

Commission on Victims in the Courts  
DRAFT MINUTES  
Friday, September 12, 2008  
10:00 am to 2:00 pm  
State Courts Building  
1501 W. Washington Street  
Phoenix, AZ 85007  
Conference Room 119A/B

**Members Present:**

Ms. Amy Bocks (Attorney General's Office)  
Hon. Lex Anderson  
Ms. Patricia Bigwood  
Mr. Michael Branham  
Dr. Kathryn Coffman  
Mr. Bruce Bowers for Mr. Edwin Cook  
Ms. Sydney Davis  
Ms. JoAnn Del Colle  
Cpt. Larry Farnsworth  
Ms. Daisy Flores (Telephonically)  
Ms. Leslie James  
Mr. Dan Levey  
Hon. Anna Montoya-Paez  
Mr. Doug Pilcher  
Mr. Paul Prato  
Hon. Ronald Reinstein (Chair)  
Hon. Antonio Riojas, Jr.  
Mr. Steve Twist  
Hon. Richard Weiss

**Members Absent:**

Ms. Karen Duffy  
Mr. James J Belanger  
Hon. Carter Olson  
Hon. William O'Neil  
Ms. Karen Sullivan  
Ms. Kathy Waters

**Presenters/Guests:**

Ms. Jennifer Greene  
Ms. Jamie Mabery  
Ms. Gabriela Quinto  
Ms. Katy Proctor  
Ms. Sarah Lynne Vasquez  
Ms. Amy Wood

**Staff:**

Ms. Carol Mitchell  
Ms. Kimberly Reid

## **I. Regular Business**

### **A. Welcome and Opening Remarks**

The September 12<sup>th</sup> meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:15 am. The Chair announced that the Attorney General's Office is seeking a new Director for the Victim's Office. Anne Marreel will be the COVIC representative as Interim Director. The Chair recognized Dan Levey as the recipient National Peyton Tuthill Award from the Interstate Compact Association. Also, the National Center for Victims of Crime has released two popular brochures on forensic DNA testing in Spanish; they may be viewed at [www.ncvc.org](http://www.ncvc.org).

Announcement: Hon. Ron Reinstein has been teaching at New Judge Orientation. This week they had criminal presentation from Keli Luther, Dan Levey and Mike Piccarella. It was a very good presentation. Challenge of getting more time with heavy agenda of other items which new judges need to be made aware.

### **B. Approval of March 28, 2008 Minutes**

Minutes for the March 28, 2008 Commission on Victims in the Courts meeting were presented for approval.

**MOTION:** To approve the March 28, 2008 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

## **II. Business Items / Potential Action Items**

### **A. Posting of Victim Rights**

Doug Pilcher passed around copies of the Victims' Bill of Rights document posted throughout Phoenix Municipal Court. Presiding Judge Song Ong decided to act on COVIC's discussion from the previous meeting. They are posted next to the dockets for each courtroom. It was done with little to no cost because existing docket sleeves were used for posting. The language was lifted straight out of the Arizona Constitution. It is presented in both English and Spanish.

**Discussion:**

- Praise was given to the leadership demonstrated at Phoenix Municipal Court by various members of the committee.
- Clarification that concerns previously expressed by limited jurisdiction courts had more to do with the reading of the victims' rights statement than the posting of it in the courtroom, although there was some resistance to posting as well.
- Acknowledgement that Judge Howard Hantman in Pima County was probably the first to post this outside of courtroom in English and Spanish a number of years ago.

## **B. Restitution Research/Rule Conflict**

Ms. Jennifer Greene of the AOC presented information regarding a conflict between the victim code section and the juvenile court rule. The new subsection, proposed by COVIC and approved by AJC, deals with restitution collection and disbursement of restitution on appeal. A juvenile rule was in place which conflicts with the language in the code section. The Supreme Court had no choice but to suspend COVIC's code provision as rule cannot conflict with code section. The current rule states that restitution is collected but not disbursed when a ruling is on appeal. This committee has the option to propose a rule change which would then go through the regular rule process. The other option is to revise the language in the code section to have it apply to adult criminal matters and have a separate subsection for juvenile matters. Alternatively, a proposed change to statute could be made.

