

**Committee on Criminal Rules Regarding Victims**

**State Courts Building, Phoenix**

**Meeting Minutes: January 20, 2022**

**Members attending:** Hon. John R. Lopez IV (Chair), \*Hon. Ronald Reinstein (Vice Chair), \*Tim Agan, \*Colleen Clase, Hon. Maria Elena Cruz by her proxy Hon. Kent Cattani, \*Ryan Green, Hon. Kellie Johnson, \*Hon. Patti Starr, \*Rick Unklesbay, \*Hon. Maria Del Mar Verdin, \*Cathryn Whalen

**Guests:** \*Theresa Rassas

**AOC Staff:** Mark Meltzer, Angela Pennington, \*Theresa Barrett, \*Jennifer Albright, \*Sabrina Nash

\*indicates virtual attendance

**1. Call to order; introductory remarks; approval of meeting minutes.** The Chair called the tenth meeting of the Committee on Criminal Rules Regarding Victims (“CRV”) to order at 10:04 a.m. The Chair, Judges Johnson and Cattani, and two staff members were present in the meeting room; others attended by Zoom. The Chair briefly reviewed materials in today’s meeting packet, which were posted on the CRV webpage on January 12, 2022.

The meeting packet included Administrative Order No. 2021-82, which was entered on December 8, 2021 and extended to July 1, 2022, the CRV’s term, the terms of its members, and the deadline for the Committee to submit its recommendations. The Chair advised members that in September 2021, he and staff had informed the Court that the Committee had recommended no changes to the Criminal Rules. The Court acknowledged the votes taken during the CRV’s September 2, 2021 meeting recommending no changes to the Criminal Rules, but the Court indicated that it was not satisfied with that recommendation. Instead, the Court iterated that it saw value with integrating victims’ rights into those rules.

The discussion the Chair and staff had with the Court laid the foundation for staff’s revised set of amendments known as the “section (v) approach.” The documents in today’s packet display a full set of amendments utilizing that approach. The section (v) approach integrates victims’ rights into the other criminal rules by locating the current victims’ rights provisions contained in those rules within a new section (v) of each respective rule. Each section (v) has the uniform title “victims’ rights.” The section (v) approach retains current Rule 39 without alterations, thereby addressing stakeholder concerns with the version offered by the Arizona Voice for Crime Victims (“AVCV”), which would have abrogated Rule 39. Because the section (v) approach fully integrates

victims' rights, it reduces the likelihood that some victims' rights might be overlooked. The section (v) approach also avoids many of the stylistic pitfalls embedded in the AVCV's draft, while also adopting a number of substantive changes that the AVCV's draft had proposed.

The Chair observed that ultimately, CRV members might not have unanimous support for the section (v) approach. He requested their cooperation, however, in reviewing each of the section (v) rules and making the set the best possible product for the Court's consideration. The Chair then opened his preliminary remarks for further discussion.

Several members, including Ms. Clase and Judge Verdin, expressed support for the section (v) approach, provided the Committee has an opportunity to review each proposed provision and make necessary modifications. Another judge noted that section (v) is helpful because it separates the other sections of each rule, which apply to parties, from the section that exclusively applies to victims. Other members agreed that the section (v) product is more readable and transparent but did not believe it was necessary and that even if it was eventually adopted, some judicial officers would continue to be outliers. These members believed that Arizona is already a strong supporter of victims' rights, and that Rule 39, the state constitution, and Arizona statutes ("the other authorities") work well and adequately serve the best interests of victims. They also expressed concerns that the new rules could increase litigation.

The Chair invited Ms. Rassas to comment. Ms. Rassas said that she had already begun comparing the section (v) rules with the other authorities, but it is an arduous and time-consuming process. She has to-date reviewed only the first 7 of 57 pages of staff's section (v) draft, but she will continue her review and contact CRV members for assistance if necessary. The Chair added that the review should not require that she duplicate work she had previously done, i.e., preparing the Rassas/Twist table, and both the Chair and other members expressed their appreciation for Ms. Rassas' continuing analysis.

The Chair then requested members to review draft minutes of the September 2, 2021 meeting. Members had no corrections or comments to the draft.

**Motion:** A member moved to approve the draft September 2, 2021 meeting minutes. The motion received a second and it passed unanimously. **CRV-011**

**2. Rule-by-rule review.** Members then proceeded to a rule-by-rule review of the section (v) provisions. Generally, a rule is not mentioned in these minutes if there was no proposed modification to the rule. Unless noted otherwise, members approved the provisions and modifications discussed below.

**Rule 1.1 (“scope”) and Rule 1.2 (“purpose and construction”).** Staff made no changes to Rule 1.1. A staff note suggested that even though Rule 1.2 referred to “crime victims,” no section (v) was necessary, and members concurred.

**Rule 1.3 (now, “computation of time,” and as proposed, “victim participation”).** This new Rule 1.3 would locate the first mention of victims’ rights in a prominent place, i.e., Rule 1.3, at the beginning of the Criminal Rules. New Rule 1.3 would displace the current rule on computation of time, which would be relocated as Rule 1.10. Staff’s draft of Rule 1.3 said in part, “...pursuant to the rights provided by Rule 39 and in section (v) (‘victims’ rights’) of other rules.” One member suggested adding in that phrase a reference to Article II, Section 2.1 of the Arizona Constitution. After discussion, members agreed to modify the phrase to say “...pursuant to the rights provided by law, including rights detailed in Rule 39 and in section (v) (‘victims’ rights’) of these rules.” “By law” would incorporate not only the constitution and statutes, but also case law on victims’ rights, which is an important component of those rights.

