IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of: ESTABLISHING STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN AND PARENTS IN DEPENDENCY, GUARDIANSHIP AND TERMINATION PROCEEDINGS	Administrative Order No. _____

Pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that not later than July 1, 2010, the superior court in each county shall establish standards of practice for lawyers who represent children and parents in dependency, guardianship and termination proceedings including lawyers appointed as guardian ad litem.

At a minimum, these standards shall include provisions that:

1. **Establish general authority and duties.** This should address the responsibilities of the attorney from appointment through dismissal of the case.
2. **Establish minimum client contact/communication requirements.** This should address the contact/communication expected before and after substantive court hearings and when apprised of significant events impacting on the client.
3. **Establish general training/competency requirements.** This should include ongoing educational requirements for attorneys practicing in this area as well as the training required for newly appointed attorneys.
4. **Establish caseload requirements.** Attorneys representing children and parents must have caseloads that allow them to perform the duties required under these standards.

The Court recommends that each county take the following materials into consideration when developing standards: American Bar Association's *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* and *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*; National Association for Counsel for Children's Revised Version of the ABA Standards; Arizona Administrative Office of the Courts' *Statewide Standards and Training Guidelines for Attorneys in Dependency Court*; the standards set forth in the National Council of Juvenile and Family Court Judges' *Resource Guidelines*; *The Child's Attorney* by Ann Haralambie; and Children's Action Alliance's *Hearing Their Voices – Children and Their Legal Representation in the Dependency Court*.

IT IS FURTHER ORDERED that each county shall provide a copy of its standards to the Chief Justice for approval by July 1, 2010.

IT IS FURTHER ORDERED that the Administrative Office of the Courts (AOC) shall establish a statewide training that may be used by counties in fulfilling their training requirements for newly appointed attorneys.

Dated this _____ day of _____, 2010.

_____
REBECCA WHITE BERCH
Chief Justice

Statewide Standards and Training Guidelines for Attorneys in Dependency Cases

A. Statewide standards for attorneys in dependency cases.

1. Attorneys must be familiar with the standards for representation set forth in the National Council of Juvenile and Family Court Judges AResource Guidelines@.

2. Attorneys for children must be familiar with the American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases.

3. Attorneys appointed for children must clarify whether their appointment is as a GAL or as attorney and the ethical obligations associated therewith.

4. Attorneys have an obligation to inform their clients about the nature of the proceedings, the attorney=s role, the possible outcomes of each hearing, and the consequences of the clients participation or lack of participation.

5. Attorneys must participate in discovery, file the appropriate pleadings and develop the client=s position for each hearing. This may include identifying appropriate family and professional resources for the clients, as well as subpoenaing witnesses to testify in support of the client=s position.

6. Attorneys must personally meet with their client prior to the Pre-Hearing Conference. Attorneys for children, must meet with clients prior to a hearing. Pre-verbal client meetings should take place in the minor=s placement.

7. Attorneys must have some meaningful contact with their clients prior to every substantive hearing. There may be older children who cannot speak, but still should meet with attorney. To determine the pre-verbal child=s position, attorneys must contact caretakers, case managers, daycare providers, CASAs and relatives. If the minor=s placement is at issue, contact with the pre-verbal minor should be at the minor=s placement. Substantive hearings include all preliminary protective hearings, dependency contest, review hearings and motions involving placement, visitation or services.

8. To the extent possible, attorneys should attend or provide input to CPS staffings and Foster Care Review Board reviews.

9. Attorneys may use appropriately trained support staff to perform the contacts noted in items 4, 6 and 7 above. Support staff performing these contacts must adhere to the standards noted herein.

10. Attorneys should identify any potential and actual conflicts of interest that would impair their ability to represent a client. Specifically, attorneys for children should determine if the appointment of a guardian ad litem is necessary, or if the appointment of another attorney is required to represent siblings with different positions.

11. Attorneys for children should determine whether their clients should appear at Court hearings by assessing the client=s desire to attend, type of hearing, client=s age, emotional and intellectual functioning, and impact on the minor.

12. Attorneys should be knowledgeable of the child welfare and related systems serving children (i.e., behavioral health, DDD, AHCCCS) and should be aware of the State and local community based service providers and organizations that can assist clients regarding financial assistance, counseling support and other reunification services and know how to access these services.

B. Training Curriculum for Attorneys Appointed in Dependency Case Proceedings.

1. Attorneys must be familiar with the substantive dependency law. Attorneys have an obligation to stay abreast of changes and developments in relevant Federal and State laws, state regulations, and relevant court decisions. They should also receive training on child development, substance abuse, behavioral health and other common issues including the affects of child abuse and neglect.

2. Attorneys must attend an initial training program (such as the State Bar=s >Juvenile Dependency in a Nutshell= program) designed to educate them about dependency procedures and other related topics. (See Exhibit A)

3. The presiding juvenile court judge in each county may modify these standards for good cause.

C. Compensation

The juvenile court shall assist the attorneys to meet the standards by paying them in a manner commensurate with other attorneys providing indigent legal representation and assisting in developing or making programs accessible.

