

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

**Minutes**

**February 12, 2013**

**Arizona State Courts Building**

**Conference Room 345A/B**

**1501 W. Washington Street, Phoenix, AZ 85007**

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**Present:** Judge Wendy Million (as Acting Chair), Judge Keith D. Barth (*telephonically*), Allison Bones, Ellen R. Brown, Esq., Sonja Burkhalter Gonzales, Chief Steven W. Campbell, Cathy Clarich, Joi Davenport (*telephonically*), Gloria Full, Patricia George (proxy for V. Michele Gamez, Esq.), Judge Carey Hyatt, Judge Joseph Knoblock, Patricia Madsen, Esq., Dana Martinez, Leah Meyers, Judge Cathleen B. Nichols (*telephonically*), Marla Randall (*telephonically*), Kristine Reich, Esq. (*telephonically*), Captain David Rhodes, Renae Tenney, Tracy J. Wilkinson

**Absent/Excused:** Judge Emmett Ronan, Chair, Judge Carol Scott Berry, Pegg Derrow, Lynn Fazz, Det. Eugene J. Tokosh

**Administrative Office of the Courts (AOC) Staff:** Kay Radwanski (AOC), Julie Graber (AOC)

**Presenters/Guests:** Theresa Barrett (AOC), Julee Bruno (AOC), Cindy Cook (AOC), Jami Cornish, Esq. (Diane Halle Center for Family Justice), Andrea C. Lawrence, Esq. (Hallier & Lawrence, PLC), Shannon Rich (Arizona Coalition Against Domestic Violence), Hon. Steven D. Sheldon, Ret. (Franks, Sheldon & Houser, P.C.), Sara A. Swiren, Esq. (Franks, Sheldon & Houser, P.C.), David Withey (AOC)

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

With a quorum present, the February 12, 2013, meeting of the Committee on the Impact of Domestic Violence and the Court (CIDVC) was called to order at 10:05 a.m. by the Honorable Wendy Million, acting as chair in the place of the Honorable Emmett Ronan, chair, who was unable to attend. Judge Million welcomed all members and guests, and she introduced new members Ellen R. Brown, Domestic Violence Unit supervisor at the Pima County Attorney's Office in Tucson, and Steven W. Campbell, chief of police, City of El Mirage.

**B. Approval of Minutes**

The minutes of the September 11, 2012, CIDVC meeting were presented for approval.

**Motion:** To approve the September 11, 2012, meeting minutes as presented. **Action:** Approve, **Moved by** Cathy Clarich, **Seconded by** Judge Joseph Knoblock. Motion passed unanimously.

## **II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS**

### **A. Evidentiary Issues at Order of Protection Hearings**

Hon. Steven D. Sheldon (Ret.) and Sara A. Swiren, Esq.; Andrea C. Lawrence, Esq., and Jami Cornish, Esq., presented evidentiary issues that they and other law practitioners have encountered at Order of Protection (OP) hearings. The issues relate to the preclusion of relevant and admissible evidence. Actual cases and case materials were used to illustrate these evidentiary issues and their impact on parties and cases. By referencing and applying the relevant sections of the Arizona Rules of Protective Order Procedures (ARPOP) to these cases, the attorneys challenged the legal basis for some judges to refuse to allow plaintiffs to testify about or admit any evidence of domestic violence allegations not specifically included in their petitions for OPs and for some courts to refuse to admit evidence based on non-disclosure when the ARPOP specifically states that disclosure is not required.

These concerns were brought to CIDVC to generate discussion and to remedy current practices. Judge Sheldon suggested additional training for courts on rules of disclosure and admissible evidence at OP hearings. Ms. Swiren pointed out the limited amount of space on the petition form for the plaintiff to list all of the allegations and suggested providing more space. Ms. Lawrence suggested holding an evidentiary hearing where all of the evidence would be presented and then giving the defendant a choice between presenting a defense at that time or returning at a later time to reply.

Judge Carey Hyatt noted that frequent judicial rotation and inexperienced commissioners may contribute to confusion about disclosure and due process notice requirements. Judge Sheldon responded that a balance is needed between protecting defendants' due process without truncating victims' rights. Members agreed that more training was necessary and a CIDVC workgroup should be assigned to study these issues.

### **B. Planning for the Next Strategic Agenda**

Theresa Barrett, AOC manager of the Court Programs Unit, announced that the Arizona Judicial Branch has begun developing its Strategic Agenda for 2015-20. Ms. Barrett reviewed the planning process and the environment and thought process during the development of the current strategic agenda. She discussed the role that CIDVC members can play in the next strategic agenda and noted that one of CIDVC's primary charges to improve victims' safety is an ongoing topic throughout all strategic agendas. She provided members with different examples of how CIDVC has addressed this charge through their education efforts and other recommendations to the supreme court and then summarized the major accomplishments in the current strategic agenda and outlined ongoing initiatives.

Ms. Barrett reported that the AJC Strategic Agenda Subcommittee met in December and several topics were identified: Focus on access to justice issues for *pro se* litigants and language access; engage in proactive communication with the public to combat misperceptions of the judiciary by increasing public understanding of the role of judges and how they are selected; explore new technologies; and identify high-impact targets.

Ms. Barrett sought input from CIDVC in the drafting of the next strategic agenda and inquired about actual projects that members would recommend and current trends that members are seeing that may impact the courts in the next five years. She noted that CIDVC's recommendations will be presented to the Arizona Judicial Council (AJC) at its June meeting and the deadline for input is May 8, 2013.

CIDVC members agreed to create a Strategic Agenda Workgroup. Allie Bones, Ellen Brown, Gloria Full, Patricia George, Patricia Madsen, and Renae Tenney volunteered for the workgroup.

**C. OVW Update: DV Summit**

Julee Bruno, AOC Education Services specialist, updated members on upcoming projects and initiatives that are supported by the OVW grant from the U.S. Department of Justice that expires June 30, 2013:

- The "Domestic Violence Summit: Court Community Response," is scheduled for March 15, 2013, at the Fiesta Inn and Conference Center in Tempe, Ariz. The program will feature national speakers who will discuss current issues surrounding domestic violence and its impact on Arizona (e.g., witness intimidation, sex trafficking, and protective orders).
- A workbook is being developed to accompany the DV bench book, which will contain scenarios, how-to's, and best practices. The workbook will be presented to judges by webcast.
- At least two DV training sessions are being planned for the 2013 Judicial Conference in June.

