

# The Supreme Court of Ohio

## MEMORANDUM

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**TO:** Chief Justice Maureen O'Connor

**CC:** Michael L. Buenger, Administrative Director  
Stephanie E. Hess, Court Services Director

**FROM:** Judge John T. Rohrs, III Chair  
Diana L. Ramos-Reardon, Domestic Violence Counsel

**DATE:** January 30, 2015

**RE:** Advisory Committee on Domestic Violence – 2014 Annual Report

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Pursuant to Guideline 4.03 of the Operating Guidelines for the Advisory Committee on Domestic Violence, Judge Rohrs of the Defiance Municipal Court, Chair of the advisory committee, and Diana Ramos-Reardon, Domestic Violence Counsel and staff liaison to the advisory committee, hereby submit the advisory committee's 2014 annual report.

### **Purpose of Advisory Committee**

The purpose of the advisory committee is to provide ongoing advice to the Court and its staff regarding the promotion of statewide rules and uniform standards concerning the establishment and operation of domestic violence programs in Ohio courts; the development and delivery of services to Ohio courts on matters involving domestic violence, including training programs for judges and court personnel; and the consideration of any other issues the advisory committee deems necessary to assist the Court and its staff regarding the resolution of domestic violence issues presented in Ohio courts.

### **2014 Activities and Accomplishments**

The Advisory committee met quarterly this year, on February 21<sup>st</sup>, May 2<sup>nd</sup>, August 8<sup>th</sup>, and November 7<sup>th</sup>. As discussed in further detail below, the advisory committee primarily focused on two items this year: (1) providing input on policy matters and (2) enhancing domestic violence resources.

#### *Input on Policy Matters*

The advisory committee discussed several legislative measures to determine their impact on the courts' effective response to domestic violence and stalking cases. In response, the

advisory committee, working with staff in the Supreme Court's Domestic Violence Program and Government Relations Counsel, commented on or provided technical assistance to House Bill 74 (cyberstalking protection), House Bill 297 (housing and employment protection of domestic violence victims), House Bill 309 (fees and costs in protection order proceedings), Senate Bill 177 (pets' protection) and Senate Bill 261 (service of protection orders). The committee's comments highlighted potential conflicts with well-settled concepts, such as *family or household members* or domestic violence acts. The focus of the advisory committee's comments has been to ensure that new legislations do not introduce confusion, inconsistency, or vagueness in the law and result in unwise use of courts' resources. In other instances, as is the case with House Bill 309, the advisory committee brought forth the importance of prompt enactment to comply with the 2013 Violence Against Women Reauthorization Act and protect Ohio from loss of federal funds. House Bill 309 was enacted on June 17, 2014. The advisory committee also provided technical assistance to Senate Bill 177. This bill sought to protect pets in domestic violence situations. The advisory committee suggested changes to underscore pets could be protected through a victim's protection order rather than being treated as the subject of the protection order, i.e., a protected party. Of most interest to the advisory committee was that Senate Bill 177, which was enacted on December 19, 2014, appears to codify in law the current language in the Supreme Court's standardized protection order forms regarding protection for pets. The advisory committee will study this legislation to decide if revisions to the protection order forms are prudent.

Additionally, the advisory committee reviewed *Schussheim v. Schussheim*, 137 Ohio St.3d 133, 2013-Ohio-4529, to determine the practical implication of this opinion on courts. Pursuant to the Court's opinion in *Schussheim*, courts may seal protection orders in limited instances, i.e., when unusual and exceptional circumstances exist. Although this opinion articulated a framework for considering motions to seal protection order records, domestic relations courts sought additional guidance regarding best practices and procedures. In response, the advisory committee, working with staff in the Supreme Court's Domestic Violence Program, developed a matrix of suggested outcomes and considerations that takes into account the different circumstances when motions to seal protection order records may be filed. The advisory committee also considered statutory or rule changes and concluded such changes are not currently necessary. Although hard data on sealing civil protection order records is not available, trial courts do not appear to be experiencing a significant number of such cases and have developed reasonable practices and procedures relying on existing laws and rules. The advisory committee will continue to monitor the trial courts' experiences and concerns regarding the sealing of civil protection order records.

