

# The Supreme Court of Ohio

## MEMORANDUM

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

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

**CC:** Michael L. Buenger, Administrative Director  
Stephanie Hess, Deputy Administrative Director  
Stephanie Graubner Nelson, Director, Court Services Division

**DATE:** December 13, 2017

**RE:** Advisory Committee on Domestic Violence – 2017 Annual Report

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Pursuant to Guideline 4.03 of the Operating Guidelines for the Advisory Committee on Domestic Violence, we are proud to present the advisory committee's 2017 annual report.

### **Purpose of Advisory Committee**

The purpose of the advisory committee is to provide ongoing advice to the Supreme Court of Ohio and its staff regarding 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 education for judicial officers, court personnel, and justice partners; and the consideration of any other issues the advisory committee deems necessary to assist Ohio courts improve their response to domestic violence, sexual assault, and stalking.

### **2017 Activities and Accomplishments**

The advisory committee met at the Ohio Judicial Center on March 3<sup>rd</sup>, May 19<sup>th</sup>, August 4<sup>th</sup>, and October 27<sup>th</sup>. As discussed in further detail below, the advisory committee primarily focused on enhancing domestic violence resources and providing input on policy matters.

#### *Input on Policy*

The advisory committee monitored closely the following legislative measures due to their impact on local courts' response to domestic violence and stalking cases: House Bill 1 will codify dating violence and authorize domestic relations courts to issue civil protection orders in these cases; House Bill 49 directs courts to expunge protection order records if an ex parte order

is not granted; House Bill 305 will require courts to determine whether a person is firearm disqualified due to a qualifying conviction or being subject to a protection order, and Senate Bill 7, authorizes the prosecution of protection order violation, even absent service, if the state can prove the defendant had knowledge of the order and recklessly violated the terms of the order. The latter bill emanated from *State v. Smith*, 136 Ohio St.3d 1, 2013-Ohio-1698—. Because the issues around the enforcement of a validly issued protection order raise serious concerns, the advisory committee was asked to provide comments on Senate Bill 7.

The advisory committee also discussed the rules of procedures that impact civil protection order proceeding. In particular, the committee identified certain ambiguities in the current language of Civ.R. 65.1 regarding the event that makes an order a final appealable order and the absence of “plain error” as a reason to appeal a civil protection order past the appellate period. After close examination, these concerns were referred to the Commission on the Rules of Practice and Procedure for further consideration. Additionally, the advisory committee proposed a technical amendment to clarify Civ.R. 4.4 relative to service by posting in civil protection order proceedings. In 2016, this rule was amended to allow service of process by posting only if the petitioner is indigent. Such a requirement is inconsistent with the civil protection order statutes, which prohibits assessing any fees or costs to petitioners. The advisory committee proposed the poverty requirement be removed for service by posting. In 2017, the Commission on the Rules of Practice and Procedure proposed this amendment on behalf of the advisory committee.

Conversations over the use of mediation in protection order proceedings prompted the advisory committee to propose a civil stalking protection order mediation pilot project in partnership with the Dispute Resolution Section. Although the committee generally disfavors the use of mediation in domestic violence proceedings, it recognizes that mediation may be an appropriate tool in other case types. To test this hypothesis and help define the appropriate parameters, the advisory committee and the Dispute Resolution Section selected civil stalking protection order (CSPO) cases as the focus of the project due to the alleged increase in filings, the procedural similarity with other civil protection order cases, and the diverse nature of allegations and parties filing for CSPOs. In collaboration with the Dispute Resolution Section, the advisory committee drafted temporary Rules of Superintendence to create a framework for this project and exempted pilot courts from the prohibition of Sup.R. 16 relative to mediation of protection order cases, developed supporting materials and forms, and planned an orientation seminar for pilot courts. Currently, twelve common pleas courts are participating in this project through December 2018.

As part of its efforts to remain current on issues affecting the statutory development of protection order laws, the advisory committee took special note of the final recommendations of the Ohio Criminal Recodification Committee. Although this legislative committee was established to consider recommendations to modernize and simplify the Ohio Criminal Code, its final report included substantive changes to Ohio’s protection order laws. The advisory committee studied the recommendations and determined, if enacted, a complete new set of protection order forms would have to be adopted. Since the policy recommendation on protection orders did not transcend beyond the Recodification Committee’s final report, the advisory committee proceeded in full force with its review of the existing protection orders forms. All

revisions to the protection order forms are carefully vetted and grounded on statutory changes and best practices.

