

**DOMESTIC VIOLENCE RULES COMMITTEE
MINUTES**

Wednesday, May 23, 2007
10:00 a.m. to 2:00 p.m.
State Courts Building
1501 W. Washington, Room 230
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable William J. O'Neil, Chair
Mark Armstrong (via proxy Ellen Crowley)
Honorable Kyle Bryson (via teleconference)
Clarence Cramer
Ellen Crowley
Larry D. Farnsworth (via teleconference)
Honorable Elizabeth R. Finn (via teleconference)
Honorable Carolyn K. Passamonte
Pearlette Ramos
Lauri Thomas
Honorable Benjamin Zvenia (via teleconference)

MEMBERS ABSENT

Bridget Humphrey
Dr. Brian Yee

STAFF:

Ms. Theresa Barrett
Ms. Lorraine Nevarez

I. Call to Order

A. Welcome and Opening Remarks

Judge O'Neil, Chair, called the May 23, 2007, meeting of the Domestic Violence Rules Committee to order at 10:10 a.m.

B. Approval of Minutes from October 4, 2006

Minutes for the February 7, 2007, Domestic Violence Rules Committee meeting were presented for approval.

MOTION:

Motion was made and seconded to approve the February 7, 2007, meeting minutes as presented. Motion passed unanimously. 11-0-0. DVRULES-07-003

II. Call to the Public

Patricia Madsen, Family Law Attorney, Community Legal Services, submitted the following comment to the proposed *Arizona Rules of Protective Order Procedure*. She was concerned primarily with those portions of the rules that address children as protected parties on protective orders. Specific issues raised by Ms. Madsen included the following:

A. The issue of children as protected parties seems to be dealt with in two distinctively different ways within the Rules. Rule 1(F) indicates that “no Judicial Officer has the authority to include a child of the defendant in a protective order unless there is reasonable cause to believe: (1) Physical harm has resulted or may result to the child, or (2) the alleged acts of domestic violence involved the child.” While Rule 1(F) appears to comport with the protective order statute, Rule 4(B)(4) significantly limits the applicability of A.R.S. § 13-3602 to minor children and as such makes a major substantive change to what the statute provides. Under Rule 4(B)(4), the statutory grounds for protection are shifted from whether a defendant has or may commit an act of domestic violence against a child to “whether the child will be harmed” by the defendant in the future. The focus shifts from the conduct of the defendant to the plaintiff, who has to prove certain and negative future consequences to the child. The child is no longer entitled to protection by having been victimized in the past. Instead, the plaintiff must show that the child “will” — not “may” — be harmed in the future. Ms. Madsen contended such substantive changes to statutory provisions and intent might be viewed as a separation of powers issue.

MOTION: To approve the proposed changes to Rule(4)(B)(a) and (b) changing the word “will” to the word “may.” Motion passed unanimously. 11-0-0. DV Rules 07-004

B. Rule 1(I)(2) also addresses children as protected parties, with regard to the intersection of protective orders and custody or parenting time orders. Ms. Madsen felt the subsection’s requirement that judicial officers “inquire about the existence of any custody order or parenting plan to avoid entering a protective order that conflicts with the current plan” reads like a blanket prohibition. Furthermore, if this subsection is meant to be a prohibition, intended to steer would-be plaintiffs toward filing “emergency” custody modifications instead, then that would appear to be a substantive change to the protective order statute. If it is not intended to be a blanket prohibition, Ms. Madsen suggested adding a qualifier, such as “inadvertently or unnecessarily avoid entering a protective order that unintentionally conflicts...”

The committee agreed, in reality, if domestic violence or child abuse occurs while a parenting plan is in effect, it may be necessary and appropriate for a court to issue a protective order that conflicts with the current plan.

MOTION: To approve the proposed changes to Rule(1)(I)(2) adding the

word “inadvertently” to the paragraph. Motion passed unanimously. 11-0-0. DV Rules 07-005

C. Regarding Rule 2(C), Ms. Madsen expressed concern that specifically mentioning attorney’s fees in these Rules will encourage the assessment of such fees against victims of domestic violence. She felt since the statutes cited in the Rule already provide for attorney’s fees, mentioning the issue again in the Rule seems unnecessary. Also, her experience suggests, it is the defendant, rather than the plaintiff, who more often secures attorney representation for protective order hearings. Ms. Madsen argued that attorney’s fees in the Rules gives the issue greater prominence and makes it more likely that an attorney representing the defendant would use the request for fees to intimidate a plaintiff to dismiss the order, not attend the hearing, etc.

The committee did not agree to change any language to Rule 2(C) regarding Attorney Fees. The committee felt Rule2(C) is important addition to the Rules.

III. Review Informal Comments

The committee reviewed the remaining informal comments and changes were made to:

- Rule 1(I)(2) adding an additional sentence at the end of the paragraph

MOTION: To approve the proposed changes to Rule(1)(I)(2) adding an additional sentence at the end of the paragraph. The motion passed unanimously. 11-0-0. DV Rules 07-006

The Committee then conducted a page-by-page review of the Rules. No additional changes were identified.

MOTION: To approve the proposed Rules as revised. Second by Clarence Cramer. The motion passed unanimously. 11-0-0. DV Rules 07-007

Judge O’Neil confirmed with Ellen Crowley that the petition would need to be submitted no later than Friday, June 29. Members discussed availability in case a final meeting is needed following presentations to AJC standing committees. Members agreed to meet Friday, June 22, at noon. Staff will notify members in advance if such a meeting is necessary.

IV. Adjournment

Meeting was adjourned at 12:15 p.m.

NEXT MEETING

Wednesday, September 5, 2007

2:00 p.m. – 5:00 p.m.

State Courts Building, Conference Room 119 A/B