Exhibit A: Sample Training

Adoptions

Ethics

Juvenile Court Survival Training

Changes in Dependency and Severance Statutes

The Role of Mediation in Dependency Cases

Child Sexual Abuse and the Family B Treatment

The Use of Psychological Evaluations with Parents and Children

Domestic Violence

Bonding and Attachment Disorder

Kids Care

Center for the Difficult Child

Model Court Multi Disciplinary Training

The Realities of Addiction

NCJFCJ Mediation Training

Family Assistance Administration Eligibility

Contract Attorney Dependency Training

SUPERVISION THAT REDUCES CRIME: EVIDENCE BASED PRACTICES

Kathy Waters, Adult Probation Services, Arizona Supreme Court

Sentencing Purposes

- **Public safety**
  - Protect public from this offender through control mechanisms
- **Deterrence/Punishment**
  - Deliver a message to offender and community that behavior will not be tolerated
- **Risk reduction**
  - Reduce likelihood that offender will commit future crime
- **Victim/Community restoration**
  - Hold offender accountable to victim and community he harmed by requiring actions to restore those he hurt

Why Policy Makers Care About EBP

- Improves outcomes, especially recidivism
- Reduces victimization
- Prevents harm
- Enhances collaboration
- Establishes research-driven decision making
- Targets funding toward the interventions that bring greatest returns

Definition

Evidence Based Practices: A progressive, organizational use of direct, current scientific evidence to guide and inform efficient and effective correctional services.

Forerunner Was Evidence Based Medicine

- 1836: Bloodletting was routine
- French physician Pierre Louis: One of first clinical trials in medicine
- Found bloodletting was linked to far more deaths
- **Too Late for George Washington:** Died two days after treated for sore throat by draining almost five pints of blood

What Have We Learned in the Past Fifteen Years?

?

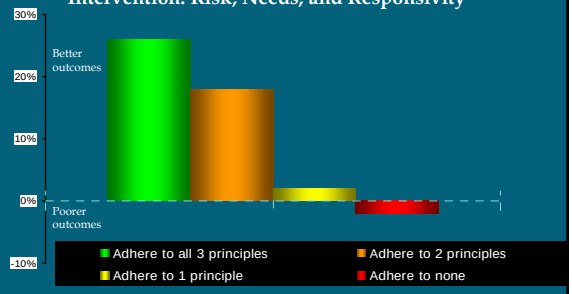
The 8 Principles of EBP

1. Assess risk/need
2. Enhance intrinsic motivation (engaged in treatment)
3. Target interventions
   - Risk Principle
   - Need Principle
   - Responsivity Principle

The 8 Principles of EBP

4. Skill train (Practice)
5. Positive reinforcement
6. Support in natural communities
7. Measure process
8. Provide feedback

Impact of Adhering to the Core Principles of Effective Intervention: Risk, Needs, and Responsivity*



* meta-analysis of 230 studies (Andrews et al., 1999)

Assessment Is Based on the Risk and Need Principles

Risk is based on likelihood of re-offense

- Actuarial tools get better results
- Best if validated on own population
- Most tools do not distinguish on level of offense
- Some tools target kind of offense (e.g., sex, domestic, DUI)
- Risk tools do not serve as good institutional classification devices
- Cost and time are major factors
- Most need additional tools
  - E.g., Hare, SONAR, SARA, etc.

Assessment: Uses for Community Corrections

- Pre-sentence recommendations to Court (if permitted)
- Initial classification (level of supervision)
- Case planning/determining interventions
- Progress monitoring
- Intermediate sanctions
- Recommendations for revocation/disposition (if permitted)

Two Types of Variables

STATIC

Historical, unchangeable

E.g.: Age at first arrest
Childhood factors

DYNAMIC

Potentially changeable

E.g.: Attitudes
Use of substance
Control of anger

Assessment is Based on the Risk and Need Principles

Needs based on life and personal conditions:

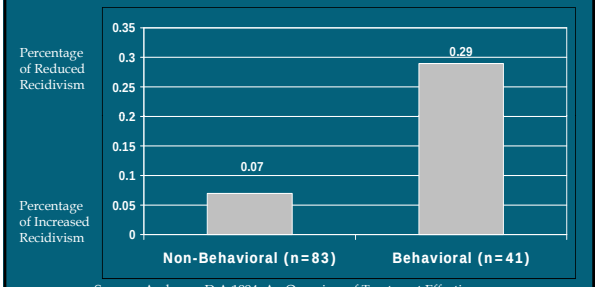
- Are dynamic as opposed to static
- Are predictive
- Provide the ingredients for a case intervention
- Can be measured over time to determine effectiveness
- If done correctly, can drive major correctional policy
- E.g., discharge, release, conditions, admissions

What Does Work

Features of Effective Interventions:

- Target criminogenic risk and need
- Cognitive/behavioral in nature
- Incorporate social-learning practices
- Balanced integrated approach to sanctions and interventions
- Incorporate the principle of responsivity
- Therapeutic integrity

Behavioral vs. Non-Behavioral



Source: Andrews, D.A.1994. An Overview of Treatment Effectiveness. Research and Clinical Principles, Department of Psychology, Carleton University.

