

Commission on Victims in the Courts
DRAFT MINUTES
Friday, May 8, 2009
10:00 am to 2:00 pm
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 119A/B

Members Present:

Mr. Paul Ahler
Hon. Lex Anderson
Mr. James J. Belanger
Ms. Patricia Bigwood
Dr. Kathryn Coffman
Ms. Sydney Davis
Ms. JoAnn Del Colle (Proxy: Terri)
Ms. Karen Duffy
Cpt. Larry Farnsworth
Ms. Daisy Flores
Hon. Andrew Gould
Mr. Dan Levey
Hon. Anna Montoya-Paez
Hon. William O'Neil
Mr. Doug Pilcher
Hon. Ronald Reinstein (Chair)
Hon. Antonio Riojas, Jr.
Hon. Richard Weiss

Members Absent:

Mr. Michael Branham
Ms. Leslie James
Ms. Hilary Peele
Mr. Paul Prato
Mr. David Sanders

Presenters/Guests:

Hon. Gary Donahoe
Mr. Bob James
Ms. Kim Knox
Ms. Keli Luther
Ms. Jamie Mabery
Mr. Phil MacDonnell
Mr. Bill Owsley
Mr. Steve Twist

Staff:

Ms. Carol Mitchell
Ms. Kimberly Reid

I. Regular Business

A. Welcome and Opening Remarks

The May 8th meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:08 am. Newly appointed members, Judge Gould and Paul Ahler, introduced themselves to the committee. Judge Reinstein offered his sincere appreciation to Steve Twist, who recently resigned from the commission, for his support and years of service to this commission. Judge Reinstein acknowledged that the Attorney General's Office held its annual recognition meeting in observance of National Crime Victims Rights week in which Chief Justice McGregor and Dan Levey were recognized. Finally, Jamie Mabery introduced Sam, Maricopa County Attorney's Office victim therapy dog and his handlers.

B. Approval of February 6, 2009 Minutes

Minutes from the February 6, 2009 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the February 6, 2009 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

II. Business Items / Potential Action Items

A. Rule 10.5

Judge Reinstein welcomed the following individuals who will address the commission in the following order: Phil MacDonnell, Maricopa County Attorney's Office; Steve Twist of Arizona Voice for Victims, Honorable Gary Donahoe and Bob James with Maricopa County Superior Court.

Phil MacDonnell, Chief Deputy County Attorney, discussed the reasoning behind the creation of this petition with Steve Twist of Arizona Voice for Crime Victims. This petition set out to address problems with transferred criminal cases in Maricopa Superior Court related to the volume of cases and the previous calendaring system.

Since the filing of the petition, the Court has instituted a new master calendar system which seems to be working well; however, a concern still exists that criminal cases will be lost in the system, and will considerably impact crime victims. This rule is proposed as a preventative measure to ensure the system continues to function as desired.

The proposed rule states that if a case is reassigned and cannot be heard within 48 hours of the originally scheduled date, it must be rescheduled at least five days out. This mirrors statutory language and would allow time to notify victims so they may make necessary arrangements to facilitate their attendance.

Steve Twist urged the group to favorably support the rule proposal. He believes this rule will help ensure victims' constitutional right to be present at all court proceedings.

Criminal Presiding Judge Gary Donahoe addressed the commission on behalf of the Maricopa Superior Court. He explained this rule will have no effect on their court because of the specific language used in the petition, such as “assigned judge” and “case transfer system”, which no longer exists due to the new master calendar. The new calendaring method sets a firm trial date and the case is heard within the time frame set with this petition; therefore making it unnecessary. He firmly asserted that Maricopa Superior Court is committed to honoring firm trial dates and has alternate back up plans in place for each case that may be re-scheduled to avoid a delay longer than one to two days.

Discussion:

A summary of some comments are listed below:

- Judge Reinstein expressed concern that this rule will add further delay and it also takes away any judicial discretion with the one party objection provision.
- Judge O’Neil asked why Maricopa is opposed to this rule if it will not even affect them and this should be considered because it would have a positive impact for victims in all courts across the state if implemented by rule.
- Judges O’Neil and Weiss expressed that case delays occur in other counties because of a lack of resources to set firm trial dates.
- Sydney Davis inquired as to why a rule is needed when the statute already declares that a victim must be given five days notice.
- Multiple members agree that the idea behind the rule is good but they are concerned that it doesn’t fix the problem.