### **Discussion**

- In actual practice, are the clerks disbursing restitution while a case is on appeal? Ms. Greene has not made that inquiry.
- When the code section was modified, the committee was dealing with the constitutional provision. The committee was attempting to establish the policy of quicker distribution. It wasn't recognized that the juvenile rule had different language, it was probably only recognized that the other rules were silent on the matter.
- Code section revision passed through AJC on a consent agenda following considerable discussion with other committees.
- Paul Prato believes that there are major due process problems on the disbursement issue because the conviction is not final until direct appeal has been completed. We are creating litigation that is unnecessary by disbursing restitution. Disbursement should not occur until the conviction is final.
- When a clerk holds restitution funds is it in an interest bearing account? The members of the commission believe it is in a regular account.
- Consider death penalty cases where there is a lifetime appeal. Remember that this would only apply to those who go to trial which is around 2 to 2.5% of the cases. Anyone who pleads has given up the right to appeal.
- Juvenile should not be able to avoid making payments by filing an appeal. This will not happen as payments are still due to the clerk.
- Maricopa County pays interest out to whoever is receiving the restitution money. Interest does not begin to accrue until there is a criminal restitution order.

**Motion:** To refer this to the Code Section Workgroup, Chaired by Judge Weiss, to try and resolve the conflict with the assistance of Jennifer Greene. *Motion seconded and passed unanimously.*

## **C. Legislative Proposal**

Hon. Richard Weiss is requesting language in the restitution payment statutes. The purpose is to have a recordable criminal restitution order that would accrue interest from the date of entry. Under the present system, victims are unable to get a recordable judgment until the defendant finishes their prison sentence or probation. If this is corrected, interest on the judgment can accrue in the favor of the victim.

Katy Proctor, from the legislative office of the AOC, explained this proposal is going through the internal committee process before it makes it to AJC in late October for approval. If approved by AJC, this would be one of the bills which would be supported by the AOC. Earlier in the morning it was reviewed by the Committee on Probation who had significant concerns. Probation may be extended for up to five years and result in the offender's ultimate restitution amount being higher than originally ordered. This would fiscally impact our probation departments. Another concern was how the clerk would monitor the third party payment if a lien was issued and how probation would be notified once this was corrected? Also, how would it be recorded that the lien is corrected? Some people were also concerned about the 10% being counter productive to the restorative justice process with juveniles. The Committee on Probation's vote was not to support the current format without questions being addressed. They do not have another opportunity to vote on the proposal before it goes to AJC.

Discussion:

- There is another juvenile issue with the word custodial parent. It should encompass all parents.
- Dan Levey raised a concern that the synopsis from the Committee on Probation (COP) seemed to not take victims into consideration. Mr. Branham, also a member of COP, explained that was not the case. He shared there was substantial discussion regarding victims and feels that COP was looking to support, but needed to find a way to understand the mechanics of how it will work before they would be able to support the proposal.
- Members of COP are willing to meet with COVIC representative(s) to discuss workable solution.
- It is questioned whether the interest will make a significant difference in the process.
- It is possible for members of multiple committees to get together and develop the proposal further before it goes to the next committee.
- Juvenile Committee meets next Friday (September 19<sup>th</sup>) and the Committee on Superior Court meets in 2 weeks (September 26<sup>th</sup>).
- Katy clarified that her role in this portion of the process is as liaison, not advocate.

Motion: The commission finds a need for reform of the statutes identified by Judge Weiss and others endorses the concept behind this proposed reform. We request that he, on behalf of the commission, meet with other committees of the Supreme Court to reach a consensus. *Motion made by Mr. Twist, seconded by Mr. Branham and passed unanimously.*

#### **D. Child Victim Names in the Media**

Mr. Levey raised a concern about the use of specific names of surviving children in child abuse cases and high profile crimes in the *Daily Star*. He would like to raise awareness about the dangers of printing child victim's names in newspaper articles. Judge Reinstein and Dan are meeting with Dan Barr, an attorney

for various newspapers to discuss this issue on October 8, 2008. After consulting various community members, Mr. Levey would like the input from the committee on the issue.

#### **Discussion**

- Why isn't there a parallel practice to the rape victim practice?
- In Flagstaff they have had great success with speaking with the staff at the newspapers and just explaining to them their point of view and why they shouldn't report child victims' names.
- Maybe other newspapers that don't do it should be consulted as to why they don't and those points could be used to persuade other newspapers.
- Another option would be to look to the police department PIOs for help because they usually have good working relationships with the newspapers.
- Some examples of how this would be detrimental and potentially harmful in the future involved: child sexual assault victim names used and schoolmates reading about the incident, using names in a *Google* search and crime-related articles would be associated with them for years to come.
- One example of a situation in which a victim name appearing would be detrimental includes the name of a child who was sexually molested appearing in the paper and having schoolmates read about the incident.
- Another related matter is what is included in minute entries (and other public records). If the victims name appears in the minute entry, it is available online in Maricopa County.
- Consider amending §13-4434 statute concerning victims right to privacy to include provisions governing names getting into public record.

ACTION ITEM: Carol will send the articles Mr. Levey has discussed out via e-mail.