Risk

- Assessment should be done as early on in the criminal justice process as possible
- Assessment should be conducted using a standard risk and need assessment
- Sentences should be based on that assessment
- Supervision should be based on that assessment
- Referrals for service should be based on that assessment
- Should be targeting HIGH RISK OFFENDERS for most intensive services

Dealing with Risk Levels

- Low Risk = Risk Management
  - Least restrictive intervention
- Medium to high risk= Risk Reduct
  - Reducing risk factors by targeting dynamic criminogenic needs
- Extreme High Risk = Risk Control
  - Use of external controls- not treatment

Strategies for Low Risk Offenders

- Fewer criminogenic needs
- Do NOT need intensive interventions/services
- Should receive services for a shorter amount of time
- Do not require as much monitoring/supervision as high risk offenders
- Consequences of placing low risk offenders into intensive programming:
  - At best, no change in their probability of re-offending
  - At worst, an increase in their probability of re-offending

Strategies for High Risk Offenders

- Should receive more intensive interventions for a longer period of time
  - Referrals/orders to the treatment providers that have separate treatment groups for higher risk offenders
  - Make referrals/orders so that higher risk offenders receive more services
- Should be monitored more closely
  - More contacts/reporting
  - More drug testing if necessary
  - Have strategy in place for violations

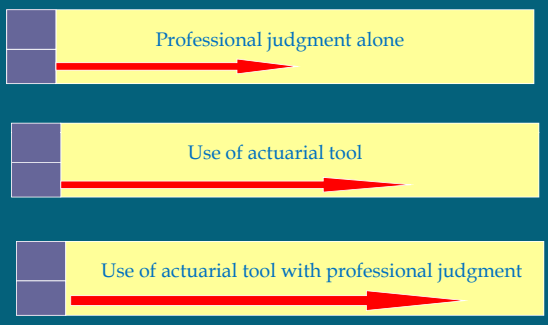
What Works?

- Target criminogenic risk and need based upon assessment
- Programming that is Cognitive/behavioral in nature
- Incorporate social-learning practices
- Balance sanctions and interventions
- Incorporate the principle of responsivity into treatment and case planning

Protective Factors

- Pro social family
- Pro social peers
- Performance in school or job
- Positive relationship with spouse
- Positive parental relationship
- No alcohol or drug problems
- Makes good use of time

Results Driven Practice



The Big Four

Criminogenic Need	Response
History of anti-social behavior	Build non-criminal alternative behaviors to risky situations
Anti-social personality	Build problem solving, self management, anger management, and coping skills
Anti-social cognition	Reduce anti-social cognition, recognize risky thinking and feelings, adopt an alternative identity
Anti-social companions	Reduce association with criminals, enhance contact with pro-social

Source: Ed Latessa, Ph.D.

The Next Four

Criminogenic Need	Response
Family and/or marital	Reduce conflict, build positive relationships and communication, enhance monitoring/supervision
Substance abuse	Reduce usage, reduce the supports for abuse behavior, enhance alternatives to abuse
School and/or work	Enhance performance rewards and satisfaction
Leisure and/or recreation	Enhance involvement and satisfaction in pro-social activities

Source: Ed Latessa, Ph.D.

Need Principle

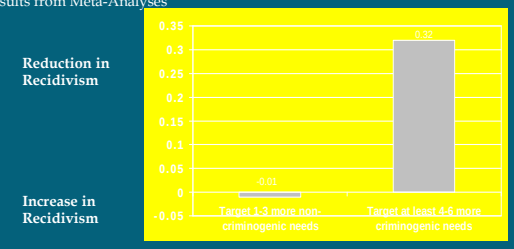
By assessing and targeting criminogenic needs for change, agencies can reduce the probability of recidivism

Criminogenic:
- Anti social attitudes
- Anti social friends
- Substance abuse
- Lack of empathy
- Impulsive behavior

Non-Criminogenic:
- Anxiety
- Low self esteem
- Creative abilities
- Medical needs
- Physical conditioning

Targeting Criminogenic Need

Results from Meta-Analyses



Source: Gendreau P., French S.A., and A. Taylor (2002). What Works (What Doesn't Work) Revised 2002 Invited Submission to the International Community Corrections Association Monograph Series Project

A Balanced Approach

Risk Management (low risk)
- Involves providing least restrictive, most appropriate sanctions & supervision

Risk Reduction (moderate-high risk)
- Involves determining criminogenic needs and reducing risk factors through effective intervention & appropriate supervision

Risk Control (extreme high risk)
- Involves techniques that control risk of re-offending while under correctional authority

Social Learning

- OBSERVATION AND MODELING of behavior, attitudes, and emotional reactions of others is the basis of social learning.
- Social Learning Theory suggests that most human behavior is learned observationally from others.