**D. AzCADV White Paper**

Allie Bones presented an executive summary ("white paper") from the Arizona Coalition Against Domestic Violence (AzCADV). The report was created to outline community recommendations about systems changes needed in the courts to better protect domestic violence victims and to hold abusers accountable. Ms. Bones said these issues were identified and solutions proposed during the Coalition's 2012-2016 strategic planning process. She summarized the main points and proposed solutions as follows:

1. Low prosecution rates (as compared to DV arrests) - Workgroup to identify solutions and conduct research into causes.
2. Lack of regulation of supervised parenting time/supervised visitation centers - Establish regulations and requirements for providers.
3. CPS involvement in family court proceedings - Hold meetings with CPS, juvenile court and family court to understand how each operates and to collaborate on serving survivors and their children to minimize contradictions in systems.
4. Limited translation/interpretation services in the courts - Additional resources needed for those who do not speak English or Spanish.
5. Need for consistency in court services - DV training for judges, best interest attorneys, guardians ad litem, commissioners, judges pro tem, parenting coordinators, and custody evaluators; consistency with Orders of Protection; how to provide new information and new best practices.

Members considered changes to CIDVC's current workgroups to discuss new topics. Some members proposed discontinuing the A.R.S. §13-3601 Review Workgroup and the Batterer Treatment Programs Workgroup. Members supported a new education workgroup to include judicial education and other disciplines (such as law enforcement and prosecution) and a new child welfare and family court workgroup to address situations where CPS is involved. CIDVC agreed to first set up the strategic agenda workgroup and hold off on creation of other workgroups until the strategic agenda planning is completed.

#### **E. Legislative Update**

Shannon Rich, AzCADV systems advocacy coordinator, presented a brief overview of the domestic violence-related legislation that has been introduced during the current legislative session. Ms. Rich noted that AzCADV's legislative priority for 2013 is the budget and funding for domestic violence programs. She outlined the measures that AzCADV is supporting, opposing, and tracking and provided status information on the bills' progress.

##### **In Support**

SB 1038 (parenting time; court-ordered supervisors)  
SB 1111 (spousal maintenance)  
HB 2383 (domestic violence; arrest; predominant aggressor)  
HB 2392 (confidential information; protective orders; injunctions)

##### **In Opposition**

SB 1071 (modification of legal decision-making)  
SB 1072 (parenting time; relocation of child)  
SB 1202 (out-of-wedlock children; fathers; rights)

##### **Tracked**

HB 2002 (missing child; reporting offenses)  
SB 1236 (domestic relations committee; membership)  
SB 1172 (qualifying charitable credit; itemizing deductions)

#### **F. Update: Petitions to Amend ARPOP Rules**

Kay Radwanski, AOC court policy analyst, reported on several rule petitions that have been filed that affect the Arizona Rules of Protective Order Procedure (ARPOP). Members were asked to consider whether CIDVC should file formal comments to any of the petitions.

- [R-12-0007](#) – ARPOP Rule 6(E)(4)(e)(2)  
This petition filed by Michael Roth regarding Injunctions Against Harassment (IAH) and weapons was continued from 2012 with another version under consideration. The Court substituted language proposed by the State Bar that would require a judge to make a finding that the defendant is a credible threat to the plaintiff before prohibiting weapons on an IAH. The deadline to respond to the petition is May 20, 2013. Ms. Radwanski will work with the ARPOP Workgroup to prepare a comment supporting the Court's proposed additional language. The comment will be reviewed at CIDVC's May meeting.

- [R-13-0002](#) – Arizona Supreme Court Rule 123  
The petition, filed by the Advisory Committee on Supreme Court Rules 123 and 125, would amend Rule 123 regarding access to public records by identifying which family law minute entries and orders may be published online and by restricting Internet publication of certain protective order case information to safeguard the identity and location of protected persons in compliance with federal statute. The deadline for response is April 1, 2013.

**Motion:** To file a comment to petition R-13-0002 stating that CIDVC supports the proposed amendments. **Action:** Approve. **Moved by** Judge Carey Hyatt, **Seconded by** Leah Meyers. CIDVC members also authorized Judge Ronan or Judge Million to file the comment to R-13-0002. Motion passed unanimously.

- [R-13-0023](#) – Arizona Supreme Court Rule 123  
This petition filed by Mike Palmer from Phoenix would amend Rule 123 for the purpose of encouraging the Court’s various committees to post meeting minutes on the Internet within five working days after a public meeting. The deadline to respond is May 21, 2013. Ms. Radwanski explained that standing committees of the AJC are governed by the Arizona Code of Judicial Administration (ACJA), which requires draft minutes to be available for public inspection within 20 working days; Posting minutes on the committees’ websites is done as a convenience. Minutes are not archived on the websites until they have been approved by the committees but are available in draft form. Ms. Radwanski will work with the ARPOP Workgroup to prepare a comment in response to the petition. The comment will be reviewed at CIDVC’s May meeting.
- [R-13-0029](#) – All ARPOP Rules  
The petition filed by Mike Palmer requests repeal of the ARPOP rules in their entirety on constitutional grounds. The deadline for response is May 21, 2013. Ms. Radwanski will work with the ARPOP Workgroup to prepare a comment in response to the petition. The comment will be reviewed at CIDVC’s May meeting.

