

**COMMITTEE ON THE IMPACT OF
DOMESTIC VIOLENCE AND THE COURTS**
Minutes
February 10, 2015
Arizona State Courts Building
Conference Room 119A/B
1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (chair), Judge Keith D. Barth, Judge Carol Scott Berry, Carla F. Boatner, Ellen R. Brown, Chief Steven W. Campbell, Joi Davenport, Patricia George, Dorothy Hastings, Judge Statia D. Hendrix, Patricia Madsen, Dana Martinez, Captain Jeffrey Newnum, Judge Wyatt J. Palmer, Marla Randall, Assistant Chief Sandra Renteria, Shannon Rich, Rebecca Strickland, Tracey J. Wilkinson

Telephonic: Lynn Fazz

Absent/Excused: Gloria E. Full, Anna Harper-Guerrero, Judge Patricia A. Trebesch

Presenters/Guests: Anthony Coulson (ACJC), Mark Peoples (ACJC), Amy St. Peter (MAG)

AOC Committee Staff: Kay Radwanski, Julie Graber

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The February 10, 2015, meeting of the Committee on the Impact of Domestic Violence and the Courts was called to order at 10:00 a.m. by Judge Wendy Million, Chair. Judge Million welcomed existing members and introduced a new member, Patricia George, Assistant City Prosecutor with the City of Phoenix Prosecutor's Office. Judge Million also congratulated Judge Carol Scott Berry for her induction into the Council on Legal Education Opportunity's Hall of Fame.

B. Approval of Minutes

The draft minutes from the November 18, 2014, meeting of the Committee on the Impact of Domestic Violence and the Courts were presented for approval.

Motion: To approve the November 18, 2014, meeting minutes, as presented. **Action:** Approve, **Moved by** Judge Wyatt Palmer, **Seconded by** Judge Keith Barth. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Domestic Violence and Order of Protection Process for NICS Reporting of Prohibited Possessors

Anthony Coulson, Arizona Criminal Justice Commission (ACJC) consultant, and Marc Peoples, ACJC program manager for Arizona NICS reporting, reviewed the role of the Arizona NICS Task Force, the type of information collected and reported to NICS and other repositories, and the categories that disqualify an individual from purchasing a firearm. Mr. Coulson identified current challenges to collecting and reporting prohibited

possessors data to NICS (e.g., gaps in processes, disparate processes among law enforcement, prosecution, and courts, and lack of training), and focused on opportunities for prohibited firearm possessor reporting in the misdemeanor domestic violence and Orders of Protection processes. He stressed that when there is an opportunity to get the data, it should be taken as early as possible.

- Law enforcement needs to collect specific data points to identify an individual as a prohibited possessor during the arrest process.
- Fingerprinting should be mandatory during the booking process for both misdemeanor and felony domestic violence offenses. Some offenders are not being booked and fingerprinted, resulting in no arrest record or associated history. Courts can help by ensuring the fingerprints are taken; however, training is essential to prevent illegible and rejected fingerprints.
- Conditions of release become even more important when there are no available fingerprints. There is a time gap between an offender's initial appearance to when the information is entered into a system and data is captured in a database. Conditions of release need to be recorded somehow so law enforcement can access the information and identify a prohibited possessor in any jurisdiction.
- Relationships covered under Arizona statute are broader than in federal law, and some protected relationships are not listed or defined in federal law. As a result, some prohibited possessors are not prohibited possessors outside of Arizona. NICS requires a specific relationship between the victim and offender, but the information is not collected in any system. Judges should capture the relationship information on the sentencing order to help identify prohibited possessors under federal law.
- Issued Orders of Protection that are entered into the Court Protective Order Repository (CPOR) might not yet have been served onto the individual, but NICS requires the Orders of Protection to be served before the data is submitted. During this time, law enforcement should be able to access Orders of Protection and download an electronic version that could be served (per the victim's choice).

Members agreed that the relationships listed under federal and state statutes should align and be consistent, and fingerprinting should be mandatory for all domestic violence offenders. Members also supported recording conditions of release for prohibited possessors while ensuring access for law enforcement and making Orders of Protection available to law enforcement. Several questions were raised on how these changes could be realized. The presenters were invited to return at the next CIDVC meeting.

