

Commission on Victims in the Courts
DRAFT MINUTES
Friday, September 11, 2009
10:00 a.m. to 1:00 p.m.
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 119A/B

Members Present:

Hon. Lex Anderson
Mr. James J. Belanger
Mr. Michael Branham
Ms. Sydney Davis
Ms. JoAnn Del Colle (telephonically)
Ms. Karen Duffy
Cpt. Larry Farnsworth
Ms. Daisy Flores
Hon. Andrew Gould
Mr. Dan Levey
Ms. Keli Luther (Proxy: Mischa Hepner)
Hon. Anna Montoya-Paez
Hon. William O'Neil
Mr. Doug Pilcher
Mr. Paul Prato
Hon. Ronald Reinstein (Chair)
Hon. Antonio Riojas, Jr.
Mr. David Sanders
Hon. Richard Weiss (telephonically)

Members Absent:

Mr. Paul Ahler
Ms. Patricia Bigwood
Dr. Kathryn Coffman
Hon. Gary Donahoe
Ms. Leslie James
Ms. Hilary Peele

Presenters/Guests:

Chief Justice Rebecca White Berch
Ms. Jennifer Greene
Ms. Patience Huntwork
Ms. D.K. (telephonically)
Ms. Kim Knox
Mr. Ken Kung
Ms. Amy Love
Mr. Gordon Mulleneaux
Hon. Ann Scott Timmer
Ms. Julie Williams

Staff:

Ms. Carol Mitchell
Ms. Kimberly Reid

I. Regular Business

A. Welcome and Opening Remarks

The September 11th meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:10 a.m. Judge Reinstein introduced newly appointed Chief Justice Rebecca White Berch. Chief Justice Berch expressed her gratitude to those who serve on this committee and encouraged everyone to continue their great work and ask the Court for help if needed.

Judge Ronald Reinstein introduced Chief Judge Ann Scott Timmer from Court of Appeals, Division One. He acknowledged her vital role in resolving a recent victim issue. A victim in a case that occurred in the 1970s contacted the Supreme Court. She was upset that her full name and identifying information was published in the appellate court opinion and available on the Internet. The victim was referred to COVIC staff, who sought assistance from Judge Timmer. Judge Timmer made contact with Westlaw and within a day, the victims' identifying information except first name and last initial had been redacted. Since this issue was brought to light, Judge Timmer has assembled a volunteer committee to go through old cases and identify other opinions using full names involving minors or sexual assault victims.

Dan Levey made an announcement about the National Day of Remembrance for Murder Victims on September 25. Parents of Murdered Children-Valley of the Sun Chapter will be having a commemorative event on September 26 in the Phoenix area. In Tucson, Homicide Survivors will be having an event on September 25.

Carol Mitchell announced that the AOC has taken steps to prevent the spread of infections and has placed hand sanitizer dispensers in all of the conference rooms and restrooms in the building. She also announced that COVIC will now be using an online RSVP function on our website.

B. Approval of May 8, 2009 Minutes

Minutes from the May 8, 2009 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the May 8, 2009 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

II. Business Items / Potential Action Items

A. Amendment to ACJA §1-202

Jennifer Greene introduced the proposed changes to the code section involving public meetings. The purpose of the amendments are to clarify the following: a) Facilities planning to ensure the public can attend any public meeting involving video conferencing or teleconferencing by members, b) How to handle a request from a member of the public to record a public meeting, and c) Proper and improper use of email by council members and staff to ensure that all council discussions and legal actions involving a quorum of members are conducted in public.

Discussion:

- JoAnn Del Colle explained that because open meeting rules don't apply to workgroups, they are a good way to keep work going if a quorum or meeting notifications requirements are not met.
- This also brings to light that rule comments, done by a workgroup, still need to be approved by the full committee before they can be filed on behalf of the committee.

MOTION: To forward the recommendation to AJC for passage of the proposed code amendments. *Motioned and seconded. Approved with no objections.*

B. Legislative Update

Amy Love distributed a one page summary of the following bills that were recently approved by the legislature.

