

# Family Court Improvement Committee

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Friday, November 22, 2019; 10:00 a.m. – 2:00 p.m.  
 Conference Rooms 119 A&B  
 State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

Time*	Agenda Items	Presenter
10:00 a.m.	Call to Order	JUDGE PAUL MCMURDIE, CHAIR
10:05 a.m.	Housekeeping	SUSAN PICKARD, STAFF
10:10	Welcome, Opening Remarks, and Introductions	JUDGE MCMURDIE
10:40	Review of Administrative Order No. 2019-115	JUDGE MCMURDIE
10:50	Approval of Committee Rules for Conducting Business	JUDGE MCMURDIE
	<input type="checkbox"/> <i>Formal Action Required</i>	
11:10	Review of ACJA §1-202: Public Meetings	DAVID WITHEY, AOC CHIEF COUNCIL
11:20	Orientation	SUSAN PICKARD, STAFF
11:30	Call to the Public	JUDGE MCMURDIE
<b>11:45</b>	<b>Lunch (\$5.00)</b>	
12:15 p.m.	Open Discussion and Strategic Planning	ALL
12:55	Child Support Guidelines Review Subcommittee	JUDGE MCMURDIE
1:10	Long Term Order of Protection Collaborative Subcommittee	JUDGE BRUCE COHEN
1:25	Unbundled Services	JENNIFER ALBRIGHT AOC POLICY ANALYST
1:40	2020 Meeting Schedule <ul style="list-style-type: none"> <li>• January 28</li> <li>• May 5</li> <li>• September 3</li> <li>• October 15</li> </ul>	JUDGE MCMURDIE

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*\*All times are approximate and subject to change. The committee chair reserves the right to set the order of the agenda. For any item on the agenda, the committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration § 1-202. Please contact Susan Pickard, FCIC staff, at (602) 452-3252 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Angela Pennington at (602) 452-3547. Requests should be made as early as possible to allow time to arrange the accommodation.*

1:45 Good of the Order/Call to the Public

*JUDGE MCMURDIE*

2:00 Adjournment

Next Meeting	2020 Meeting Dates
TBD Conference Room TBD Arizona State Courts Building	TBD

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
)  
ESTABLISHMENT OF THE FAMILY ) Administrative Order  
COURT IMPROVEMENT COMMITTEE ) No. 2019 - 115  
AND APPOINTMENT OF MEMBERS )  
)  
)  

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The Arizona Judicial Branch strategic agenda, *Justice of the Future: Planning for Excellence*, places a high priority on the goals of access to justice and protecting children and families. Goal Two acknowledges the need to continually improve family court case processes and the provision of resources to help parties find necessary assistance and services in an understandable and timely manner.

As a large number of self-represented litigants access the court system, courts across the country are striving to meet the needs of this population while balancing the duties of fairness and impartiality with access to justice. This need has become most apparent in family courts, where an overwhelming majority of cases have at least one self-represented party. In 2013, approximately 79% of all domestic relations cases were filed by self-represented litigants in the Superior Court of Maricopa County<sup>1</sup>.

The judiciary recognizes the complexities of family court issues, the impact that involvement with the judicial system can have on children and families, and the need to provide self-represented litigants with the resources necessary to successfully navigate a case to conclusion. Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the Family Court Improvement Committee (“Committee”) is established as a standing committee of the Arizona Judicial Council. The Committee is created to assist the Arizona Judicial Council and the Supreme Court in the development and implementation of policies designed to improve the quality of justice, access to family courts, and efficiency in court operations.

**1. Purposes:** The Committee shall:

- a. Make recommendations that would improve and enhance family law statutes, rules, and court processes and procedures.

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<sup>1</sup> Nicole Zoe Garcia, *Examining Dissolutions Amongst Self-Represented Litigants in the Superior Court of Maricopa County*, Institute for Court Management ICM Fellows Program 2013-2014, <https://cdm16501.contentdm.oclc.org/digital/collection/accessfair/id/344>

- b. Develop and coordinate policies and strategies that would improve the likelihood that child support will be paid.
  - c. Conduct the federally-mandated quadrennial Child Support Guidelines review and make recommendations on issues raised by the 2017 Committee for an Interim Review of the Child Support Guidelines.
  - d. Identify and respond to emerging trends and issues impacting family court services.
  - e. Advise the Administrative Office of the Courts Education Services Division staff about judicial officer and court staff educational needs.
  - f. Provide advice regarding the use of online dispute resolution in family court cases.
2. **Membership:** The individuals listed in Appendix A are appointed as members of the Committee beginning upon entry of this Order through the noted term expiration. Committee members holding membership by virtues of their positions shall be members of the Committee so long as they hold their respective positions. The Chief Justice may appoint additional members as necessary.
  3. **Organization:** Subcommittees to help the Committee carry out its responsibilities may be established by the chairperson upon approval of the Chief Justice.
  4. **Meetings:** The Committee shall meet as necessary, but no less than twice per year. Meetings may be scheduled, cancelled, or moved at the discretion of the Committee chairperson. All meetings shall comply with the Arizona Code of Judicial Administration §1-202: Public Meetings.
  5. **Actions:** The Committee shall adopt rules for conducting Committee business. These rules shall prescribe the quorum, majority needed to constitute committee actions, virtual attendance, and proxy provisions
  6. **Administrative Support:** The Administrative Office of the Courts shall provide administrative support and staff for the Committee who may, as feasible, conduct or coordinate research as requested by the Committee.

Dated this 18th day of September, 2019.

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ROBERT BRUTINEL  
Chief Justice

**Appendix A  
Membership List  
Family Court Improvement Committee**

**Chair**

Judge Paul McMurdie  
Court of Appeals, Division I

**Members**

Presiding Judge Bruce Cohen, Family Court  
Superior Court in Maricopa County  
BVP

Presiding Judge Scott Rash, Family Court  
Superior Court in Pima County  
BVP

Judge R. Erin Farrar  
Superior Court in Yuma County  
Term Expiration: 12/30/2020

Judge Elaine Fridlund-Horne  
Superior Court in Coconino County  
Term Expiration: 12/30/2021

Commissioner Joseph Goldstein  
Superior Court in Yavapai County  
Term Expiration: 12/30/2022

Brian Bledsoe  
Superior Court in Maricopa County  
Term Expiration: 12/30/2022

Marla Randall  
Superior Court in Navajo County  
Term Expiration: 12/30/2021

Amanda Stanford  
Clerk of the Superior Court in Pinal County  
Term Expiration: 12/30/2022

Megan Spielman  
Clerk of the Superior Court in La Paz  
County  
Term Expiration: 12/30/2022

Joi Hollis  
Superior Court in Pima County  
Term Expiration: 12/30/2022

Tracy McElroy  
Superior Court in Pinal County  
Term Expiration: 12/30/2021

Sabrina Lopez  
Department of Economic Security  
Division of Child Support Services  
Term Expiration: 12/30/2022

Janet Sell  
Office of the Attorney General  
Term Expiration: 12/30/2022

Benjamin L. Deguire  
State Bar Representative  
Term Expiration: 12/30/2021

Jennifer Mihalovich  
State Bar Representative  
Term Expiration: 12/30/2022

**Patricia Madsen**  
**Community Legal Services**  
**Term Expiration: 12/30/2022**

**Kellie E. DiCarlo**  
**Arizona Legal Document Services, LLC**  
**Term Expiration: 12/30/2020**

**Mental Health Service Provider - tbd**  
**Term Expiration: 12/30/2020**

**CaSaundra Guadalupe, Custodial Parent**  
**Term Expiration: 12/30/2021**

**Vance Simms, Non-Custodial Parent**  
**Term Expiration: 12/30/2021**

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
 )  
APPOINTMENT OF MEMBERS TO ) Administrative Order  
THE FAMILY COURT IMPROVEMENT ) No. 2019 - 134  
COMMITTEE )  
 )  
 )  
\_\_\_\_\_ )

In accordance with the Administrative Order No. 2019-115 which established the Family Court Improvement Committee, the Chief Justice may appoint additional members as may be necessary. Therefore, after due consideration,

IT IS ORDERED that the individuals listed below are appointed as members of the Family Court Improvement Committee for a term beginning on entry of this order and ending December 30, 2022.

Honorable Michael Peterson  
Superior Court in Graham County

Danna Lopez  
Casa de los Niños

Dated this 16th day of October, 2019.

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ROBERT BRUTINEL  
Chief Justice



**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 1: Judicial Branch Administration**  
**Chapter 2: Operations**  
**Section 1-202: Public Meetings**

**A. Policy.** To promote openness in government by assuring that the public has an opportunity to attend the meetings of all public councils of the supreme court and the Administrative Office of the Courts (AOC) while providing flexibility to close meetings when necessary.

**B. Definitions.** In this section, the following definitions apply:

“Public council” means any council, commission, board or committee established by administrative order that includes any public members or members who are judges or employees of different courts or established by a statute that provides for the supreme court to appoint members and adopt rules.

“Meeting” means gathering of the majority of the members of a public council whether in person or electronically for the purpose of discussing or conducting public council business other than an adjudicatory hearing conducted by a public council.

“Legal advice” means communication to the public council by an attorney employed by or representing any Arizona court regarding facts and information that have legal ramifications, the legality of various legal options, a recommended course of action and response to any questions about the communication.

**C. Procedures.**

1. Meeting Notice.

a. Posting. Public council staff shall post meeting notices in the state courts building in a public area and on the Arizona Supreme Court internet site maintained by the Administrative Office of the Courts at least 48 hours prior to a meeting. Public council staff shall send additional notice of a meeting held in a county other than Maricopa to the clerk of the court of that county for posting at each location of the superior court in that county at least 48 hours in advance of the meeting. Notice of an emergency meeting shall be provided in these locations as soon as possible after the meeting location, time and agenda are established.

b. Content. A notice shall identify the public council and the date, time and location of the meeting, specifying the name of the building, street address and room number where the meeting is located. The notice shall identify a person or an office to contact to obtain a copy of the meeting agenda. The notice shall include the following statement: "Persons with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting (name of contact person) at (address, telephone, text telephone number). A person requesting an

accommodation should make the request as early as possible to allow time to arrange the accommodation. (See sample notice, Appendix 1.)

2. Meeting Agenda.

- a. Availability. The contact person for the public council identified in the meeting notice shall have the agenda available at least 48 hours prior to the meeting for distribution in response to requests from the public.
- b. Content. The meeting agenda shall state each item to be addressed. The agenda shall also state, without breaching confidentiality, the general subject of an executive session and the specific provision of this section that authorizes the executive session.
- c. Adherence. All public councils shall adhere to the published meeting agenda unless by majority vote the council determines:
  - (1) Deviation from the agenda is necessary to address a matter that the public council and staff could not have reasonably anticipated, and
  - (2) Delaying the matter until the next meeting would be detrimental to the work of the public council and the interests of the public, and
  - (3) Addressing the matter without public notice would not significantly impair public awareness of the matter.