Cognitive Behavioral Approaches Based on Social Learning Theory

Cognitive Restructuring

(What we think: content)

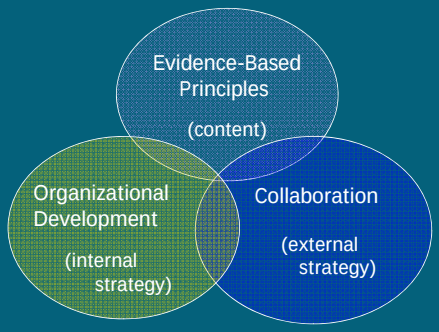
Cognitive Skills Development

(How we think: process)

Behavioral Strategies

(Reinforcement and modeling pro-social behavior)

The Integrated Model



Best Sources for "Cleaned Up" Research

Links from NIC website: http://www.nicic.org/WebPage_387.htm

- **Washington State Institute for Public Policy**: Conducts evaluations of evidence-based offender treatment interventions in the State of Washington
- **Center for the Study and Prevention of Violence, University of Colorado:** Conducts studies, provides information, and offers technical assistance regarding violence prevention
- **The Corrections Institute, University of Cincinnati**: Assists agencies seeking to change offender behavior
- **Bureau of Government Research, University of Maryland**: Helps government agencies identify and implement "best practices."
- **Institute of Behavioral Research at TCU:** Studies addiction treatment in community and correctional settings
- **Campbell Collaboration**: Studies the effects of interventions in social, behavioral, and educational arenas
- **National Criminal Justice Reference Service**

Questions

?

2/4/2010

INCREASE IN MONIES FOR RESTITUTION COMING FROM THE DEPARTMENT OF CORRECTIONS

RESTITUTION PAYMENTS FROM THE DEPT OF CORRECTIONS TO THE MARICOPA COUNTY CLERK'S OFFICE

PAYMENT MONTH	Calendar year 2008		Calendar year 2009		# INCREASE		% INCREASE	
	ITEMS	DOLLARS	ITEMS	DOLLARS	ITEMS	DOLLARS	ITEMS	DOLLARS
January	3,095	$55,893	4,177	$69,745	1,082	$13,852	35%	25%
February	3,044	$54,145	4,399	$94,634	1,355	$40,488	45%	75%
March	3,099	$56,453	4,543	$101,722	1,444	$45,269	47%	80%
April	3,137	$64,396	4,470	$93,061	1,333	$28,666	42%	45%
May	3,118	$63,240	4,388	$87,041	1,270	$23,801	41%	38%
June	2,980	$56,249	4,349	$94,849	1,369	$38,599	46%	69%
July	2,954	$62,060	4,300	$89,501	1,346	$27,441	46%	44%
August	3,188	$46,794	4,222	$84,021	1,034	$37,227	32%	80%
September	3,467	$51,109	4,255	$87,849	788	$36,741	23%	72%
October	3,547	$55,718	4,231	$86,031	684	$30,314	19%	54%
November	3,498	$48,419	4,213	$89,588	715	$41,169	20%	85%
December	3,623	$59,367	4,344	$114,457	721	$55,090	20%	93%
Totals to date	38,750	$673,843	51,891	$ 1,092,499	13,141	$418,655	34%	62%

DOC comparative payments 2008 to 2009

Submitted by Gordon L Mulleneaux

Addendum A

Commission on Victims in the Courts

Legislative Summary
Friday, May 21 2010

SB 1035; Guardian ad litem; child; hearings (Sen. Waring)

If the court appoints a guardian ad litem (GAL) or attorney for a minor, the GAL or attorney must meet with the minor at least once before the preliminary protective hearing (PPH), if possible, or within 14 days after the PPH. Directs the GAL or attorney to meet with the minor before all other substantive hearings. Allows the judge to modify these requirements for any substantive hearing upon a showing of extraordinary circumstances.

Statute amended: § 8-221

SB 1055; Victims' rights; disclosure of information (Sen. Paton)

Includes the court in the list of entities to which a crime victim's information may be disclosed by an advocate providing services to the victim if the victim consents and the disclosure is in the furtherance of any victim's right.

Statute amended: §13-4430

SB 1095; Access to child; notification (Sen. L. Gray)

Requires a child's parent or custodian to immediately notify the other parent or custodian if the parent knows that a convicted or registered sex offender or a person who has been convicted of a dangerous crime against children may have access to the child. The parent or custodian must provide written notice to the other parent or custodian should they find out that a sex offender or person who has committed dangerous crimes against children has access to the child. Requires the educational program and proposed parenting plan to include a statement that each parent has read, understands and will abide by the notification requirements outlined above.

Statutes amended: §§ 25-351, 25-403.02, 25-403.05

SB 1189; Admissibility of expert opinion testimony (Sen. Leff)

In a civil and criminal action, expert testimony regarding scientific, technical or other specialized knowledge may only be offered by a qualified witness. In order for the testimony to be admissible the court must determine that:

- The witness is qualified as an expert on the subject matter based on knowledge, skill, experience, training or education
- The witness reliably applied the principles and methods to the facts of the case
- The opinion will assist the trier of fact in understanding the evidence or determining a fact in issue
- The opinion is based on sufficient facts and data and is the product of reliable principles and methods

In order to determine whether the testimony provided by a qualified witness is admissible, the court shall consider, if applicable whether the expert opinion and its basis can be tested and have been subjected to peer reviewed publication, the rate of error of the expert opinion and its basis and the degree to which the opinion and its basis are accepted in the scientific community.

In essence, legislatively applies *Daubert* to Arizona, however, the bill requires the judge to apply the above enumerated factors if applicable; Daubert provides discretion to the trial judge as to whether to apply the factors.

