

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

**CC:** Steven C. Hollon, Administrative Director  
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**FROM:** Judge Debra Boros, Advisory Committee on Domestic Violence Chair

**RE:** Advisory Committee on Domestic Violence 2013 Annual Summary

## **Overview**

The Advisory Committee on Domestic Violence (Advisory Committee) met three times in 2013 and held numerous meetings with its subcommittees. Five vacancies were filled in 2013, which resulted in the membership of Judge Thomas Capper (Clark County Common Pleas Court), Judge Kathleen Rodenberg (Clermont County Domestic Relations Court), Magistrate Bruce Smalheer (Geauga County Common Pleas Court), Magistrate Karen Zajkowski (Tuscarawas County Common Pleas Court), and Attorney Micaela Deming. Judge Lynne Callahan (Summit County Common Pleas Court) and Judge Margaret Evans (Gallipolis Municipal Court) were reappointed for another three-year term. The new Advisory Committee members brought a wide range of rich experiences and perspectives about effective judicial responses in domestic violence and related proceedings.

Additionally, these appointments and reappointments resulted in a noteworthy achievement for the Advisory Committee. Although the Advisory Committee remains a strong multi-disciplinary body, more than half of its current members are judicial officers (ten judges and three magistrates) equally representing the courts that have jurisdictions over domestic violence, stalking, and sexual assault matters. This shift in committee composition has solidified the court-centered focus of the Advisory Committee.

The Advisory Committee continued in 2013 to educate itself to stay current on domestic violence policies and practices, legislative changes, and case law developments through subcommittees' discussions and guest lecturers. For example, Dianna Bessemer, Columbus Field Division Counsel, Bureau of Alcohol, Tobacco & Firearms, presented to the Advisory Committee on recent case law which may impact firearms disability for persons subject to protection orders or with domestic violence convictions in Ohio. The Advisory Committee remains committed to serving the Supreme Court and recommending best practices and procedures for improving Ohio Judiciary's effective response to domestic violence and related offenses.

### **Advisory Committee Work**

The Advisory Committee identified and prioritized several initiatives in addition to its commitment to remain well-informed and serve as a resource for the Supreme Court of Ohio and Ohio's Judiciary. The prioritized initiatives included studying the surrender and return of firearms and ammunition in domestic violence cases, seeking external funding to support innovative projects, refining protection order forms to ensure their accuracy and relevancy, and providing input on legislative and policy matters. Each initiative is explained below.

#### Issues with Weapons in Domestic Violence Cases

The Advisory Committee's ad hoc firearms subcommittee concluded its work in 2013. This subcommittee was charged with studying the situations upon which weapons, i.e., firearms and ammunitions, in domestic violence cases are surrendered and gaining a better understanding about the process of and circumstances under which surrendered weapons could be returned.

The subcommittee concentrated its work on the return of weapons upon the expiration of protection orders and the dismissal or acquittal of criminal domestic violence charges. The subcommittee achieved the following milestones:

- Compiled data through state surveys to learn about practices and procedures from other states and determine relevant trends applicable in Ohio.
- Proposed a procedure for returning weapons surrendered due to the issuance of a protection order. The procedure was incorporated in the protection order forms adopted by the Court in December 2013.
- Recommended language for civil protection orders regarding the procedure for returning surrendered weapons upon the expiration of the order. The ACDV Forms Subcommittee accepted the language and it was included in the protection order forms approved and adopted by the Court in December 2013.
- Recommended the development of a bench card which would articulate firearms disability criteria in federal and state laws and would include model language for court orders directing the return of weapons order upon (1) the expiration of an ex parte civil protection order that did not result in a full hearing protection order or a consent agreement, (2) the expiration of a full hearing civil protection order or consent agreement, and (3) acquittal or dismissal of domestic violence charge where a temporary protection order had been issued. The bench card project is on hold until the US Supreme Court decides US v Castleman, 695 F.3d 582 (6th Cir. 2012), *cert. granted* Oct. 1, 2013. The Castleman decision will direct the breadth of this project.

The Advisory Committee may reconvene the subcommittee if further in-depth discussion is merited on this topic.

### Policy Impact

The Advisory Committee reviewed at least five domestic violence legislative measures introduced during calendar year 2013. In reviewing legislations, the Advisory Committee strives to promote sound public policy to facilitate effective judicial response in domestic violence and related cases. Based on this stance, the Advisory Committee commented on three measures through the Supreme Court's Government Liaison.

Substitute House Bill 74 was introduced to strengthen the criminal justice response to cyberstalking. Upon review, the Advisory Committee questioned the need to create a new class of protected persons (immediate family) and a new offense (emotional distress) in the menacing by stalking statute (R.C. 2903.211) when both of these concepts have been well-established through case law. Further, the Advisory Committee expressed concerns over broad and vague descriptors, e.g., annoy and alarm, proposed in the telecommunication harassment statute (R.C. 2917.21). The Advisory Committee was concerned that these amendments would create confusion, inconsistencies, and vagueness in the law and expend limited judicial resources to litigate cases that do not further the law. By informing the bill's sponsors about the possible unintended consequences of these amendments, the Advisory Committee was instrumental in guiding better policy that holds stalkers accountable for their actions.

