

Some Committee members gave reports on conferences they had attended and updates on domestic violence projects. Evelyn Buckner, Judge William O'Neil and Konnie Neal attended a conference in Florida where they learned about Project Passport. Evelyn Buckner attended the week-long National Conference of District Attorneys 14th Annual Domestic Violence Conference in Anaheim, California. A majority of the information that Evelyn received from the conference

revolved around prosecuting victimless crimes after post *Crawford v. Williams* decision and extensive information on law enforcement training. She highly recommended the conference to the members to attend in the future. The next conference will be held in Reno, Nevada for 2005. Evelyn also discussed the conference that she, Judge O'Neil and Konnie attended in Florida that was sponsored by the STOP Violence Against Women. It was an opportunity to talk about cooperation, collaboration and coordination. Judge O'Neil stated that one of the things that he found very fascinating was that for many of the various states and territories attending the conference, time and time again when people from the same state would stand up to introduce their team, they were meeting each other for the first time that day. Judge O'Neil emphasized that we are fortunate in Arizona to have many opportunities to work together on DV issues, and CIDVC provides a great avenue for everyone to work together toward common goals regarding DV in Arizona. The other aspect was the excellent work, particularly in the area of DV training, that conference participants from other states shared at the conference.

Allie Bones gave a status report on the implementation of the State Plan on Domestic and Sexual Violence. There is an implementation team working on the legislation and different entities it impacts. There is also an implementation team focusing on sexual violence that has begun to meet at the three major universities, NAU, U of A, and ASU. Three focus groups have formed to study DV education, public awareness, and resources to respond to sexual assault on campus; the implementation team is putting together protocols for all the different entities where a person might come forward and report an incident of sexual assault. Also, there is a criminal justice implementation design team that is focusing on AZPOST (Arizona Police Officers' Standards and Training) and has agreed to put together a subject review committee to look at the basic training curriculum for all violence against women training. Sexual assault and stalking training will be provided, as well. Also, new law enforcement in-service training and prosecution and judicial training will be available.

4. Fatality Review Research (Dr. Neil Websdale)

Dr. Neil Websdale, NAU professor and prominent researcher and writer on DV fatality review studies, presented at the CIDVC meeting. He discussed the need for a fatality review study in Arizona and the results of his research in other states. Dr. Websdale and CIDVC member Judge Mark Moran attended a national conference on fatality review, and they are joining efforts with others from the Governor's Office for further research on DV fatalities in Arizona. Dr. Websdale provided the following website where members can log on to obtain more information on fatality review: www.ndvfri.org (National Domestic Violence Fatality Review Initiative). Dr. Websdale stated that over the last ten years, there has been a tremendous amount of research and literature accessible on this topic. There has been an enormous movement from approximately five or six states doing fatality reviews in 1990 to now thirty-four doing death reviews. There are numerous reports and a huge amount of information available. Dr. Websdale stated that he believes that states that do not move in this direction, toward establishing fatality review, run the risk of increased litigation. With more knowledge and information agency players and professionals will be increasingly compromised over the next decade or two.

Committee Member John Pombier asked Dr. Websdale that since some states have been doing this for up to fifteen years, has there been any reduction in the number of homicides during that time

period in any of the states. Dr. Websdale responded that some states have recorded fewer homicides, and some have not. Dr. Websdale stated that it could not be scientifically shown that the presence of death reviews reduces domestic homicides or domestic violence any more than one can show that mandatory arrest, as an example, decreases recidivism. Jerry Bernstein asked if there have been any studies in regards to whether there is an increase in the incidents of suicides by stalkers themselves. Dr. Websdale stated that he was not aware of any studies that document that, but definitely research is needed to document that type of statistic. Judge Elizabeth Finn asked Dr. Websdale if he had an opinion as to where the team should originate. Should it originate at a state level, through the Governor's Office, or the Attorney General's Office? Dr. Websdale responded that combinations of members or co-chairs from different agencies work better. There are models where advocacy blends with law enforcement and models where courts and the Attorney General's Office work collaboratively on review boards; it works well when two sets of agencies work together toward this goal. However, Dr. Websdale suggested that in Arizona, housing a fatality review team only with the Coalition would be a mistake; it would be a better move to house it in combination with the Coalition, law enforcement, and public health agencies or maybe through some kind of commission through the Governor's Office with a liaison to work with local communities. Another committee member asked if there have been any prevention programs that have been developed based on this research and Dr. Websdale said that there was and you could go onto their website to view the changes that have been implemented and programs that have been introduced.