#### **G. Arizona Case Processing Standards – Protective Orders**

Cindy Cook, AOC court services specialist and staff to the Arizona Case Processing Standards Steering Committee (Steering Committee), reported that the Steering Committee was tasked to review national time standards and Arizona rules and statutes in order to develop case processing standards for Arizona courts. Ms. Cook described the model case processing time standards as a management tool that provides a reasonable set of expectations for courts, attorneys, and the public, and as the first step toward quick and efficient handling of cases, with achievable goals for courts, necessary timeframes for attorneys, and defined expectations for the public on how quickly a case can be concluded. She explained that the Steering Committee is recommending that Arizona adopt its own standard for protection orders because of significant differences among state laws. The timelines would be measured as follows:

- *Ex-parte* hearings within 24 hours (from filing of protective order to when it is issued, denied, or pre-issuance hearing is set) 99%
- Contested hearing within 10 days (from filing of hearing request to when it is affirmed, modified or quashed). 90%
- Contested hearing within 30 days 98%

The committee is gathering input on establishing Arizona standards, and preliminary recommendations will be posted on the following website starting February 15, 2013, where comments may be submitted: <http://www.azcourts.gov/caseprocessingstandards/home.aspx>. A final draft of the proposed case processing standards will be circulated to stakeholders, including CIDVC, for recommendation to the AJC.

Some members reported scenarios in their counties where an Order of Protection is requested and a case number is assigned but the plaintiff does not proceed to the courtroom for the *ex parte* hearing. The person might or might not return to have it issued (resulting in a dismissal after 30 days in some courts). The question was asked about the appropriate measurement for cases of this kind. Members considered creating a different category for them; lowering the percentages; and measuring the time from the filing of the petition to when the pre-issuance hearing is held or to when a pre-issuance hearing is set (so these cases would not be counted in the measurement). Ms. Cook indicated she would take CIDVC's comments back to the committee.

#### **H. Protective Order Forms – Update**

Kay Radwanski and David Withey, AOC chief legal counsel, updated members on a recent opinion, *Mahar v. Acuna (Mahar)*, issued by the Arizona Court of Appeals, Division II, which directly reviewed the language on the Order of Protection (OP) form. The opinion prompted a need for CIDVC to review the OP form again and possibly revise its recommendation from last September to add language to the OP in response to the 9<sup>th</sup> Circuit's opinion in *U.S. v. Sanchez (Sanchez)*.

Mr. Withey reviewed the *Mahar* opinion, in which the trial court's Notice to Sheriff of Brady Disqualification was vacated because the firearms restriction was either unsupported by the record or legally erroneous. He explained that firearms restrictions are triggered either by a finding of credible threat (A.R.S. § 13-3602(G)(4)) or by a finding of credible threat or by an explicit prohibition of the "use, attempted use, or threatened use of physical force" against an intimate partner that would reasonably be expected to cause bodily injury (18 U.S.C.A. § 922(g)(8)). The Court of Appeals considered the OP a general no-contact order that did not include any explicit prohibition, and as such, did not result in firearms restrictions under federal statute (18 U.S.C. § 922(g)(8)(c)(ii)). Additionally, in order to determine if the defendant poses a credible threat, Arizona statutes and rules require the judicial officer to ask about the defendant's use of or access to firearms and then to follow mandatory procedures for transferring firearms if it is so determined (A.R.S. § 13-3602(G)(4)). The record in *Mahar* did not show evidence of credible threat or that these procedures were followed by the court.

Ms. Radwanski provided previous versions of the OP form to show its evolution over the years and discussed an analysis of the form performed in 2000 by the Bureau of Alcohol, Tobacco, and Firearms. During the Project Passport initiative, which made significant changes to the form that was adopted in 2007, the “No Crimes” language was substituted for the list of specific crimes that constitute domestic violence pursuant to A.R.S. § 13-3601 to conserve space on the form. The legal standard for issuing an Order of Protection also was removed during the Project Passport initiative. Ms. Bones, who participated in the Project Passport initiative, explained that, like the consolidation of the “No Crimes” section, this was done simply to conserve space on the form.

Members discussed the language on the form and Brady criteria. It was noted that Brady comes into play only when there is a contested hearing, and only about 30% of cases go to a contested hearing. The parties also must be intimate partners, and the defendant must have received notice and had an opportunity to participate in the hearing. Members compared language from previous versions of the OP form and proposed modifications to the current form.

**Motion:** To amend the Order of Protection form by adding the legal standard for issuance of an Order of Protection: “The Court finds reasonable cause to believe that the Defendant may commit an act of domestic violence or has committed an act of domestic violence within the past year (or good cause exists to consider a longer period).” Under NO CRIMES, keep the proposed language that reads: “Defendant shall not commit any crimes, including but not limited to conduct involving the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury” and then add “or harassment or stalking” against Plaintiff or Protected Persons. On the second page of the Order of Protection, retain the proposed addition to the warnings: “However, orders are not automatically granted upon request. Legal requirements must be met.” **Moved by** Leah Meyers, **Seconded by** Allie Bones. Discussion ensued. Additions were made to the original motion. The checkbox that shows that “Defendant received actual notice of this Hearing and had an opportunity to participate” should be retained. An introductory statement should be added in front of “Firearms” on the second page of the Order of Protection form to read “Pursuant to 13-3602(G).” In addition, “bodily injury” should be changed to “physical safety” to conform to Arizona statutory language. **Amended Motion:** To amend the Order of Protection form incorporating the original motion and the additions to the motion, as discussed. **Moved by** Leah Meyers, **Seconded by** Allie Bones. Motion passed unanimously.

#### **I. Workgroup Reports**

Workgroup reports were tabled until the Strategic Agenda Workgroup finishes its task.

#### **III. OTHER BUSINESS**

##### **A. Call to the Public**

No persons from the general public were present.

Chief Campbell reported that public safety announcements (PSAs) about domestic violence are available for downloading. The PSAs were created by the El Mirage Police Department with a grant from Verizon. Other members of the El Mirage community participated in the creation of the PSAs.

**B. Next Meeting**

May 14, 2013

Conference Room 119A/B

Arizona State Courts Building

1501 W. Washington St.

Phoenix, AZ 85007

The meeting adjourned at 2:28 p.m.

