

Commission on Victims in the Courts
DRAFT MINUTES
Friday, February 6, 2009
10:00 am to 2:00 pm
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 119A/B

Members Present:

Attorney General's Office Representative
Hon. Lex Anderson
Mr. James J Belanger
Ms. Patricia Bigwood
Dr. Kathryn Coffman
Mr. Paul Ahler for Mr. Edwin Cook
Ms. Sydney Davis
Ms. JoAnn Del Colle (Telephonically)
Ms. Karen Duffy
Cpt. Larry Farnsworth
Ms. Daisy Flores
Ms. Leslie James
Mr. Dan Levey
Mr. Doug Pilcher
Mr. Paul Prato
Hon. Ronald Reinstein (Chair)
Hon. Antonio Riojas, Jr.
Ms. Kathy Waters

Members Absent:

Mr. Michael Branham
Hon. Anna Montoya-Paez
Hon. Carter Olson
Hon. William O'Neil
Ms. Karen Sullivan
Mr. Steve Twist
Hon. Richard Weiss

Presenters/Guests:

Hon. Robert Brutinel (Telephonically)
Ms. Melinda Hardman
Hon. Michael Jeanes
Ms. Caroline Lutt-Owens
Ms. Jamie Mabery
Hon. Roland Steinle

Staff:

Ms. Carol Mitchell
Ms. Kimberly Reid

I. Regular Business

A. Welcome and Opening Remarks

The February 6th meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:07 am. Sympathies go out to Michael Branham, whose wife just passed away. Hon. William O'Neil will not be with us because his wife was recently in a horse accident.

B. Approval of November 14, 2008 Minutes

Minutes for the November 14, 2008 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the November 14, 2008 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

II. Business Items / Potential Action Items

A. Dependency Attorney Certification & Other Training Efforts

The Children in the Courts workgroup proposed a rule petition for child attorney standards to the Arizona Judicial Council in December, 2008, which was not approved. Hon. Robert Brutinel, chair of the Committee on Juvenile Courts, shared the thoughts of the committee. A "one sizes fits all" rule isn't practical for the state of Arizona. They propose that each county be allowed to come up with their own standards. To adopt the standards as is would be extremely impractical and expensive for the rural counties. It is suggested that these be adopted as a best practice standards as opposed to a rule. Judge Brutinel expressed support for the possibility of a pilot program for county standards.

Judge Brutinel has been talking about a Child Welfare Specialist as a legal specialty in the state of Arizona. This would help in setting appropriate standards of practice. The State Bar created a committee to evaluate the possibilities.

Caroline Lutt-Owens passed out a hand out that explained the AOC's training efforts. They have focused on attorney training that has been conducted in the 13 rural counties. The curriculum of the training was based on the standards put together in 2002.

Discussion:

- Jim Belanger shared his understanding that the attorneys doing the best work in the juvenile field are public officers, not private attorneys. Another related issue that needs to be addressed is the attorney contract system.
- Judge Reinstein believes that those who will apply for the specialization will be the attorneys who already do good work.
- COVIC to work with COJC re: attorney standards

B. Supreme Court Rule 123 and Data Dissemination

Michael Jeanes, Chairman of the Supreme Court Rule 123 and Data Dissemination Committee, brought forth the latest Rule 123 proposal. Because of technology changes, the public's opinion of obtaining public documents has changed. The changes to this rule have already been submitted to AJC; however, the comment period is only open through April 1, 2009. The current changes don't change access to records at the court house. The main change submitted in this rule deal with internet access to documents. They are available to attorneys and litigants within the case. Because of the convenience added, fees will be assessed to the public to help maintain the system. The recommendations limit the civil and criminal cases and the types of documents that can be accessed to help protect privacy.

One problem they have noticed is that some people don't check the records as diligently as others. To avoid this, they recommend that the courts predominantly display the outcome of the case. The committee is considering other issues, such as how long documents will be available and access to bulk data.

Discussion

- Leslie James- Victims should be included in the party classification and not part of the general public.
 - Most people would agree with this but it comes down to technical issues of determining who is a victim and how they would be recognized by the system. Currently the system is unable to do this.
- The documents will not be available until all parties are served.

MOTION: Change Juvenile to Person as it refers to sexual assault victim. Motioned by Dan Levey, seconded by Leslie James. No objections.

Action Item: Carol will send out an e-mail vote on comments crafted by Leslie James and Dan Levey for approval by the committee.

