

**Commission on Victims in the Courts**  
Meeting Minutes-DRAFT  
Friday September 14, 2007 10:00 AM-2:00 PM  
Attorney General's Office, State Capital Center  
Conference Rooms 401 & 402  
15 South 15<sup>th</sup> Ave., Phoenix, AZ 85007  
Conference Call Number: 602-452-3192; Access Code 1112  
C.O.V.I.C Website <http://www.supreme.state.az.us/covic>

**COVIC Members Present**

Chair: Hon. Ronald Reinstein  
Dr. Kathryn Coffman  
Mr. Jack Ballentine  
Mr. Steve Twist  
Ms. Kimberlie Musselman  
Ms. Kathy Waters  
Mr. Dan Levey  
Hon. Richard Weiss  
Hon. Anna Montoya-Paez  
Hon. Antonio Riojas, Jr.  
Ms. Sydney Davis  
Mr. Doug Pilcher  
Mr. Anthony Vidale

**Members Absent**

Mr. Stephen Dichter  
Ms. JoAnn Del Colle  
Ms. Karen Sullivan  
Mr. Gary Husk  
Mr. Edwin Cook  
Mr. Marc Budoff  
Hon. William O'Neil  
Hon. Lex Anderson  
Ms. Emily Johnston  
Hon. Patricia Noland  
Hon. Carter Olson

**Proxy**

Ms. Kristen Flores for Mr. Bill Hart

**Staff Present**

Ms. Nicole Garcea  
Ms. Amy Wood for Ms. Carol Mitchell

**Guests**

Paul Julien, AOC  
Kay Radwanski, AOC  
Julie Williams, MCAO Victim Services  
for Jamie Mabery, MCAO, Victim  
Services  
Hon. Mike Cruikshank, Pima County  
Sarah Lynne Vasquez, ADJC, Juvenile  
Corrections  
Mark Stodola, Tempe Municipal  
Kim Knox, Maricopa County Finance

## **Welcome and Call to Order**

The Chair officially called the meeting to order at 10:14 AM, at the Arizona Attorney General's Office in the Capitol Center in Phoenix, Arizona. Introductions were made of commission members and guests.

JoAnn Del Colle was announced as a new member, but was unable to attend the meeting.

## **Approval of June 8, 2007 Minutes**

**Motion:** To approve the draft minutes from June 8, 2007 without changes was made by Steve Twist. The motion was seconded and unanimously passed.

## **Clarification of Proxy Rights**

The Chair took a moment to clarify the use of a Proxy in Commission meetings. He indicated that the Chief Justice had sent a letter to all Chairs clarifying the use of proxies and their rights according to ACJA §1-104.

- A member can name a Proxy to attend a specific meeting, this person will have the same responsibilities the member would have had at the meeting.
- A member cannot name another member of the Commission as a Proxy.
- The Proxy must be prepared for the meeting.
- The Chair will develop a policy regarding percentage of attendance by members.
- The Chair and the members will develop a policy regarding frequency of usage of a Proxy.
- The Proxy must attend the meeting in person.
- The Proxy votes based on his or her own analysis of the information at the meeting rather than being instructed how to vote by the member.

## **Reverse Transfer Rule**

The Reverse Transfer Rule will be proposed to amend Rules 8.4, 27.12, and 40 in order to conform with legislation while establishing procedures for reverse transfer of juvenile sex offenders. This deals specifically with the registration and evaluation requirements for sex offenders and whether or not they should be deleted. This rule change will be voted on by the Supreme Court and made available for comment until their Rules Conference in December. The legislation goes into effect on the general effective date, September 19, 2007.

One issue that was presented in regards to this topic is the issue of Juveniles going through adult assessments. These evaluations will be somewhat skewed due to the nature of the questions that are inappropriate for juveniles (e.g., How long have you been married?).

The rules affected relate to probationers that are under 22 years of age who committed an offense when they were under 18 years of age and were required to register as sex offenders.