3. Public Comment. All agendas shall include a "Call to the Public" provision prior to meeting adjournment. The chair of the public council shall announce the opportunity for public comment regardless of whether a member of the public is in attendance or has expressed any desire to comment. The chair may impose reasonable time, place and manner limitations upon meeting participants including setting time limits, banning repetition and prohibiting profanity and disruptive behavior.

4. Public Access to Meetings. The public shall be permitted to attend meetings and listen to deliberations of public councils except as provided in subsection 5 below. The chair may permit public comment, other than during the call to the public, as appropriate. Public council staff shall schedule meetings in locations reasonably accessible to the public, including persons with disabilities, in rooms large enough to accommodate anticipated public attendance.

5. Executive Sessions. Upon a call by the chair or a majority vote of the members constituting a quorum, a public council may hold an executive session but only for the purposes stated below. The chair shall announce the general subject of the executive session and the specific provision of this rule authorizing the executive session without breaching confidentiality. Attendance shall be limited to members of the public council and additional persons whose presence is reasonably necessary for the public council to perform its executive session responsibilities. An executive session may be held for any of the following purposes:

- a. Discussion or consideration of hiring, assignment, appointment, job performance, promotion, demotion, dismissal, salary, discipline, resignation, ethical misconduct or alleged criminal conduct of a public officer, appointee or employee of the Arizona judiciary;
- b. Discussion or consideration of records or matters made confidential or privileged by statute, court rule or this code;
- c. Discussion or consultation with an attorney employed by or representing any judicial entity regarding legal advice, potential litigation or pending litigation;
- d. Discussion or consultation with officers, appointees or employees of the judiciary regarding negotiations for the purchase or lease of real property or for contracting for goods or services;
- e. Discussion or consideration of court security or emergency response;
- f. Discussion or consultation regarding relations with other governmental entities; or
- g. Discussion or consultation in order to consider the position of the public council and to inform staff regarding the position of the public council regarding proposed or pending legislation.

**D. Meeting Minutes.**

1. Content. Public council staff shall keep meeting minutes, in writing or on tape that include:
  - a. The meeting date, time and place;
  - b. The members attending;
  - c. The matters considered;
  - d. The results of all votes taken; and
  - e. The names of all persons who address the public council.
2. Availability. The contact person identified for each public council shall make the minutes available for public inspection, as soon as practicable but no more than 20 working days after the meeting.
3. Executive sessions. Executive session minutes shall identify persons present and include any instructions given by the public council. Persons present shall keep executive session discussions and minutes confidential except from personnel of the Arizona judiciary who

require access to perform their duties and other persons authorized by law. The chair shall instruct persons who are present at an executive session regarding these confidentiality requirements.

**E. Noncompliance.**

1. Remedial Measures. All public council chairs and staff persons shall comply with the provisions of this policy as one of the duties of their positions. If noncompliance is discovered, the chair of the public council, chief justice or administrative director shall take reasonable measures consistent with this code to bring the public council into compliance. Such measures may include reconsideration of a matter at a subsequent meeting.
2. Validity. Failure to comply with this code in any respect shall not be a basis for invalidation of any action of a public council.

*Adopted by Administrative Order 2002-22 effective March 7, 2002. Amended by Administrative Order 2007-84, effective November 21, 2007.*

**Section 1-202: Public Meetings**

**APPENDIX 1**

**NOTICE OF MEETING**

The (name of public council) will hold a meeting on the (date) of (month) 20- .

at

(location)

The meeting will begin at (time) o'clock (am/pm)

An agenda of the items to be considered, discussed, or decided may be obtained from the Administrative Office of the Courts, Arizona Supreme Court, 1501 West Washington, Phoenix, Arizona 85007 at least 24 hours in advance of the meeting. Agendas will be available between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Persons with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting (name of contact person) at (address, phone, text telephone number). A person requesting an accommodation should make the request as early as possible to allow time to arrange the requested accommodation.





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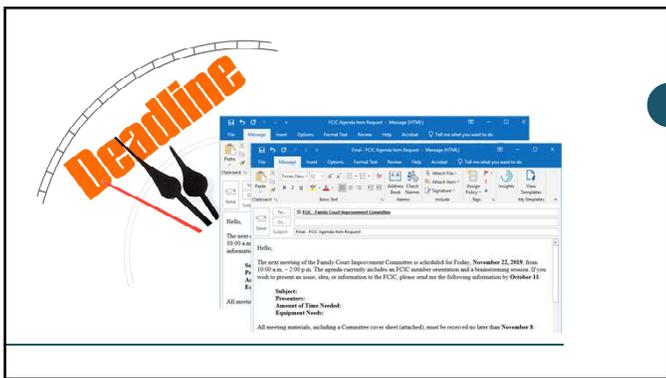
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*FCIC*  
ONLINE @ AZCOURTS.GOV

- Meeting Information
  - RSVP
  - Lunch
- Membership Information
- Resources
- Archive
- Comments

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## ISSUES REFERRED TO THE NEXT CHILD SUPPORT GUIDELINES QUADRENNIAL REVIEW COMMITTEE

Several issues were discussed during the committee meetings that involve issues outside the scope of this review; however, the committee respectfully refers these issues for consideration to the next child support guidelines quadrennial review committee.

1. Section 27. Federal Tax Exemption for Dependent Children of the guidelines allocates federal and state tax exemptions between parents, as they agree, or in a manner that allows each parent to claim allowable federal dependency exemptions proportionate to adjusted gross income. However, the Affordable Care Act (ACA) will penalize the parent who claims the child as a tax exemption for not providing insurance to cover the child's health care even if the other parent was ordered to provide the insurance.

Many states whose child support guidelines are based on an income shares model, like Arizona, are uncertain of what to do with the medical child support provisions, in light of the ACA. These states recognize that the parent who is required to provide health insurance under the ACA, may not be the same parent ordered to provide insurance by the child support order. Fortunately, the reality is that the current practice is working; however, there remains a misalignment between the state provision and the ACA.

This committee is hopeful that between the end of this review and the commencement of the next quadrennial review, the federal government will make further refinements to the ACA that will result in a practical solution for states that allocate income tax exemptions to both parents on a proportionate share of income basis.

2. Section 5.(A) Determination of the Gross Income of the Parents was recently referenced in a Court of Appeals opinion<sup>1</sup> that posed the question "may a court attribute income beyond that of regular full-time employment without a showing that the income was historically earned from a regular schedule

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<sup>1</sup> *Lundy v. Lundy*, 1 CA-CV 15-0612 FC (2016 WL 4140883)

and is anticipated to continue into the future?”<sup>2</sup> This committee believes further examination of this issue is warranted as this provision of the guidelines continues to create confusion for calculating gross income appropriately and could result in inconsistent child support orders.

Examination of this issue will require a more in-depth analysis involving subject matter experts and extensive vetting.

3. The issue of allocating insufficient funds for multiple orders was a topic of great concern for the review committee. The members discussed instances in which a single obligor had several court orders for child support; however, earnings from low-income obligors to fund several support orders for numerous children, usually result in unpaid support for most, if not all, of the orders. Because this issue concerns many policy considerations that lie outside the scope of this interim review, the committee respectfully requests the next review committee consider the issue.

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<sup>2</sup> In the matter of *Lundy v. Lundy*, the Arizona Court of Appeals, Division 1, noted in a footnote; “*Though the second and third sentences of section 5(A) might appear to conflict, we interpret the Guideline as a whole, avoiding constructions that could render any part meaningless. We read the second sentence to prohibit inclusion of income from traditional overtime or second jobs, and we read the third sentence to permit realistic calculation of income in cases involving a parent whose income does not arise from such discrete sources.*”

## FAMILY COURT IMPROVEMENT COMMITTEE

<b>Date of Meeting:</b>  <b>November 22, 2019</b>	<b>Type of Action Required:</b>  [x] Formal Action/Request  [ ] Information Only  [ ] Other	<b>Subject:</b>  <b>Proposal: Long-Term Order of Protection</b>
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PRESENTER(S): Judge Bruce Cohen

DISCUSSION: The Study Committee on Domestic Violence and Mental Illness in Family Court Cases recommended that legislation be drafted to allow for a long-term Order of Protection (OP) in Arizona. (Click to read the [2018 report](#).) The study committee, chaired by Chief Justice Ruth McGregor (ret.), was convened after Dwight Lamon Jones shot and killed six people over the course of several days in 2018. Jones then took his own life. What four victims had in common was “their involvement or perceived involvement in a family court case that involved serious allegations of domestic violence and mental illness,” according to the report. Jones’ ex-wife, Dr. Connie Jones, was not among the victims. When she was interviewed by the study committee, she told them that for four successive years, after a serious domestic violence incident that involved a firearm, a hostage situation, and a SWAT team, she had to file a new petition for an Order of Protection for herself and her child as each OP expired. As the incident faded into the past, it became more difficult for Dr. Jones to persuade a court that she needed another OP. She suggested to the committee that in some situations, an OP should last longer than a year.

The Committee on the Impact of Domestic Violence and the Courts (CIDVC) was asked to draft legislation for a long-term OP. CIDVC began the task but soon realized that aspects of Arizona’s OP law create challenges, as well as the interaction between OPs and legal decision-making and parenting time orders from family court. CIDVC proposes a joint workgroup with the Family Court Improvement Committee to work through these challenges.

RECOMMENDED ACTION OR REQUEST (IF ANY): Support the establishment of an ad hoc workgroup that includes members of the Family Court Improvement Committee and the Committee on the Impact of Domestic Violence and the Courts (CIDVC).



## FAMILY COURT IMPROVEMENT COMMITTEE

<b>Date of Meeting:</b>  <b>November 22, 2019</b>	<b>Type of Action Required:</b>  [ ] Formal Action/Request  [X] Information Only  [ ] Other	<b>Subject: Limited Scope Representation – proposed AO and new forms</b>
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PRESENTER(S):

JENNIFER ALBRIGHT & KATHY SEKARDI

DISCUSSION:

PRESENTERS WILL SHARE AND DISCUSS A PROPOSED AO AND FORMS RELATED TO LIMITED SCOPE REPRESENTATION. THE TASK FORCE ON THE DELIVERY OF LEGAL SERVICES RECENTLY ISSUED ITS REPORT AND RECOMMENDATIONS THAT WAS ADOPTED BY THE AJC IN OCTOBER. ONE OF THE RECOMMENDATIONS ADOPTED WAS TO ADOPT AN AO THAT EDUCATES THE BENCH ABOUT LIMITED SCOPE REPRESENTATION AND ADOPT 2 FORMS THAT COULD BE USED BY ANY LAWYER IN ANY PRACTICE AREA TO ENTER INTO AND TERMINATE A LIMITED SCOPE REPRESENTATION.

