

Commission on Victims in the Courts
DRAFT MINUTES
Friday, November 6, 2009
10:00 a.m. to 1:00 p.m.
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 106

Members Present:

Ms. Patricia Bigwood
Dr. Kathryn Coffman
Ms. Sydney Davis
Ms. JoAnn Del Colle (telephonically)
Hon. Gary Donahoe
Ms. Karen Duffy
Cpt. Larry Farnsworth
Ms. Daisy Flores (telephonically)
Hon. Andrew Gould
Ms. Keli Luther
Hon. Anna Montoya-Paez
Hon. William O'Neil
Mr. Doug Pilcher
Mr. Paul Prato
Hon. Ronald Reinstein (Chair)
Hon. Antonio Riojas, Jr. (Telephonically)
Hon. Richard Weiss

Presenters/Guests:

Ms. D.K. (telephonically)
Mr. Gordon Mulleneaux
Ms. Julie Williams

Staff:

Ms. Carol Mitchell
Ms. Kimberly Reid
Ms. Amy Wood

Members Absent:

Mr. Paul Ahler
Hon. Lex Anderson
Mr. James J. Belanger
Mr. Michael Branham
Ms. Leslie James
Ms. Hilary Peele
Mr. David Sanders

I. Regular Business

A. Welcome and Opening Remarks

The November 6th, 2009 meeting of the Commission on Victims (COVIC) in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:12 a.m.

B. Approval of September 11, 2009 Minutes

Minutes from the September 11, 2009 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the September 11, 2009 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

II. Business Items / Potential Action Items

A. Approval of 2010 COVIC Meeting Dates

The Commission will change from quarterly meetings to three meeting dates in 2010: February 5, May 14 and October 1.

MOTION: To approve the proposed 2010 meeting dates. *Motioned and seconded. Approved with no objections.*

B. Amendment to ACJA§ 5-204

As discussed at the September 2009 meeting, the proposed amendment to Arizona Code of Judicial Administration, Part 5, Chapter 2, Section 204, Paragraph K, "Restitution Payment Processing," is to raise the disbursement of restitution threshold from ten to thirty dollars and to clarify the use of business versus calendar days in the payment process. The current Code sets a mandatory threshold of ten dollars for the release of payments; however, Maricopa County has requested that the threshold be increased to thirty dollars. This change was discussed with the Clerks of the Court Association in their September meeting and was unanimously supported because it does not require any change to current practices. Dave Byers, Director of the Administrative Office of the Courts, gave his approval of this issue to go out to all of the committees for consideration as a change to the Arizona Code of Judicial Administration.

The current practice of restitution disbursements varies by county. Some counties will disburse restitution once ten dollars is received, whereas other counties disburse all restitution monies as they are received, no matter the amount. The proposed amendment does not require change by any Clerk or any court, but allows them to extend the threshold to thirty dollars if they wish.

The motivation for this amendment is due to budget/resource issues. There is the potential to save, specifically Maricopa County Clerk's Office, over one thousand dollars per month due to the reduction of the large volume of payments currently mailed to victims.

The restitution payment system used by Maricopa County Clerk's Office has the ability to manually send out checks of less than ten dollars if requested. In the past years, they honored all requests to do so. At the request of the COVIC Committee, Maricopa County has proposed new language in the code requiring notification be sent to parties receiving restitution of the change in the threshold amount.

Gordon Mulleneaux, of Maricopa County Superior Court Clerk's Office, has presented this proposed rule change to the Limited Jurisdiction Committee (unanimously supported) and will be presenting it to Committee on Superior Court and the Juvenile Court Committee in the next few days.

Discussion:

- Gordon Mulleneaux will follow up to determine whether functionality exists in Maricopa County Superior Court Clerk's Office automated system to allow a victim to request an automatic monthly disbursement for amounts below the threshold or if they will be required to make the request each month.