### **ACJA 5-204: Administration of Victims' Rights Code Section Proposal**

There are parts of the ACJA Code §5-204 that have been affected by the passage of SB1286, and by caselaw involved in State v. Klein, State v. Hansen. Proposed changes made by the ad hoc workgroup were discussed. Handouts were provided illustrating a comparison of the proposed changes to the code section currently in effect.

Changes of notable interest made and discussions that took place:

- Some definitions were taken out and others were shortened to incorporate the recent changes
- A lingering issue with regards to “victim” relates to those in custody. At this time, the definition is not entirely clear on whether a victim loses the status of victim when in custody for ANY offense or for an offense that relates to the underlying offense in which victim status was originally afforded. Currently, when anyone is incarcerated they lose their victim status for the length of their incarceration. In the late 1980’s some work had been done towards providing limited rights to those who were incarcerated, but that issue is not currently active.
- Additionally, it is unclear exactly how a sole proprietor or LLC will be treated (as a business or as a person).
- Purpose and applicability were combined in section B.
- References to Title 8 the Rules of Juvenile Court were made throughout.
- In section C the distinction was made to provide 5 business days for notice of a scheduled proceeding.
- More clarification was given in section D with regards to the Victims’ Bill of Rights being read out loud in court.
- Discussion regarding transcripts for crime victims (section F). Clerk should not be determining what is “reasonably necessary”, how will this be handled?
- There is the possibility of resource issues arising in relation to the request of transcripts. Currently, no time frames are provided relating to delivery of the transcript. Time frames could potentially be affected by the source of the recording from which the transcript is made. Further input from the Clerks of Court might be necessary in regards to this topic.
- It was noted that Adult and Juvenile Rules have different timeframes in relation to the Presentence Report. The language could also be problematic and a burden as it states that a written plan and procedure will be developed which lends itself to an ongoing process.
- Criminal History Record Information is kept private because FBI and Federal rules prevent DPS from making certain information public without losing their ability to connect ACIC which in turn reports to NCIC.
- Restitution Payment Processing was changed to incorporate the referral to ACJA §§3-401 and 4-301, Priority of Offender Payment.

- Order to Show Cause for Nonpayment of Restitution is now placed on the clerk of court.

**Motion:** To conform language of provision **J.** to match that of **G.** to read “develop and adopt written procedures”. Motion unanimously passed.

A point was made to Note & Applaud the Presiding Judge of Maricopa County and her staff along with the Committee that was developed of Victim Advocates to give feedback relating to the design of a new courthouse being constructed so that it will better meet the needs of victims. Dan Levey, a member of COVIC, and Jamie Mabery, a member of one of our workgroups served on this committee which was initially developed based on a recommendation made by our Committee.

Discussion took place regarding the Reading of the Victim Rights specifically the language “At the commencement of the criminal docket”. Concerns relating to this are:

1. The Limited Jurisdiction Courts run differently than the General Jurisdiction Courts do as relating to their dockets. Criminal cases are usually intermingled with civil.
2. Only vocalizing it at the top of the docket will mean that it only reaches those victims that are in the courtroom at the top of the docket.
3. Makes no reference to Juvenile cases.

**Motion:** To adjust the language to read “At the commencement of the criminal and delinquents’ criminal docket”. Motion unanimously passed.

**Motion:** The proposed changes to Code Section 5-204 as amended be recommended to the various bodies that will be considering it, including the Arizona Judicial Council with a note to ensure that LJC is consulted on the implementation in limited jurisdiction courts. Motion unanimously passed.

### **Limited Jurisdiction Priority of Payments**

Ken Kung, Financial Specialist at the AOC came to present on behalf of Julie Dybas. Potential changes to ACJA §3-401 were discussed. Handouts were provided showing a comparison of the proposed changes to the existing code section. This code section went to AJC in June and returned so that a workgroup could further develop issues surrounding payment of oldest or active cases.

