

# COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

## Meeting Minutes

October 16, 2002

12:00 – 4:00 PM

State Courts Building

Conference Room 119 A&B

Phoenix, AZ

### CIDVC Members Present

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

### Members participating by telephone

Hon. Dana Hendrix

### Members using a Proxy

Allie Bones

### Members RSVP (unable to attend)

Margaret Bentzen  
Hallie Bonger-White, Esq.  
Hon. Sherry Geisler  
Dr. Teresa Lanier  
Dr. Anu Partap

### Guests

Theresa Barrett, Court Services, AOC  
Nancy Grey-Eade, Conciliation Court,  
Yuma  
Karen Kretschman, Court Services, AOC  
Dianne Post, AzCADV  
Nicole Winiecki, AzCADV  
Danella Yaloz, AzCADV

### Staff Present

Catherine Drezak

### Quorum: Yes

#### **1. Call Meeting to Order**

**Judge O'Connor**

The meeting was called to order at 12:15 PM. All those persons present introduced themselves. Guests attending the meeting were welcomed.

#### **2. Review of Previous Meeting Minutes**

**Judge O'Connor**

Minutes of the August 08, 2002 meeting were reviewed. A couple of clerical revisions were proposed, such as: Roll call- include Dianne Post as a participant; Section B (Expose)- remove "an Arizona perspective" to clarify the studies were conducted in other states; rewording sentences to clarify the meaning.

**Motion:** Approved August 08, 2002 as amended.  
**Vote:** Pass  
**Tasks:** Catherine revise August 08, 2002 minutes and send to members.

### **3. Meeting Business**

**Judge O'Connor**

#### **A. Orders of Protection Issue**

**Erin Szajna**

Ms. Szajna researched the issue of whether a victim can be arrested for violating an order of protection taken out against an abuser. Ms. Szajna's research appears to indicate that the victim cannot legally be arrested for violation of another's order. In one case in Kentucky, a victim was arrested and convicted of violating the protection order in direct contradiction of the state statutes that prohibit such actions. The legislative intent of Arizona's order of protection statutes (enacted in 1980) was to make domestic violence the equivalent of violence against strangers. Several drawbacks included: it allowed for mutual orders of protection; the court had authority to enjoin both parties from contacting each other; the order was automatically effective against the plaintiff but only the defendant was allowed a hearing on the order. These problems have since been removed because it was recognized that they created a double standard and violated the victims' due process rights. As a result of an Arizona Supreme Court Domestic Violence Taskforce finding that mutual orders of protection were unconstitutional, in 1991 the statute was changed to focus the sanctions against the defendant and not the plaintiff. The victims' due process rights are violated when a mutual order is granted because the defendant is given the opportunity to defend him/herself yet the victim is not given the same opportunity. In 1998 the statute was changed to prohibit mutual orders which put Arizona in compliance with the Violence Against Women Act. The history of changes in the statutes clearly indicates that the intent of the legislature is to protect the victim from both the defendant and from the effects of mutual orders. Unfortunately, the issue of mutual orders is a nation wide problem. In a variety of cases, courts in other states recognize that the victim is entitled to due process and that the victim may not be held accountable for violating the very act that protects them.

**Motion:** None, informational only  
**Tasks:** None

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

**Bob James**

Mr. James presented a progress report on the workgroup's accomplishments. The workgroup reviewed 3 forms: Certificate of Service, Brady Notice and Request for Hearing, prepared by Judge Finn and Judge Anagnost. A lively discussion regarding the need for a Brady Form ensued but no resolution was reached. There was also a contrast in opinions voiced on the need for warning the defendant of the possible Brady prohibitions on the "Request for Hearing" form. Another meeting will be held on November 20 at the AOC. Send comments on the forms to the committee for review. Direct questions to ITD on rollouts included a 1.0 rollout underway in Pinal County and Flagstaff Municipal. The 1.5 rollout is in the works but no timeline available. David Berg noted that it is important to preserve the business process when considering the redesign of the forms. The workgroup requested that an ITD representative be prepared to discuss timelines at the next DV Forms Workgroup meeting.