RECOMMENDED ACTION OR REQUEST (IF ANY):

Presenters seek input on the AO and Forms and any suggestions on changes or edits to either item. General input on steps to advance the practice of limited scope representation in family law matters is also welcome.



**Draft Administrative Order and Forms Re: Limited Scope Representation**

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
 )  
LIMITED SCOPE REPRESENTATION ) Administrative Order  
(DELIVERY OF UNBUNDLED LEGAL ) No. 2019 - \_\_\_\_\_  
SERVICES) )  
 )  
\_\_\_\_\_ )

Low-income individuals and increasing numbers of unrepresented litigants cannot afford the costs of full-service legal representation. Limited scope representation, or unbundled legal services, describes a legal service delivery method whereby an attorney assists a client with specific elements of the matter, as opposed to handling the case from beginning to end.

Although self-represented litigants may avail themselves of online court forms and self-help materials, without advice and counsel from an attorney, those litigants may come to court uninformed, unprepared, or simply overwhelmed. Others may be unable to afford the cost of legal representation for every aspect of their case. These situations impede access to justice. Limited scope representation provides unrepresented litigants an option for effective representation they may more easily afford.

Unbundling of legal services is authorized and does not violate the Arizona Rules of Professional Conduct as long as the attorney’s representation is reasonable under the circumstances. (Arizona Ethics Rule 1.2 governs limited scope representation).

Approved limited scope representation forms are commonly used in civil and family law matters, (Rule 5.3 of the Rules of Civil Procedure and Rule 9 of the Family Law Rules of Procedure). The delivery of Legal Services Task Force recommended that a general notice of limited scope representation and notice of completion of limited scope representation be developed for any area of law that may not already offer a form. See Appendix A to this Order for Notice of Limited Scope Representation and Notice of Completion of Limited Scope Representation.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED, that to the extent not inconsistent with the Rules of this Court, an attorney may enter a limited appearance when representing a client.

IT IS ORDERED, that in accordance with Rule 1.2 of the Arizona Rules of Professional Conduct, an attorney may enter a limited appearance in a court proceeding including, but not limited to, discovery, motions practice, or hearings.

IT IS ORDERED, that an attorney's appearance may be limited by date, time period, activity, or subject matter, when specifically stated in a Notice of Limited Appearance filed and served prior to or simultaneous with the proceeding(s) for which the attorney appears.

IT IS ORDERED, that the attorney's limited appearance terminates when that attorney files a Notice of Completion of Limited Scope Representation, which must be served on each of the parties, including the limited appearance attorney's own client.

IT IS ORDERED, that (1) service on an attorney who has entered a limited appearance is required only for matters within the scope of the representation as stated in the notice; (2) any such service also must be made on the party; and (3) service on the attorney for matters outside the scope of the limited appearance does not extend the scope of the attorney's representation.

IT IS ORDERED, that this Administrative Order shall take effect on the date of this Order.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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ROBERT BRUTINEL  
Chief Justice

FOR CLERK'S USE ONLY

**ARIZONA SUPERIOR COURT**  
**IN \_\_\_\_\_ COUNTY**

**IN THE MATTER OF:**

**CASE NO.:** \_\_\_\_\_

\_\_\_\_\_  
(Plaintiff/Petitioner)

**NOTICE OF  
LIMITED SCOPE  
REPRESENTATION**

\_\_\_\_\_  
(Defendant/Respondent)

THE CLERK OF THE COURT will please note that I am entering an appearance limited to (select one and specify):

date:  
\_\_\_\_\_.

time period:  
\_\_\_\_\_.

activity:  
\_\_\_\_\_.

subject matter:  
\_\_\_\_\_.

My appearance will terminate upon my filing a Notice of Completion.

My client and I agree that my appearance is limited and does not extend beyond what is specified above without mutual and informed consent and unless a new Notice of Limited Scope Representation is filed.

Notices and documents concerning my limited scope representation must be served on me and my client. All notices and documents regarding matters outside the scope of my representation

must be served only on my client and any other counsel who has entered an appearance on my client's behalf.

I hereby certify that the foregoing information is true and correct to the best of my knowledge and belief and that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I served a copy of this Notice of Limited Scope Representation on all parties or their counsel and on my client by hand, first-class mail, or electronically by agreement of the parties, court rule or court order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Street address

\_\_\_\_\_  
Print name and Bar number

\_\_\_\_\_  
City, state, zip code

\_\_\_\_\_  
Phone number

\_\_\_\_\_  
Email address

\_\_\_\_\_  
Date

FOR CLERK'S USE ONLY

**ARIZONA SUPERIOR COURT**  
**IN \_\_\_\_\_ COUNTY**

**IN THE MATTER OF:**

**CASE NO.:** \_\_\_\_\_

\_\_\_\_\_  
(Plaintiff/Petitioner)

\_\_\_\_\_  
(Defendant/Respondent)

**NOTICE OF  
COMPLETION OF  
LIMITED SCOPE  
REPRESENTATION**

THE CLERK OF THE COURT will please note that as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I completed the (select one):

date:  
\_\_\_\_\_

time period:  
\_\_\_\_\_

activity:  
\_\_\_\_\_

subject matter:  
\_\_\_\_\_

specified in my Notice of Limited Scope Representation. The filing of this Notice of Completion terminates my appearance without necessity of leave of court. I informed my client that my appearance was temporary and will terminate upon the filing of this Notice of Completion.

Any subsequent notices or documents pertaining to this case must now be served on my client and any other counsel who has entered an appearance on my client's behalf.

I hereby certify that the foregoing information is true and correct to the best of my knowledge

and belief and that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I served a copy of this Notice of Completion of Limited Scope Representation on all parties or their counsel and on my client by hand, first-class mail, or electronically by agreement of the parties, court rule or court order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Street address

\_\_\_\_\_  
Print name and Bar number

\_\_\_\_\_  
City, state, zip code

\_\_\_\_\_  
Phone number

\_\_\_\_\_  
Email address

\_\_\_\_\_  
Date



# Study Committee on Domestic Violence and Mental Illness in Family Court Cases: Report and Recommendations

December 13, 2018

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## *Study Committee on Domestic Violence and Mental Illness in Family Court Cases*

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# Study Committee on Domestic Violence and Mental Illness in Family Court Cases: Report and Recommendations

December 13, 2018

## Part 1. BACKGROUND

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A series of homicides shook the Arizona community when six innocent people were gunned down over the course of several days in late May and early June of 2018. The connecting thread among the victims was the killer, Dwight Lamon Jones, who apparently targeted four of the six victims because of their involvement or perceived involvement in a family court case that involved serious allegations of domestic violence and mental illness.

Dwight Jones and his former wife, Dr. Connie Jones, had been engaged in a lengthy family court dissolution case, *Jones v. Jones*, that was filed in 2009, resulted in a decree in 2010, and concluded with a final post-decree order in 2016, a year after their child turned 18 years old. Over a four-day period, from May 31 to June 3, 2018, Dwight Jones murdered six people—four of whom had direct or tenuous ties to the dissolution case and two who did not. The murder spree ended on June 4, 2018, when Dwight Jones took his own life in an extended-stay hotel where he had lived since 2009.

Media and public reaction was swift, with criticism launched at the family court and the legislature, with assertions that domestic violence is not taken seriously, firearms are

*“We’re trying to work to make things better. If there are some things that we can flag or change, or in hindsight we should have done differently, I want to know that. I don’t want to ignore it.”*

--Chief Justice Bales



too easily attainable, and court orders for mental health treatment are ineffectively enforced. Attention was drawn to the safety risks for those who practice family law or engage in work as allied professionals, such as experts who evaluate or counsel persons associated with family court cases.

Chief Justice Scott Bales asked former Chief Justice Ruth McGregor (retired) to chair an informal study committee to assess the Arizona family court system’s treatment of domestic violence and mental health issues in light of the *Jones* case and similar cases. The committee’s work, while including the issues raised by the facts in *Jones*, thus extended to consideration of broader issues.<sup>1</sup>

Chief Justice Bales also selected for the committee a group of experts, who were able to provide a broad range of perspectives related to family court cases involving allegations of domestic violence and mental health. They included Judge Paul J. McMurdie, Court of Appeals, Div. 1, past presiding judge of the family court in Maricopa County; Judge Wendy A. Million, magistrate, Tucson City Court, and chair of the Supreme Court’s Committee on the Impact of Domestic Violence and the Courts (CIDVC); Dr. Neil S. Websdale, director of the Family Violence Institute at Northern Arizona University, and director of the National Domestic Violence Fatality Review Initiative; and Beth H. Winters, licensed professional counselor, Esperero Family Center, Tucson.

## Part 2. STUDY COMMITTEE PROCEDURE

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The study committee first met in July 2018. During its initial meeting, the committee defined the issues it planned to consider, including:

- What should be the impact of allegations of domestic violence in family court? Should such allegations be considered in making decisions related to legal decision-making<sup>2</sup> and parenting time, spousal support, relocation requests, or other issues?

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<sup>1</sup> The study committee’s charge was not to conduct an appellate review of *Jones*, a task that would have fallen to the Court of Appeals if either party had sought such a review.

<sup>2</sup> The term “legal decision-making” replaced “child custody” in Arizona’s domestic relations statutes in 2012. The term “parenting time” replaced “visitation” when referring to timesharing between parents and children. “Visitation” refers to timesharing between a child and a third party, such as a grandparent. (See



- Should the family courts adopt assessment tools to help predict the likelihood of future violence? How reliable are such tools?
- How, if at all, should criminal allegations of or convictions for domestic violence be considered in family court?
  - Should the statutory requirements of A.R.S § 25-403.03, which defines the circumstances under which domestic violence impacts custody decisions, be revised?
- Under what circumstances should the court require mental health evaluations of one of the parties in a family court action?
  - What should be the standards for requiring an evaluation?
  - Do the courts need additional tools to decide when to order an evaluation?
  - What needs or concerns of mental health professionals should be addressed?
  - What impact does the lack of financial resources have on obtaining mental health evaluations?
- Are the standards for making decisions related to parenting time, including supervised parenting, sufficient?
  - Do existing practices allow effective use of parenting coordinators or therapeutic supervisors?
  - Do limited financial resources affect the use of coordinators?
- How can or should family courts enforce orders, including those requiring mental health evaluation or treatment?
  - Should some terms of Orders of Protection be extended, including those related to possession of firearms?
  - How can the courts and law enforcement better cooperate in serving and enforcing court orders, including Orders of Protection?
- Should the courts institute additional training to allow family court judges to better address issues of domestic violence and mental health?