Chapter 57: DOMESTIC VIOLENCE; CHILD CUSTODY -*Impact: Judges must now make specific findings when there are allegations of domestic violence in a contested custody case.*

Chapter 129: DOMESTIC VIOLENCE; DATING RELATIONSHIPS -*Impact: The changes will require modification of the Arizona Rules of Protective Order Procedure, Supreme Court approved forms under A.C.J.A. § 5-207 and AZTEC forms module, as well as, any other case management system that generates protective order forms. The short title is misleading as the change has no effect on dating relationships in the statute for the Injunction Against Harassment under A.R.S. §12-1809. Reference rule petition R-09-0026.*

Chapter 138: FIDUCIARIES-*Impact: The change will require an amendment to A.C.J.A. § 7-202.*

The following bills were discussed.:

- **Cold Case Registry-** will require certain steps be taken by law enforcement for follow up with victims on cold cases.
- **Sex Offender GPS monitoring-** judges were given more authority to decide if an offender needs to be kept on GPS monitoring or if they could be removed from the monitoring.
- **Removal of life with the possibility of parole after 25 years-** was not passed. Concern was expressed that it would take a bargaining option away from the prosecutors and could have a negative impact on victims.
- **Finger Print Cards-** The Department of Corrections has been monitoring the number of people who enter the system, but are released without being fingerprinted. A piece of legislation targeted this issue.

Discussion:

- Judge Reinstein brought up two issues on behalf of Judge Gary Donahoe which may be discussed at the November meeting:
 - §41-105 was used to allow a Mexican national to transfer to Mexico to serve the remainder of a vehicular manslaughter sentence. The concern involves whether the victim and the prosecutors are being notified and the level of accountability in Mexico. Jerry Landau will be contacted to assist in researching this issue.
 - When a court orders blood testing based on the applicable statute, who pays for the testing? Currently it is not defined in the statute, leading to confusion.
 - Mischa Hepner said that in Pinal County, the Department of Health Services handles the testing and paid for the financing.
 - Daisy Flores shared that in Gila County, the Department of Health Services also handles the testing.
 - Judge Reinstein asked others to research what procedures occur in their counties for discussion at the next meeting.

C. Court Rules Update

Patience Huntwork, from the Supreme Court's Staff Attorney's Office, provided an overview of several rule petitions with criminal and/or victim-related issues:

- R-08-0019- RULE 28, RULES OF PROCEDURE FOR JUVENILE COURT et al. would allow for court orders that juveniles or adults summoned to court and who are charged with specified offenses report to the arresting agency and submit biological samples for DNA testing.
- R-08-0022-RULE 10.5, ARIZONA RULES OF CRIMINAL PROCEDURE Would create a new paragraph "c" which addresses the transfer of cases already set for trial date due to the unavailability of the trial judge- the Supreme Court continued this item and referred back to COVIC for comment.
- R-08-0037- RULE 39, ARIZONA RULES OF CRIMINAL PROCEDURE would amend the definition of "victim" in rule 39(a) to conform to statutory changes broadening the definition appearing in A.R.S. sections §3-382, §13-703.01, §13-703.03, and §13-4401-Adopted.
- R-09-0001- RULE 31.6, RULES OF CRIMINAL PROCEDURE et al. would require disbursement of restitution payments collected by the court pending an appeal unless the defendant can demonstrate to the court sufficient grounds for a stay. This proposed change was rejected.
- R-08-0039-RULE 123, RULES OF THE SUPREME COURT et al. to provide greater access to case records while being mindful of sensitive information that might be contained within the records- Adopted.

- R-09-0012- RULE 92(a)(1), RULES OF THE SUPREME COURT would require the presiding judge in each county to create a random case assignment system within each judicial division for all cases in which a judge has not previously been involved- Adopted.
- R-08-0016- RULE 1.6, ARIZONA RULES OF CRIMINAL PROCEDURE would provide for appearances by defendants via videoconferencing for initial appearances, arraignments, and some other hearings.
- R-08-0027- PROMULGATE RULE 57.1 AND 57.2, ARIZONA RULES OF CIVIL PROCEDURE would provide a procedural mechanism for a victim of identity theft to petition for declaration of factual innocence when the victim's identity has been used in the commission of a criminal offense and a declaration of improper party status in civil cases- Adopted.
- R-09-0009- PROMULGATE RULE 804(B)(5), ARIZ RULES OF EVIDENCE- would add a new hearsay exception when the defendant has deliberately acted to make the declaring witness unavailable for trial- Adopted.