Mr. Peoples inquired whether a court would be willing to pilot an electronic version of the Order of Protection, and he would research available funding grants. Judge Wyatt Palmer from Graham County volunteered his justice court.

B. Maricopa Association of Government (MAG) Protocol Evaluation Project: Informational Video on Orders of Protection for Law Enforcement

Amy St. Peter, MAG Human Services and special projects manager, and Chief Steven Campbell, El Mirage Police Department, presented "Orders of Protection: A Tool For Safety," an informational law enforcement training video that was produced in

collaboration with the Governor's Office for Children, Youth, and Families. The video promotes a more compassionate approach by law enforcement, depicts Orders of Protection as a useful tool to enhance the safety of the community and law enforcement, and allow patterns of abuse to be documented so law enforcement can make arrests and be proactive in assisting victims of domestic violence.

C. Legislative Update

Kay Radwanski reviewed bills of interest to CIDVC that were introduced in the current legislative session. Members may contact Amy Love, AOC legislative liaison, directly with any additional questions.

HB2294: courts; approved screening, treatment facility: Would expand the list of alcohol, drug screening, and domestic violence treatment program facilities to those approved by the U.S. Department of Veterans' Affairs to save on resources.

HB2553: human trafficking victim; vacating conviction: Would vacate a person's conviction of prostitution if it was committed as a direct result of being a victim of human trafficking. If the bill moves forward, it will be subject to several amendments.

HB2637: interference; judicial proceeding; monitoring; classification: Would allow the court to mandate electronic monitoring and obtain a fee if the person is convicted of interference. The bill was introduced yesterday.

HB2640: dependency; households; domestic violence: Would require the members of a child's household to be screened for domestic violence by a Department of Child Safety (DCS) investigator before a child is returned to the child's home.

SB1035: domestic violence treatment programs; providers: Would allow a court to approve a domestic violence offender treatment program for misdemeanor offenders in addition to facilities approved by a probation department or the Department of Health Services. If the bill is approved, it will be subject to rules adopted by the Arizona Supreme Court.

SB1064: service of process; regulation: Would prescribe rules for alternative and substitute service of process. If the bill moves forward, it will be amended to apply only to photo enforcement notices of violation because it could be problematic for victims of domestic violence.

SB1314: domestic violence; arrest; predominant aggressor: Would allow a peace officer to arrest only the predominant aggressor in a domestic violence situation. The bill did pass unanimously in the Senate Judiciary committee but is also assigned to a second committee.

SB1048: vexatious litigants; fees; costs; designation: Would prohibit a court from granting a waiver of court fees or costs for vexatious litigants. The bill is moving forward but will be subject to an amendment excluding family law cases.

D. Rule 28 Petitions—ARPOP

Ms. Radwanski reviewed current rule petitions affecting the Arizona Rules of Protective Order Procedure (ARPOP). The deadline to submit comments is May 20, 2015. The Supreme Court will meet in late August or early September to review and decide on all rule petitions that have been filed.

R-15-0010 was filed by CIDVC to amend the ARPOP so the rules are more readable to self-represented litigants in keeping with *Advancing Justice Together*. CIDVC will have until June 20, 2015, to file a response or an amended petition to any comments received.

R-15-0016 seeks the repeal of current Rule 6(E)(4)(e)(2) regarding the requirement that a judicial officer ask a plaintiff about the defendant's use or access to weapons for an Injunction Against Harassment. Ms. Radwanski sought feedback from CIDVC on whether to file a formal comment. The ARPOP Workgroup (Judge Carol Scott Berry, Gloria Full, Patricia Madsen, Shannon Rich, Judge Patricia Trebesch, and Tracey Wilkinson) will meet to draft a comment and present at the next CIDVC meeting.

E. Case Law Update / Bench Briefing Update

Case Law Update: Ms. Radwanski discussed two opinions that have been issued recently by Arizona courts relating to domestic violence.

The Arizona Court of Appeals, Division I, issued an opinion in *Michaelson v. Garr* in May 2014 that affirmed the superior court's decision to continue the Order of Protection after a contested hearing. The defendant appealed and contended that the court did not state a basis for continuing the order and the portion of the order preventing him from possessing a weapon violated federal law. The appellate court found that the court properly considered a partially illegible email as proof that Garr violated the ex parte order because the email clearly displayed his name, email address, and the date sent. The appellate court also found that the court did not err in continuing the firearm prohibition based on state law.