Statute created: § 12-2203

SB 1266; Juveniles; communication devices; sexual material (Sen. Paton)

Establishes a new offense, Unlawful use of an electronic communication device by a minor. It is unlawful (delinquent act) for a juvenile to either intentionally or knowingly use an electronic communication device to transmit a visual depiction of a minor that depicts explicit sexual material. The offense is classified as either a Petty Offense or Class 3 misdemeanor depending on whether one or multiple images are transmitted. It is also unlawful for a juvenile to intentionally or knowingly possess a visual depiction of a minor that depicts explicit sexual material and that was transmitted to the juvenile through the use of an electronic communication device. This offense is classified as a Petty Offense. It is not a violation of the latter provision if the juvenile did not solicit the visual depiction, the juvenile took reasonable steps to destroy or eliminate the visual depiction or report the visual depiction to the juvenile's parent, guardian, school official or law enforcement officer, and the juvenile did not provide the visual depiction to another person.

A second offense, committed after adjudication for a first offense of either violation is a Class 2 misdemeanor. A prior diversion counts as an offense.

"Electronic Communication Device" has the same meaning as in §13-3560, "Explicit Sexual Material" means material that depicts human genitalia or that depicts nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse as defined in 13-3501, and "Visual Depiction" has the same meaning as in §13-3551.

Adds a new provision to Aggravated Assault, committing an assault under circumstances that would result in a domestic violence offense by intentionally or knowingly impeding the normal breathing or circulation of blood of another person either by applying pressure to the throat or neck or by obstructing the nose and mouth either manually or by an instrument. The offense is classified as a Class 4 Felony.

Permits the court to grant a petitioner of an order of protection the exclusive care, custody or control of any animal that is owned, possessed, leased, kept or held by the petitioner, the respondent or a minor child residing in the residence or household of the petitioner. Also permits the court to order the respondent to stay away from the animal and to forbid the respondent from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect or otherwise disposing of the animal.

Eliminates the requirement that the court provide a written notice of the effect of a second or subsequent offense to a defendant who is found guilty of a first domestic violence offense.

Adds the following to the predicate offenses for domestic violence:

- First and second degree murder,
- Manslaughter,
- Negligent homicide,
- Sexual assault,
- Intentionally or knowingly subjecting an animal in the person's care or control to cruel neglect, cruel mistreatment or abandonment that results in serious physical injury to the animal
- Intentionally or knowingly preventing or interfering with the use of a telephone by another person in an emergency.

Statutes amended: §13-1204, 13-3601

Statute enacted: §8-309

Addendum B

	Before Master Calendar	Master Calendar
Cases Continued Due to Judge Availablity (Monthly Average)	12	4
Started Trial One Day After FTD	7	4
Started Trial Two Days After FTD	2	0
Started Trial Three or More Days After FTD	3	0

Addendum C

MEMORANDUM OF RESTITUTION DELINQUENCY

TO: **The Honorable Judge Smith** | DIVISION: **CRJ00**

FROM: **Joseph Jones Probation Officer, APO** PHONE: **602-619-0000** DATE: **08-06-2009**

DEFENDANT: **Steven Smith** CASE NUMBER: **CR2000-000000-000**

Probation Start Date: **01-01-2008** Probation Length: **Three Years**

Reinstatement/Extension Date: Probation Length: From:

RESTITUTION ORDER: **$1,000.00**

MONTHLY PAYMENT: **$50.00**

BALANCE DUE: **$980.00**

DELINQUENCY TO DATE: **$100.00**

Pursuant to Administrative Order No. 94-16, the Court is hereby notified that the aforementioned Defendant is delinquent in an amount totaling two full court ordered monthly payments of restitution.

The delinquency/nonpayment is attributed to:

( ) Unemployment (X) Underemployment ( ) Medical Problems ( ) Inpatient Treatment ( ) Incarceration

( ) Other:

The delinquency/nonpayment is expected to last at least **6 months**. No Court action is recommended at this time. In an effort to remedy the delinquency/nonpayment the defendant will be referred to:

(X) Job Search (X)Collections Unit (X) Payment Plan (X) Budget Class (X) Restitution Court

A Petition to Revoke Probation was considered based upon the financial non-compliance. However, given the action outlined above, this officer will continue to work with the probationer to ensure regular payments. If it becomes necessary, further notification to the Court will be made via a memorandum or Petition to Revoke Probation.

DIRECTION:

☐ **Approved as recommend above**

☐ **Prepare and Submit a Petition to Revoke Probation with: ☐☐Summons ☐Bench Warrant**

☐ **Direct the defendant to appear before this Court, pursuant to ARS 13-810, on _____ at _____ at the following address and courtroom: _____**

☐ **Take the Following Action: _____**

Dated this _____ day of _____, **20__.** _____

Judge of the Superior Court

MC APD Macros **Court (original)** **Probation File** **Opt-in Victim** **Defendant** **Rev. 08/27/2008**

Daughters' rights complicate murder case

They believe father, accused of bludgeoning mother, is innocent

by **Dennis Wagner** - May. 21, 2010 12:00 AM
The Arizona Republic

PRESCOTT - There is a reason Katie and Charlotte Democker want the man accused of murdering their mother out of jail.

The defendant is their father, Steven Democker, who is now on trial in a case that could lead to the death penalty if the wealthy investment adviser is convicted.

Yavapai County sheriff's deputies gathered enough circumstantial evidence to file charges in a murder mystery that has horrified, captivated and divided Prescott from day one. They contend that Steven savagely beat his ex-wife, artist Carol Kennedy, in her Williamson Valley home nearly two years ago. They say Steven, 56, searched the Internet for information on how to disguise a homicide and bought books on how to disappear as a fugitive afterward.