**COMMITTEE ON THE IMPACT OF  
DOMESTIC VIOLENCE AND THE COURTS**  
**Minutes**  
**May 14, 2013**  
**Arizona State Courts Building**  
**Conference Room 119A/B**  
**1501 W. Washington Street, Phoenix, AZ 85007**

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**Present:** Judge Emmet Ronan, Chair, Judge Keith D. Barth, Judge Carol Scott Berry, Allison Bones, Ellen R. Brown, Esq., Chief Steven W. Campbell, Joi Davenport, Pegg Derrow, Lynn Fazz (*telephonically*), Gloria Full, Patricia George (proxy for V. Michele Gamez, Esq.), Sonja Burkhalter Gonzales, Judge Joseph Knoblock, Josh Eisenstein (proxy for Patricia Madsen, Esq.), Dana Martinez, Leah Meyers, Judge Wendy Million, Marla Randall (*telephonically*), Kristine Reich, Esq., Captain David Rhodes, Tracey J. Wilkinson

**Absent/Excused:** Cathy Clarich, Judge Carey Hyatt, Judge Cathleen B. Nichols, Renae Tenney, Det. Eugene Tokosh

**Presenters/Guests:** Julee Bruno (AOC), Cindy Cook (AOC), Gloria Galeno (Arizona Coalition Against Domestic Violence), Amy Love (AOC), Judge Steven McMurry (Encanto Justice Court), Ariel Rowe (AOC), Patrick Scott (AOC)

**AOC Staff:** Kay Radwanski (AOC), Julie Graber (AOC), Kymberly Lopez (AOC)

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

With a quorum present, the May 14, 2013, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:07 a.m. by the Honorable Emmet Ronan, chair. Judge Ronan welcomed all members and guests. Judge Ronan thanked Judge Wendy Million for chairing the February meeting.

**B. Approval of Minutes**

The minutes of the February 12, 2013, CIDVC meeting were presented for approval.

**Motion:** To approve the February 12, 2013, meeting minutes as presented. **Action:** Approve. **Moved by** Judge Joseph Knoblock. **Seconded.** Motion passed unanimously.

**II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS**

**A. Making the Connection Between Gun Violence and Domestic Violence**

Gloria Galeno, Arizona Coalition Against Domestic Violence (AzCADV), presented a summary of an AzCADV special report and fact sheet regarding the connection between gun violence and domestic violence. Because of mass tragedies that occurred recently, many different firearms-related proposals were introduced during the current legislative session. The Gun Control Act of 1994 and 1996 has made it more difficult for domestic

violence defendants to obtain firearms. For example, individuals who are subject to qualifying protective orders or defendants who are convicted of qualifying misdemeanor domestic violence crimes are prohibited from possessing firearms under federal law. However, laws do not require judges to order the surrender of firearms, and police officers can remove firearms only in specific situations. Because of statutory loopholes regarding background checks, approximately 40 percent of firearms purchased by abusers are obtained at gun shows, Ms. Galeno reported. Recommendations from AzCADV include universal background checks and support of any legislation that would keep firearms from those who choose to abuse. Courts can play a role by communicating with other entities and the criminal justice system.

**B. Arizona Case Processing Standards -- Protective Orders**

Judge Steven McMurry, presiding justice of the peace for Maricopa County, Encanto Justice Court, and Cindy Cook, AOC Case Processing Standards Steering Committee, presented the final recommendations for the case processing standards that are being proposed for Arizona's protective orders. Time standards are important to judges and are a measure of effectiveness.

The proposed standard for an ex parte Order of Protection hearing is for 99 percent of the petitions to be heard within 24 hours of filing. The proposed standard includes cases in which a pre-issuance hearing is scheduled. The Steering Committee recognizes the need for more data, but the committee would like to set the standard as-is and work with it.

The proposed standard for when the order is contested (when the defendant asks for a hearing) is for 90 percent of these cases to be heard within 10 days and 98 percent heard within 30 days.

Member discussion included concerns about the form of measurement used to achieve the percentages. The consensus was that the committee does not want to send the message that it is acceptable to not have ten percent of cases heard within 24 hours.

**Motion:** To approve the proposed case processing standards as related to protective orders. **Action:** Approve. **Moved by** Allison Bones. **Seconded by** Kristine Reich. Motion passed unanimously.

**C. El Mirage Order of Protection Service Pilot Project**

Police Chief Steven Campbell, City of El Mirage, discussed a pilot project between the El Mirage Police Department and the El Mirage City Court. The project, begun as a project, is now standard procedure. At a plaintiff's request, the El Mirage City Court will e-mail a protective order it has issued against an El Mirage resident to the police department for service. After the order has been served, the police department will e-mail proof of service back to the court. Since the pilot program began, the number of orders served has increased significantly. This program has created a positive impact by maximizing technology, maximizing accountability, and utilizing the records management system to its fullest extent.

**D. Tucson City Court -- Domestic Violence Court Project**

On behalf of the Tucson City Court, Judge Wendy Million applied for and received a three-year Court Development Grant from the U.S. Department of Justice, Office on Violence Against Women (OVW). Judge Million showed a video describing the project and spoke about the funding, which will subsidize a docket coordinator, American Sign Language interpreters for victims of domestic violence, and education about domestic violence and teen dating violence for those in the deaf community.

**E. OVW Update: DV Summit and Other Projects**

Julee Bruno, AOC Education Services Division, provided a report on the DV Summit that took place in March. The event was well attended, with 330 people present. Interest in the summit was high, with an additional 30 additional people on a waiting list. With such a positive response to the training, the agency is looking for ways to find funding to carry this program forward. Another project being funded by the OVW grant includes work on a domestic violence workbook to accompany the bench book that is provided to judges. The grant ends on September 30.

**F. Legislative Update**

Amy Love, AOC, presented a brief update on DV-related legislation.

HB 2144 – CPS omnibus bill; scheduled for the floor.

HB 2383 - Domestic violence; predominant; aggressor. This bill provides direction to law enforcement. A hostile amendment was attached to the bill. The plan is to take this bill to the floor.

HB2392 - Protective orders; confidential information; injunctions. The Governor has signed this law, which provides that a form used to collect additional information about a defendant for the purposes of serving a protective order is a confidential form, whether in the hands of law enforcement or the courts. The form, called the Service of Process Information Form, was developed by the O'Connor House Order of Protection Task Force.

HB 2517 – Domestic violence; arrest. This bill clarifies that in a DV mandatory arrest, the individual has to be at least 15 years of age.

SB 1072 – Parenting time; relocation of child. This bill has not moved but was recently discussed in a newspaper article.

**G. Comments to Petitions to Amend ARPOP Rules**

Kay Radwanski, AOC, presented draft comments prepared in response to rule change petitions. The ARPOP Workgroup, which met on April 18, prepared the drafts.