In December 2014, the Arizona Supreme Court issued an opinion in *State v. Ketchner* that affirmed Ketchner's convictions and sentences on three counts of aggravated assault and one count of attempted first-degree murder, but reversed the felony murder and burglary convictions and sentences because the sociologist's expert testimony about separation violence, lethality factors, and characteristics common to domestic abusers was inadmissible profile evidence, and the error was not harmless. The case is remanded to the superior court for a new trial on the felony murder and burglary charges.

Bench Briefing Update: Ms. Radwanski reported that Bench Briefing 3: Firearms, Domestic Violence, and Protective Orders, was just released. Bench Briefing 4: Conducting Ex Parte Protective Order Hearings will launch in April, and Bench Briefing 5: Relief—What Can Be Ordered? has been recorded. She also noted that judges and court staff can earn 30 minutes of COJET when viewing two Bench Briefing videos.

F. Introduction – Strategic Planning

Judge Million discussed setting direction and priorities for the committee for the upcoming year that are consistent with CIDVC's expertise and purpose. After considering several issues to address, members agreed to form three new workgroups.

1. Judicial Conference Workgroup: All CIDVC judges will work together to identify potential speakers and propose domestic violence sessions for the annual Judicial Conference.
2. Orders, Enforcement, and Access Workgroup: Will discuss electronic Orders of Protection, using remote video access for protective order petitions (e.g., for hospital patients, domestic violence shelters), enforcing Orders of Protection, addressing conflicting orders, and reporting prohibited possessors of firearms to NICS, including conditions of release and transmitting issued Orders of Protection.

Chair: Judge Carol Scott Berry

Workgroup members: Judge Keith Barth, Ellen Brown, Chief Steven Campbell, Patricia George, Patricia Madsen, Jeffrey Newnum, Judge Wyatt Palmer, Marla Randall, Shannon Rich, Rebecca Strickland, Tracey Wilkinson

3. Training and Education Workgroup: Will discuss expanding video bench briefings to a broader audience, developing an expert panel, sponsoring events, providing outreach to new judges (a list of new justices of the peace and magistrates should be compiled), and informing judges about changes in case law, court rules, and legislation.

Chair: Judge Keith Barth

Workgroup members: Judge Carol Scott Berry, Carla Boatner, Ellen Brown, Lynn Fazz, Anna Harper-Guerrero, Judge Statia Hendrix, Dana Martinez, Shannon Rich

Ms. Radwanski will email action items to each workgroup.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

During the Good of the Order/Call to the Public, Karen Duckworth-Barnes addressed the committee.

B. Next Committee Meeting Date

May 12, 2015; 10:00 a.m. to 2:00 p.m.
State Courts Building, Room 119A/B
1501 W. Washington Street, Phoenix, AZ 85007

The meeting adjourned at 1:18 p.m.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Minutes

Tuesday, May 12, 2015

10:00 a.m. to 12:00 p.m.

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (chair), Judge Keith D. Barth, Judge Marianne T. Bayardi, Judge Carol Scott Berry, Carla F. Boatner, Chief Steven W. Campbell, Gloria E. Full, Patricia George, Esq., Anna Harper-Guerrero, Dorothy Hastings, Judge Statia D. Hendrix, Patricia Madsen, Dana Martinez, Judge Wyatt J. Palmer, Deputy Chief Andrew R. Reinhardt, Assistant Chief Sandra Renteria, Shannon Rich, Rebecca Strickland, Tracey J. Wilkinson

Absent/Excused: Ellen R. Brown, Diane L. Culin, Joi Davenport, Lynn Fazz, Captain Jeffrey Newnum, Judge Patricia A. Trebesch

Presenters/Guests: Patrick Scott, Administrative Office of the Courts (AOC)

AOC Committee Staff: Kay Radwanski, Julie Graber

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The May 12, 2015, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:01 a.m. by Judge Wendy Million, chair. Judge Million welcomed existing members and introduced newly appointed members, Judge Marianne T. Bayardi, Phoenix Municipal Court, and Deputy Chief Andrew R. Reinhardt, Prescott Police Department.

