

**STATE OF NEVADA
NEVADA COUNCIL FOR THE PREVENTION OF
DOMESTIC VIOLENCE
JUDICIAL TRAINING COMMITTEE**

Minutes of Meeting

Thursday, October 13, 2011, at 2:00 p.m.

Office of the Attorney General
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

Committee Members Present

None

Committee Members Present Via Teleconference

Christine Jones Brady
Valerie Cooney
Dr. Michael Freda
Mark Jackson
Robin Sweet

Committee Members Absent

Catherine Cortez Masto, Attorney General
Bob Zentz

Public Present

None

Attorney General's Office Staff Present

Henna Rasul, Deputy Attorney General
Lorraine Webber, Assistant to the NCPDV

1. *Call to order and roll call of members.

Dr. Freda called the meeting to order at 2:04 p.m. Roll call was taken and a quorum was established.

2. Public Comment.

There was no public comment at this time.

3. *Review and approval of minutes from the August 18, 2011 meeting.

Valerie Cooney made a motion to approve the minutes of the August 18, 2011 meeting. Christine Jones Brady seconded the motion. A vote was taken and the motion carried. Mark Jackson abstained from voting.

4. *Review, discussion and possible action regarding Limited Jurisdiction Bench book.

Ms. Cooney said she had compared chapter five of the 2008 bench book with the 2010 supplement and had not seen any difference. She asked if anyone in attendance had found any changes. No one was aware of any but agreed that the revised version should have all the changes incorporated into it.

Mr. Jackson stated that he had spoken to four justices of the peace in three different jurisdictions to determine how often they used the bench book. All four of the judges are seasoned judges and although they take note of changes to the law, none of them really refer to the bench book while on the bench. Nevertheless, Mr. Jackson is concerned about the information that is given to them. For example, on page 5-1 of the bench book, it states that "domestic violence is typically a misdemeanor crime that has a relationship component." Mr. Jackson noted that, in fact, domestic violence is sometimes a felony. He suggested that the words "typically a misdemeanor" be removed from the sentence. Ms. Brady and Ms. Cooney agreed. There were several places in chapter five that described domestic violence as a misdemeanor offense. Mr. Jackson characterized this language as a misstatement of the law.

Ms. Cooney asked Ms. Sweet who prepared the bench book and its supplements, and who should be approached to suggest changes. Ms. Sweet stated that the bench book originated many years ago and she could not say who wrote the original language. Currently, AOC staff member and legislative contact John McCormick meets with the Bench Book Committee, which is comprised of limited jurisdiction judges in Nevada, to update and revise the document.

Mr. Jackson added that when the district attorneys file criminal charges, the language used is not "battery domestic violence" as written in the bench book. He stated that language used in a criminal complaint or a criminal information mirrors the language in the statute and is called "battery which constitutes domestic violence" or "battery constituting

domestic violence.” Ms. Sweet stated that she would be happy to relay that suggested change to Mr. McCormick.

Ms. Cooney suggested that the committee take some time to work on possible changes to the bench book. Ms. Sweet said that she would gladly take recommendations to the AOC’s Bench Book Committee but that rewriting the chapter was not the job of the Judicial Training Committee.

Mr. Jackson stated that some of the citations in the bench book are inaccurate. Although there is a definition of “battery” in NRS 200.400, the definitions provided in NRS 200.481 and NRS 200.485 are the ones a reviewing court would look at on issues related to the filing of criminal charges for battery which constitutes domestic violence. Ms. Sweet stated that she thought there might be a misunderstanding. She thought the intention of applicable statutes and case law section of the bench book was to refer judges to the entire section of the statute, which includes the specific information noted by Mr. Jackson. Mr. Jackson noted that the specific takes precedent over the general and that judges should be referred to NRS 200.481 which specifically defines battery as opposed to 200.400 which generally defines battery with intent to commit a crime. Ms. Sweet commented that the bench book is intended to train lay judges as well as those with a legal background and that they are trying to provide all the laws related to battery and strangulation—the general and the specific. She will bring it up with Mr. McCormick and the Bench Book Committee to discuss. Ms. Cooney stated that there must be a way to organize the information so that there is no confusion.

Ms. Brady stated that as a survivor of domestic violence, the thing that struck her when seeing the crime defined as a misdemeanor was that it marginalized how extreme domestic violence can be. Ms. Sweet stated that she had that particular language on the list of concerns to take back to the Bench Book Committee.

Dr. Freda suggested that the Committee make a list of concerns to give to the Bench Book Committee. Ms. Sweet stated that the timeline is short and that the Bench Book revision would be done shortly after the holidays. Mr. Jackson stated that he only had a couple of other minor suggestions and that he didn’t think further meetings were necessary. One of his other suggestions concerned a paragraph on page 5-3. Under the heading “Battery Domestic Violence Strangulation,” The sentence that reads “ This offense is classified as a category C felony pursuant to NRS 200.485 and the person shall be punished pursuant to NRS 193.130” is missing some language. There is an additional fine of not more than \$15,000 which may not even be discretionary for the judge. Mr. Jackson noted that the limited jurisdiction court would not have the power to punish someone under that

statute so perhaps the last part of that statute was left off intentionally. He wasn't sure that it needed to be added, but he did notice that it was missing.

Mr. Jackson's other concern was in Chapter 4 of the Bench Book, on page 4-8 under the heading "Domestic Violence and TPO Violence Bail Exceptions," regarding the 12-hour hold language. This became an issue with the Sheriffs' and Chiefs' Association and with the District Attorneys' Association during the last legislative session. It was discovered that some judges and sheriffs were interpreting the law to mean that the 12-hour hold only applied if an arrest was made within 24 hours of the crime. If someone was arrested days or weeks later, they were sometimes granted bail in less than 12 hours. Mr. Jackson stated that he would like to see language indicating that the law applies under any circumstances--no matter when the person is arrested or whether or not a warrant was issued. Ms. Brady agreed with Mr. Jackson. Ms. Sweet asked for clarification. It was her understanding that Mr. Jackson was not asking for changes to chapter 4 but was asking that the language from chapter 4 be brought into chapter 5. Mr. Jackson said yes, that it was hard to find the information and that it would be nice to have the information cross-referenced.

Ms. Cooney asked if, in chapter 6, there was a reference to restrictions against issuance of mutual protection orders. Mr. Jackson said he remembered reading it but committee members were unable to locate it in the document. Ms. Sweet made a note to recommend either adding it to the bench book or changing the format to make it more noticeable, as Ms. Brady suggested.

Ms. Brady asked if the changes made during the Supreme Court hearings regarding protection orders were included in the current Bench Book and if, perhaps, samples could be included. Ms. Sweet stated she was not certain, but thought that changes would be included in the upcoming revision. She said that she made a note to look into it. If the Bench Book Committee members have any questions for the Judicial Training Committee during their revisions, Ms. Sweet stated she would contact Ms. Webber to get the questions to the Committee.

5. *Schedule future meetings and agenda items.

The next meeting was scheduled for January 18, 2012 at 2:00 p.m.

6. Public comment.

There was no public comment.

7. *Adjournment.

Valerie Cooney made a motion to adjourn the meeting. Mark Jackson seconded the motion. The meeting was adjourned at 2:48 p.m.