Commission on Victims in the Courts
DRAFT MINUTES
Friday, October 1, 2010
10:00 a.m. to 12:00 p.m.
State Courts Building
1501 W. Washington
Phoenix, AZ 85007
Conference Room 119

### **Members Present:**

Mr. Paul Ahler

Mr. James J. Belanger

Ms. Patricia Bigwood

Mr. Michael Branham

Dr. Kathryn Coffman

Ms. Shelly Corzo

Ms. Sydney Davis

Ms. Daisy Flores

Ms. Leslie James

Ms. Keli Luther

Mr. Dan Levey

Hon. William O'Neil

Mr. Doug Pilcher

Mr. Paul Prato

Hon. Ronald Reinstein (Chair)

Hon. Antonio Riojas, Jr.

Mr. David Sanders

Hon. Richard Weiss

### **Members Absent:**

Hon. Lex Anderson

Ms. Karen Duffy

Cpt. Larry Farnsworth

Hon. Andrew Gould

Hon. Anna Montoya-Paez

### **Presenters/Guests:**

Hon. Sally Duncan

Ms. Patience Huntwork

Ms. Linda King

Ms. Caroline Lautt-Owens

Mr. Mark Meltzer

Ms. Elizabeth Ortiz

Hon. Roland Steinle

Hon. Ann Scott Timmer

Mr. Daniel Woolston

#### Staff:

Ms. Carol Mitchell

Ms. Kimberly Reid

# I. Regular Business

## A. Welcome and Opening Remarks

The October 1, 2010 meeting of the Commission on Victims in the Courts (COVIC) was called to order by Chair, Honorable Ronald Reinstein, at 10:05 a.m.

Judge Reinstein announced that Judge O'Neil is retiring from his superior court judge position at the end of the year because he has taken the position of State Disciplinary Judge.

Mr. Doug Pilcher has retired of the City of Phoenix and will be moving to the private sector.

14 members are up for reappointments in the spring and Ms. Carol Mitchell will contact those members prior to the reappointment period. Two appointments are currently awaiting the Chief Justice's signature; Honorable Douglas Rayes and Ms. Elizabeth Ortiz.

# B. Approval of May 21, 2010 Minutes

Minutes from the May 21, 2010 Commission on Victims in the Courts meeting were presented for approval.

**MOTION:** To approve the May 21, 2010 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.* 

# C. Approval of 2010 Meeting Dates

February 4 May 20

September 17

December 9 (only if needed for an administrative code change)

**MOTION:** To approve the proposed meeting dates. *Motion seconded and passed unanimously.* 

### II. Old Business

# A. Children in the Court Update

Honorable Richard Weiss presented the proposal approved by the Court Improvement workgroup of the Committee on Juvenile Courts regarding Attorney Standards for Child Representatives (Addendum A). Comments can be posted at <a href="https://www.AZCIP.org">www.AZCIP.org</a>.

Ms. Caroline Lautt-Owens encouraged members to comment and distribute the information to other groups that might be of interest.

Discussion:

- Honorable Sally Duncan expressed concern that, as written, these standards only apply in
  dependency cases where as, guardian ad litems are appointed in various types of cases,
  including criminal. She also expressed concern that best interest attorneys, who perform the
  same task as GALs, may not be included in the proposal. She would like all child representatives
  be held to these standards.
- Judge Reinstein acknowledged the workgroup should expect to receive comments/concerns regarding the training requirement for attorneys in rural counties.
- Ms. Keli Luther believes that the trainings should include information about The Victim Bill of Rights and issues that come up in criminal and family law cases.

### B. Victim Identification Protections

Judge Ann Scott Timmer, Chief Judge of Court of Appeals, Division One, formed a volunteer committee to review old Court of Appeals cases in WestLaw in search of victims' names for redaction. The committee found 311 cases and Judge Timmer took the necessary steps to change the full names to initials in these records.

While reviewing cases, concern grew over victim identification issues regarding incest cases. Because of the relation to the defender, initials do not necessarily disguise the identity of the victim; Judge Timmer proposes using "minor relative" instead of the initials.