MOTION: To accept the amendment as written. *Motioned and seconded. Approved with no objections.*

A. Maricopa Master Calendar Update

Judge Gary Donahoe, Judge of the Superior Court of Maricopa County, gave an update on the Master Calendar system currently in use at Maricopa County Superior Court. This update is in relation to the petition for rule change that would require a case to be continued if it did not go to trial within three days of its firm trial date. For the week of October 26, 2009 through October 30, 2009, twelve cases were assigned for trial. Of those cases, seven went to trial on the firm trial date; four went to trial one day after the firm trial date and one went to trial two days after the firm trial date. Since the implementation of the Master Calendar system, Maricopa County Superior Court has heard 216 cases. Of those 216 cases, only eight have started more than three days after the firm trial date. The assignment judge notes the delays were due to prosecutorial trial date requests.

Discussion:

- Prior to the implementation of the new master calendar system there were complaints from victims regarding cases that were continued 20, 30 or even 60 days from the original trial date.
- The directive under the master calendar system is for the judge to take the case the day it is assigned unless there are extraordinary circumstances. An example of an extraordinary circumstance would be pre-trial motions which have not yet been ruled upon.
- Judge Donahoe is considering requiring a minute entry to be entered and forwarded to him each time a case is continued two or more days beyond the trial date.
- Judge Richard Weiss, Judge of the Superior Court of Mohave County, explained that the three day policy would be difficult to uphold in rural counties where there are not enough judges to hear all of the cases.
- Keli Luther described her experience with trials that are being held as scheduled. Arizona Voice for Crime Victims is changing their practices to keep up with the quick processing of cases.

- Keli Luther is concerned that some victims get confused with the change of judges that occurs, including the change from motion judge to trial judge.
- Judge Weiss asked how Maricopa County handles Notices of Change of Judges. Judge Gary Donahoe explained that the Notice of Change of Judge is issued to the parties before they leave the courtroom.
- Doug Pilcher, Court Administrator for Phoenix Municipal Court, explained that Phoenix Municipal Court also uses the Master Calendar system in place at Maricopa County Superior Court. They have found that it is helpful in monitoring which party has been delaying a case through filing multiple motions and the court has been addressing those issues.
- Judge Donahoe mentioned the Capital Oversight committee:

B. Capital Case Oversight Committee (new topic which did not appear on the agenda)

Judge Reinstein explained that the Capital Case Oversight Committee stemmed from the backlog of pending capital cases in Maricopa County. There are nine members on the committee, four of whom are on COVIC: Judge Reinstein, Judge Donahoe, Paul Prato and Dan Levey. The largest issue facing victims in capital cases is the lengthy time to trial; some cases take five years to make it to trial. The committee recently voted to recommend that the Supreme Court extend the maximum time to trial from 18 to 24 months. Judge Reinstein presumes that when the recommendation makes it to the annual Supreme Court Rules Meeting, it will be clear what effect the Master Calendar system is having on the processing of capital cases.

Discussion:

- Judge Donahoe explained that he voted against the time extension because he believes that the defense teams will procrastinate when dealing with the case. He cited the Martinson case as a prime example.
- Judge Reinstein explained his vote in support of the extension was because he wanted the Supreme Court to fully consider this issue and obtain input and public comment.
- Judge Donahoe encouraged COVIC to make a comment on the recommendation.
- Judge Andrew Gould, Judge of the Superior Court of Yuma County, explained that in rural counties, capital cases take time to be processed because most judges who lack experience with capital cases proceed extremely cautiously.
- Judge William O'Neil, Judge of the Superior Court of Pinal County, believes that there is a disregard to the 18 month rule. He believes that if capital cases can go to trial in 18 months in Maricopa, they can go to trial in any county.
- Paul Prato explained that at the Maricopa County Public Defender's Office, they are short-staffed when it comes to capital cases. They were recently unable to fill a vacancy due to lack of interest and are at their maximum caseload based on ABA standards.
- Keli Luther explained that 60% of Arizona Voice for Crime Victims' caseload is representing victims in capital cases.

C. A.R.S. § 13-1415 Testing Procedures

Judge Reinstein raised the issue of who pays for HIV testing when someone is in custody. At the last meeting, many counties reported that the County Departments of Health Services have been conducting and financing the tests.