The group then decided to conduct interviews with people who either had direct involvement in the *Jones* case or had close affiliation with and knowledge of family court or domestic violence cases. From the interviews, the study committee hoped to

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[Senate Bill 1127](#), Fiftieth Legislature, 2<sup>nd</sup> Regular Session, 2012.) These legislative changes were not yet in effect in 2010, when the *Jones* decree was entered. This report, however, uses the updated terminology.



gather information that would assist in the exploration of the questions under consideration and define additional areas for consideration.

Invitations for interviews were extended to and accepted by Dr. Connie Jones, ex-wife of Dwight Jones; five skilled family law attorneys; five experienced superior court judges, representing four counties, who have presided over family court cases; a representative from a statewide domestic violence coalition; and a provider of domestic violence offender treatment programs.

The committee also considered Scottsdale City Court records, the family court record from the Superior Court in Maricopa County; media reports published in June 2018 following the homicides committed by Dwight Jones; and relevant legal references.

In mid-August 2018, the study committee met to conduct interviews over the course of two days at the State Courts Building in Phoenix. The committee met in October and November and by telephone to complete this report.

### *Part 3. DISCUSSION*

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#### *Legal decision-making and parenting time in Arizona*

A case for legal decision-making or parenting time begins when a parent who has a child in common with another parent files a petition<sup>3</sup> in the superior court. By filing the action, the parent asks the court to become involved in decisions about where the child will live, when and where the child will spend time with each parent, who will make important decisions on behalf of the child, and how the child's financial support will be allocated between them. If the petition includes dissolution of marriage, the court may be asked to determine issues of spousal maintenance and division of property and debts as well. In resolving the issues presented, the court may issue orders that impair, to some degree, the parental rights of each party.

The court's orders rely upon and enforce various statutes enacted by the legislature. If the parents agree to provisions for legal decision-making and parenting time, the court can enter orders by consent. If one parent declines to participate in the case, the court

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<sup>3</sup> For example, the party may file a petition for dissolution (with children), or to resolve issues involving legal decision-making, parenting time, paternity, or child support.



can enter orders by default. But if the parents are unable or unwilling to agree on some or all of the issues, the case will proceed to trial.

Arizona’s family courts oversee a large number of cases. Time, therefore, is a luxury in short supply in many family courts. In Maricopa County, for example, the family court receives about 5,000 new filings each month for its 43 judges and commissioners to manage. The judges’ time is spent primarily in hearings for temporary orders, resolution conferences, motion hearings, and bench trials. For trials, superior court judges report that self-represented litigants will get about one hour for case resolution, which is usually sufficient. Attorneys typically ask for three hours of trial time.

A trial can be costly, both financially and emotionally. Under ideal circumstances, each parent will be able to afford the services of an attorney, a child custody evaluator, and a mental health expert if there are allegations of domestic violence, mental illness, or other concerns about parental shortcomings. Most family court litigants, however, are not among those who experience such ideal circumstances. The majority represent themselves in court, unable to afford the services of attorneys, evaluators, or expert witnesses.<sup>4</sup> Outside of the courtroom, most litigants also lack funds to pay for domestic violence treatment programs, parenting time supervisors, or parenting coordinators.

### JONES CASE ATTRIBUTES

- A child in the case
- A security flag (an advisory to court security)
- Three Orders of Protection filed in the family court case (more than 98% of other cases)
- Terminated by decree in 559 days (more than 99% of other cases)
- Eight post-decree petitions (more than 98% of other cases)
- Two judges on the case from filing through decree (more than 87% of other cases)
- Six judges on the case from filing through post-decree (more than 73% of other cases).

<sup>4</sup> Estimates indicate that in more than 80 percent of Maricopa County’s domestic relations cases, both parties are self-represented. In 12 percent of the domestic relations cases, one party has an attorney and the other party is self-represented. Only in about 5 percent of the domestic relations cases is each party represented by an attorney.



Because the *Jones* case provided the impetus for this study committee, we asked the Superior Court in Maricopa County to conduct research to determine whether the *Jones* case is more or less like the typical family court case. The court reviewed domestic relations cases<sup>5</sup> that were terminated by judgment or dismissal in 2010, the same year a final decree granting divorce and determining legal decision-making and parenting time was entered in the *Jones* case. The court then looked for cases with similar attributes.

The final analysis reveals that the *Jones* case was not typical. Most cases present fewer contested issues and require less court involvement than did *Jones*.

In Maricopa County, the family court terminated 31,046 domestic relations cases in 2010.<sup>6</sup> Only three cases had a security flag (an advisory to court security); only two percent involved three or more Orders of Protection or eight or more post-decree petitions and only one percent terminated after 559 days or more. Less than three percent of those cases involved children and had multiple Orders of Protection.<sup>7</sup> The *Jones* case was among the five percent of family law cases in which both sides were represented by attorneys and fell within the small number of cases in which the parties

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<sup>5</sup> All domestic relations cases include dissolutions, annulments, separations, paternity, legal decision-making, support, parenting time, and other orders corresponding to a divorce decree or previous domestic relations orders, including grandparent rights.

<sup>6</sup> Only cases terminated in 2010 were used in the analysis.

<sup>7</sup> Of the 31,046 cases:

- Three had a security flag (an advisory to court security).
- Eight other cases had the following characteristics similar to the *Jones* case attributes:
  - 500 or more case days from filing to final decree
  - Two or more Orders of Protection (OPs) filed with the case
  - Five or more post-decree petitions filed with the case
  - Two or more judges from filing through original decree
  - Six or more judges through the life of the case
- 817 cases (2.63%) involved children and had multiple OPs.
- 219 cases (0.075%) involved children, had multiple OPs, and had five or more post-decree petitions.
- 20 cases (0.06%) involved children, had multiple OPs, had five or more post-decree petitions, and required 400 or more case days to termination.
- 17 cases (0.05%) involved children, had multiple OPs, five or more post-decree petitions, 400 or more case days to termination, and five or more judges throughout the life of the case.



had sufficient resources to pay for a mental health evaluation.<sup>8</sup> In addition, the trial court allotted two days for trial, far more than provided in the typical case.

The *Jones* case did, however, highlight the difficulties courts face in resolving issues related to domestic violence, mental illness, and parenting time, and it provided impetus for finding solutions to instances in which a parent fails to comply with court orders.

Although most family law cases are not comparable to *Jones*, they still consume a substantial amount of time, particularly when they involve complex issues.

What takes so much time? In the early stages, the parties may engage in hearings for temporary orders—court orders that establish temporary legal decision-making and parenting time until those issues are finally decided, either by agreement or by trial. During this pre-decree period, the parties may be trying to reach agreement on their own through various types of alternative dispute resolution. They also may be exchanging discovery—for example, information regarding their finances, assets and

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<sup>8</sup> Statewide statistics suggest that even today, a case like *Jones* is unusual. The Administrative Office of the Courts (AOC) provided an estimate of statewide cases with factors like the *Jones* case. The proportion of family law cases terminated during 2010 with factors similar to *Jones* were provided by the Superior Court in Maricopa County, Research & Planning Services. These proportions were applied to statewide domestic relations cases terminated in 2017 to estimate the number of cases that would be similar to the *Jones* case. Using that methodology, the AOC determined that:

Estimated Number of Cases per Year				
Jones Case Attributes	Maricopa	Pima	Rural	Total
All Jones case factors	18	3	6	27
Three OPs filed in the case	726	115	221	1,062
Cases taking 559 days to terminate by decree	363	57	11	431
Cases with eight post-decree petitions	726	115	221	1,062
Cases with two judges through original decree	4,721	745	1,437	6,903
Cases with six judges to termination*	9,804	1,547	2,985	14,336

\*In cases with children, includes judicial officers who handle post-decree issues until the parties' youngest child reaches 18, the age of majority.



liabilities, or retirement plans. If they cannot agree on legal decision-making authority, one or both parents may hire a custody evaluator. If there are allegations that a parent has a mental illness, additional evaluations may be ordered.

If the case has not been settled by agreement or default, it proceeds to trial. The trial may be of long or short duration, depending on the complexity of the issues, the number of witnesses, and the volume of evidence presented. Following the trial, the judge must apply the law by comparing the testimony and evidence against statutory factors and giving them the proper weight. The judge’s decisions are then reduced to writing in the decree. Like the trial, the decree can be long or short, depending on the complexity of the case. For purposes of this report, the focus will be on the statutes affecting legal decision-making and parenting time.

### *Arizona statutes on legal decision-making and parenting time*

The factors family court judges consider in resolving questions about parents’ legal decision-making authority and parenting time with their children are set out in the Arizona Revised Statutes, specifically Title 25, Chapter 4, Legal Decision-Making and Parenting Time. The legislature, through statutory enactments, defines the issues and establishes the factors that a judge must analyze and apply in each petition for legal decision-making and parenting time.

**Best interests of the child.** The analysis begins with A.R.S. § 25-403. This statute sets the legal standard—best interests of the child—for deciding legal decision-making and parenting time. Legal decision-making authority confers on one or both parents “the legal right and responsibility to make all nonemergency legal decisions for a child including those regarding education, healthcare, religious training and personal care decisions.” A.R.S. § 25-403.

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[A.R.S. § 25-403](#)

Legal decision-making;  
best interests of child

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Parents who are married to each other jointly hold these rights, without court order, from the time their child is born. For parents who are not married to each other, paternity may be established by court order or by recognition on the child’s birth certificate.<sup>9</sup> In either case, if one parent files a petition for legal decision-making and

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<sup>9</sup> See Title 25, Chapter 6 Maternity and Paternity Proceedings.



parenting time against the other parent, the petitioner is asking the court to enter orders that will change and restrict the parental rights of each parent to some extent.

If the parents agree on legal decision-making and parenting time and submit a consent agreement and a joint parenting plan, the judge makes their agreement official by adopting it through an order of the court. If a parent files a petition, serves a copy on the other parent, and the other parent fails to answer by filing a response in court, the judge presumes that the other parent has no objection to the filing parent's requests and will enter orders by default. If there is neither consent nor default, and no agreement after mediation or resolution conferences, the matter is set for trial. Each party must come forward with testimony and evidence to support his or her position on legal decision-making and parenting time.