### *Grant Activities*

The advisory committee serves as the Collaboration Board for the Supreme Court's STOP VAWA Grant projects. In this capacity, the committee oversaw the Court's operation of this grant and provided input, as appropriate, on grant activities. In 2017, the grant focused on bringing national technical assistance and resources to the local level to meet community needs as perceived by the local court. Through this inaugural effort, Akron Municipal Court received technical assistance to enhance coordination in supervising domestic violence offenders between the community and the court. Ashtabula County Common Pleas also requested and received technical assistance to strengthen the criminal justice response to domestic violence. Both of these programs reasserted judicial leadership and ignited increased coordination between the local court and its justice partners. The advisory committee also concurred in the use of STOP VAWA funds to support a myriad of educational opportunities, including the Specialized Docket Domestic Violence Forum, which focused on differentiated response of domestic violence offenders; Specialized Docket Conference, which featured a session on procedural justice and a half-day program on supervising domestic violence offenders, and the orientation seminar for the civil stalking protection order mediation pilot project court sites.

### *Domestic Violence Resources*

#### Domestic Violence Online Course

In partnership with the Ohio Judicial College, the advisory committee oversaw the content development for an online, asynchronous course on domestic violence for guardians ad litem (GALs) based on the Safe & Together Model, which is the framework used in Ohio to assess allegations of domestic violence in child welfare cases. Staff worked closely with David Mandel, architect of the model, to adapt the content to the professional construct and learning needs of GALs. This project is being pursued at the request of juvenile courts, who have expressed great interest in building GALs' capacity to appropriately assess and make recommendations in cases with a history of domestic violence.

#### Protection Order Forms

The Forms Subcommittee serves as an ad hoc committee and is tasked with examining current protection orders and proposing revisions based on statutory changes and known best practices. The subcommittee reviews the protection order forms every two to three years. In 2017, the subcommittee met extensively—four in-person meetings and two conference calls—due to the breadth of issues concerning protection order forms. The start of the subcommittee's work was delayed by the impending recommendations of the Ohio Criminal Recodification Committee. Since the wholesale changes to the protection order statutes did not materialize, the subcommittee started its review in the spring.

The subcommittee focused its discussions on (1) recent legislation—e.g., address confidentiality program through the Ohio Secretary of State, transfer of cellular service, custody of companion animals, and knowledge of the issuance of a protection order—(2) societal trends regarding the use of social media, service instructions, and clarification of firearms disability, and (3) procedural justice. Discussions on the latter centered on simplifying the language used in the civil protection order petition forms and incorporating relevant instructions found in other forms into the petition forms. The subcommittee surmises that this approach does not only increase self-represented litigants’ access to justice and understanding of the civil protection order proceedings, but it also results in economies of scale as the advisory committee will recommend at least seven forms be deleted. This will yield a more efficient packet of forms.

## **2018 Anticipated projects**

In 2018, the advisory committee will continue to assess progress on identified goals and objectives and pursue activities consistent with its mission. As always, the dedicated members of this committee will continue to strive to provide valuable input to the Supreme Court.

The advisory committee anticipates working on the following projects:

### *Standard Protection Order Forms*

Ohio protection order forms have garnered national distinction for being robust and comprehensive. The advisory committee will work diligently to make sure Ohio protection order forms continue to deserve such a distinction. The advisory committee will complete its review and recommended revisions in the winter. It anticipates requesting the Court publish the revised forms for public comments in the spring and proposing final recommendations in the summer.

### *Mediation of Civil Protection Order Cases Pilot Project*

The advisory committee will continue to monitor the practices and procedures implemented by the pilot courts authorized to mediate civil stalking protection order cases. The committee will use the data being currently gathered from these courts to suggest Rules of Superintendence, recommend protocols, draft mediation forms (including on-point screening tools), and oversee development of specialized judicial training for mediation of qualifying protection order cases.

### *Technical Assistance*

As the Collaboration Board overseeing the Court’s STOP VAWA grant activities, the advisory committee will continue to review and serve as a sounding board for the Supreme Court on STOP VAWA funded-activities. In this capacity, it is tasked with ensuring the funded requests stay within the parameters of the grant. In 2018, the advisory committee will continue to support appropriate requests for technical assistance as it believes that local courts are best suited to determine the needs of their community to effectively respond to domestic violence, sexual assault, and stalking. Additionally, the advisory committee will favor projects that elevate

judicial officers' and court personnel's knowledge about domestic violence, sexual assault, and stalking.

### *Conflicting Orders*

The Ohio Revised Code articulates that a civil protection order supersedes a temporary protection order, when the former is issued last. Hence, in this limited circumstance, it is clear which order is to be enforced. In all other instances, the Revised Code is silent about the enforceability of orders, i.e., a protection order and an order allocating parental rights and responsibilities, which contain dueling terms—for example, one order allows contact with the children but another order strictly prohibits contact with the children. To assist local jurisdictions grappling with this question, the advisory committee will draft a model local rule grounded on best practices to reconcile conflicting orders. In drafting the model local rule, the advisory committee will take special note of Sup.R. 10.06, Inter-Court Communication in Domestic Violence and Related Cases.