The Advisory Committee also commented on House Bill 243, which in part amends the protection orders statutes to provide protection of pets in protection orders. This bill brings to the forefront of public discourse the close correlation between animal abuse and domestic

violence. Although recognizing such a correlation is a critical aspect of breaking the cycle of family violence, the Advisory Committee was concerned that the relevant amendments were not narrowly tailored to achieve the purpose of the bill and could be interpreted as subsuming protection for a person under protection for a pet. Such a broad interpretation could introduce ambiguity and weaken a well-established relief for domestic violence victims. Given the collective expertise of the committee, the Advisory Committee was invited make recommendations to clarify the scope of the amendments and ensure domestic violence victims can protect their pets through protection orders without compromising the safety of persons exposed to domestic violence.

Upon the enactment of the Violence Against Women (VAWA) Reauthorization Act of 2013 (P.L. 113-4), the Advisory Committee reviewed the law with particular interest of determining how the law would impact courts. Through this examination, the Advisory Committee concluded that the protection order statutes should be amended to comply with a new certification in the law, which requires states to certify that neither court fees nor court costs are assessed to protection order petitioners in connection with the enforcement, dismissal, withdrawal, or modification of their protection orders. The implication of not amending the law could result in a loss to the state of more than \$8.2 million in federal assistance. The Advisory Committee has worked diligently through staff to recommend amendments to the protection order statutes that comply with federal law requirements.

The Advisory Committee will continue to monitor the enactment of these amendments and provide further assistance as necessary.

## Protection Order Forms

The Advisory Committee on Domestic Violence is charged with monitoring the protection order forms and proposing recommendations when changes in policy and procedure warrant revisions. The committee is circumspect in proposing changes to the protection orders forms, unless such changes are necessary to maintain the quality and integrity of the forms. Additionally, the Advisory Committee prides itself in drafting forms that are recognized as national model and makes every effort to retain this distinction.

The protection order forms were last revised in 2010. Since the last revision, three key developments have taken place which prompted the Advisory Committee to review the protection order forms and propose revisions to maintain their integrity and relevance. First, and most salient, Civ.65.1 became effective on July 1, 2012. This particular rule of civil procedure significantly transformed and normalized civil protection order proceedings, including authorizes magistrates to grant ex parte protection orders, articulates discovery procedures, and clarifies service questions. Civ.R. 65.1 also declared civil protection order proceedings to be special statutory proceedings. Second, the enactment of 2013 VAWA Reauthorization Act imposed specific limitations regarding fees and costs that could be assessed to a petitioner. Lastly, the Advisory Committee has received many inquiries about the surrender and return of weapons, e.g., firearms and ammunition, relative to the issuance of a protection order. Given these developments, the Advisory Committee tasked the Forms Subcommittee to review all protection order forms and propose recommendations to update the forms.

Upon reviewing the Forms Subcommittee's recommendations, the Advisory Committee recommended the following revisions, which the Court approved and adopted on December 12, 2013.

- Revised and updated all protection order forms to align them specifically to the procedures outlined in Civ.R. 65.1, including describing service and discovery procedures, as appropriate; authorizing magistrates' to grant ex parte protection orders; changing the court's standard of review in full hearing protection order cases assigned to magistrates, and underscoring that all full hearing orders are final, appealable orders once adopted by the judge.
- Incorporated the weapons return procedure recommended by the ad hoc Firearms Subcommittee and clarified the "official use" exception in civil protection orders.
- Underscored the primary purpose of granting any type of protection order is to stop the abuse.
- Updated and revised the language on fees and costs associated with protection orders consistent with the 2013 VAWA Reauthorization Act.

The Advisory Committee will continue being vigilante to the relevancy and usefulness of Ohio protection order forms and ensure Ohio's courts have access to the most advanced and sophisticated forms for granting protection to victims of domestic violence, stalking, and sexual assault.

#### External Funding Sources to Advance Courts Understanding of Domestic Violence

In 2013, the Advisory Committee reconvened the VAWA Subcommittee, which is composed of law enforcement, court, prosecution, and victim service provider representatives, to examine possible external funding sources to support projects consistent with the Court's efforts

to promote effective judicial response to domestic violence and related cases. The subcommittee will serve as a specialized body to provide technical assistance to the Advisory Committee in pursuing external funding opportunities that require a multi-disciplinary collaborative board to monitor projects' performance.

As a result of multiple discussions, the Advisory Committee has identified as a vexing problem the proper allocation of parental rights and responsibilities in cases involving substantiated or unsubstantiated allegations of domestic violence. With the support of staff and the VAWA Subcommittee, the Supreme Court of Ohio was successful in obtaining grant funding from the Office on Violence Against Women, US Department of Justice to develop a court-specific tool to apply in such cases. Through this grant, the Court will receive national technical assistance from the Center for Court Innovations to develop such a tool.

Additionally, the Advisory Committee is cognizant that as a consequence of updating and making current the protection order forms the previously translated protection order forms will also need to be updated. With the support of staff and the VAWA Subcommittee, the Supreme Court of Ohio was successful in obtaining grant funding from the Office of Criminal Justice Service, Ohio Department of Public Safety to update previously translated forms and also translate two juvenile civil protection order forms that were not available earlier.

The Advisory Committee will review the 2013 Program of Work to assess progress on previously identified objectives and create a Program of Work for 2014 that will include new projects and objectives. As always, the dedicated members of the Advisory Committee will strive to continue providing valuable input to the Court during the coming year.