R-13-0002 – Change to Rule 123, Rules of the Supreme Court: In February, the committee authorized Judge Million to file a comment in support in April to meet an early comment deadline. The petition proposes an amendment to Rule 123 that would require that no case information about protective orders can be posted on the Internet. This would put the courts in compliance with the federal law.

The comment period for the following three petitions closes May 21.

R-12-0007 – The petitioner asked for a rule to be stricken from the Arizona Rules of Protective Order Procedure (ARPOP) that currently requires a judicial officer to ask the plaintiff about the defendant’s use or access of weapons when the plaintiff is applying for an Injunction Against Harassment (IAH). The Order of Protection (OP) statute states that if a judge finds that the defendant is a credible threat to the plaintiff, the judge can order that weapons be restricted. That language does not appear in A.R.S. § 12-1809, the IAH statute. The statute allows the judge to order any relief necessary to protect the plaintiff. That provision has been interpreted to mean that the judge may restrict weapons on an IAH if the judge believes it is necessary to protect the victim.

When the Supreme Court considered this petition in 2012, the court modified the proposed rule language and left the petition open for comment until May 20, 2013. The Court proposed adding a sentence (“This inquiry shall be made to determine if the defendant poses a credible threat to the physical safety of the plaintiff or other protected persons.”) that is the same standard in the OP statute.

The workgroup proposed a brief comment that explains that the standard already exists in the law, which is that the judge can order whatever protection is necessary, including a prohibition on possession of firearms.

**Motion:** To approve the proposed comment to R-12-0007. **Action:** Approve. **Moved by** Ms. Bones. **Seconded by** Ms. Reich. Motion passed unanimously.

R-13-0023 – The petitioner proposed that Rule 123, Rules of the Supreme Court, be amended to require the Court’s standing committees to post draft minutes on the Internet within five business days following a meeting. In response, a comment was drafted explaining that CIDVC is governed by the Arizona Code of Judicial Administration, which has its own public meeting rules. The Code requires draft minutes to be available for public inspection within 20 business days, and there is no requirement that minutes must be posted on the Internet, although this is done as a courtesy to the members and the public. Draft minutes are posted with the next meeting’s materials rather than in the minutes archive because the draft minutes have not been approved yet. Once the draft minutes are voted on and approved, they are moved into the minutes archive with the other approved minutes from past meetings.

**Motion:** To approve the proposed comment to R-12-0023. **Action:** Approve. **Moved by** Chief Campbell. **Seconded by** Judge Keith D. Barth. Motion passed unanimously.

R-13-0029 – The petitioner asked the court to repeal the entire set of ARPOP. The State Bar of Arizona filed a comment in opposition, pointing out that the 1955 case the petitioner relied on in his argument was overturned or superseded by statute and, therefore, is no longer a reliable case. The comment drafted by the ARPOP Workgroup states that the court, under the authority granted by the Arizona Constitution, acted within its authority in making the ARPOP rules. Its rules are valid procedural rules and should remain in effect as written.

**Motion:** To approve the proposed comment to R-12-0023. **Action:** Approve. **Moved by** Judge Barth. **Seconded by** Joi Davenport. Motion passed unanimously.

Ms. Radwanski will ensure that the comments are filed by the deadline.

**H. Language Access Planning**

Kay Radwanski, AOC, gave an update on language access in the courts. The information was provided by Carol Mitchell, the AOC's language access specialist, who was unable to attend the meeting. This is the two-year anniversary of the implementation requirements of the language access plans that were mandated by AO 2011-96. Each court was required to submit a written plan on how it would accommodate non-English speakers in its court. Some of the main areas included in the plan were identifying the languages requested in a court's jurisdiction, resources that are available in and out of the courtroom, and education and outreach to ensure that court staff is aware of the plan. The AOC held a mini summit during last year's Judicial Conference to address language access issues, and they designated a session for language access during last October's Court Leadership Conference. A project currently under way is a remote video interpreting pilot project in Yuma County, which also allows two-way American Sign Language as well. Any questions can be directed to Ms. Mitchell.

**I. CIDVC Proposals for Next Strategic Agenda**

A Strategic Agenda Workgroup was established at the February 2013 meeting to develop ideas for CIDVC to contribute to the Judicial Branch's next strategic agenda. The workgroup met on March 6 to discuss ideas, which were then consolidated into a document that has been forwarded to the AJC Strategic Agenda Workgroup.

**J. Protective Order Forms -- Update**

Ms. Radwanski provided an update regarding modifications to the protective order forms. In previous meetings, CIDVC had proposed revisions to the protective order forms. Dave Byers, AOC administrative director, signed Administrative Directive 2013-03 in April, and courts must begin using the forms no later than June 3. At the February meeting, David Withey, AOC chief counsel, presented a case called Mahar v. Acuna, Ariz. Ct. App., Div. 2. Mahar noted that the Order of Protection form lacked explicit language that would have made it a qualifying protective order pursuant to 18 USC § 922(g)(8), known as "Brady." CIDVC proposed additional changes to the OP to ensure that it will meet Brady criteria. The form was presented to the Arizona Judicial Council on March 28, and the AJC unanimously approved it. Technical changes to the Notice to Sheriff of Brady Indicator, the Hearing Notice, and the Defendant's Guide Sheet were proposed, and the forms were modified. As these additional changes were staff recommendations, CIDVC did not vote on them. Judge Million is making edits to the bench book that will provide more information for judges about the effect of the OP forms modification and the Brady criteria.

**K. Workgroup Reports**

Workgroup reports were tabled until the next meeting. A suggestion was made to organize and develop workgroups based on the goals of the next strategic agenda and to focus on education. Therefore, all workgroups are suspended until further discussion takes place.

**III. OTHER BUSINESS**

**A. Call to the Public**

No persons from the general public were present.

**B. Next Meeting**

September 10, 2013

Conference Room 345A/B

Arizona State Courts Building

1501 W. Washington Street

Phoenix, AZ 85007

The meeting adjourned at 1:37p.m.