After a lengthy discussion, the chair confirmed the petitioners were willing to working with members of COVIC to attempt to resolve the differences of the various positions as to the petition.

ACTION ITEM: Carol will file a petition to receive a time extension on the comment period. A small work group, comprised of COVIC members, Judge Weiss, Judge O’Neil, Paul Ahler and Jim Belanger, will coordinate with Phil and Keli Luther to formulate the commission’s formal comment.

MOTION: A subcommittee is formed, including a representative from Maricopa, to re-craft the proposed rule. The commission agrees with the general concept of giving appropriate notice to the victims when it comes to assignment or reassignment of a case for trial. *Motioned and seconded. Approved with no objections.*

MOTION: The commission endorses an extension of time for the comment period. *Motioned and seconded. Approved with no objections.*

B. Rule 804 (b) (5)

Phil MacDonnell explained his office submitted this rule petition to admit a hear-say statement when it can be proven that the defendant has caused the witness to be unavailable. It mimics a similar rule that exists in the federal rules of procedure. The question arose whether this would apply in all cases, and it

was believed it would apply in all cases in which the rules of evidence apply; however, some family court cases, the rules of evidence are suspended.

MOTION: The Commission will file a comment supporting the adoption of Arizona Rule 804 (b) (5).
Motioned and seconded. Approved with no objections.

ACTION ITEM: Staff will file a comment in support of this rule.

C. Rule 57.1 & 57.2

The Arizona Supreme Court's AOC filed this petition to conform to legislation, HB 2321, that went into effect January 1, 2009. This rule deals with identify theft in the commission of a crime. An individual may file a declaration to show that they were innocent.

Discussion

- Judge O'Neil suggests the addition of subsection 4 that would read as follows.
Upon a determination of the defendant's guilt in a criminal matter, the criminal court may contemporaneously enter a determination of the victim's factual innocence without hearing or submission of proof by affidavit. A determination of the defendant's guilt is deemed entered upon the defendant's change of plea or guilty verdict.

MOTION: For the committee to file a comment in support of changes with the addition of subsection 4 as above mentioned. *Motioned and seconded. Approved with no objections.*

D. 2010 Strategic Agenda Plans

Carol Mitchell offered a brief overview of the new collaboration tool available for the Supreme Court's upcoming five year Strategic Agenda. As Vice Chief Justice Berch transitions into the role of Chief Justice, she and members of the planning committee are seeking input from all Supreme Court Committee/Commission members for important issues that should be considered for inclusion in the new strategic agenda. Members will need to sign up and register on the site, www.sp2010.courts.az.gov, which is structured similarly to the Court's Rules Forum. Once registered, members are asked to submit any recommendations or suggestions by August 2009.

ACTION ITEM: Due to the limited time remaining for this presentation staff will email a copy of the presentation and instructions for COVIC members to sign up on the Strategic Plan 2010 collaboration website.

E. Workgroup Updates

1. Restitution

Dan Levey shared that the restitution webpage continues to be updated and reviewed. It is expected to be posted online within the next few months. He also explained the workgroup will be considering some restitution-related questions related to the post-sentence jurisdiction.

The workgroup has received a couple questions come up about who retains jurisdiction over restitution.

2. Children in the Court

Bill Owsley discussed the attorney standards proposed by the workgroup along with Dr. Kathy Coffman. It was suggested that in lieu of statewide standards implemented by rule, each county could adopt their own version, which may be more feasible for the Committee on Juvenile Courts to accept.

Bill will redraft the standards and return to the Committee on Juvenile Courts. Judge O'Neil suggested the standards may be drafted or implemented through a judicial code of administration, versus rule.

MOTION: The Commission reaffirms its prior support of the attorney standards idea. *Motioned and seconded. Approved with no objections.*

III. Business

A. Next Meeting:

September 11, 2009
State Courts Building
Phoenix, AZ 85007

B. Call to the Public

None.

Judge Reinstein introduced Keli Luther, with the Crime Victim Enforcement Project, whom he plans to nominate as a candidate to replace Steve Twist. Additionally, the chair asked for recommendations from members for individuals, particularly outside Maricopa County, who may be candidates for future reappointment cycles.

C. Adjournment

The meeting was adjourned at 12:31p.m.