Discussion:

- Dr. Kathy Coffman explained that the test she is most familiar with is OraSure or Oraquick. This test has minimal cost because there is no laboratory time and results are available in as little as 20 minutes. With minimal training, it can be performed by almost anyone. With the quick turn-around, if a test comes back positive, any potentially affected parties can be treated to prevent transmission.
- The main concern in Maricopa County has to do with what department will be financing the tests.

ACTION ITEM: Judge Reinstein will talk to Jerry Landau about the possibility of making a legislative change.

ACTION ITEM: Judge Donahoe will have Karen Westover contact Larry Farnsworth to set up a meeting with various agencies in Maricopa County to discuss how they will proceed.

D. New ACJA Forum

AOC recently developed a new electronic forum for pending Arizona Code of Judicial Administration proposals. The new ACJA Web Forum (similar to the Rules Forum) can be found at: <http://azdnn.dnnmax.com/Default.aspx?alias=azdnn.dnnmax.com/forumacja>.

This forum is designed to enable committee members and others to review and comment on proposed ACJA sections. Staff responsible for these sections will review comments in order to make modifications to drafts and bring issues forward for AJC. To comment on any proposed code section, registration is required; however, registration is not necessary for read only/ review access.

E. Strategic Planning Review

This item will be discussed at a future meeting.

F. Work Group Updates

1. Restitution

The restitution work group is in the final stages of reviewing the restitution webpage. The current focus is keeping the information as brief as possible so that readers do not have to search through pages of information. They also focused on using resources already available, for example, the website has a link to Maricopa County Adult Probation's page for frequently asked questions about restitution.

2. Children in the Courts

The Children in the Courts workgroup initially wanted to get the Child Dependency Attorney Guidelines reflected in court rules; however, the Arizona Judicial Council did not support the recommendation citing concerns for the attorney discipline issues and the impact to rural counties. The new focus is getting the guidelines implemented as Attorney Best Practice Standards.

At an earlier COVIC meeting, it was recommended that this be implemented as a change to the Arizona Code of Judicial Administration. The following judges will be consulted to help with this process: Judge Escher, Judge Brutinel, Judge Nelson and Judge Davis.

Discussion:

- This workgroup needs to be mindful of the challenges faced in rural counties when it comes to finding counsel for children.
- This workgroup might also want to look at attorneys for children in criminal and other legal matters.
- Judge O'Neil cautioned against trying to do too much. The focus should be narrow and once it is in place, it will be easier to build upon at a later time.

3. Administration of Justice

Judge O'Neil volunteered to chair the workgroup. One item that he would like to discuss is looking at how courts address victims' needs when there are both criminal and civil cases. In New Jersey, a criminal judge can establish an injury and place a judicial order of liability. Once the finding is established, the civil case solely needs to determine damages. This same idea may be helpful in a variety of case types in Arizona, including dissolution of marriage.

Please contact Carol Mitchell, Judge Reinstein or Judge O'Neil to participate in this workgroup.

III. Business

A. Next Meeting:

February 5, 2010
10:00 a.m.
State Courts Building
Phoenix, AZ 85007
Conference Room 119 A/B

B. Call to the Public

Ms. D.K. called in to give an update on her situation as described at the September 2009 COVIC meeting. She had several questions to be answered: Are all appellate opinions public? Judge Reinstein explained that they are public. She also asked, when a case is sealed in Superior Court, does the seal follow the case to appellate court? Follow up was done after the meeting to determine that the seal does not follow the case when it is appealed. Ms. D.K. also explained that she is still having problems removing her name from West Law. She and her sister are hesitant to get counseling through their private health insurance because of other stories they have heard about benefits being revoked. Arizona Voice for Crime Victims will reconnect with Ms. D.K. next week.

ACTION ITEM: Judge Reinstein will follow up with Judge Timmer on the progress of the volunteer work group that was assembled to review old opinions for information that needs to be redacted.

C. Adjournment

The meeting adjourned at 12:16 p.m.

DRAFT