Important changes noted and points of discussion raised:

- Any payment that is made to the court by a non-offender that directs the court to utilize the funds in a way that is different than the Statutes/Codes/Orders are written will be returned to the payor.
- In the absence of a Judicial Order, Active Cases are paid in accordance with payment plans to keep payments current through the next payment due date Additional payments will be applied to the oldest inactive cases according to sentencing date until restitution is paid off.

- In counties where payments are taken in multiple offices, issues could arise because each office is not necessarily aware of payments taken in other offices and may not be able to apply payments in accordance with the code section.
- From the victim's perspective, restitution should be paid first regardless of case type (active/inactive) in order of oldest to newest. A point made in relation to this is the ability for a victim to file a lien against the offender. If older cases are not paid off first this lien along with the fines the offender is responsible for can continue to accrue interest indefinitely while the offender is also prevented from certain things such as selling his house or registering his car.
- When this code section went to AJC, the competing ideas were from the Clerk's to pay off oldest cases first and from probation to pay active case first, because it enables probation officers to monitor compliance and handle revocation processes.
- Some fees listed in the proposed version do not apply to Juvenile Court.

The Chair deferred this topic to the Restitution Workgroup to research further and perhaps come up with additional recommendations. However, this particular version is going to AJC in October so recommendations will be made for future versions.

**Motion:** To request that AJC approve the changes that have been proposed. This will enable a code section to be adopted. The Commission also wishes to have recognized that further recommendations regarding restitution will likely emerge from the restitution workgroup in the future. The applicability of the Code to Juvenile cases will be investigated. Motion passed unanimously.

### **Victim Rights Statement**

Judge Cruikshank from Pima County came to speak regarding Pima County's interpretation of the Statute relating to the reading of the Victim Rights Statement. The majority of the judges in Pima County utilize a Victims Rights Statement which has been burned onto CD and is played on a CD-ROM in the courtroom. In an earlier meeting, COVIC had expressed concern over this practice. This issue was initially brought to COVIC's attention through audits conducted by the AG's office. During this meeting, pros and cons of having a judge read the statement from the bench and having the statement played in the courtroom were discussed.

Benefits of playing the statement in the courtroom through the CD:

- Both Spanish and English versions can be taped to reach a wider base of the Victims present. Playing both versions of the statement means that victims speaking both languages are treated equally. Interpreters would not be available to interpret this each day.
- The tape prevents the Script from being relayed in a manner that conveys boredom or inattention as might happen if it is spoken over and over by the same judge.
- Perspective that this is in keeping with the letter of the statute.

- The tape insures a consistent portrayal of the information.
- Serves the purpose of notifying the victim.

Benefits of having the Judge read the statement from the bench:

- Treats the Victim's constitutional rights in the same manner as the defendant's constitutional rights.
- Embodies the importance of having the "gate keeper" of the proceeding speak about the victim's rights.
- Ensures the attention of those in the courtroom will be focused on the reading of the rights as the court has already been called to order when the judge is on the bench (CD is sometimes played before court session while the gallery is still talking among themselves).

Discussion regarding the posting of the statement outside of courtrooms in both English and Spanish revealed that a number of courts are already doing this and that it may be an advisable approach for more courts.

Judge Cruikshank stated that some points were raised that were perhaps not thought of previously by the Judges in Pima County and stated that he would convey those sentiments to them.

COVIC membership felt that the intent of the legislation was to have the statement read out loud by the judge from the bench and not to be played on tape.

### **Yavapai County Victim Offender Mediation Program**

Heather Seets spoke about the Yavapai County Victim Offender Mediation Program. The program began approximately 4 years ago to effectively deal with juveniles that were involved in crime and to help the victims of those crimes. The mediators involved with the program are all volunteers and they have about a 95% rate of bringing the offenders and the victims to some form of an agreement.