**Motion:** None, informational only.  
**Tasks:** Committee is to review the proposed forms and submit comments to the DV Forms Workgroup.  
Catherine will invite an ITD representative to the next meeting.

### **C. CPOR Policy Workgroup Report**

**Judge Moran**

Judge Moran presented a progress report on the workgroup's accomplishments. Many issues are still not agreed upon, so there is no formal document for the committee to review. Part of the problem is that the various criminal justice agencies have very differing needs and concerns. It may be easier to agree on general guidelines than specific rules at this point. With this in mind, the workgroup did agree on a break down by users : victim, courts, LE, etc, and suggested a general rule with specific exceptions granted as needed. As a general rule, only make available to any group orders that have been served. No information on unserved orders will be available to the public in general. A protected address is not disclosable, even by judges. The issue of allowing law enforcement access to unserved orders has been deferred. This issue will be brought to the full committee.

**Motion:** None, informational only.  
**Tasks:** The next meeting is scheduled for November 20, 2002.

### **D. Criminal Benchbook Workgroup Report**

**Judge Moran**

Judge Moran presented a progress report on the workgroup's accomplishments. The criminal DV benchbook is virtually complete and will be completed by the end of the year. Some sections still need to be written. Perhaps the work can be incorporated into the regular criminal benchbook instead of being published as a separate book. Offender accountability recommendations from MAN are available for inclusion. The next meeting is scheduled for December 11, 10:00 – 12:00, before the CIDVC meeting.

**Motion:** None, informational only.  
**Tasks:** Catherine to get a copy of the MAN recommendations to Judge Moran.

### **E. Integrated Family Court Plan**

**Dr. Renee Bartos**

Dr. Bartos presented a report on the Integrated Family Court proposal. The presentation started with an introduction by Nancy Gray-Eade from the Conciliation Court in Yuma. The Domestic Relations Committee (DRC) has been instrumental in developing the Integrated Family Court (IFC) proposal. They used research from various IFCs around the nation to develop this proposal. Last year SB1088 gave the DRC the authority to develop a statewide IFC plan which will eventually become a legislative proposal. Divorce is a large issue in this state, as well as family disputes involving children. All the stakeholders were included in the workgroup. The focus is to create a single court, one team for one family, to hear family relations cases including juvenile, some probate and non-criminal DV cases. Alternative Dispute Resolution (ADR) will become the rule not the exception, except in the cases where the judge rules there is domestic violence. A component will also focus on making the IFC court "more attractive" to judges. There were 10 recommendations developed by the subcommittee including essential elements, authority and structure, services and resources, information systems and confidentiality, minimum standards, judicial officer and staff assignments,

facilities, case management, ADR, and the implementation timeline. There will be guidelines and benchmarks to address domestic violence issues. Implementation planned for December 2005. The implementation plan is set and dependant on the passage of the legislation. They have a sponsor for the bill. Still need to fully develop the statewide AOC committee and funding. Objections were voiced as follows: the plan as written does not guarantee that a DV victim will not be forced into mediation; there was not a single victim advocate on the subcommittee and the criminal aspect, although considered, was not included. So basically, it is a plan for most of the family issues and not a 100% holistic approach. Need to be able to include misdemeanor DV crimes. Having a more integrated system will assist with OP/IAH issues however, all courts will remain able to issue orders of protection. It is unclear if the IFC will become an appellate court for order of protection cases. Superior court judges may find the IFC concept more appealing if they knew they would not have to hear order of protection appeals. Although Maricopa County has a pilot project that seems successful, the research for the IFC plan being proposed is based on research from other states. These states have well established programs and the published results are favorable. It remains to be seen if this plan can be successful using Arizona laws and with Arizona's unique culture. The legislature has stated that the state will not fund this project through a general funds appropriation and the IFC subcommittee is still discussing funding strategies. However, the IFC details are scarce in terms of public policy issues, confidentiality issues, family law and domestic violence issues. Minimum standards are to be developed by the Supreme Court as part of the proposed statutory draft.

**Motion:** Table the committee's recommendation until the December meeting.

**Vote:** Pass

**Tasks:** Committee is to read the IFC documents and be prepared to discuss specific concerns and suggestions at the December meeting.