"The circumstantial evidence against defendant is overwhelming," deputies say in court papers.

The sisters say their dad is not guilty - a position that puts them at odds with prosecutors in a legal battle over their rights as crime victims.

"My father, my dad, is the most compassionate, supportive, brilliant man I know," Charlotte, now 18, wrote in a prepared statement to the judge, provided to *The Arizona Republic* by her attorney. "If there is one thing I just know, it is my father is not capable of what he is accused of."

Under the Victim's Bill of Rights, a constitutional amendment adopted by Arizona voters in 1990, the young women are entitled to confer with prosecutors about decisions in the case. But, because the sisters are aligned with the defense, the Yavapai County Attorney's Office pressed them to renounce their rights, then declined communications with them.

Chris Dupont, the sisters' attorney, said they want no publicity but have been thrust into a constitutional controversy. "This is not a story about them having to choose sides," Dupont added. "They loved their mother. They love their father. And they believe he is innocent."

Steven Democker's trial is now in its third week of jury selection in Prescott. Testimony is expected to last three months, with more than 100 witnesses scheduled.

None of them will place Steven at the scene. Neither his fingerprints nor DNA was found. The murder weapon is missing.

Still, deputies gathered reams of information and statements which, they say, prove that he used a Callaway No. 7 Big Bertha III golf club to end years of financial feuding with Kennedy, whom he had recently divorced.

Defense attorneys Larry Hammond and John Sears answer in court papers that Steven had no financial motive to kill his ex-wife. They say police botched the investigation. And

they point out that DNA from three unidentified men, not Steven, was found beneath the victim's fingernails.

Grim death of Carol Kennedy

Kennedy, a psychotherapist, painter and former Prescott College faculty member, lived alone in a house on North Bridle Path, in an oak-dotted rural neighborhood a few miles north of Prescott.

Court records describe the final day of her life:

On July 2, 2008, she completed an evening jog through the hills and sat down for a phone call with her mother in Nashville.

Ruth Kennedy told detectives her daughter mentioned Steven's failure to pay alimony and discussed plans to see a lawyer. Twenty minutes into the conversation, at 7:59 p.m., there was an exclamation - "Oh, no!" - and the line went dead.

Ruth tried calling back but got no answer. She phoned other relatives. She dialed Steven, leaving a message. Finally, she contacted the Sheriff's Office.

A deputy arrived at the house and pointed his flashlight through a window, illuminating Carol Kennedy's body on the floor in a pool of blood. Someone had toppled a bookcase and moved a ladder to make it appear she had fallen.

The autopsy found Kennedy's skull was fractured in 50 or more places by at least seven blows, consistent with the strike of a golf club.

"The severity of the injuries suggests her attacker was in a rage," a search-warrant affidavit notes. "Rage often suggests a relationship between the attacker and the victim."

Moments after the body was found, Charlotte, then 16, arrived at the house with her boyfriend. Charlotte was on a cellphone with her dad when deputies advised that her mother was dead. She dropped the phone.

A deputy began speaking with Steven, who explained that family members had asked him to check on his ex-wife, but he sent Charlotte because he didn't feel comfortable doing it.

Steven then asked about his daughter: "She hasn't . . . what kind of state is Carol in? She hasn't seen Carol, has she?"

After driving to the house, Steven volunteered that he and Kennedy had gone through a difficult divorce. He was paying $6,000 a month to his ex-wife, plus most of a 401(k) valued at $190,000. They had exchanged text messages earlier in the day, disputing the finances.

Still, Steven said he and his wife had chatted amicably over coffee a few days earlier.

"We were talking about starting to date again," he said. "I loved Carol."

Asked where he'd been, Steven told deputies he had gotten a flat tire while mountain biking on dirt trails, starting 1 1/2 miles from his wife's house, at 6:30 p.m., ending 10 miles away and three hours later.

As the interview continued, Steven wondered aloud: "So, I'm a suspect?"

At Kennedy's house, deputies noticed loosened lightbulbs in the laundry room.

They took impressions of footprints near the house leading to bicycle tracks that stopped about 100 yards away.

At the same time, Yavapai County Medical Examiner Philip Keen was examining the body. He observed indentations in Kennedy's head that might have been left by a golf club.

With that information, and while Steven was still being questioned, investigators returned to his house. Pictures taken in his garage during the first visit, hours earlier, showed a golf-club cover on a shelf in the garage. When they returned, however, the cover was gone.

The investigation dragged on for weeks. Detectives found that Steven was the beneficiary of Kennedy's life-insurance policies, worth $750,000. They contacted experts who said tracks at the scene were similar to treads on Steven's bike tires, but not a conclusive match. They learned that the shoe prints were of the same type as a pair Steven once owned.

On Oct. 23, 2008, after nearly three months, detectives arrested Steven Democker in Phoenix at his UBS Financial Services office, where he worked as a financial adviser, taking home $300,000 to $500,000 a year. Steven, who had no history of violence, asked how deputies could believe that he "just suddenly erupted in a blind rage after 5 1/2 years of relatively amicable separation."