#### **E. Elder Abuse Video**

Hon. Ron Reinstein brought in a video, developed by the Office for Victims of Crimes (OVC), for review and comment about elder abuse and courts' response. An evaluation form was administered to COVIC regarding the content of the video. Judge Reinstein will return responses to OVC.

### **III. Workgroup Reports**

#### **A. Code Section Work Group**

Judge Weiss indicated the Code Section Work Group's report was covered by the restitution research/rule conflict item.

#### **B. Children in the Court**

Dr. Coffman reviewed the focus of this workgroup and goal of improving representation of children in the court. The three focuses were: continuity of representation across the spectrum (between different courts), ensure those representing the children are attorneys and that they are held to standards of continuing education, as these are not currently mandated. Dr. Coffman explained that there are two

basic models. The attorney/traditional model is where the wishes of the child are represented regardless of anything else and confidentiality is paramount. This has been termed as “robotic allegiance”. Second, there is the GAL Model in which the best interest of the child is represented. The committee is experiencing the expression of very strong polarized opinions as to which are better.

Maricopa County uses the GAL model and provides a great deal of latitude to GAL’s. Pima Superior Court uses the attorney model. At one point in time there was discussion about creating a hybrid model but it was not feasible.

#### **Discussion**

- Judges on benches dealing with the same child need to communicate so that there are not conflicting orders.
- Issue with rural areas because there are so few attorneys, concern that strict standards would reduce the number of available attorneys.
- Some thought has been given to a specialty group of attorneys specializing in juvenile.
- Consider standards for courts – a judge over a dependency case should trigger a request to determine if there are related criminal cases.
- A no contact order should trump a visitation order. This could be done through rule.
- Further complications arise in the orders of protection which are issued in limited jurisdiction courts, but which need to be transferred to Superior Court if there is a related divorce proceeding.

Everyone agrees on standards and continuity of care. There are two rough drafts of proposals, one encompassing each model so that courts may choose the one reflecting the model they use. An update will be provided to the Committee on Juvenile Courts next week. Dr. Coffman will report back to COVIC on the outcome of that discussion.

### **C. Restitution Workgroup**

Dan Levey spoke on the restitution statute that was passed two years ago was implemented about a month ago at the Arizona Department of Corrections (ADC). This is the statute that allows the department of corrections to take from 20-50% of the inmates’ deposits to their earnings or wage accounts for the purpose of restitution. The wording that the legal department at ADC recommends is: “While in the Department of Corrections, restitution shall be paid as provided in ARS 31-230”. The only remaining question is whether or not it applies retroactively. The judge’s order happened in the past and explicitly provides for a specific amount. A similar law was applied retroactively in California, but their statutes regarding restitution payments in prison were different than Arizona’s.

The restitution website has been being developed over the past year. The goal is for this to be an up-to-date one-page-stop for restitution. It has been modeled after Colorado’s Supreme Court Restitution webpage. It includes statutes and forms as well as links to clerk’s pages and contact information. If you have suggestions feel free to let Carol know. It is not yet available for use by the public.

#### **Discussion**

- Currently doesn’t look like the constitutional right to restitution is shown in the list of statutes, this should be added.

- Next steps will include review by the attorney general's office and others to ensure that the process has been accurately represented.

**Motion:** To accept the webpage with recommended changes. *Motion seconded and passed unanimously.*

#### **IV. Other Business**

##### **A. Next Meeting:**

November 14, 2008  
State Courts Building  
Phoenix, AZ 85007

##### **B. Call to the Public**

- Jamie Mabery would like help from Judges to review the judicial portion of the Maricopa County Attorney's Office protocol for cases involving the elderly.
- Hon Richard Weiss, acting as Chair, asked if any other matters needed to be addressed.
- Steve Twist shared that Arizona Voices for Crime Victims and the Maricopa County Attorney's office filed a petition for a case transfer rule change with the Supreme Court. The court denied the petition for expedited review. Justice Ryan asked that it be brought to the attention of the commission. It will appear on the COVIC's November agenda.
- Leslie James mentioned that the appellate clerks' websites are not as informative as the information available on public access for the state courts, where minute entries and additional information is available. Leslie believed this area should improve and would be helpful for victims.
- If any member is interested in chairing the Administration of Justice Workgroup, please see Carol.
- Dan Levey wanted to bring the following problem to the attention of the Commission. If a defendant is placed on lifetime probation and then violates their probation on a technicality, they are taken off probation and placed in prison. Because their probation is revoked and their prison sentence is complete (which may be very short), the defendant is no longer on lifetime probation supervision because double jeopardy attaches. Dan thinks this is something the commission should look into.

##### **C. Adjournment**

Hon. Richard Weiss acting as Chair declared the meeting adjourned at 12:10pm.