## **F. Ethics Opinion**

**Dianne Post**

Ms. Post presented a report on the ethics opinion reconsideration task. One solution includes developing a guideline for determining the acceptability of a commission or commission to include judges. There are many groups/ commissions on which judicial participation will be very helpful. The committee needs to define a specific question with a very narrow focus. A systematic evaluation of a problem needs input by judges along with the other criminal justice representatives; this could be the focus of the question. For instance: can a judge sit on the Governor's DV Commission? The aim or purpose of the commission on which the judge wants to participate must be considered. However, there are various judges currently on various commissions, using any one of them as an example for a question specifically opens up the possibility of removing these judges from these groups. One person suggested that it may be best to try to get an opinion that allows a judge to recuse him/herself if needed. Judges need the contact with the community as well to keep in touch with what is happening in their jurisdiction. The committee should craft the question in such a way that leads to an affirmative response using the administration of justice or connection to the community as a key. In the request putting a package together we should discuss the efficacy of the system and working together to provide expertise and ask if the "example commission's" agenda conforms to ethics rules. It may be wise to use a different, non-DV committee. This avoids using precedent in deciding the response, if it results in a positive response, then send a second request to clarify the discrepancy. Perhaps we should use a different fact pattern, with a similar, yet different set of circumstances, instead of asking for a re-consideration. This unfortunately makes it a two step approach.

**Motion:** Table for further research and discussion  
**Vote:** Pass  
**Tasks:** Committee is to Review Dianne's document and prepare to discuss the issue at the December meeting.

**G. A.O 98-66**

**C. Drezak**

The AOC is in the process of changing a variety of Administrative Orders (AO) into Administrative Codes. AO 98-66 outlines court policies for domestic violence cases. The rewritten version into Administrative Code is an updated version that includes new statutes and a requirement for mandatory DV training. Some suggested changes include rewording of B.(1)(b) regarding the hearing of a petition; clarifying the section discussing "mutual orders;" rewording section C(1)(a) regarding the availability of courts to issue protective orders, except for as applicable in section 2(b).

**Motion:** Defer until the December meeting.  
**Vote:** Pass  
**Tasks:** Committee is to review the document and email any suggested changes to Catherine.

**4. Old Business**

**Judge O'Connor**

**A. Revive DV Benchbook Workgroup**

The DV benchbook needs to be updated and CIDVC should reconvene this workgroup. Add: Dianne Post and Nicole Winiecki to the workgroup.

**Tasks:** Members need to volunteer.

**B. Training**

The next Judicial conference is being planned for June 17, 2003 in Phoenix. A DV segment will be included. Other possible activities include a roadshow to get educational training to rural judges.

**Tasks:** Education Workgroup consists of: Judge Moran, Judge Karp, Tracey Wilkerson; any one else interested please contact Catherine.

**C. Victim safety plan.**

Catherine is working on the revision of the "Safety Plan" for the CIDVC web site to include children's safety. Using bullet points and considering existing safety plans she will develop a brief draft for the committee.

**Tasks:** Any suggestions, please send them to Catherine.

**D. 2003 meeting schedule OK**

## **E. Unnamed defendants**

At the August meeting, Judge Finn requested the committee to review policies on the issue of filing an OP against an unnamed defendant.

**Tasks:** Catherine will ask Judge Finn to give a presentation at the December meeting. Catherine will ask the ITD Data Warehouse people to query DV Module for “John Doe for statistical information.

## **5. New Business**

**Judge O’Connor**

A draft data sheet was presented to the committee to demonstrate the information we can gather from the CPOR. Committee noted that there are a large number of Injunctions granted for persons who have a relationship with the defendant that qualifies for an order of protection.

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

**Public Attending**

Dr. Renee Bartos spoke to the committee and urged them to support increased accountability in cases where children are involved. She is pursuing “parenting time centers” as an option for parents to exchange children for court ordered parenting time.

7. Next Meeting: December 11, 2002, 12:00 – 4:00 PM, AOC conference room 119 A&B, Phoenix, AZ

## **8. Adjournment**

**Judge O’Connor**

The meeting adjourned at 3:30 PM.