In the draft comment to Rule 1.3, members considered adding a reference to law enforcement in the phrase “to assure that victims, judges, and attorneys are aware of these rights,” but inasmuch as the rules apply to court proceedings, they declined to do so. Members agreed to stylistic changes to the comment, i.e., changing “other rules” to “these rules,” deleting “more importantly” at the beginning of the second sentence, and changing “these rules should help assure” to “these rules is an attempt to assure.”

**Rule 1.4 (“definitions”).** The members’ discussion of Rule 1.4 focused on the definition of “victim.” Staff proposed alternative definitions of that word, one of which simply cross-referenced the definition in A.R.S. § 13-4401; the other definition paraphrased the statute. Staff noted that paraphrasing the statute would allow readers to comprehend the meaning of “victim” without looking up the statutory definition. After discussion, members agreed to a modification of the paraphrased definition, as follows:

‘Victim’ means a person or entity against whom the criminal offense has been committed or a representative who is designated or appointed to act on their behalf. If the person against whom the offense was committed was killed or incapacitated, ‘victim’ includes the person’s spouse, parent, child, grandparent, or sibling, or another individual specified in A.R.S. § 13-4401, unless that person is in custody or is the accused.

Members declined to include staff’s proposed sentence, “if there is more than one victim in a case, the word ‘victim’ means each victim,” because they considered that concept to be apparent.

**Rule 1.5 (“interactive audiovisual system”).** In subpart (v)(2), and upon Ms. Rassas’ recommendation, members added the words “if requested” (i.e., “the victim if requested must be notified of the rescheduled court date.”) This revision led to a broader discussion about the desirability of adding a new rule about how the victim would make such a request, that is, how the victim “opts in.” The new provision would not only be informative, because the subject is not currently addressed in the rules; but it could also avoid the necessity of repeatedly saying “if requested” throughout the rules. Members asked Ms. Rassas to draft text on this subject that could be included in Rule 1.3. Ms. Rassas agreed to do so, and she will coordinate with staff on the specific language and organization of the new provision.

Members discussed the logistics of “a means to view and participate in the proceeding” that is now in subpart (v)(1) and is in current subpart (b)(3)(B), but they made no resulting changes to this provision or to other text in Rule 1.5.

**Rule 1.7 (“filing and service of documents”) and Rule 1.8 (“clerk’s distribution of minute entries and other documents”).** The only changes to these rules were corrections of erroneous cross references in the respective section (v)’s.

**Rule 1.9 (“motions, oral argument, and proposed orders”).** Members had no changes to the text of subpart (v)(1) (“in the trial court”), but they discussed and made changes to subpart (v)(2) (“special action”). Specifically, members changed the order of the phrasing; used a reference to Rule 2(a)(2) rather than to Rule 2(a); and declined to use the phrase “denying any right guaranteed to victims” that is utilized in Rule 2(a)(2) of the Rules of Procedure for Special Actions. The members agreed-upon provision says:

Under Rule 2(a)(2) of the Rules of Procedure for Special Actions, a victim may file a petition for special action seeking relief from an order affecting any victim’s right guaranteed by law.

**Rule 1.10 (“computation of time”).** This rule was relocated from Rule 1.3. The objective of section (v) is to require victims to compute time in the same manner as parties. Members made no changes to the draft.

**Rule 2.3 (“content of complaint”).** Staff noted that current Rule 2.3 requires the prosecuting agency to notify the clerk when it files a charging document alleging specified sex and other offenses or if the victim was a juvenile at the time of the offense. Staff did not believe this provision implicated a victims’ right that needed to be detailed in section (v). Members agreed with staff’s conclusion.

Staff’s draft of Rule 2.3, however, included a section (v) that concerned the right of a victim to confer with the prosecutor before a decision not to prosecute became final. After discussion, members saw no need for this provision because there would not be a

pending criminal case at the time of the prosecutor's declination, that is, there would be no case to which the right would attach. The prosecutor's duty arises from statute, and although it would be improbable, a victim could independently bring an action to enforce the right. Members therefore unanimously agreed to delete proposed Rule 2.3(v).

**Rule 3.2 ("content of a warrant or summons").** Rule 3.2(a)(1)(C) requires a warrant to state whether the offense is one to which victims' rights provisions apply. Members agreed that this subpart does not require a section (v) provision.

**Rule 4.1 ("procedure upon arrest").** The first sentence of Rule 4.1(v) references two Title 13 statutes:

Upon request, the victim must be informed of the date, time, and place for the defendant's initial appearance in accordance with A.R.S. §§ 13-4406 and 13-4409.

Minutes of the Committee's May 21, 2021 meeting, at page 3, say,

Proposed Rule 4.1 ('prompt initial appearance') contains this new sentence: 'Upon request, the victim must be informed of the date, time, and place for the initial appearance in accordance with 13-4406 and 13- 4409 [sic]' The underlined language derived from the Rassas/Twist table ....

After further consideration of these statutes, members agreed that A.R.S. § 13-4409 is generally not pertinent to Rule 4.1, and they deleted the reference to that statute.

**3. Roadmap.** Ms. Rassas' review of the section (v) rules concluded with Rule 4.1. The Chair accordingly suggested that members adjourn today's meeting pending her continuing review of the rules. Members agreed with this plan. Following discussion, members agreed to reconvene on Friday, March 25, 2022, beginning at 10:00 a.m. The March 25 meeting, like today's meeting, will be in a hybrid format.

The Chair announced that Ms. Pennington has received a promotion within the AOC, and she will not be able to continue to staff this Committee. The Chair thanked Ms. Pennington for her proficient and dedicated service during the past year.

**4. Call to the public; concluding remarks; adjourn.** There was no response to a call to the public.

The meeting adjourned at 12:18 p.m.