In determining a child's best interests, the court must consider 11 statutorily enumerated factors that are relevant to the child's physical and emotional well-being. (See A.R.S. § 25-403.) Among those factors are the child's relationship with each parent, with siblings, or other persons significant to the child; adjustment to home, school, and community; the child's wishes (if of suitable age and maturity); the mental and physical health of all individuals involved; which parent is more likely to allow the child to have frequent, meaningful, and continuing contact with the other (unless the parent has acted in good faith to protect the child from domestic violence or child abuse); and whether there has been domestic violence or child abuse. The court also considers other factors that relate to a parent's attempts to delay litigation, drive up its costs, coerce an agreement from the other parent, or bring child protective services into the home by making false reports of child abuse or neglect.

The judge must evaluate the testimony and evidence presented by the parties at a hearing or a trial against each of these 11 factors. Then, on the record, the judge must make specific findings about the relevant factors and the reasons the judge's decision is in the child's best interests.

**Sole or Joint Legal Decision-Making.** The legislature, through A.R.S. § 25-403.01, gives judges the options of ordering sole or joint legal decision-making and parenting time, based on the child's best interests. The judge must

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[A.R.S. § 25-403.01](#)

Sole and joint legal decision-making and parenting time

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consider the 11 factors in A.R.S. § 25-403 plus four more factors that focus on parental agreement on joint legal decision-making: whether a parent’s lack of agreement is unreasonable or is influenced by an issue unrelated to the child’s best interests; the past, present, and future abilities of the parents to cooperate on child-related decisions; and whether joint legal decision-making is logistically possible. (See A.R.S. § 25-403.01.B.) A parent who is given sole legal decision-making cannot unilaterally change a court-ordered parenting plan. A parent who is not given sole or joint legal decision-making authority is still entitled to parenting time, unless the court makes a finding that the child’s physical, mental, moral, or emotional health would be endangered. (See A.R.S. § 25-403.01.C-D.) A parenting time plan is then ordered, either one crafted jointly by the parents or one entered by the court. If parents cannot agree on a joint plan, then each must submit a proposed plan for the judge’s consideration. (See A.R.S. § 25-403.02.)

**Decision-Making Authority and Domestic Violence.** In cases involving allegations of domestic violence or child abuse made against a parent, A.R.S. § 25-403.03 requires the court to conduct an additional detailed analysis based on evidence and testimony presented by the accusing parent.

If the accusing parent provides sufficient proof for the court to find that significant domestic violence<sup>10</sup> exists or that there has been a significant history of domestic

violence, the court is prohibited from ordering joint legal-decision making. The safety of the child and the victim override any preference for joint legal decision-making.

A finding of significant domestic violence is considered contrary to the child’s best interests and creates a rebuttable presumption<sup>11</sup> that the parent should have no legal decision-making authority at all. The statute specifies the criteria on which the judge must rely—findings from another court (usually an Order of Protection), police reports, medical reports, Department of Child Safety reports, domestic violence shelter records, school records, and witness testimony. The accused parent can rebut the presumption based on additional statutory requirements in A.R.S. § 25-403.03.E. If the parent fails to

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[A.R.S. § 25-403.03](#)

Domestic violence and child abuse

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<sup>10</sup> While “domestic violence” is defined by A.R.S. § 13-3601.A, the term “significant” is not defined in A.R.S. § 25-403.03.

<sup>11</sup> The presumption does not apply if both parents have committed domestic violence. (See A.R.S. § 25-403.03.D.)



**Domestic Violence**

**Misdemeanors.** Outside of family court, a parent arrested for a domestic violence offense and subsequently charged must answer in criminal court. If convicted of a domestic violence misdemeanor, the parent can be required to attend a minimum of 26 weeks of domestic violence offender treatment and must pay the program costs.

do so, he or she must then prove that parenting time will not endanger the child’s physical safety or emotional development. If the parent makes this showing, the court must still impose appropriate conditions to protect the child, the other parent, or any other family or household member—for example, exchanges in protected settings, supervised parenting time, or restrictions on consumption of alcohol or controlled substances during parenting time. (See A.R.S. § 25-403.03.F.)

**Decision-Making Authority and Mental Health.**

A.R.S. § 25-403 requires the judge to consider each parent’s mental health in determining the child’s best interests. But the legislature has not created a parallel provision in the domestic relations statutes that would require the same judicial scrutiny of mental health concerns as is required when there are allegations of domestic violence or child abuse.

In family court litigation, a parent who alleges that the other parent’s mental health is impaired must prove the allegation by a preponderance of the evidence (more likely than not). Making that showing usually requires an evaluation, report, and testimony by a mental health expert hired by the parent who makes the allegation.

**Right to Parenting Time and Relocation.** Each parent has a right to spend time with his or her child, unless a judge has determined that any time at all with the child puts the child at risk and no conditions exist that could keep the child safe. If each parent has parenting time rights established by agreement or court order, then the other parent cannot diminish those rights by relocating a long distance away with the child absent permission of the court.

**[A.R.S. § 25-408](#)**

Rights of each parent; parenting time; relocation of child; exception; enforcement; access to prescription medication and records

A relocation request begins when the parent who wants to move with the child—either out of Arizona or more than

100 miles within the state—gives 45 days’ written notice to the other parent. (See A.R.S.



§ 25-408.) The other parent then can object to the move, prompting a court hearing on the relocation issue. Even if relocation is permitted, the parents must comply with current court orders affecting parenting time, regardless of the distance moved or the notice required unless the judge orders otherwise. Under certain circumstances, a temporary move is permissible while the parents await a hearing.

The judge will consider factors established by the legislature in the relocation statute, plus those in A.R.S. § 25-403, in deciding whether to allow relocation. The parent who wants to relocate the child bears the burden of proving that the move is in the child's best interests. The court can assess attorney fees and costs against a parent who has unreasonably denied, restricted, or interfered with the other parent's parenting time.

### *Resources in legal decision-making and parenting time actions*

If the parties do not offer evidence sufficient for the court to reach conclusions about legal decision-making and parenting time, the court can consider several sources of information to assist the court in determining the child's best interests.

The court can interview the child in chambers. (See A.R.S. § 25-405.A.) The court can also request advice from a court-appointed advisor (CAA). A CAA is a professional who may or may not be regularly employed by the court.

(See A.R.S. § 25-405.B.) To obtain more detailed information, the court can order an investigation and a report concerning legal decision-making or parenting time.

(See A.R.S. § 25-406.A.) The investigation can be done by a court social services agency, juvenile court staff, a local probation or welfare department, or a private person. Any person making a report to the family court must

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#### [A.R.S. § 25-406](#)

Investigations and reports

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complete training on domestic violence and child abuse every two years. The investigator can consult with any person who has information about the child or potential legal decision-making and parenting time arrangements.

The court must allocate the cost of the investigator based on the parents' financial circumstances.

A judge may order a parent or a child in the case to submit to a physical, mental, or vocational evaluation by an expert if any of those conditions are in dispute. (See [Rule](#)

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#### [A.R.S. § 25-405](#)

Interviews by court;  
professional assistance

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[63, Arizona Rules of Family Law Procedure](#).) Typically, the cost of any of these types of evaluations is borne by the party who requested the assessment. The cost of evaluations by assorted experts can be substantial. Whether the parents select the experts themselves or the court appoints one or more investigators, these are costs that most litigants cannot afford.

In the *Jones* case, Dr. Steven Pitt, the forensic psychiatrist who performed a risk assessment evaluation on Dwight Jones, testified that the fee for the evaluation and report came to \$34,000. Connie Jones, who requested the evaluation of Dwight Jones, paid the fee. During the interviews, the committee members learned that court-ordered mental health evaluations are considered forensic—not therapeutic—and therefore not usually covered by health insurance plans.

### *Spousal maintenance, domestic violence, and mental illness*

Allegations of domestic violence, mental illness, or both, add layers of complexity to family court cases. These allegations weigh heavily in decisions about legal decision-

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#### [A.R.S. § 25-319](#)

Maintenance;  
computation factors

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making and parenting time, as they directly affect a child’s best interests. But in other types of family court matters—most notably spousal maintenance—they are considered differently or not at all.

A.R.S. § 25-319 establishes the framework that family court judges must follow when determining whether a party to a dissolution or legal separation proceeding should be awarded ongoing maintenance, and if so, the amount and duration of that financial support. If a judge finds any one of five reasons set out in the statute, the judge may order spousal maintenance. The statutory reasons focus on whether the spouse requesting maintenance has sufficient property to meet his or her reasonable needs; will be able to achieve financial self-sufficiency, based on other considerations; has contributed to the other spouse’s education, training, vocational skills, career, or earnings; has been in a long marriage and is of an age that may preclude obtaining employment that will allow for self-sufficiency; or sacrificed his or her own income or career opportunities for the benefit of the other spouse. A spouse’s mental illness, if it affects the person’s ability to be financially self-sufficient, is a factor the judge will consider.



If the judge finds that any one of the statutory eligibility factors applies, then the judge calculates the amount of spousal maintenance and its duration without regard to marital misconduct. (See A.R.S. § 25-319.B.) Marital misconduct—for example, adultery or domestic violence—is not a consideration in deciding whether a person qualifies for spousal maintenance, even if the person is at fault for the divorce.

### *Enforcing the family court's orders*

If a parent does not comply with a court order in the family law case, it is the responsibility of the other parent to bring the noncompliance to the attention of the family court. The parent draws the court's attention to the problem by filing a petition and requesting a hearing. (See [Rule 92, Arizona Rules of Family Law Procedure](#).) The petition must state the facts that support the belief that the parent has failed to follow the order. The petition must be served on the allegedly noncompliant parent, along with an order to show cause or an order to appear in court for a hearing on a specific date and time.

The parent who filed the petition for enforcement must present testimony and evidence, which the other parent has the right to refute. If the court finds that a parent is, in fact, noncompliant, the law provides assorted remedies for civil contempt, including incarceration, seizure of property, assessing attorneys' fees and costs, make-up parenting time, or fines.

Incarceration for civil contempt, which differs from incarceration for a criminal conviction, is intended to encourage the person to comply with a court order, not to punish the person for violating a law. Before incarcerating a person for civil contempt, the court first must determine that the person is able to comply with the order. Every 35 days, a person who is jailed for civil contempt must be brought back to court so the judge can determine whether the person has been able to comply with the order.

## *Part 4. SUMMARY*

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**T**he study committee heard recurring themes in the August 2018 interviews that ultimately led to the recommendations in Part 5. These themes are summarized in detail in the following pages.



*Training on domestic violence.*

Judicial officers, court personnel, court-appointed advisors, and justice partners who work in conjunction with the courts can benefit from training—on all sorts of topics. Foremost among those topics are domestic violence and mental health issues.