Deputies asked about the missing golf-club cover. Steven said he did not remove the item from his garage, He said he found it one day later, in a friend's car, and gave it to his attorney. Without elaborating, he added, "There is an explanation."

During the arrest, detectives told Steven they knew he'd applied for a replacement passport by claiming the original was lost, when in fact he had surrendered it to authorities. They asked him to explain his purchase of books with titles such as "How To Disappear Until You Want To Be Found." They also wondered why his motorcycle was packed for travel, with a map of Mexico.

Steven said he had no alibi and feared arrest, so, in a time of panic, he made plans to abscond. "It was stupid, fear-based stuff," he said.

Defense lawyers, in turn, accuse police and prosecutors of blindly focusing on the ex-husband and not looking at Kennedy's tenant, whom they say was involved with drug trafficking.

Opposite sides of the courtroom

During jury selection last week in court, Ruth Kennedy listened attentively beside a Yavapai County victim's advocate, awaiting the day she will testify against her former son-in-law.

As the hearing proceeded, Charlotte slipped into the courtroom. Spotting her grandmother, the teenager flashed a smile and gave a tender hug.

Later, Ruth returned to a seat reserved for victims. Charlotte followed, walking past her grandmother to a bench behind the defense table, backing her dad.

Under Arizona law, the Democker sisters are guaranteed treatment with dignity and a right to confer with prosecutors. According to court records, however, the daughters were blocked from contact with their father

for weeks after his arrest and pressured to renounce their rights as victims. Prosecutors declined to comment for this story.

Dupont, the lawyer for the daughters, said state lawyers feared they might be a conduit of information to the defense. As recently as April, he complained to the court that his clients' rights were being violated and that prosecutors "tried to punish the girls for taking a contrary position."

Keli Luther, senior counsel for the non-profit Arizona Voice for Crime Victims, said there are occasional cases where children of defendants are at odds with the state's attorney. Unlike other witnesses, victims are entitled to attend court proceedings, receive police reports and request information from prosecutors.

"It makes it more challenging," Luther said. "But they still have a constitutional right to protect, whether it's awkward or not."

Richard Lougee Jr., a Tucson attorney, said prosecutors take advantage of the law when victims are gung-ho for a conviction.

"But when the victim backs off and doesn't want blood," he added, "very often a prosecutor will simply cut them out of the process."

Dupont said Charlotte Democker finally was granted a private audience last month with Yavapai County Attorney Sheila Polk, who listened as Charlotte's representatives asked for dismissal of the death-penalty petition. When the session ended, Dupont said, Polk made a quip about the length of the presentation."That was it," Dupont said. "Her response to the whole thing was to make a joke about the death penalty, right in front of Charlotte's face."

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY
(FIRM STATE BAR NO. 0003200)
PHILIP J. MACDONNELL
(STATE BAR NUMBER 003813)
JEFFREY TRUDGIAN
(STATE BAR NUMBER 020305)
REBECCA BAKER
(STATE BAR NUMBER 020357)
301 WEST JEFFERSON STREET, SUITE 800
PHOENIX, ARIZONA 85003
TELEPHONE: (602) 506-3800

STEVE TWIST
(STATE BAR NUMBER 004081)
PRESIDENT, ARIZONA VOICE FOR CRIME VICTIMS
PO BOX 12722
SCOTTSDALE, ARIZONA 85267
TELEPHONE: (480) 600-2661

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of PETITION TO AMEND RULE 10.5, ARIZONA RULES OF CRIMINAL PROCEDURE	Supreme Court No. R-_____ PETITION TO AMEND RULE 10.5 OF THE ARIZONA RULES OF CRIMINAL PROCEDURE

The Maricopa County Attorney and Arizona Voice for Crime Victims hereby move, pursuant to Rule 28 of the Arizona Rules of the Supreme Court, to amend Rule 10.5 of the Arizona Rules of

////

////

////

////

////

Criminal Procedure by creating a new paragraph "C", which addresses the transfer of cases already set for trial due to the unavailability of the trial judge.

Respectfully submitted this 3 day of September, 2008.

BY: _____
STEVE TWIST
PRESIDENT, ARIZONA VOICE FOR CRIME VICTIMS

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

BY: _____
PHILIP J. MACDONNELL
CHIEF DEPUTY

JEFFREY TRUDGIAN
DEPUTY COUNTY ATTORNEY

REBECCA BAKER
DEPUTY COUNTY ATTORNEY

I. SUMMARY OF PROPOSED CHANGE

In Maricopa County, the case transfer system was created by the Superior Court to address the problem of having multiple criminal cases set for trial at the same time before the same judge. In this system, if an assigned trial judge is not available on the day of the scheduled trial, the case is systematically placed onto a list of cases awaiting trial. As judges become available for trial, they contact court administration to accept a case from the case transfer list. A trial can be delayed for a day to weeks at a time, waiting for a Superior Court judge to become available. This system leaves the parties, as well as crime victims and witnesses, in limbo for an indefinite period of time. This can create enormous notice problems for attorneys, witnesses and victims who suddenly find themselves in trial after being in a "holding pattern" for weeks. The trial may then commence the day it is assigned to a new judge.