**COMMITTEE ON THE IMPACT OF  
DOMESTIC VIOLENCE AND THE COURTS  
Final Minutes – As Corrected  
September 10, 2013  
Arizona State Courts Building  
Conference Room 345A/B  
1501 W. Washington Street, Phoenix, AZ 85007**

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**Present:** Judge Emmet Ronan, Judge Carol Scott Berry, Allison Bones, Cathy Clarich, Gloria Full, Michele Gamez, Judge Carey Hyatt, Judge Joseph Knoblock, Patricia Madsen, Dana Martinez, Leah Meyers, Judge Wendy Million, Marla Randall, Teisha Portee (proxy for Tracey Wilkinson)

**Telephonic:** Sonja Burkhalter Gonzalez, Lynn Fazz, Judge Cathleen Nichols, Det. Eugene Tokosh

**Absent/Excused:** Judge Keith Barth, Ellen Brown, Chief Steven W. Campbell, Joi Davenport, Pegg Derrow, Kristine Reich, Captain David Rhodes, Renae Tenney

**Presenters/Guests:** Lt. James Gallagher (Phoenix PD), Dr. Kristine Hickle (ASU), Dr. Dominique Roe-Sepowitz (ASU)

**Administrative Office of the Courts (AOC):** Humberto Cisneros, Carrin Huff, Cindy Trimble

**AOC Staff:** Kay Radwanski, Annette Mariani

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## **I. REGULAR BUSINESS**

### **A. Welcome and Opening Remarks**

With a quorum present, the September 10, 2013, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:08 a.m. by the Honorable Emmet Ronan, chair. Judge Ronan welcomed all members and guests. Introductions of all attendees (including telephonic appearances) were made.

### **B. Approval of Minutes**

The draft minutes from the May 14, 2013, CIDVC meeting were presented for approval.

**Motion:** Judge Joseph Knoblock moved to approve the May 14, 2013, meeting minutes as presented. **Seconded by** Judge Wendy Million. **Vote:** Unanimous.

## **II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS**

### **A. Strategic Agenda Update**

Cindy Trimble, AOC audit officer, discussed the FY2015-2019 Judicial Branch Strategic Agenda. She is working with Vice Chief Justice Scott Bales and the AJC Strategic Agenda Subcommittee on the plan, which is tentatively entitled “Justice for All Arizona: Courts Serving Communities.”

Earlier this year, all committees were asked to provide input on issues they felt needed to be included in the next strategic agenda. This exercise proved to be very helpful. Similar

concepts were combined, and the beginning of a well-rounded plan was developed. This continues to be a work in progress, with more plan development underway. Ms. Trimble will present the first initial draft to the Arizona Judicial Council (AJC) in October and a final draft to the AJC in March 2014 for implementation on July 1, 2014.

Based on input from various committees as well as a review of the current plan, the following themes emerged:

- Emphasis on courts as part of Arizona communities
- Emphasis on access to justice
- Emphasis on evidence-based practices (This is a continuation from the current plan, which includes looking at research, practices in other states, and problem-solving courts.)
- Continuation of improving processes and operational reviews, enhanced training and workforce development, and more proactive communication with the public

The current goals – Promoting Access to Justice; Protecting Children, Families, and Communities; Improving Court Processes to Better Serve the Public; Enhancing Professionalism and Efficiency within the Judicial System, and Improving Communications and Community Participation – are serving as placeholders for main ideas; however, they may be placed in a different order.

Ms. Trimble noted that Vice Chief Justice Bales is interested in receiving input on issues that may not be current in the courts but could become issues within the next five years.

Committee members asked whether the initiatives listed under Goal #4, 6B, will address the lack of information sharing (electronically) across jurisdictions related to domestic violence dispositions. Ms. Trimble said the initiative is focused more on the data that is currently in the different repositories to ensure timely, safe, and secure data. She invited the committee to provide more information as additional input or area of emphasis.

Regarding the gaps in information sharing, a member expressed concern that an individual can be arrested and charged with a first-time domestic violence offense and then the same individual can be charged in another jurisdiction with another domestic violence offense. The second court would not be aware of the first offense and might order diversion. In response, another member said it is the responsibility of law enforcement to provide the disposition and charge information to the court from the initial time of arrest. Another comment touched on the issue of training for court staff regarding data entry into the system, and it was suggested that an education component be extended to law enforcement as well. The committee discussed recommending adding another bullet item within this initiative to emphasize “continued collaboration and increased training for timely entry of data.”

Members had suggestions for language for Goal #4, 1E, which reads: “Develop web-based training on best practices for conducting domestic violence hearings and criminal case proceedings involving child victims.” Two proposals were: “Develop web-based

training on best judicial practices for protective order procedures and criminal case proceedings involving child victims” or “Develop web-based training on best judicial practices for complying with the Arizona Rules of Protective Order Procedure and criminal case proceedings involving child victims.” The committee is interested in making sure that the goal is expanded more to the protective order arena and suggested a need for broader language.

## **B. Domestic Violence and Sex Trafficking**

Dr. Dominique Roe-Sepowitz, director of the Arizona State University Office of Sex Trafficking Intervention Research (STIR); Dr. Kristine Hickle, associate director of STIR, and Lt. James Gallagher, Vice Enforcement Unit, Phoenix Police Department, discussed the similarities between victims of domestic violence and victims of sex trafficking and a related Phoenix Police Department project.

Dr. Roe-Sepowitz said that sex trafficking is not about movement but rather about having someone use force, fraud, or coercion to get another person to sell his or her body for money. The Trafficking Victims Protection Act (TVPA) defines a victim of sex trafficking as anyone under the age of 18 or anyone over the age of 18 who has a pimp or “trafficker” who profits from the person’s exploitation.

The issues relating to the overlap of both domestic violence and sex trafficking as well as the specific issues in sex trafficking were reviewed:

- Similar to domestic violence, there are warning signs, including tattoos, branding marks, and the use of unique terminology within the culture.
- The stigma that a person in sex trafficking is promiscuous needs to be reevaluated. Victims need to be seen as individuals who are in need of services, similar to those being subjected to domestic violence.
- In domestic violence situations, there may be no one “legitimately looking in.” In sex trafficking, there is knowledge that trafficking is occurring because someone is purchasing the victims’ services.
- In domestic violence cases, one person may be committing all the sexual violence. In sex trafficking, multiple individuals are exploiting one person.