Domestic violence is complex, and the need for training and awareness was raised frequently during the interviews. The study committee heard that in family court, domestic violence allegations and Orders of Protection may be viewed with skepticism by judges, court staff, attorneys, and litigants. For example, some question whether the OP being used for a legitimate purpose or as a leveraging tactic. Attorneys reported that victims are told to suppress domestic violence allegations because the judge will not want to hear about them in family court. On the other hand, judges said they sometimes hear terrifying allegations and believe that OPs relate to valid concerns. A parent may have a real need for the shield of an Order of Protection, but the other parent may counter that the OP is being used as a sword to interfere with parenting time.

Understanding and being aware of the patterns of a coercive controlling relationship will help judicial officers and court staff gain clarity about the perplexing behaviors that victims and perpetrators of domestic violence may display. For a judge, comprehending the reasons for the parties' actions and the dynamics of their relationship is important to weighing and evaluating the evidence they bring to the courtroom. Court personnel can benefit from training that helps them grasp the reasons a person may repeatedly request and then dismiss Orders of Protection. In turn, this knowledge will guide the response from court staff who interact with returning applicants.

Every judge in Arizona has jurisdiction to issue an Order of Protection. Beyond the mechanics of issuing a protective order, a judge needs to understand the dynamics of domestic violence, the behaviors of the litigants, the trauma that victims and children who witness domestic violence can suffer, and the types of appropriate treatment for domestic violence offenders. Some—but not all—judges take a keen interest in these topics. To ensure that judicial officers take part in appropriate training, the study committee recommends mandatory domestic violence training for judicial officers and court personnel involved in family court and protective



order cases. Ideally, focused domestic violence training would be required for a larger audience as domestic violence can be present not only in family court cases, but also in juvenile, criminal, and even probate court cases.

Domestic violence cases alone can raise safety concerns when both parties, their witnesses, their families, and their friends come to the courthouse for contested protective order hearings. These dangers can also carry into the family court when the parties are involved in disputes over legal decision-making and parenting time. A parent whose contact with the other parent is restricted by an Order of Protection may take advantage of the opportunity presented by a family court hearing to threaten or intimidate the protected person. Judicial officers, court personnel, and court-appointed advisors all can benefit from training about courthouse and courtroom safety protocols to ensure the safety of all court users, whether they are there for family court or a contested protective order hearing.

#### *Training on mental health.*

Just as allegations of domestic violence can affect family court cases, so can allegations of mental illness. If a parent exhibits mental illness that can affect the parent's ability to parent or to parent safely, the judge should be made aware of that issue. On the other hand, an accusation that a parent has a mental illness can be stigmatizing and can create a dilemma for a parent. If the parent seeks mental health treatment, the other parent may accuse him or her of being an inadequate, unsafe, or unfit parent. If the parent fails to seek mental health treatment, the other parent may accuse him or her of being an inadequate, unsafe, or unfit parent. The accused person must then prove that he or she can adequately and safely parent the child, with the aid of treatment or without the need for treatment.

An accusation of mental illness can paralyze a family court case. Resources may be unavailable to pay a professional to evaluate a party's mental health. Meanwhile, in the absence of an evaluation or awaiting an expert's report, the judge must try to determine whether the accusation of mental illness is sufficiently credible to conclude that the child is at risk. Judicial officers can benefit from training on the signs of mental illness and the types of mental health treatment offered so they are in a better position to make decisions based on available information.



### *Working Together with Justice Partners.*

The study committee also considered the roles of other justice partners who are involved in cases involving domestic violence or mental health concerns. These partners include family law attorneys, prosecutors, defense attorneys, and attorneys who provide representation in juvenile court; law enforcement officers who investigate and make arrests in domestic violence cases; probation officers; and parenting time supervisors. Outside of the court, victim advocates and members of domestic violence fatality review teams play a role.

While each may have a specific role, it is beneficial to bring them together periodically to share information, experience, expertise, and ideas. Therefore, the committee recommends that the court and its justice partners convene an annual multidisciplinary conference.

### *Access to Case Information.*

Through its interviews, the study committee learned that the family court can be disconnected from information relevant to the case before it. For example, the family court judge is not necessarily the same judicial officer who issued an Order of Protection, even when the parties to the OP also have an on-going legal decision-making or parenting time case. A parent also may have obtained a valid OP against the other parent in a limited jurisdiction court before the family court case was filed. If a parent has been convicted of a domestic violence misdemeanor or felony, the family court may be unaware of that conviction in a domestic violence or a criminal court. The study committee has proposed recommendations to ensure that judicial officers have access to other case information that impacts the cases before them.

### *Litigants and the Court Experience.*

Self-represented litigants abound in family courts and in every court that issues protective orders. Estimates indicate that in Maricopa County, neither party is represented by an attorney in 80 percent of family court cases. In 12 percent of the cases, one party has an attorney and the other is self-represented. Only in 5 percent of the cases does each party have an attorney.

Many self-represented litigants have never had prior experience in a court. Stepping into family court alone, without an advocate, can be extremely daunting. There are



multiple forms to fill out, copies to be made, fees to be paid, court rules to follow, and statutes to decode. Appearing before a judge, enveloped in the formality of the courtroom, is intimidating. If someone has an underlying mental health issue or is a victim of domestic violence, the experience is exponentially traumatic. In a trial or a contested Order of Protection hearing, the self-represented litigant is expected to present evidence and examine or cross-examine witnesses. Knowing what it means to carry the burden of proof is beyond the experience of most self-represented litigants. They want to tell their story, and they become frustrated when told that not every part of their story is important or relevant.

Those interviewed reported on the dissatisfaction that self-represented litigants experienced in family court. The self-represented felt unheard by the judges, confused by procedures, and unclear about the judges' reasons for their decisions.

The study committee has offered suggestions to promote procedural justice. The focus is on providing information that explains court processes in plain language and in a variety of formats (e.g., written materials, web-based information, or videos). Allowing lay persons such as third-year law students or court navigators to assist with forms and other tasks would provide additional resources in the courts.

### *Standards for Court-Approved Domestic Violence Offender Treatment Programs.*

Domestic violence offender treatment programs vary across the country. In Arizona, persons convicted of domestic violence misdemeanors must complete an offender treatment program. Options include programs approved by the Arizona Department of Health Services (ADHS), the U.S. Department of Veterans Affairs, and local probation departments. Recently, the legislature added courts, subject to rules established by the Arizona Supreme Court, to the list of entities that can approve facilities that provide treatment.

Offenders who are directed to ADHS-approved programs must attend 26 weeks of treatment. The offender must pay for the program. Although every Arizona county has at least one ADHS-approved program, participants sometimes find it challenging to reach those programs because of distance, particularly in rural counties, and costs, which are unregulated and vary among providers.



After hearing about these challenges, the study committee is urging the Administrative Office of the Courts (AOC) to move forward with the establishment of applicable court rules and to explore options for covering the costs incurred by offenders unable to pay for treatment.

### *Communication Tools for Parents Living Apart.*

During legal separation or divorce proceedings, parents must be able to communicate about their child’s health, welfare, and education. If an Order of Protection stands between them, the parents may find communication limited or altogether prohibited. Even without an OP, parents who experience a high degree of conflict find communication to be challenging.

Until recently, a family court judge could appoint a parenting coordinator, at the parents’ expense, to facilitate communication between them when necessary. However, with changes to [Rule 74, Arizona Rules of Family Law Procedure](#), a parenting coordinator can be appointed only if both parents agree, as they are the ones who must bear the cost of these services. With many parents unable to afford the services of a coordinator, courts have come to rely on low-cost third-party Internet applications that allow parents to exchange information without the need for face-to-face contact. These web-based services reduce direct interaction, document parental communications, and provide other tools, such as shared calendars, to manage parenting time, parenting time exchanges, reimbursement for out-of-pocket medical expenses, and other information concerning the child.

### *Legislative Proposals.*

Family court judges make decisions within the statutory framework established by the legislature. The study committee’s conversations generated ideas on ways several statutes could be modified so that judges have more flexibility to address some of the concerns identified.

**Financial assistance with family court services.** The cost of mental health evaluations—and the inability of most self-represented litigants to pay for them—is a barrier to a judge’s ability to make informed decisions when allegations of mental illness are made. An allegation may be unsubstantiated, but it also may be legitimate and signal a need for treatment or conditions for parenting time. Without an



evaluation, the allegation and the concerns raised by it are left unanswered. If a party insists upon an evaluation or if the need is obvious, the judge must determine who will pay for it. If funds are not available, the judge lacks this essential tool.

Family court cases come with high costs for other services, such as professional risk assessments or custody evaluations. A divorce or separation divides one household into two, and the parties' day-to-day living expenses nearly double. The budgets of many family court litigants have no spare room for the added expense of more evaluations or the recurring cost of parenting coordinators or parenting time supervisors. When supervised parenting time is ordered, the window of time spent with a child becomes an ongoing expense. An inability to pay the fee results in time not spent with the child, a detriment to maintenance of the parent-child relationship.

*"Most litigants in family court cannot pay for evaluations and assessments. They're in crisis, untreated, unmonitored, and unmedicated."*

--A Superior Court Judge

The lack of resources to pay for these services came up repeatedly during the interviews. Recognizing that these costs are within the means of few parents, the study committee recommends that the legislature consider ways to generate funds to assist qualifying individuals with payment for these types of services.

**Compliance with court-ordered mental health evaluations.** Once a party has been ordered to have a mental health evaluation and financial responsibility has been assigned, the next step is compliance. What if the parent refuses to submit to the evaluation? While A.R.S. § 25-403.A.5 requires the judge to consider the parties' mental health in determining the child's best interests, it provides no guidance beyond that. The study committee proposes that the noncompliant parent be subject to the rebuttable presumption that, for the noncompliant parent, legal decision-making or parenting time are contrary to the child's best interests.<sup>12</sup> (The presumption would be inapplicable if failure to obtain the evaluation is because of a proven inability to pay.) The parent can then rebut the presumption by cooperating

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<sup>12</sup> This approach is similar to that directed by A.R.S. § 25-403.03 in cases involving allegations of domestic violence.



with the evaluation. If the evaluator determines that the parent has a mental illness that impacts the ability to parent, the court would then be required to order either supervised parenting time or no parenting time, subject to a showing of change of circumstances.

**Judicial discretion to extend Orders of Protection.** Four times between 2009 and 2012, Connie Jones filed petitions for Orders of Protection. The basis for each one was the May 2009 incident during which Dwight Jones threatened to kill her and take their minor child. Each order lasted only one year from the date of service. Connie Jones believed that Dwight Jones was becoming increasingly dangerous—a belief supported by Dr. Pitt’s risk assessment—and she felt compelled to return to court year after year to ask for another Order of Protection to protect herself and her child. But with each year taking her farther away from the May 2009 incident, Connie Jones had to justify the need for another order, although she had reported no additional incidents to the court or violations of the order to police.