Allie Bones stated that legislation is being pursued for fatality reviews in Arizona. Allie and Dr. Websdale discussed whether it made sense to have it at the commission level with the relationships of local communities or a state agency with the problem that there was not necessarily a staff person who could take this on as part of current job responsibilities whereas with a commission, that would be more of a reasonable expectation.

5. Extending Project Passport: Regionally Recognized Protection Orders (*Video Conference*) (Denise Dancy)

With technical assistance from Kim Albert and others in IT at this court and in Virginia, Denise Dancy, National Center for State Courts (NCSC) Director of the regional OP project called *Extending Project Passport*, presented via video conference during the CIDVC meeting. Denise provided a PowerPoint presentation regarding Project Passport and encouraged members to ask questions at the end of her presentation. She also was assisted by a technical staff person who addressed questions regarding the XML component of the project. The goal of Extending Project Passport is to improve recognition and enforcement of orders of protection within and among states and tribes by encouraging states and tribal courts to adopt a recognizable first page for orders of protection (i.e. to include common elements and fields necessary for NCIC). Denise informed the Committee that several states have already adopted the model first page for protection orders; most recently, six states and three territories comprising the Western-Pacific Region adopted a regionally recognized OP first page. Denise Dancy had approached Judge O'Neil and Konnie about the possibility of Arizona hosting the Central-Southwestern Region meeting in February; however, these plans have not been solidified to date. This meeting will serve to educate state teams, including Arizona and nine other states, about the intricacies

associated with federal laws that pertain to orders of protection, in an effort to enhance victim protection nationwide.

6. City of Phoenix Prosecutors' Office DV Website (Amy Bain & Eric Jeffery)

Amy Bain and Eric Jeffery, from the City of Phoenix Prosecutor's Office; gave a presentation on a DV website they designed to relay information regarding DV issues and protective orders to the public. Eric Jeffery stated that the website is to provide victims the ability to interact with the prosecutor's office through a web environment. They also put together a prosecutor's resource center so that prosecutors throughout the state of Arizona could have resources in the domestic violence arena as well. The site is password protected so that the information could be shared with the prosecutors and not the defense attorneys. Also a domestic violence training manual is available to obtain information or download for use in the daily practice. Allie Bones suggested that a warning be put on the website that if the victim felt that the e-mail was being tracked in any way, to stop and go and use a public computer for safety purposes.

7. Legislative Report (David Benton)

David Benton gave a brief summary of the judicial package for the upcoming legislative session.

Drug Court Funding:

Appropriates funds for drug courts to provide treatment, staff and drug-testing services.

Fiduciary Program Funding:

This proposal is a funding packet designed to support the additional needs of the Fiduciary Program. The packet includes possible funding sources of increased surcharges on birth and death certificates. Technical statutory changes are also addressed.

Appointment of Guardians or Conservators in Mental Health Proceedings:

The proposal would add the provision to allow the court to investigate the need, and appoint a temporary guardian or conservator, if they find a person to be "persistently or acutely disabled," in addition to the current "gravely disabled."

Mental Health Services; Access to Confidential Records:

This proposal would give a legal representative access to the patient's medical records and files pertaining to court proceedings pursuant to Title 36 or Title 14, and requires that medical records and files used in connection with these proceedings not be made part of public record.

Jury Service Reform:

This proposal would make various revisions, both substantive and technical, to recently passed jury reform legislation addressing jury duty excuses and documentation.

Allie Bones asked David to elaborate on the Mental Health Services; Access to Confidential Records proposal and to define "legal representative." David stated that this proposal came out of probate court, and it deals with last year's HIPPA bill. A particular line was struck from the

statute that gave legal representatives access to the medical records. This year there is a consensus to fix this with the intention to make the records confidential.