### *Domestic Violence Resources*

#### Firearms Bench Card

In 2013, the advisory committee convened a Firearm Workgroup to study the return of firearms upon the expiration of a protection order. The advisory committee, working with staff in the Supreme Court's Domestic Violence Program, recommended creating a firearms bench card relevant to domestic violence cases. The development of the bench card was delayed when the United States Supreme Court certified the following question: whether a misdemeanor crime of

domestic violence requires the use of violent force. In *United States v. Castleman*, 134 S. Ct. 1405, 188 L.Ed.2d 426 (2014), the Supreme Court decided that a domestic violence misdemeanor conviction, regardless of the severity of the violence, results in a firearms disability. The *Castleman* opinion provided the basis for important analysis relevant to the production of the bench card. On November 7, 2014, the advisory committee completed the draft of the **Guide to Firearms in Domestic Violence Cases**. This document fills an existing gap for domestic relations courts regarding firearms return issues, increases the breadth of knowledge of judges regarding federal and state firearms disability criteria relevant to domestic violence cases, and provides a framework to begin the firearms return analysis. The advisory committee also consulted with the Columbus Field Division Counsel of the Bureau of Alcohol, Tobacco, Firearms and Explosives in drafting the document.

### Protection Order Forms

Two achievements of the advisory committee regarding Ohio's standardized protection order forms are noteworthy. The first achievement was the publication of 31 updated protection order forms on March 1, 2014. Although the advisory committee typically updates fewer forms at a time, the committee deemed it advisable to revise all relevant forms at once to minimize confusion.

The second notable achievement was the translation into Arabic, Chinese, Russian, and Spanish of protection order forms that provide instruction or guidance to litigants about domestic violence, stalking, or juvenile civil protection proceedings. In total, nine translated forms were published on May 31, 2014. The translation project was undertaken subsequent to the update of the 31 protection order forms to ensure the translated forms included the most recent information. The translated forms have been disseminated through the advisory committee's professional network.

### **2015 Anticipated Activities**

The advisory committee will continue to work on the proposed updated training course this year and may have a proposal to present for the Court's consideration later this year.

#### *Tool to Enhance Judicial Decision-making*

There are three potential items for the advisory committee's consideration this year. The first concerns developing and piloting a domestic violence court-specific tool for the allocation of parental rights and responsibilities. A recurrent concern of judges is determining how past domestic violence in the family will impact future parent-child relationships. The tool will enhance judicial decision-making in cases involving the allocation of parental rights and responsibility. In drafting the tool, the advisory committee will use findings from focus groups of judges, magistrates, family law attorneys, and victim advocates. The advisory committee, working with staff in the Supreme Court's Domestic Violence Program, will recommend two courts with domestic relations jurisdiction to pilot the tool. Based on the pilot courts' input, the advisory committee will refine the tool.

### *Standard Protection Order Forms*

A second potential item for the advisory committee's consideration is a review of the standard protection order form in light of recent legislative enactments, such as Senate Bill 177, and best practices not previously contemplated. The committee is circumspect of proposing changes to the protection order forms, unless such changes are necessary to maintain the quality and integrity of the forms. Ohio's protection order forms are recognized as national models. The advisory committee will make every effort to make sure our forms retain such a distinction.

### *Protection Order Proceedings*

Another potential item for consideration is the impact of *State v. Smith*, 136 Ohio St.3d 1, 2013-Ohio-1698, on the service procedures articulated in Civ.R. 65.1. Additionally, the rule appears to depart from service procedures commonly used in post-decree matters, such as contempt proceedings, and does not appear to contemplate alternative methods of service, e.g., service by publication. In light of the Court's decision in *Smith*, the advisory committee will review Civ.R. 65.1 to determine if any updates or revisions are necessary to this Rule of Civil Procedure.