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[A.R.S. § 13-3602](#)

Order of Protection;  
procedure; contents;  
arrest for violation;  
penalty; protection order  
from another jurisdiction

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Every state has a version of a domestic violence protection order. The duration of these orders varies widely, ranging from several months in some states to an indefinite number of years in others. In yet others, the judge has discretion to decide how long the protective order should be in place, based on the facts presented.

Arizona law offers no such discretion to judicial officers, regardless of how serious the threat may be. While another Order of Protection can be issued based on incidents alleged in prior orders, the thread connecting those incidents can be stretched thin. The study committee therefore recommends that A.R.S. § 13-3602 be amended to provide judges with discretion to issue Orders of Protection that are valid for more than one year in certain circumstances.

*Standards for Supervised Parenting Time.*

Each parent—even a parent who has no legal decision-making authority—has a right to parenting time unless the court finds that a child’s physical, mental, moral, or emotional health would be endangered by the parent. (See A.R.S. § 25-403.01.D.)



If the court finds that domestic violence has occurred, the parent who committed the domestic violence then has the burden of proving that parenting time will not endanger the child. If the parent successfully rebuts the presumption, the court can still impose conditions on the parenting time to protect the child. (See A.R.S. § 25-403.03.)

A family member or a friend can oversee parenting time if the court orders a parent to have supervision when with the child. If family members or friends are unavailable or unacceptable, however, the parent under supervision may have to pay an agency to supervise the parenting time. The paid supervisor may be a person who stays in the room with the parent and the child to ensure the child’s safety, or the person could be a therapeutic supervisor who also is qualified to provide counseling on parenting skills. An agency must file reports with the family court, but these reports vary in content and quality. A report can document the interaction between the parent and the child in detail, or it may simply note that parenting time occurred.

#### SUPERVISED PARENTING TIME COSTS

Fees for supervised parenting time are unregulated and vary, depending on services required. Dwight Jones was allowed two hours of supervised parenting time each week. The parties first relied on basic supervision services for which they equally shared the \$60/hour fee. Later, a therapeutic supervisor (a licensed therapist) oversaw the parenting time at a cost of \$125/hour, with Mr. Jones paying 80 percent of the fee.

The supervised parenting time business is unregulated, with no standards for training, qualifications, facilities, safety, or costs for services. Because these shortcomings deserve additional attention, the study committee recommends that the court establish standards for supervised parenting time providers that wish to be eligible for court referral.

#### *Use of Risk Assessments in Family Court.*

Evidence-based risk or lethality assessments are prevalent in specialized domestic violence courts and criminal courts. In April 2018, the Arizona Supreme Court approved a statewide risk assessment—[Form 4\(c\) Release Questionnaire, Rule 41, Rules of Criminal Procedure](#)—for a judge’s consideration at the initial appearance of a person arrested for domestic violence. The instrument is designed to help identify the potential risk of severe re-assault for a domestic violence victim. While law



enforcement agencies are not required to administer the Arizona tool, the court must consider it or any other form of assessment if it is provided.

The study committee heard suggestions that this type of assessment might be useful in family court cases that involve allegations of domestic violence. Concerns were raised about a person’s due process rights if a judge were to administer an assessment to evaluate the risk of domestic violence or any potential harm because of mental illness. Judges also expressed concern that, while such assessments could be helpful if administered and interpreted by a professional, judges themselves should not be asked to evaluate the results of the assessment. Because of these concerns, the study committee recommends that the court explore the use of evidence-based risk or lethality assessments in family court cases.

## Part 5. RECOMMENDATIONS

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The study committee set out to assess one part of Arizona’s justice system—the handling of family court cases in which one or both parties allege the presence of domestic violence, mental illness, or both. Based upon its consideration and analysis of information received, the committee makes the following recommendations.

### 1. RECOMMENDATION: Training for Judicial Officers and Court Personnel.

*Require that judicial officers and other personnel involved in family court receive additional training about domestic violence and mental health issues.*

#### Summary of Comments

Most of those with whom the committee spoke noted the need for additional training specific to domestic violence and mental health. Suggested topics include:

- For judicial officers—
  - Distinguish between reliable allegations of domestic violence and spurious allegations used as leverage by the accusing parent.



- Understand the application of state and federal firearms prohibitions to Orders of Protection and in criminal domestic violence cases.
- Understand the dynamics of domestic violence and coercive control and the interaction between the [Arizona Rules of Family Law Procedure](#) (ARFLP) and the [Arizona Rules of Protective Order Procedure](#) (ARPOP).
- Be familiar with various levels of supervised parenting time.
- Understand the importance of the term “significant” domestic violence in A.R.S. § 25-403.03.
- Know the mechanisms for enforcing orders and modifying Orders of Protection issued by other courts.
- Recognize intimate partner violence risk or lethality factors and know how to apply them in family and civil cases.
- Learn about types of mental health treatment options and how to recognize signs of mental illness and develop an awareness that a parent’s mental illness does not necessarily endanger the child.
- Increase awareness of the court’s authority to order mental health evaluations under Rule 63, ARFLP.
- Develop skill and patience in courtroom management.
- Know courthouse and courtroom safety protocols to ensure that domestic violence and family court cases are managed safely; be aware of courthouse security standards for the specific facility.
- Be aware of personal safety measures for all family court participants and court staff.
- For court personnel—
  - Provide training on legal advice and legal information so court personnel can distinguish between the two and better assist the public.



- Understand the dynamics of domestic violence, power and control and the need to treat all litigants with respect and dignity.
- Know courthouse and courtroom safety protocols to ensure that domestic violence and family court cases are managed safely; be aware of courthouse security standards for the specific facility.
- Be aware of personal safety measures for all family court participants and court staff.
- For Court-Appointed Advisors (CAAs)—
  - Understand the dynamics of domestic violence.
  - Know courthouse and courtroom safety protocols to ensure that domestic violence and family court cases are managed safely; be aware of courthouse security standards for the specific facility.
  - Be aware of personal safety measures for all family court participants.

### **Action Items**

- Work with the AOC Education Services Division to develop curriculum on the identified subject areas.
- Ask the Supreme Court to consider how many hours of focused domestic violence training would be most effective and how frequently judicial officers and court personnel should be required to complete it.
- Recommend that the Supreme Court require annual mandatory training in domestic violence and mental health issues for judicial officers and court personnel involved in family court cases and related protective order matters.

## **2. RECOMMENDATION: Working Together with Justice Partners.**

*Collaborate with justice partners on training for attorneys (family, prosecutors, defense, and attorneys who appear in juvenile court), law enforcement officers, and parenting time supervisors.*



### Summary of Comments

Concerns about the need for training for others who work with the judiciary beyond court personnel were raised. Multidisciplinary topics could include:

- Firearms, domestic violence misdemeanors, and prohibited possessor status under state and federal law;
- Recommendations from domestic violence fatality review teams;
- Domestic violence and mental health; and
- The interaction between domestic violence and family law cases and associated risks.

### Action Items

- Collaborate with the Governor’s Office for Youth, Faith and Families to establish an annual multidisciplinary domestic violence conference to be financed with STOP Grant funds.
- Explore other possible grant resources that could be used to fund multidisciplinary training.
- Collaborate with justice partners, such as the State Bar of Arizona, the Arizona Prosecuting Attorneys Advisory Council (APAAC), and Arizona Attorneys for Criminal Justice, on training topics.
- Ask the Chief Justice to determine whether any non-confidential portions of any domestic violence fatality review team report received should be shared with Committee on the Impact of Domestic Violence and the Courts (CIDVC) for further review and follow-up.

### 3. RECOMMENDATION: Access to Case Information.

*Improve information sharing to ensure that superior court judges and commissioners have access to case information about Orders of Protection and relevant criminal proceedings involving one or both parents.*



### Summary of Comments

A superior court judge may not be aware of an OP entered by another court or a commissioner. That lack of information could affect legal decision-making orders. (ARS § 25-403.03 requires the family court to consider whether there has been a significant history of domestic violence.) The judge also may be unaware of pending cases or convictions for domestic violence misdemeanors or felonies.

### Action Items

- Develop procedures so that judicial officers who hear OPs are communicating with family court judges on cases involving the same parties.
- Provide access to the AOC's Central Case Repository (when it becomes available) to judicial officers and court personnel so OPs issued by other courts can be identified, and conflicting orders can be avoided.
- Provide judicial access to available data resources on convictions for domestic violence misdemeanors or felonies.

## 4. RECOMMENDATION: Litigants and the Court Experience.

*Promote procedural justice by treating court users with dignity, fairness, and respect, ensuring they understand applicable court processes, and by providing more assistance for self-represented litigants.*

### Summary of Comments

The committee heard comments from the victim perspective that judges are not compassionate toward them and do not want to hear about domestic violence allegations in family cases. They also heard that litigants are confused about court processes and unable to bear the high cost of litigation in complex family cases. Concerns also were raised about the lack of Court-Appointed Advisors (authorized by A.R.S. § 25-406) and the scarcity of legal assistance for self-represented litigants who proceed alone in protective order or family court.



### Action Items

- Provide an explanation to litigants about the role of the judicial officer by working with partners on the [AZCourtHelp.org](https://www.AZCourtHelp.org) project to develop resources.
- Collaborate with Legal Talks coordinators to develop programs that address the relationship between protective orders and family court cases.
- Explore an opportunity to work with Arizona State University to produce short videos that will educate the public on protective order processes.
- Encourage courts to partner with non-profit advocacy agencies where available to support victim services.
- Consider whether advocates or navigators should have a broader role to bolster the ARPOP rule on advocate presence in the courtroom during *ex parte* protective order hearings.
- Ask the Chief Justice to enlarge CIDVC membership to include a designated seat for a superior court judge who hears family court cases.
- Provide additional resources to assist self-represented litigants in navigating the court system, such as expanding the use of lay-persons (e.g., third-year law students, court navigators, etc.) to assist with specific activities, such as completing forms.

## 5. RECOMMENDATION: Standards for Court-Approved Domestic Violence Offender Treatment Programs.

*Expand treatment options for persons convicted of domestic violence misdemeanors by encouraging the Supreme Court to develop rules for courts to follow when approving facilities that provide domestic violence offender treatment programs.*

### Summary of Comments

The committee heard about the challenges surrounding domestic violence offender treatment programs—their effectiveness, variations in standards and requirements, and disparities in cost. By statute, a person who is convicted of a domestic violence misdemeanor is required to bear the cost of domestic



violence offender treatment. With a typical program consisting of 26 weeks at minimum, cost is a barrier to completing treatment.

