

Commission on Victims in the Courts
DRAFT MINUTES
Friday, November 14, 2008
10:00 am to 2:00 pm
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 345A/B

Members Present:

Ms. Patricia Bigwood
Ms. Sarah Vasquez for Mr. Michael Branham
Dr. Kathryn Coffman
Mr. Paul Ahler for Mr. Edwin Cook
Ms. JoAnn Del Colle (Telephonically)
Ms. Karen Duffy
Cpt. Larry Farnsworth
Ms. Daisy Flores (Telephonically)
Ms. Leslie James
Mr. Dan Levey
Hon. Anna Montoya-Paez
Hon. William O'Neil
Mr. Paul Prato
Hon. Ronald Reinstein (Chair)
Hon. Antonio Riojas, Jr.
Hon. Richard Weiss

Members Absent:

Attorney General's Office Representative
Hon. Lex Anderson
Mr. James J Belanger
Ms. Sydney Davis
Hon. Carter Olson
Mr. Doug Pilcher
Ms. Karen Sullivan
Mr. Steve Twist
Ms. Kathy Waters

Presenters/Guests:

Hon. Anna Baca
Ms. Libby Bissa
Ms. Stephanie Bradley
Ms. Jennifer Greene
Mr. Bob James
Ms. Kim Knox
Mr. Bill Owsley
MCAO staff

Staff:

Ms. Carol Mitchell
Ms. Kimberly Reid

I. Regular Business

A. Welcome and Opening Remarks

The November 14th meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:10 am. The Chair announced that Sydney Davis is not at the meeting today because she is involved in a theatrical production.

B. Approval of September 12, 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.*

Announcement: Reappointments will be taking place shortly. For those whose terms are expiring, please inform Carol Mitchell if you would like to be reappointed.

II. Business Items / Potential Action Items

A. Criminal Rule 10.5 Petition

Hon. Anna Baca spoke on the petition. She noted that the data cited in this rule petition is from 2005. This rule states that once a case has been placed into case transfer, if it is not scheduled to be heard in the next 24 hours, there must be 5 business days notice of the later scheduled date. Currently almost all cases are removed from case transfer within 2 days. Judge Baca presented a statistical overview for the number of days cases were waiting in case transfer: 2006= up to 40 days; 2007=up to 20 days and in 2008 the average time is less than 2 days. The Court's position is that this rule change would add a significant waiting time.

Discussion:

- Dan Levey brought up concerns about the amount of notification time needed for victims to make new arrangements for childcare and work. Judge Baca responded that because the trials are only being delayed by such a short amount of time this shouldn't be an issue.
- Leslie James hypothesizes that perhaps this rule is proposed to continue the new case transfer methodology though formal administrative changes.
- Bob James says that this rule guarantees delays that the current system is able to overcome.
- The petition was filed in September of this year, so some people apparently the petitioners still think this is a problem.

MOTION: To postpone a vote on this rule until the next meeting when Mr. Twist and members from the Maricopa County Attorney's Office are available for comment and the vote can fall within the comment period. *Motion seconded and passed unanimously.*

Action Item: Ensure that a representative from the Maricopa County Attorney's Office and Mr. Steve Twist is available at the next meeting for comment/questions.

B. Restitution Research/Rule Conflict

Ms. Jennifer Greene presented information regarding the updated rule changes. She found two federal district court opinions on the stay of disbursement of restitution pending appeal. In both cases the government had to reimburse the defendants whose appeals were successful. A process to address this potential problem should be created before the situation comes up.

Discussion

- Mr. Paul Prato thinks that this proposed rule conflicts with 13-804(D), limiting the discretion to hold or disburse payments. By allowing the courts to hold the payments until the appeal has been decided, a balance has been reached. Additionally, he this could open the victim up to further problems if the appeal is successful and victims have to repay the defendant or possibly face a civil lawsuit. Finally, a balance should be found between defendant's due process rights and victims' constitutional rights.
- Hon. Riojas thinks that this rule could have massive implications on the limited jurisdiction courts. Currently judges are staying restitution orders upon appeal so the defendants aren't paying into the system until the appeal is decided on.
- Hon. O'Neil: This rule opens the door for more people to file a rule 32 stay of the restitution order. The rule needs to recognize the two different world of the court; limited and general jurisdiction.
- Mr. Levey: when a case is reversed we are always open to litigation whether there is restitution or not.

Motion: To approve the rule petition and request that it is forwarded through the rule process. *Motion seconded.*

Motion to Amend: Only amend Rule 31.6 and Rule 103 and exclude the references to Superior Court Rules of Appellate Procedure and limited jurisdiction courts. *Motion to amend seconded and passed unanimously.*

Original motion with the amendment passed with 14 aye and 2 nay votes.

Action Item: Carol and Jennifer will make the necessary changes to the rule petition to include it in the AJC mailing that will occur on Monday 11/17/08.

C. Child in the Court Rule Petition Proposal

Dr. Kathy Coffman and Bill Owsley presented the proposal. The proposal is based on the ABA standards for child representation. The biggest struggle in the process was determining whether to follow the GAL or the attorney model in the rule petition. The basic overview of the rule is to set up standards by which attorneys and GALs representing children must follow, so that child victims/clients receive the improved representation.

Discussion

- Judge O'Neil applauds this proposal because it has vision. He thinks that discovery and flexibility are extremely important.
 - The Attorney and the GAL should never be the same person.
 - The words "abuse and neglect cases" should be removed from the title. None of these standards should be limited to certain cases. It should be all cases in which they are representing the child.
 - These rules should be part of a Code of Judicial Administration.
- Judge O'Neil recommended the following changes :
 - Part I, Item B-1 (1) - "without cost" should be added.
 - Page 2, footnote 2 should be added as a rule instead of a comment.
 - Page 3, C-1. The last sentence should read, "The attorney and guardian ad litem may use trained and qualified staff to conduct visits with the child following *any hearing*"
 - Page 5, Item D-5. Remove "dependency proceeding" from the sentence, "...the child who is the subject of a dependency proceeding shall be present."
 - Page 5, Item D-5. Remove "of the child" from the sentence, "Upon motion of the child, the court may enter a written order..."
 - Page 8, Item G. Remove "dependency" because these rules apply to more than just dependency cases.

MOTION: To forward on and to be considered by the Arizona Judicial Council for the amendment to the rule and for consideration as part of the Administrative Judicial Code (including the changes discussed today). *Motion seconded and passed unanimously.*

Announcement: Mr. Owsley will be representing this item at AJC as Judge Reinstein and Dr. Coffman will be out of town.

D. Proposed 2009 Meeting Dates

MOTION: To approve 2009 meeting dates: February 6th; May 8th; September 11th and November 6th. *Motion seconded and passed unanimously.*

E. Fatality Review Presentation

Libby Bissa conducted a presentation as part of the City of Phoenix Domestic Violence Fatality Review Team. The presentation included information about the team, their most recent fatality review and how it impacts the courts. She also passed around a Fatality Review Sheet.

III. Business

A. Next Meeting:

February 6, 2009
State Courts Building
Phoenix, AZ 85007

B. Call to the Public

None.

C. Adjournment

Quorum was lost during the last presentation, effectively ending the meeting without adjournment.