D. Restitution thresholds

Mr. Gordon Mulleneaux, from the Superior Court of Maricopa County's Clerk's Office, addressed COVIC to suggest an increase in current restitution threshold disbursements. He explained his office currently collects restitution for victims and issues a check once the amount reaches \$10.00. Once a year, they lower the threshold to \$1.00 to empty out the accounts. The proposal is to raise that threshold to \$30.00, resulting in a savings of \$1,500.00 per month. Gordon provided a handout for July 2009 restitution payments from the Department of Corrections (DOC) inmates allocated by specific dollar amounts, to illustrate the proportion of payments that fall below the proposed \$30.00 threshold.

Discussion:

- Dan Levey expressed concern with the fact that it could delay payment to a victim.
 - Gordon explained that a victim could ask the court to issue them a check at any time.
 - Jim Belanger would like disbursement procedures to be included in the information that victims get when they are ordered restitution.
- Ken Kung from the AOC explained that the Minimum Accounting Standards (MAS) refers to this code section directly. If this code is amended, it will be amended in (MAS).
- The statistics that are represented on the handout are only for Department of Corrections (DOC). Judge Weiss asked for additional statistics for non-DOC payments.
 - Gordon agreed to gather statistics; however, the large majority of the payments under \$30.00 come from DOC.
- Judge William O'Neil recommended the Clerks' Association review the issue and return with a petition to amend the code.

MOTION: Table until we hear back from the Clerk's Association. *Motioned and seconded. Approved with no objections.*

E. Workgroup Updates

1. Restitution

Dan Levey announced the Attorney General's Office has put together a Victim's Committee to advise the Attorney General of victims' current issues and insights.

The restitution handout provided showed how much money has been collected from the "new restitution law" that allows DOC to take portions of monies sent to inmates owing restitution. The language DOC is requesting that judges use in the court orders, to be able to collect restitution in this manner was also included on the handout. Without this specific language, DOC believes they lack authority to collect the restitution.

Carol Mitchell displayed the new restitution website which is intended to be a "one-stop shop" of information for victims regarding restitution. It is not currently available to the public, but will be after it is reviewed by a number of groups.

2. Children in the Courts- No report provided

3. Administration of Justice

Judge Reinstein would like to get this workgroup going again and asked for a volunteer to serve as chair.

III. Business

A. Next Meeting:

November 6, 2009
10:00 a.m.
State Courts Building
Phoenix, AZ 85007
Conference Room 106

B. Call to the Public

Kim Knox addressed the Commission on the issue of Criminal Restitution Orders (CRO). She explained the process of creating CROs but also explained that sometimes they are missed. Recently two different cases were brought to light. Both defendants appealed the restitution orders because they were "not created in a timely manner." One was for \$8,000 and the judge overturned the restitution order. The other was for millions of dollars with multiple victims. The order was upheld, but the CRO had to be recreated with victims' names listed individually. Kim plans to ask the Attorney General's Office to appeal the decision in the case that was overturned. The case law created by this case could have major implications in the future.

Ms. D.K. then addressed the Commission as the victim in the case that Judge Ronald Reinstein discussed at the beginning of the meeting. She found her and her sister's personal information involving the case on multiple websites. In the past two weeks, she has observed that the system is very insensitive to

victims. She has been told that it will take too many tax dollars to redact the information. She and her sister would like to see this information removed from the various Internet sites because it has caused them severe emotional distress. Dan Levey expressed his concern and appreciation for her contacting COVIC. Judge Reinstein asked if Mischa Hepner, from Arizona Voice for Crime Victims and Dan Levey of the Attorney General's Office of Victim Services would be willing to follow up with D.K. Both agreed and Carol Mitchell will route their contact information to the victim. D.K. thanked COVIC for the opportunity to share her very personal experience.

C. Adjournment

The meeting adjourned at 12:31 p.m.

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