#### **Action Items**

- Recommend that the AOC work toward implementation of ARS § 13-3601.01.A by establishing a task force to develop court-approved rules and standards for domestic violence offender treatment programs.
- Explore options to help those who commit domestic violence misdemeanors to pay for the cost of treatment.

### **6. RECOMMENDATION: Communication Tools for Parents Living Apart.**

*Encourage use of low-cost tools and alternatives for family court litigants who cannot afford the services of parenting coordinators.*

#### **Summary of Comments**

Changes to Rule 74, ARFLP, have made use of parenting coordinators (PC) more difficult. The family court judge can appoint a PC only if both parties agree to such an appointment. The barrier often is the high cost of PC services. However, low-cost alternatives have been developed that allow parents to communicate via the Internet, reducing direct interaction and documenting their contact.

#### **Action Items**

- Educate family court judges on the benefits of ordering the use of third-party systems and applications to facilitate communication between the parties (e.g., Our Family Wizard or similar applications).
- Provide funding through additional court filing fees or any new funds created to support such types of communication services for parents who cannot afford them.

### **7. RECOMMENDATION: Legislative Proposals.**

*Ask the legislature to consider creating laws that would aid the family court's interaction with litigants who have mental health issues, establish funding to pay for*



*related services and evaluations, and expand Order of Protection provisions for domestic violence victims.*

### **Summary of Comments**

The committee heard a suggestion that Title 25 be expanded to include a section on mental illness, comparable to A.R.S. §§ 25-403.03 and 25-403.04, which affect legal decision-making and parenting time. Additional discussion included parenting time and domestic violence, specifically whether it is ever appropriate to prohibit a parent from having any parenting time, even supervised, when domestic violence has not directly involved a child, and if standards governing imposition, extension, termination, and review of supervised parenting time should be created. They also heard that in some situations, an OP that is valid for only one year is insufficient and should have a longer duration.

### **Action Items**

- Ask the legislature to establish funds to pay for services related to family court cases (e.g., mental health evaluations, supervised parenting time, parenting coordinators or alternative services, risk or lethality assessments, or legal decision-making evaluations).
- Support a modification to A.R.S. § 25-403.A.5 regarding a party's mental health. If the court finds the need for a party to have a mental health evaluation but the party refuses to comply, a rebuttable presumption would arise that legal decision-making or parenting time are presumed to be contrary to the child's best interests. If an evaluation shows that a party's mental illness impacts the party's ability to parent, the court shall order supervised parenting time or no parenting time, subject to a showing of change of circumstances. The presumption will not apply if failure to obtain the evaluation is because of a proven inability to pay.
- Support an amendment to A.R.S. § 13-3602 that would give judges discretion to extend the duration of an Order of Protection in certain cases.



## 8. RECOMMENDATION: Standards for Supervised Parenting Time.

*Ask the Supreme Court to approve standards for supervised parenting time providers.*

### Summary of Comments

The study committee heard about the cost of supervised parenting time, safety issues at supervised parenting time facilities, and concerns about the qualifications of some of the personnel who directly supervise the interaction between the parent and the child.

### Action Items

- Recommend establishment of standards for supervised parenting time providers.

## 9. RECOMMENDATION: Use of Risk Assessments in Family Court.

*Ask the Supreme Court to investigate the use of evidence-based risk assessments in family court cases.*

### Summary of Comments

The committee heard information about various types of assessments, such as those that screen for the risk of future violence in intimate partner cases or assessments for mental health. The group discussed how various assessments could be beneficial and how they could be administered.

### Action Items

- Recommend establishment of a workgroup to explore the use of evidence-based risk assessments in family court cases.



## Appendix: The Jones Case

### The parties in the family law case

- Dr. Connie Jones
- Dwight Lamon Jones. On June 4, 2018, his body was found in the extended-stay hotel in Scottsdale where he had resided since 2009, when he was barred from the family residence by an Order of Protection. He had carried out his suicide.

### The homicide victims

- Dr. Steven Pitt, forensic psychiatrist, was shot and killed by Dwight Jones on May 31, 2018. The shooting occurred on the sidewalk outside of Dr. Pitt's office. As part of the dissolution case, Dr. Pitt was hired by Connie Jones to perform a risk assessment of Dwight Jones.
- Veleria Sharp and Laura Anderson were shot and killed by Dwight Jones on June 1, 2018. The shooting occurred inside the Scottsdale law office of Burt Feldman Grenier, where the women were employed as paralegals. Elizabeth Feldman, a law firm partner, represented Connie Jones in her family court case against Dwight Jones. Neither Ms. Sharp nor Ms. Anderson were employed by the law office during the *Jones* litigation.
- Marshall Levine, psychologist, was found dead in his Scottsdale office on June 2, 2018. Dr. Levine had no known connection to the *Jones* case. He did, however, rent an office suite from a counselor who had worked with the child of Connie and Dwight Jones during their family court case.
- Mary Simmons and Bryon Haywood Thomas were found dead inside their Fountain Hills home on June 3, 2018. The connection between the victims and Dwight Jones is unknown.

### Chronology of the family court case

- 05-06-2009 Dwight Jones is arrested by Scottsdale police for domestic violence (assault, threatening and intimidating, and disorderly conduct).
- 05-06-2009 Dwight Jones is taken to Magellan UPC on an emergency involuntary petition alleging danger to others.



- 05-07-2009 Connie Jones obtains an Order of Protection from the Scottsdale City Court. During the year that the order is valid, Dwight Jones is prohibited from possessing firearms under A.R.S. § 13-3602.G.4.
- 05-12-2009 Connie Jones is granted temporary sole legal custody and temporary exclusive possession of the marital residence. She also files petition for dissolution of marriage. (The parties were married in 1988.) Dwight Jones is allowed two hours/week of supervised therapeutic parenting time.
- 05-14-2009 In the Scottsdale City Court, Dwight Jones pleads guilty to the domestic violence misdemeanor offense of disorderly conduct. The other charges are dismissed. He is sentenced to 12 months of unsupervised probation, 30 days in jail (suspended), 36 weeks of domestic violence offender treatment, and a mental health evaluation. While he is on probation, he is prohibited from possessing firearms.
- 05-18-2009 Dwight Jones is transferred from Magellan UPC to Desert Vista Behavioral Health. He is discharged from Desert Vista on May 26.
- 06-01-2009 Spousal support payments of \$6,000/month from Connie Jones to Dwight Jones begin.
- 07-27-2009 Following an evidentiary hearing regarding temporary orders, the court orders that Dwight Jones will continue to have a minimum of two hours of supervised therapeutic parenting time each week. Pending the divorce, Connie Jones will pay \$3,800/month spousal support, and Dwight Jones will pay \$347.94 child support for the benefit of the parties' child.
- 08-20-2009 The court finds that Dwight Jones' mental health is a concern. Over his objection, pursuant to Rule 63 of the Arizona Rules of Family Law Procedure, the court orders him to submit to a risk assessment evaluation by Dr. Steven Pitt, at Connie Jones' expense.
- 08-26-2009 The parties stipulate to the appointment of a custody evaluator.



- 05-13-2010 As the Order of Protection issued by Scottsdale City Court will soon expire, Connie Jones files a petition for a new order. The superior court grants the order and prohibits Dwight Jones from possessing firearms for the duration of the order under A.R.S. § 13-3602.G.4.
- 05-17-2010 A therapeutic supervisor is appointed to oversee Dwight Jones' parenting time.
- 09-21-2010 Dr. Pitt testifies in the dissolution trial. He concludes that Dwight Jones has features of paranoid, antisocial, narcissistic personality disorder and undefined anxiety and mood disorders.
- 11-22-2010 The court issues a decree dissolving the parties' marriage. Connie Jones' request to relocate with the child is denied, and Dwight Jones will continue to have two hours of supervised parenting time each week. But the court advises that any request from him for more parenting time will be denied unless he provides an affirmative statement that he has participated in psychiatric treatment, entered group therapy, and received additional domestic violence offender treatment. Connie Jones is required to pay spousal maintenance to Dwight Jones in the amount of \$6,000/month for five years (including the pre-decree period). He must continue to pay child support. A parenting coordinator also is appointed.
- 05-05-2011 As the Order of Protection issued in May 2010 is due to expire, Connie Jones applies for another Order of Protection. It is granted and served. Dwight Jones is prohibited from possessing firearms for the duration of the order under A.R.S. § 13-3602.G.4.
- 10-26-2011 The court clarifies the decree, specifying that Dwight Jones must submit to a psychiatric evaluation and comply with all treatment recommendations. He must provide the evaluator with a complete history, including records from his involuntary stay at Magellan and Desert Vista Behavioral Health and allow access to the parties' parenting coordinator.



- 11-2011 Dwight Jones' therapeutic supervised parenting time stops because he has not scheduled appointments with the provider.
- 05-02-2012 As the Order of Protection issued in May 2011 is about to expire, Connie Jones applies for another Order of Protection. It is granted and served. For the duration of the order, Dwight Jones is prohibited from possessing firearms under A.R.S. § 13-3602.G.4.
- 07-13-2012 Following a contested hearing regarding the Order of Protection, the court affirms the order. Dwight Jones is now prohibited from possessing firearms under A.R.S. § 13-3602.G.4. and 18 U.S.C. § 922(g)(8) for the one-year duration of the Order of Protection.
- 06-10-2013 Dwight Jones files a motion to appoint another therapeutic parenting time supervisor. Connie Jones files a response, noting that he has not participated in parenting time since November 2011. She opposes his request until he completes evaluation and treatment as previously ordered.
- 07-10-2013 Dwight Jones files a motion to restart parenting time and appoint a new therapeutic parenting time supervisor. He also asks to be allowed to have a psychological, rather than psychiatric, evaluation. The court orders that any future "therapeutic visits must abide a proper [psychiatric] examination of Father." The court denies his request to appoint a therapeutic parenting time supervisor and his request to submit to a psychological rather than psychiatric evaluation. The court orders that Jones may reapply for a therapeutic parenting time supervisor after such time as he completes his psychiatric evaluation.
- 05-30-2014 Dwight Jones files a petition to extend spousal maintenance payments indefinitely, saying he suffers from chronic major depression and has been diagnosed with adjustment disorder with anxiety, PTSD, dependent personality disorder, and schizoid personality disorder.
- 06-01-2014 Spousal support payments end. Soon after, Dwight Jones' petition to extend spousal maintenance payments is dismissed at his request.

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- 01-22-2016 Connie Jones files a motion to enforce child support. Although the parties' child is now emancipated, Jones has not paid child support since September 2013 and has not cooperated with completion of a Qualifying Domestic Relations Order (QDRO) to divide a retirement account.
- 03-29-2016 The parties stipulate to distribution of the retirement account, with adjustments for child support and spousal maintenance arrears. The family court case ends.