B. Approval of Minutes

The draft minutes from the February 10, 2015, meeting of the CIDVC were presented for approval.

Motion: To approve the February 10, 2015, meeting minutes, as presented. **Action:** Approve, **Moved by** Judge Keith Barth, **Seconded by** Judge Carol Scott Berry. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Creating Accessibility for Survivors of Abuse Who Are Deaf

Anna Harper-Guerrero, Emerge! Center Against Domestic Abuse (Emerge!), provided an overview of Pima County's project and collaboration with the deaf community to ensure that survivors of abuse who are deaf are able to access the same information and can participate in the same programs as those who can hear. Ms. Harper-Guerrero stressed the importance of creating accessibility for domestic violence survivors who are deaf and providing services that fit the needs of the deaf clients. She discussed the impact of audism on delivering services to the deaf community. Those who hear set the standards

and norms for business, and audism manifests itself when those who hear do not provide reasonable accommodations to, or do not address the needs of, the deaf community, and when they require the deaf community to adopt hearing ways of communication at the expense of Deaf culture and American Sign Language (ASL).

Ms. Guerrero acknowledged that most domestic violence programs are not truly accessible to the deaf community and illustrated how they also lack cultural awareness and sensitivity. The communication needs of the deaf community, for example, are not taken into account when developing materials or when providing services like counseling and group meetings. In addition, the busy shelter environment affects the deaf community differently and actually increases social isolation.

She reviewed the steps that were taken at Emerge! to create accessibility, which started with educating themselves by talking with the deaf community's main service providers; conducting needs assessment; researching equipment; and cross-training all staff about deaf culture. The second step was to evaluate the current service system. New expectations of inclusion, commitment, and flexibility were established with staff to ensure deaf clients have access to the same services, their interests and needs are met, and they are provided with interpreters, even if it requires changes in procedures. In addition, a video phone was installed at all sites in a location that provided both accessibility and privacy for the deaf client; materials were developed for survivors who are deaf, including a video orientation about the shelter environment and the services provided; and outreach was conducted for ASL volunteers.

Ms. Harper-Guerrero described the current efforts to build support within the deaf community to identify and address safety concerns for the insulated population and to focus on sustainability, regardless of available funding, with continued collaboration with the deaf community's service providers, re-evaluation of the service delivery system, re-design of access points for services, and ongoing education to become better advocates for the deaf.

Member comments:

- The discussion about audism highlighted how communication is not a priority for those who hear when it should be a priority.
- Domestic violence survivors who are deaf have reported obstacles with law enforcement from the start. Chief Steven Campbell acknowledged the need for more work to ensure all areas of victim services are covered. Emerge! offered to provide education to law enforcement regarding the deaf community.

B. Legislative Report; SB1035: Domestic Violence Offender Treatment Programs

Kay Radwanski reviewed the legislative report for this year's session. The general effective date is July 3, 2015.

HB2294 – courts; approved screening; treatment facilities: Adds the Department of Veterans Affairs to the list of authorized providers for treatment programs. The bill has been signed.

HB2553 – sex trafficking; vacating conviction: Authorizes a person convicted of prostitution to apply to the court to have the conviction vacated if the person can show that the offense was as a direct result of having been a victim of sex trafficking; allows the court to proceed without a hearing if the prosecutor does not oppose the application; and implements procedures for vacating the conviction, including an order sealing the case file. The new law only applies to violations of A.R.S. § 13-3214 committed prior to July 24, 2014, and does not apply to convictions for a municipal ordinance.

SB1295 – fingerprinting; judgment of guilt; records: Allows the court to obtain and record the defendant's two fingerprint biometric-based identifier instead of affixing the right index fingerprint to help track criminal history reports.

SB1035 – Domestic violence offender treatment programs: Authorizes a court to approve domestic violence offender treatment programs, subject to rules created by the Arizona Supreme Court. The bill has been signed into law with a delayed effective date of January 1, 2016. Ms. Radwanski discussed the process for how these rules will be developed, depending on whether the rules are adopted in the court or administrative rules, and recommended pursuing the simpler vetting process and amending the Arizona Code of Judicial Administration. The following members agreed to be part of a workgroup to develop these rules: Judge Marianne Bayardi, Judge Carol Scott Berry, Gloria Full, Patricia George, Anna Harper-Guerrero, Judge Wendy Million, Shannon Rich, Rebecca Strickland, and Tracy Wilkinson.