C. Restitution Court Innovations

Hon. Roland Steinle discussed his recent work with the Maricopa County Adult Probation Department. Restitution typically isn't a high priority for defendants on probation because it is easier to violate them on issues other than failing to pay restitution. According to ARS 13-810, defendants who do not pay restitution may be held under civil contempt. Judge Steinle donates half a day, once a month to the Maricopa County Adult Probation Department and handles approximately six to eight new defendants a month. If realistic plans and honest efforts to pay the restitution have not been made, defendants will be held in contempt with possibility of work release until the debt or a court-ordered portion of the debt is paid. The program started in the beginning of August and since then they have collected \$44,000 in restitution. It is a great program but it takes strict cooperation between the court and probation to hold the defendants accountable.

Discussion

- What do you do with the people that don't see jail as a deterrent?
 - There have only been two problem cases and they have been caught up to date within three months.
 - Dan Levey thinks that this is a great program. It holds the defendants accountable to the restitution.
 - Judge Steinle thinks that judges need to be more diligent when ordering restitution payments to be more realistic in being able to reach the total payment amount
 - Judge Steinle is more than willing to do presentations to other judges or groups to help further the program
 - Maricopa County Superior Court has a self-help center where victims can get the process started on their own, however they have to hire their own process server. Probation officer, County Attorney or Court on own can initiate action against a non-paying defendant.
 - It is possible that the probation officer would be willing to serve the defendant.

D. New Discussion Topics

1. DNA/Post Conviction Conference

Judge Reinstein attended the DNA/Post Conviction Conference. Arizona has a grant through the program. Judge Reinstein will be presenting in Texas next month. Texas has had 39 exonerations in the past 24 months. Judge Reinstein has been engaging in conversations about when you notify the victim that the defendant has requested DNA testing.

2. ARS 13-1415 HIV/STD Testing

There is a hole in the statute regarding how testing is done and who pays for it. Judges are more than willing to provide the court orders. The problem is with out-of-custody defendants who need to be tested. Where do you send them? Who pays for it? Correctional Health Services handles this in Maricopa County for in-custody defendants. The defendant is asked to submit a sample, if they refuse, a notice of their refusal is sent to the court.

Discussion:

- Dr. Kathy Coffman explained there are medications that prevent transmission within 72 hours of exposure. However the statute has a 10 day window. There is a simple, fairly inexpensive test that takes 20 minutes with a saliva sample, so it is non invasive. It does not test for hepatitis C, only HIV.
- Sydney Davis: most perpetrators are not arrested in 72 hours.

Action Item: Judge Reinstein will talk to Jerry Landau about whether forfeiture funds could be allocated to HIV/STD testing, as noted by Jim Belanger.

3. Child Witness/Facility Dogs

Preliminary tests have been taking place as to the effect of facility dogs on child witnesses on the stand. They are currently in practice in four other states. The results have been favorable. The dogs lower blood pressure which helps the child's recollection. Maricopa County Victim Witness is currently training Sam, a golden retriever facility dog, to aid children in the court. He is being funded 100% through donations. No one expressed concern about whether judges will allow the dog in the witness box,

however there may be need to be hearing to determine necessity. There may be issues with use of the dog prior to court as well.

Announcement: There is a petition to amend Rule 39 of the Criminal Rules of Procedure. The statute provides that grandparents and siblings are classified as victims and are allowed to be present in the courtroom; however, Rule 39 did not include the same definition.

- Jamie Mabery pointed out what she believed may be another shortcoming of this rule. In-laws of a victim were afforded victim's rights even though they were pro-defendant and testifying as witnesses on the defendants behalf.

E. Workgroup Updates

1. Restitution

Dan Levey announced that the restitution website should be up and running prior to the next meeting. Also, a senator is working on legislation regarding persons who owe restitution and prevails on a suit against the county or state for any reason. Part of the judgment will go to pay off restitution.

Announcement: Kathy Waters explained that AOC will be piloting a curriculum for all probation officers regarding restitution, leadership and victim sensitivity. They will present on March 9, 2009 and it will take place in the afternoon in room 345B of the State Courts Building.

Announcement: The Chair asked members to route names of potential future member candidates, particularly from counties other than Maricopa, to Carol for the next appointment cycle.

III. Business

A. Next Meeting:

May 8, 2009
State Courts Building
Phoenix, AZ 85007

B. Call to the Public

None.

C. Adjournment

The meeting was adjourned at 12:31