Victim protection issues are becoming more prevalent as minute entries and briefs are now posted online. Thompson-Reuters is aware that this is an issue and they try to screen cases for victim names before they publish the documents.

Judge Reinstein informed the Commission of a recent case in which the victim's name was listed in the verdict along with a graphic description of the offense. Judge Timmer suggested informing judges of the issue in new judge orientation and the criminal bench books.

#### Discussion:

- APACC has added an informational item about victim identification protections to their next Council Meeting agenda.
- Judge Duncan believes that there should be a rule that simply states that in all juvenile victim cases, initials will be used in all court documents.
- Ms. Luther suggested including a mandatory check box indicating if a child victim is involved when cases are filed electronically to help identify these cases and keep the victim's identification from being posted.
- Mr. Paul Prato believes that the age of the victim when the offense occurred should determine the child victim protections, not the age of the victim when the offense comes to light.
- Karen Duffy submitted written comments stating victims' names were found in various
  case documents in Pima County. She believes that an effective date should be included
  in any rule change to determine if retroactive corrections need to be made.

**ACTION ITEM:** Judge Reinstein is referring this issue to the Administration of Justice Workgroup to look into a code section or rule change to mandate initials be used.

## C. Rules Update

Ms. Patience Huntwork provided an overview of recent rule decisions. Detailed information is available online at azourts.gov under the Court Rules Forum.

- 1. **Rule 10.5** The petition was to change victim notification guidelines upon continuance. The court rejected the proposal in accordance with COVIC's comment that the goals of the petition were good but the proposed solution would be detrimental to the issue.
- 2. R 09.0032- Adds an additional 20 days for the defense in a capital case to prepare his/her brief.
- 3. **R 09.0033** Eliminated the requirement that appellate counsel representing a defendant in a capital direct appeal have prior experience as counsel in post conviction relief proceedings. This arose because of the difficulty to find adequate counsel in capital cases.
- 4. R 09.0037-Petition to amend Rule 10.2- allows a party in a capital case to request a change of judge when a case is administratively reassigned to a new trial judge. This is currently allowed in criminal cases but not in capital cases. Ms. Huntwork suggests that COVIC makes a comment before the end of the comment period in early December.
- Rule 10.012- proposed by Capital Case Oversight Commission- expanded the time to trial in capital cases from 18 months to 24 months. Some COVIC members were opposed to this change.
- 6. **R 09.0045** proposed change to the Rules of Protective Order that would repeal the rule allowing a judge to prevent the defendant from possessing firearms during the injunction against harassment. This was rejected by the Supreme Court, but has been referred to the Family Law Committee of the State Bar. Mark Armstrong is the contact for the State Bar Family Law Committee.

### **III.** New Business

## A. Proposed Rule for Guilty Pleas by Mail

As part of Chief Justice Rebecca White Berch's five year plan to improve access to justice, the Limited Jurisdiction Courts Committee, drafted a rule change that would allow defendants in certain traffic case types to submit guilty pleas by mail. This is to address violations such as expired out-of-state registration, suspended license and boating and fishing violations. This would not include any violations involving a victim or that would require jail time.

Motion: To support the proposed rule as presented. Seconded and passed unanimously.

#### B. Defense Initiated Victim Outreach Presentation

Ms. Linda King shared her experience as a victim survivor as a result of the loss of her daughter and step-daughter. Her experience with the justice system has led her to become a Defense Initiated Victim Outreach (DIVO) advocate. Victims want information, compensation, participation, protection and help from the criminal justice system. DIVO challenges the traditional mind sets of who can meet victims' needs. In the DIVO process there is a victim specialist that will convey information from the victim to the defense attorney at the victim's request.

#### Discussion:

- Judge Reinstein explained that under the Arizona Constitution and rules, defense attorneys are not allowed to initiate contact with the victims.
- Mr. Dan Levey has concerns that the program is housed under the Federal Defender's office in Arizona which he believes creates a conflict of interest. He also believes it needs to be victim initiated and he has heard of times when it is not, for example, unsolicited letters sent to victims.
- Ms. King explained that in Texas and Georgia the organization is housed in a non-judicial agency such as university law schools.
- Ms. Luther explained that her office, Arizona Voice for Crime Victims, does something very similar to this as victims' attorneys.
- Mr. James Belanger is a proponent of the goals of this system. Major benefits come from increased communication between all parties of the justice system.
- Judge Duncan believes in a truly neutral location of housing the victims advocates because the victims are the neutral party in the case. Because we have an adversarial justice system, it is hard to have a neutral advocate role within it.