C. Comment to Rule 28 Petitions

Judge Million reviewed comments to the rule petitions that were filed affecting the Arizona Rules of Protective Order Procedure (ARPOP):

R-15-0010: Filed by CIDVC to restyle, simplify, and clarify the ARPOP rules. One comment has been received to date in support of the amendments to ARPOP's evidence rules. If additional comments are filed by the May 20, 2015, deadline, the ARPOP Workgroup will prepare replies that can be reviewed by CIDVC in a virtual meeting.

R-15-0016: Requests that the Supreme Court repeal Rule 6(E)(4)(e)(2) regarding firearms and Injunctions Against Harassment on grounds that it violates the Fourth Amendment. Judge Million reviewed the ARPOP Workgroup's draft comment in opposition to the petition and sought the committee's approval and authorization to file the comment on CIDVC's behalf.

Motion: To approve CIDVC's comment to the rule petition and authorize Judge Million to file it on CIDVC's behalf, as discussed. **Action:** Approve, **Moved by** Judge Barth, **Seconded by** Chief Campbell. Motion passed unanimously.

D. Report: NICS Task Force Meeting

Chief Steven Campbell and Kay Radwanski reported on discussion from the April 14, 2015, meeting of the NICS Task Force that focused on reporting release conditions to the National Instant Criminal Background Check System (NICS) for cases related to domestic violence and making protective order information immediately available for law enforcement. The task force was established by the Arizona Criminal Justice Commission (ACJC), which is working on improving the flow of information into NICS.

Release conditions:

- Of the people who attended the April 14 NICS Task Force meeting, 72 percent strongly agreed that all conditions of release (COR) prohibiting the possession of firearms should be reported to NICS to ensure law enforcement has knowledge of COR.
- The task force agreed mostly that COR transmitted to NICS should be done through AJACS, or any other system used by the Administrative Office of the Courts.
- 84 percent strongly agreed that the system used to report COR must be able to modify or cancel a record automatically because COR might change or expire.
- 96 percent strongly agreed that law enforcement should have access to COR via their automated systems.

Protective order process:

Chief Campbell discussed the benefits of maximizing technology and automation, making Orders of Protection (OPs) immediately available to all Arizona law enforcement agencies for service, and entering the served OPs into NCIC within 24 hours of service.

- Of those attending the NICS Task Force meeting, 68 percent strongly agreed and 28 percent agreed that a statewide protocol should be developed that defines how OPs should be served.
 - Chief Campbell explained how OPs are served in the City of El Mirage and why cooperation is needed between law enforcement agencies to promote cross-jurisdiction service. An officer from El Mirage should be able to take the opportunity to obtain a defendant's firearms when serving an OP, whether the OP was issued in El Mirage or elsewhere.
 - CIDVC members from Maricopa County raised issues with the surrendering of firearms when the OP is served. Superior court judges in Maricopa County have been trained to put the Maricopa County Sheriff's Office (MCSO) as the law enforcement agency on all OPs, but MCSO will not accept surrendered firearms from the serving law enforcement agency.
 - Several members suggested that judges rewrite the OP so that the defendant must surrender firearms to *law enforcement*, subject to the OP, rather than to a *specific* law enforcement agency. The defendant must also get a receipt from law enforcement at the time of surrender to address liability and safekeeping issues.
 - The task force strongly agreed that law enforcement should develop a mechanism to track the service of OPs as well as the service attempts.

- A member inquired about the impact of SB1064 on the service of protective orders. Ms. Radwanski noted that this bill only applies to photo enforcement violations.
- Of those attending the NICS Task Force meeting, 48 percent strongly agreed and 32 percent agreed that once the plaintiff has authorized service, the OP should be transmitted electronically from the court to the serving law enforcement agency. The system must be capable of transmitting the petition, the defendant's guide sheet and declaration of service forms.
- Of those attending the NICS Task Force meeting, 40 percent strongly agreed and 40 percent agreed that the law enforcement agency that serves the OP should enter it into NCIC within 24 hours of service.
 - Chief Campbell discussed the advantages of entering OPs into NCIC within 24 hours of service over waiting for the sheriff's office to receive and enter the data, which could delay the availability of the information by up to two weeks and compromise the plaintiff's safety. As the holder of records, the county sheriff must maintain a repository for protective orders; however, Arizona law does not require entry of the information into NCIC.
 - In Scottsdale, law enforcement officers already enter the information into NCIC and could do the same for OPs.
 - The serving law enforcement agency must have the system capability to enter the OP into NCIC.