David also informed the Committee that he had joined in on the substantive law workgroup under the Domestic Relations Committee to address the issue of service of protective orders. There has been some effort to make some legislative changes to the statute to allow for service of protective orders by law enforcement from any jurisdiction. David will track this and provide us with an update of any proposed legislation at the next meeting.

8. CPOR/LPOR Update (Robert Roll)

Robert Roll gave an update on a milestone that was reached with CPOR and LPOR. On October 20, 2004, Coconino County went live with LPOR. They are receiving the hard copy orders from the courts in Coconino County and have been pulling up LPOR and comparing the orders and accepting them. When an order is accepted, an electronic version is sent to the National Crime Investigation Center (NCIC) if it qualifies with all of the fields that are associated with it. Up to this point, Coconino County has had 68 acceptances which are local in Arizona and nationally. In Arizona, orders that are missing necessary fields are not accepted by NCIC. The courts have been really efficient in bringing up the required fields and entering them. Also the orders the courts receive have been corresponding with what is in LPOR. Also, along those lines the LPOR system has received over a million queries from the network. Most of those queries include the vehicle query and one-person queries. If there is a hit on a protective order, the law enforcement officer receives the LPOR information back in the officer's vehicle. There are some other counties that will be next to come in, also. Robert has been working closely with DPS and the holder of records within certain counties; he has received their approval to monitor courts, and the error rates have gone down significantly with LPOR in place. Therefore, DPS seems to feel comfortable to move forward with LPOR and processing protective orders electronically.

Judge Moran asked Robert for an update on the status for court access to information about orders of protection. Robert stated that the application for court access has been completed, and there has been some initial testing. The only question that remains is who should have access. Bob James asked, "If unserved orders are still not public record, then what is the security issue?" Robert stated that the access is only within the courts; if there is public access, anyone would be able to have access. Only served orders are displayed not unserved orders. This site will be housed on the intranet.

Judge O'Neil would like the CPOR/ Policy Workgroup Committee to be reactivated again.

9. DV Automation Trainer Report (Pat Wuensche)

Pat told the Committee that Coconino County live has been a project that has been going on for three years. It has been a major effort between Robert Roll and his staff, DPS and court training and wanted to give Robert a hand for all his effort and diligence in making this happen. Pat stated that she has been out training for approximately seven months and has trained over 200 court staff and has visited sixty courts. During this training, Pat ran into two issues that she wanted to bring forth to the Committee. The first issue involves a city where the Police Department and the

Sheriff's Office refuse to serve each others orders. Pat asked for the Committee's recommendation, and Judge Finn stated that this has been going on since 1991; basically, that was not going to change because it was an unfunded mandate to serve and enter the information into NCIC, and they refused to do this. Another issue Pat brought before the Committee was that she went to train in that specific court because they had some errors on the exception report that she felt were easy to fix. It turned out that they had orders that were served but not issued. This makes it necessary to go into the hearing screen and state that the hearing was held, and the order was issued so that it will match up with the order already being served. When Pat was in that court she discovered that they were not entering hearings into the AZTEC DV Module at all because they were in fear of invoking Brady, so there was no way to state that orders were issued because the hearings were not inputted. Pat met with much resistance from this specific court in just trying to explain the proper way to enter this information. Pat stated that the correct way of doing this procedure in having the specific court do it right was not going to happen unless the proper authority came to that specific court and mandated it. Judge O'Neil stated that that authoritative individual would be Judge Colin Campbell. He is the presiding judge over that specific county. Judge O'Neil stated that whenever Pat had an issue over any court that she needed to take that issue to that presiding judge for that county.

10. Workgroup Reports

DV Forms Committee-Bob James, Chair:

Bob James gave a status report on the Forms Workgroup's progress. Bob said that the workgroup took the protective orders through the different committees seeking approval for them with the culmination of presenting to the Arizona Judicial Council (AJC). After further review regarding the attempts to deal with the concerns expressed to the workgroup because of the *Emerson* decision, Chief Justice stated that the proposal that was submitted was not acceptable. Some members of AJC were uncomfortable with the "commit no crimes" language or more importantly that if a judge did not check the correct box, it would appear that the judge was condoning that crimes were permissible. They thought that it was objectionable for the courts to have a document that would have that implication. The Committee rejected the language and asked the workgroup to come up with more appropriate language. This action was given in a very tight time frame. They were given two weeks to change the language. A handout was passed out to the members that reflected the results of the workgroup's efforts in changing the language.