# **IV.** Workgroup Updates

### A. Restitution

Mr. Levey reminded all that the restitution website, <a href="www.azcourts.gov/restitution">www.azcourts.gov/restitution</a> has been up and available to the public.

As reported by the Arizona Department of Corrections, \$471,000 has been collected in Maricopa County within 20 months. This is a result of the new statute that allows mail money to be collected from inmates to pay restitution.

#### **Restitution Court Update**

Honorable Roland Steinle of Maricopa County Superior Court explained that his court has collected \$149,000 in delinquent restitution in the first 9 months of 2010, with two judges devoting one and a half hours a month.

Judge Steinle urged the courts to use the criminal restitution order as another powerful tool in the fight to collect restitution. Because of the multiple probation continuances that some offenders receive, Judge Steinle suggests a statute change that would allow for criminal restitution orders to state that restitution is due upon sentencing as opposed to release from probation and record it. In Maricopa County, an automated filing system records the restitution with the County Recorder, Motor Vehicle Division and the Secretary of State. Because of the lien, the restitution will be collected from the sale price of a motor vehicle or real estate. Currently, this process doesn't occur until the restitution is delinquent by multiple years.

Given definable consequences for violating probation by missing restitution payment, offenders begin to pay their restitution. In the state of Michigan, all fines, fees and restitution are due at the date of sentencing.

An article was published in the paper to announce the implementation of restitution court in Pima County and immediately, restitution payments spiked. Mr. David Sanders informed Judge Steinle that Pima County's restitution court was inspired by Judge Steinle and his work.

# **B.** Administration of Justice

The Administration of Justice Workgroup has been drafting language to amend Rule 39, to enhance victim' understanding of information and opportunities available to them. The workgroup continues to collaborate on this issue.

### V. Business

# A. Next Meeting:

February 4, 2010 10:00 a.m. State Courts Building Phoenix, AZ 85007 Conference Room 119

### B. Call to the Public

# C. Adjournment

The meeting adjourned at 12:10 p.m.

### Finalized Draft of The Attorney Standards for Child Representation

Pursuant to Article VI, Section 3, of the Arizona Constitution, the following Standards for Dependency Cases (the Standards) are issued under the authority of the Supreme Court of the State of Arizona. All attorneys and guardians ad litem appointed to represent children in dependency cases in the State of Arizona shall adhere to these Standards. Privately retained attorneys shall become equally familiar with these Standards. In developing the Standards, the Court considered best practices within Arizona and well-accepted standards developed by nationally recognized organizations. In particular, the standards for representation outlined in the American Bar Association's Standards for Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, the National Association for Counsel for Children's Revised Version of the ABA Standards, and the Resource Guidelines published by the National Council for Juvenile and Family Court Judges were instructive in developing the Standards for Arizona. In addition to adhering to the Standards for Dependency, Arizona attorneys and guardians ad litem should be familiar with and consult these national standards and references to ensure the highest standard of practice in this important area of the law.

Arizona Courts shall have broad discretion in enforcing the Standards and to impose sanctions when appropriate. Attorneys providing representation in Arizona may also be subject to sanctions under the Arizona Rules of Professional Conduct for failure to adhere to the Standards. Sanctions may include the removal of the attorney or guardian ad litem from a particular case or from representation of children for a period of time.

- 1. Attorneys appointed for children shall make clear to children and their caregivers whether their appointment is as a guardian ad litem or as an attorney and the ethical obligations associated with their role
- 2. Attorneys and guardians ad litem shall inform the child, in an age and developmentally appropriate manner, about the nature of the proceedings, the attorney's role, that the child has the right to attend hearings and speak to the judge, the consequences of the child's participation or lack of participation, the possible outcomes of each hearing, and other legal rights with regards to the dependency proceeding and the outcomes of each substantive hearing.
- 3. Attorneys and guardians ad litem shall participate in discovery and file pleadings when appropriate and attorneys must develop the child's position for each hearing. The duties of the attorney and guardian ad litem may include identifying appropriate family and professional resources for the child, as well as subpoening witnesses, and the attorney and guardian ad litem shall inquire of the child regarding potential placements and communicate this information to Child Protective Services as appropriate.
- 4. The attorney and guardian ad litem shall meet in person with the child before the preliminary protective hearing, if possible, or within fourteen (14) days after the preliminary protective hearing.