Lt. Gallagher explained that human trafficking is a very lucrative, organized criminal industry, with victims being a renewable commodity. The sex trafficking culture has distinct affiliations, such as the relationship between the trafficker and the trafficking victim and the relationship between the “right-hand” of the trafficker and the trafficking victim. From the law enforcement perspective, he finds that both domestic violence and sex trafficking victims tend to be in denial, feeling shame. Officers need to employ the right kind of questioning to elicit information needed to help serve sex trafficking victims without judging them. Orders of Protection are critical in creating a layer of protection between the abuser and the victim. Even if the victim returns to the trafficker, with a valid Order of Protection, there is now chargeable offense against the trafficker for violation of the order. He noted that traffickers use the Internet to maximize exposure of their “commodities” while minimizing identification of the purveyor.

Dr. Hickle discussed risk factors that make victims vulnerable to exploitation. She noted similarities between domestic violence and sex trafficking from a physical health standpoint. A domestic violence abuser who is having sex with others outside of the home may bring home sexually transmitted diseases. Likewise, a trafficking victim having sex with multiple individuals has a greater chance of contracting sexually transmitted diseases. The mental health of domestic violence and sex trafficking victims is affected, with high trauma levels in both situations; however, sex trafficking victims suffer a higher level of disassociation. Both types of victims have trust issues in their relationships. A DV victim may deal with one person at a time, and the person is familiar. Sex trafficking victims are interacting with multiple strangers who will not help them. Finally, the number of beds available for sex trafficking survivors in Arizona is significantly lower than the number of beds set aside for domestic violence victims.

Among the changes needed are:

- An increase in knowledge among social services and law enforcement on what to look for in both DV cases and sex trafficking cases,
- A decrease in the stigma and blame toward these victims – one pool of victims that need to be served equally within the system, and
- The sharing of domestic violence services with sex trafficking victims without overwhelming the system.

The presenters also discussed Project Rose. The project began in 2011 and is a collaboration of organizations that provide support, information, and education to women involved in prostitution. Participating organizations include the Phoenix Police Department Vice Enforcement Unit and Phoenix police precincts, the City of Phoenix Prosecutor's Office, and the ASU School of Social Work. The project goal is to divert prostitutes away from a fourth arrest, which is a felony under Arizona law, and redirect them to other resources. Clients are located during a regular law enforcement sweep. Instead of arrest, clients are offered the opportunity to complete a 36-hour evidence-based diversion program that includes parenting programs, weekly discussion groups, job assistance, medical services, mental health counseling, and food and clothing. Successful completion of the program increases the chance that an individual will leave the lifestyle and not return to prostitution. The program has served 312 clients over the last four events. Tucson has a similar program called Project Raise.

### **C. Domestic Violence Statistics**

Humberto Cisneros and Carrin Huff, Court Services Division, AOC, gave a presentation on a project regarding protective order statistics.

Ms. Huff presented statistical information on Orders of Protection (OP) and Injunctions Against Harassment (IAH). Data currently collected each month from all courts includes the number of petitions filed, issued and denied for both OPs and IAHs, the number of hearings held to either revoke or modify any orders that were issued, and in superior

courts, the number of Emergency Orders of Protection issued. An annual data report, which is published online, presents data on court, county and statewide levels.

Current trends show that 70 percent of OPs are filed in the limited jurisdiction courts and 30 percent in the superior courts. This has been a consistent trend over the last five years with a shift toward superior courts. During FY12 among petitions issued, 35,600 were for OPs and 17,500 were for injunctions. A seven-year trend from 2006-12 shows (except for 2008) that requests for OPs have been slowly increasing. Except for FY2009, injunctions have an opposite trend of going down, with a total decrease of 3.4 percent. Between FY11 and FY12, OPs increased 2.1 percent; from FY06-FY12, they increased by 7.9 percent. Injunctions are down about 5.1 percent and 20 percent over the seven-year measurement.

Mr. Cisneros explained that statistical reports are being developed for the AJACS case management system. AJACS currently is used in 13 superior courts, and a limited jurisdiction version is in development. The focus will be on superior courts first, with the limited jurisdiction courts to follow.

When AJACS is fully in place, statistics on dismissed protective orders will be collected. At present, statistics are collected on petitions filed, issued, and denied but not subsequent dismissals. Also, data regarding felonies will be broken down to the type of crime, such as persons, property, etc. Since domestic violence charges consist mostly of property crimes and assaults, other categories may be shortchanged. Therefore, a subset of felonies will be added in order to see how many of these are related to domestic violence offenses. For a defendant to be counted in a subset, only one of the charges needs to be flagged as domestic violence. These new subset categories will be carried across to reflect a clearer picture of how many charges were filed, terminated, and domestic violence-related.

Sentencing reports will be designed to better identify case outcome, showing, for example, how many defendants were sent to corrections and how many to probation. Interactive summary buttons will provide more levels of details for defendants. Reports will be able to be run for a day, a fiscal year, or a calendar year. The reporting system also will be designed to look for cases where an initial charge, if later amended to include a domestic violence flag, will be counted in later reports. Reports for superior court reports are awaiting pilot testing.

#### **D. Rules Agenda**

Kay Radwanski, AOC, presented an update on four relevant Rule 28 petitions that were filed during the 2013 rules cycle. The deadline for filing petitions in the next cycle is January 10, 2014.

R-12-0007 relates to Injunctions Against Harassment and firearms. The Supreme Court amended the rule to read that “[I]f necessary to protect the plaintiff or other specifically designated person, the judicial officer may prohibit the defendant from possessing,

purchasing or receiving firearms and ammunition” for the duration of the IAH. The rule is effective January 1, 2014.

R-13-0023, which would have required committees to post draft minutes on the Internet within five business days, was denied. CIDVC is governed by the Arizona Code of Judicial Administration, which allows 20 business days to have draft minutes available. There is no requirement to post minutes on the Internet, although it is typically done.