Following the AJC meeting in October, Konnie Neal had met with the DV Forms Workgroup to inform them about Project Passport and the impact the project will have on the approval process for the protective orders packet. Judge O'Neil had been advised by the Chief Justice that approval of protective order forms would be tabled until Arizona has the opportunity to participate in the regional Project Passport Conference in February.

Bob James said that although the new protective order forms have been tabled until after the Project Passport Conference he would still like to present the changed language that is reflected on the handouts distributed at the CIDVC meeting, because he and the workgroup felt that as they reviewed other states' protective orders, that the revised Arizona protective order forms were more comprehensible for people outside of the legal culture. The workgroup felt that it would be a good strategy to get the issue resolved before the February meeting so that if our representatives who

attended the February meeting chose to advocate this position, they would be well informed of what the workgroup's position was for Arizona rather than just accepting what other states have done and not taking a position. Bob would like to receive some feedback from the Committee about the draft language and provide it to the Chief Justice, the Vice Chief Justice and the AOC Director for some feedback, as well.

Judge O'Neil told the Committee that one of the issues that the Chief and the Vice Chief made very clear was that they were not expressing an opinion as they were not briefed enough on this issue but they do not believe that *Emerson* is a correct case, and they do not believe that this state need follow it as that decision is not from the Ninth Circuit. The direction the Chief and Vice Chief asked of Judge O'Neil relates to the concept that if a judge does not mark one of these boxes (with revised language in red font) then an individual who has an order of protection issued to him or her can still have a weapon. The Chief's directive to Judge O'Neil is to find out from the Committee that if *Emerson* arguably applies, to grant discretion to a judge to either state that Brady applies or not, that the defendant can have a weapon or not have a weapon even after a hearing. The Chief would like some direction from the Committee. Specifically, does this committee recommend, regardless of whether *Emerson* applies or not, that a judge should have discretion to allow an individual—who has been issued an order of protection and has been given an opportunity to appear or after a hearing—the right to continue to carry a firearm?

MOTION: To table the discussion/action on the language for the order of protection forms until the next meeting in February.

VOTE: In favor-Unanimous (verbal vote)

DV Benchbook-Evelyn Buckner, Chair:

Evelyn Buckner said that some minor revisions and cosmetic changes were made to the Benchbook. Konnie Neal distributed to the members a handout that reflected the various changes to the Benchbook. Evelyn said that on page 9 that the content was not changed but reworded for clarification purposes only. A lot of work went into the resource list and updating it as well.

DV Criminal Benchbook-Judge Mark Moran, Chair:

Judge Moran stated that the updates were made and printed and that they were also on the website highlighted in red. The changes that took place were basic modifications to reflect current law. The new Rule 17.2 amended language is also included in the Appendix. The 13-3601(M) Diversion Section legislative changes have been made.

DV Education Workgroup-Judge Mark Moran, Chair:

Judge Moran said that the Education Workgroup had not met between the last CIDVC meeting and this current one, so there was nothing to report at this time. However, this workgroup is continuing to gather information about DV issues and protective order concerns from the courts, service providers, attorneys, and public.

DV Legislative Workgroup-John Pombier, Chair:

John Pombier is the Chair of this new CIDVC Workgroup. This workgroup will study relevant DV issues and court impact prior to and during the next legislative session.

Konnie explained that non-committee members could join CIDVC Workgroups, and if the committee members knew of anyone who they would like to recommend to serve on any of the workgroups, to let her know.

Judge O'Neil asked the committee members if they would like to include future presentations, similar to those given today, at future CIDVC meetings. The response was positive to presentations made today by Dr. Websdale and Amy Bain from the City of Phoenix Prosecutor's Office, and many members indicated that similar presentations would be beneficial to the Committee in the future.

11. Call to the Public:

There were no comments from the public.

12. Next Meeting

The next meeting date has been changed from February 9, 2005 to March 23, 2005, 10:00 AM – 2:00 PM, State Courts Building, Conference Room 119 A&B.

13. Adjournment:

Judge O'Neil adjourned the meeting at 1:50 pm.