Thereafter, the attorney and guardian ad litem for the child shall meet in person with the child and have meaningful communication before every substantive hearing. Substantive hearings include all preliminary protective hearings, all periodic review hearings, permanency hearings, any hearings involving placement, visitation or services, or any hearing to adjudicate dependency, guardianship or termination. If the child is under the age of 5 or is not able to communicate effectively, meetings should include observations within each placement home. At each substantive hearing the attorney or guardian ad litem shall inform the court as to the child's position concerning pending issues and, if the child is not present, an explanation for the child's absence. In all cases, attorneys and guardians ad litem for children should also communicate with placements, and if practicable, observe the placement.

Upon a showing of extraordinary circumstances, the judge may modify this requirement for any substantive hearing.

- 5. Attorneys and guardians ad litem shall also maintain contact with caretakers, case managers, service providers, daycare providers, CASAs, relatives and any other significant person in the child's life as appropriate in order to meet the obligations of informed representation of the child.
- 6. To the extent possible, attorneys and guardians ad litem should attend or provide input to Child Protective Services staffings, Foster Care Review Board reviews and Child and Family Team meetings.
- 7. Attorneys and guardians ad litem may use appropriately trained support staff to assist in the performance of the duties listed herein unless otherwise required by law. The support staff performing these duties must adhere to these standards.
- 8. Attorneys and guardians ad litem should promptly identify any potential and actual conflicts of interest that would impair their ability to represent a child. Either the attorney or the guardian ad litem shall, if necessary, move to withdraw or to seek the appointment of an additional attorney or guardian ad litem if they deem such action necessary.
- 9. Attorneys and guardians ad litem shall be knowledgeable of the child welfare and public systems and community-based service providers and organizations serving children (e.g. behavioral health, developmental disability, health care, education, financial assistance, counseling support, family preservation, reunification, permanency services and juvenile justice). Attorneys and guardians ad litem shall be knowledgeable about how these services are accessed and shall advocate for such services as appropriate for the child.
- 10. Attorneys and guardians ad litem shall be familiar with the substantive juvenile law. Attorneys and guardians ad litem shall stay abreast of changes and developments in relevant federal and state laws and regulations, Rules of Procedure for the Juvenile Court, court decisions and federal and state laws concerning education and advocacy for children in schools. Attorneys and guardians ad litem shall complete an introductory six (6) hours of court approved training prior to their first appointment unless otherwise determined by the presiding judge of the juvenile court for good cause shown and an additional two (2) hours within the first year of practice in juvenile court. All attorneys and guardians ad

litem shall complete at least eight (8) hours each year of ongoing continuing education and training. Education and training shall be on juvenile law and related topics, such as child and adolescent development, (including infant/toddler mental health), effects of substance abuse by parents and by and upon children, behavioral health, impact on children of parental incarceration, education, Indian Child Welfare Act, parent and child immigration status issues, the need for timely permanency, the effects of the trauma of parental domestic violence upon children and other issues concerning abuse and/or neglect of children. Some or all of this training and continuing education may qualify as mandatory Continuing Legal Education under State Bar of Arizona requirements.

Attorneys shall provide the judge with an affidavit of completion of the six (6) hour court approved training requirement prior to or upon their first appointment as attorney or guardian ad litem for a child after the adoption of these standards. The affidavit of completion shall include a list of courses including the name of the training, the date of the training, the training provider, and the number of hours for each course.

All attorneys shall file annually an affidavit with the presiding judge certifying their compliance with this section. Such affidavit shall be filed concurrently with the affidavit of compliance with State Bar MCLE and shall include a list of courses including the name of the training, the date of the training, the training provider and the number of hours for each course.