Ms. Radwanski reviewed and commented on two recent articles that appeared in *The Arizona Republic* regarding domestic violence and firearms: 1. Walsh, Jim. "Study: Arizona domestic-violence victims die from guns at twice U.S. rate." *The Arizona Republic* 8 May 2015; and 2. Bones, Allie. "Separate abusers from their guns." *The Arizona Republic* 11 May 2015.

She explained that there are several reasons why protective orders are not entered into NCIC. The plaintiff can decide if or when an order is to be served and may choose not to serve the order if the plaintiff is not ready. In some cases, orders are not entered into the system because the defendant successfully avoids service or cannot be found, while some orders cannot be entered due to data integrity issues when there is information missing in the required fields.

Regarding firearms, she explained that judges must follow legal standards and can order the defendant to surrender firearms to law enforcement only when the plaintiff presents evidence that the defendant is a credible threat to the plaintiff's physical safety.

Member comments:

- Judges should inquire about risk factors and whether the plaintiff is working with an advocate. The recant rate drops if a plaintiff has an advocate.

- Lethality assessments should be standardized, and judges should be educated about them when addressing release conditions, protective orders, and firearms prohibition.

E. Update: Bench Briefings

Judge Million reported that the bench briefings have been well received, but efforts need to be made to improve audience engagement. In addition, Ms. Radwanski, Kathy Sekardi (AOC), and Judge Million were nominated for a 2015 COJET Excellence in Education award for the work on the bench briefings. CIDVC will be sponsoring two sessions at the Judicial Education Conference. One session will address treatment for domestic violence offenders and the other will focus on domestic violence and children.

F. Workgroup Reports:

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

Orders, Enforcement and Access Workgroup: Judge Berry reported that the workgroup is developing a best practices model for setting up remote video conferencing to issue protective orders for courts and advocates. Judge Wyatt Palmer shared how he established such a process between Justice Court #2 in Graham County and Mt. Graham Safe House. He is working with Judge Berry on a bench card that can serve as a guide for all parties.

Training and Education Workgroup: Judge Barth reported that the workgroup is working on bench cards regarding protective order procedures and considering alternative methods to inform and remind new and existing judges about available and accessible resources. Members agreed that annual domestic violence training should be mandatory for judicial officers to address recurring access to justice issues. Ms. Radwanski will research how CIDVC can accomplish this goal.

Judge Bayardi joined the Training and Education Workgroup, while Deputy Chief Andrew Reinhardt joined the Orders, Enforcement and Access Workgroup.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Committee Meeting Date

Wednesday, September 15, 2015

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

State Courts Building, Room 119

1501 W. Washington Street

Phoenix, AZ 85007

The meeting adjourned at 12:01 p.m.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Minutes

Tuesday, November 17, 2015

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

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

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

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

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

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

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

AOC Staff: Kay Radwanski, Julie Graber

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

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

B. Approval of Minutes

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

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

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Expanding the Role of Lay Legal Advocates

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

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

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

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

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

B. Discussion: Domestic Violence Offender Treatment

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

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

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

C. Amended ARS § 13-3967 and Lethality Assessment

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

Member comments:

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

D. Discussion: Protective Order and Law Enforcement

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

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

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

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

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

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

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

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

G. Domestic Violence Training for Judicial Officers

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

Member comments:

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

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

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

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

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

Judge Barth joined the Protective Orders and Law Enforcement Workgroup.

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

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

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

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

K. Update: Bench Briefings

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

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Committee Meeting Date

Tuesday, February 9, 2016; 10:00 a.m.
State Courts Building, Room 119
1501 W. Washington Street, Phoenix, AZ 85007

The meeting adjourned at 1:53 p.m.