R-13-0002 was filed by an ad hoc committee of Rule 123, Rules of the Supreme Court, which governs public access to court records. The court adopted the petition, which asked for a rule change to differentiate the types of family law minute entries that can be posted online. This petition clarified that case information does not include information about protective orders and restricts publication of “under advisement” family law minute entries in order to protect sensitive information from being read and possibly posted on an outside social media network. The rule also specifies that there is to be no information posted on the Internet that would disclose the identity or location of the plaintiff on an OP or an IAH.

R-13-0029, which requested the repeal of the ARPOP rules in their entirety, was denied.

R11-0043 was filed in 2011 by the State Bar and would have required courts to mail a copy of proof of service of a protective order to the plaintiff. The court held this petition open, waiting to see if the State Bar and CIDVC could reach a compromise. No further movement was made on the petition, and it ultimately was denied. Ms. Radwanski noted that the O’Connor House, in the meantime, had introduced a new Service of Protection Information Form, with law enforcement being more open to advising plaintiffs when their protective orders have been served.

#### **E. Update: Protective Order Forms Roll-Out**

Ms. Radwanski gave an update on the protective order forms roll-out. There are 15 protective order forms. An administrative directive was signed by David Byers, AOC director, authorizing modifications to 13 of the 15 forms. The modifications went into effect June 3, 2013. These forms were rolled out to the courts in the AZTEC case management system. Courts that do not use AZTEC were given the forms in time for implementation. Regarding Brady, the explicit language referenced in 18 U.S.C. § 922(g)(8)(B)(ii) is now on the form. Prior to June 3, a statewide memorandum was sent out to courts to answer questions relating to Brady. Six of the forms have been translated into Arabic, Chinese, Spanish, and Vietnamese and are posted on the Judicial Branch website. In addition, a statewide memo was sent out explaining the need to provide copies of the Service of Process Information Form and an accompanying instruction sheet beginning September 13, 2013.

#### **F. Proposed Revisions to ACJA § 1-110**

Ms. Radwanski presented proposed revisions to ACJA § 1-110, the code section that governs CIDVC. Clarification and corrections in the code were reviewed and discussed. The following changes were agreed upon:

Section B6 – Membership:

Five representatives from domestic violence resource services providers, to include one representative from the Governor’s Office for ~~Domestic Violence Prevention~~ Children, Youth and Families, one medical ~~doctor~~ community representative and one representative from a shelter facility.

Section D – Responsibility of Members:

CIDVC members shall attend and actively participate in CIDVC meetings, assist with the administration of CIDVC affairs and serve on advisory ~~committees~~ subcommittees as necessary. A member may designate a proxy, subject to the requirements of ACJA §1-104 and ~~CIDVC policies~~ the following requirements:

1. The use of more than three proxies by members of CIDVC is limited to extraordinary circumstances, as determined by the chairperson; and
2. If a CIDVC member cannot attend a meeting and would like to send a proxy, the member must obtain prior approval of the chairperson. If approved by the chairperson, that proxy must comply with other guidelines regarding proxy rights.

Section E. Organization:

The chief justice shall appoint the chairperson of CIDVC and other leadership as needed to organize committee affairs. The chairperson may appoint advisory ~~committees~~ subcommittees to help CIDVC carry out its responsibilities.

Section F. Meetings:

1. Quorum. A simple majority (50% +1) of the current CIDVC membership shall constitute a quorum.
2. Virtual Attendance (conference call, video conference, etc.). The CIDVC chairperson may designate a meeting as a virtual attendance meeting. Otherwise CIDVC members may virtually attend a meeting with prior approval of the chair. In the instance where the CIDVC chairperson designates a meeting as a virtual attendance meeting, a meeting room and a connection must be available for members of the public who wish to attend.

Section G. Actions:

~~CIDVC shall adopt rules for conducting CIDVC business. These rules shall prescribe the quorum and majority needed to constitute CIDVC actions. Approval of a majority of those voting shall constitute an action of CIDVC.~~

Ms. Radwanski will follow up with formal procedures to have the code section approved.

**G. ANNOUNCEMENTS/CALL TO THE PUBLIC  
2013 Leadership Institute (Coconino County)**

Judge Million gave an update on the 2013 Leadership Institute in Coconino County, which she attended. At the conference, she shared a newly developed one-page questionnaire that law enforcement will complete. The form provides information, including an assessment of lethality factors, that will assist a judge in setting conditions

of release. This form was approved by AOC as a local rule in Tucson City Court. Judge Million will send out the form and the procedure she used in working with the AOC to obtain approval of the form to those who are interested.

Sonja Burkhalter Gonzalez also attended the conference and offered as a resource the Northland Family Health Center, which coordinated the event.

#### **Arizona Coalition Against Domestic Violence**

Allison Bones reported that the Arizona Coalition Against Domestic Violence has received permission from the federal government to transition to a dual coalition on domestic violence and sexual assault later this year. A community stakeholder retreat will be held on November 14, 2013, in Phoenix to discuss renaming the coalition and rewriting its mission statement. A gala award celebration is scheduled for September 18, 2013, where Judge Elizabeth Finn (Glendale City Court) will be honored with a lifetime achievement award. The City of Phoenix will also be awarded for its work on the Phoenix Roadmap to Excellence. In observance of National Domestic Violence Awareness Month, the Paint Phoenix Purple initiative is under way. A press conference with the Phoenix mayor and Justice Sandra Day O'Connor is set for October 18, 2013.

#### **Strategic Agenda Follow-Up**

As a follow-up to the previous discussion on strategic agenda, Ms. Bones and Patricia Madsen drafted additional language for Goal 4, 6B. The consensus was to submit the proposed language to Ms. Trimble. The language is: *“Enhancing coordination, collaboration, and training between justice system partners to convey the importance of timely and accurate input of data, especially regarding dispositions and criminal history.”*

#### **Good of the Order/Call to the Public**

No persons from the general public were present.

#### **Next Committee Meeting Date**

November 12, 2013  
10:00 a.m. to 3:00 p.m.  
State Courts Building, Room 345A/B  
1501 W. Washington Street  
Phoenix, AZ 85007

#### **Meetings for 2014**

February, 11, 2014  
May 13, 2014  
September 9, 2014  
November 18, 2014

The meeting adjourned at 1:46 pm.