The program works directly with and has a contract with Juvenile Probation in Yavapai County. Offenders are referred to the program by Probation Officers or by Judges from the bench. It is completely voluntary for victims, but is required for those offenders that qualify. In order to qualify for this program the offender must be willing to admit a portion of involvement in the situation.

A great deal of screening is done prior to the actual mediation to see if both victim and offender are viable candidates and to see what is appropriate to discuss in the mediation. The juvenile must bring an adult with them to the mediation. Two mediators are usually involved in each session. Mediators are volunteers.

The Victim Offender Mediation Program allows victims to meet with offenders in a safe atmosphere where they can vent their feelings and potentially get answers to questions they may have. It also allows offenders to take responsibility for their actions and to see

the impact their actions have had on the victim. Meetings are held prior to the mediation with each individual party in order to determine their desired outcomes and which items are appropriate for mutual discussion. The mediation is then held with both parties to address their concerns.

Ms. Seets hopes to move this program to an Adult system within the next several years. She also hopes that other counties will begin similar programs. This program received an Honorable Mention from the AOC this year for programs put on by the courts that help to take us from “Good to Great”. The program is funded through Juvenile Probation at a level of \$3,000/year.

### **Workgroup Summary**

The Chief Justice approved the idea of establishing a Child Victim workgroup. Dr. Coffman will chair the workgroup that will hope to look at the way children are represented and protected in the court. One particular topic to be visited would be the use of Guardian Ad Litem (GALs) and the standards they follow across different casetypes. Additionally, the role of CASA’s may be addressed. The group may also look at issues in preparation for the Judicial Conference which will focus on children. Several Commission members volunteered to be part of the workgroup.

### **Administration of Justice**

Proposition 100 continues to be on the radar as well as the issue of Interpreter usage. They were also looking into the issues that arise when the parent(s) of a minor become the victim of that minor and court fines/fees are assessed to the parents (victims) to pay.

### **Education**

Comments that the judges made that attended the Victim Panel Presentation were read, illustrating the positive impact the session had on the 65-70 that attended that attended. Kim Musselman stated the Victim Panel that presented at the June Judicial Conference was a huge success. Due to the success of this panel there will now be a Victim Panel Presentation made for new judges’ orientation which begins September 24th. This will then be an ongoing presentation that will be made at each new judges’ orientation offered to new judges throughout the state by the AOC. Discussion was held about making similar offerings for other members of the court community as well (e.g., Court Staff, Bailiffs, Judicial Assistants, etc.), perhaps at a Judicial Staff Conference, or potentially making Victim Rights a COJET requirement.

### **Restitution**

Dan Levey stated the Restitution Workgroup is primarily working on putting together a restitution page on the Internet. A basic page has been created, but more info will need to be added to make it more useful. The page will be discussed further today at the workgroup meeting. Kim Knox has also been going around the state discussing restitution issues in an effort to educate, Judge Granville has accompanied her and been well received.

NOTE: September 25<sup>th</sup> is the National Day of Remembrance for Murder Victims.

**Public Comment**

A Call to Public was made. There were no public attendees that wished to comment.

The workgroup meetings will convene during lunch today through 2:00 PM.

**Motion to Adjourn**

**Motion:** Meeting ended at 12:25PM

Respectfully Submitted,  
Amy Wood, Caseflow Unit Manager  
On behalf of:  
Carol Mitchell, Court Specialist  
Staff to the Commission on Victims in the Courts

**Post-Meeting Activity**

The proposed revision to ACJA 6-103 was sent electronically to COVIC members on Monday, November 5, 2007 for review and comments. Because this code section is scheduled before the Arizona Judicial Council on December 5, 2007 (prior to COVIC's next quarterly meeting), members were asked to submit their vote to approve or reject this code section on Tuesday, November 13, 2007 via email communication. Based on a quorum of voting members via E-mail, COVIC supported recommending this code section by way of the following motion on 11/15/07:

“Motion to approve the revised ACJA 6-103, Victims Rights Requirements for Probation Personnel as written and forward to Arizona Judicial Council for approval.”