The proposed amendment to Rule 10.5 addresses problems which arise when a criminal case is transferred from one trial judge to another, based upon the unavailability of the assigned trial judge. If the trial does not begin by the business day following the scheduled trial date, the amendment requires the newly-assigned trial judge to provide the parties with at least five business days notice of when the trial will actually commence. The purpose of the proposed rule change is to address the systematic problems that occur when a trial judge has multiple cases ready for trial at one time, requiring a delay in the trial as the matter is awaiting transfer to a new judge.

The amendment is being jointly proposed by the Maricopa County Attorney's Office and Arizona Voice for Crimes Victims. The Maricopa County Attorney's Office is responsible for the prosecution of more than 40,000 felony criminal cases each year.

Arizona Voice for Crime Victims is an organization dedicated to ensuring that crime victims receive their rights to justice, due process and dignified treatment throughout the criminal justice process. The vision of Arizona Voice for Crime Victims is to establish a compassionate justice

system in which crime victims are informed of their rights, fully understand those rights, know how to assert their rights, have a meaningful way to enforce those rights, and know how to seek immediate crisis intervention when they become victims of crime.

II. PRACTICAL EFFECTS OF THE CURRENT SYSTEM

The case transfer system in Maricopa County leads to predicable miscarriages of justice as attorneys are routinely forced to put their case together in as little as a day's notice of a new judge being assigned to the case. This includes requiring attorneys to notify, and perhaps even re-subpoena, victims and witnesses upon receiving notice that they have been assigned to a new judge for trial. This can be especially difficult for victims or witnesses from lower socio-economic backgrounds, who are unfortunately commonly involved in criminal prosecutions due to the locations and circumstances which tend to produce crime. Often, these individuals do not have a phone number by which they can be easily reached. That makes it very likely that the victim or witness will not find out that trial has been delayed until they have actually appeared for trial at the scheduled time and location. Once the case is in the case transfer system, if an attorney has less than a day's notice of a trial beginning before a new judge, ensuring that the victim and witnesses are aware of when and where they will next be required to appear will be difficult and time consuming. In-person contact may be necessary based on a number of variables outside the control of the parties.

The parties and witnesses must also make allowances in their daily schedules for whatever trial schedule the newly-assigned judge intends to follow. This can be particularly demanding as some judges only conduct trials on certain days of the week, and others may only conduct trial in the afternoons. Victims and witnesses who have already had to made accommodations to their work and daily schedules are then forced to make last minute changes which could result in having to take additional time off from work or cancel important personal matters. Thus, they may have no choice but to use additional vacation

time or take additional time off from work without pay. This can cause victims and witnesses to have to reschedule or cancel vacations and personal appointments or find last minute daycare.

Additionally, a last minute change in the judge often results in a change in the location of the trial which may present transportation issues for the parties, victims and witnesses. In Maricopa County the two courthouses which handle criminal matters are approximately 20 miles apart, directly in the flow of commuter traffic. Moreover, counsel (generally the prosecutor) often is forced to present his or her witnesses out of order when a case in case transfer is suddenly set for trial. This results in a jury receiving the evidence in an illogical or unorganized manner. Giving the parties at least five business days notice of a new trial date will provide the parties with sufficient time to address all of these issues once a case has been assigned to a new trial judge.

A longer-term problem is that witnesses and victims conclude that the criminal justice system is incompetent and arbitrary. An unfortunate yet foreseeable result is that they become reluctant to re-involve themselves in the criminal justice system due to their prior negative experience. The case transfer system in Maricopa County too often treats the participants as fungible pieces of evidence rather than those who are doing a civic duty while sacrificing personal time and other priorities.

III. VICTIM'S RIGHTS

The proposed amendment to Rule 10.5 is needed as the case transfer system currently does not provide adequate notice to victims of sudden changes in trial date and location. The Victims' Bill of Rights guarantees victims rights under the Arizona State Constitution to preserve and protect their rights to justice and due process. Arizona Revised Statute § 13-4418 specifies that the victims' rights statutes "shall be liberally construed to preserve and protect the rights to which victims are entitled."

The Victims' Bill of Rights provides victims the rights to "justice and due process," to be treated

with fairness," and a "speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence." Ariz. Const. Art. II, § 2.1(A) (1), (10); These rights are further implemented through both Statutes and Rules. See, e.g. A.R.S. §13-4409 (implementing the right the notice of all criminal proceedings), Ariz. R. Crim. P., Rule 39(b)(15). Pursuant to Rule 39(b)(3)&(4) of the Arizona Rules of Criminal Procedure, a victim has the "right to be given *reasonable notice* of the date, time and place of any criminal proceeding" and "to be present at all criminal proceedings." (emphasis added.)

Further, A.R.S. § 13-4409 specifically requires the prosecution to "give notice to the victim in a timely manner of scheduled proceedings and any changes in that schedule." To facilitate this, A.R.S. § 13-4409 provides that "the court shall provide notice of criminal proceedings … to the prosecutor's office at least *five days before* a scheduled proceeding to allow the prosecutor's office to provide notice to the victim." (emphasis added.) The statute requires the court to create a record on those occasions when the court finds it is not reasonable to provide five days notice. Clearly, the case transfer system, on its face, ignores victims' rights and frequently violates the Constitutional rights of victims.

IV. EXAMPLE

There have been many cases which have shown the problems inherent in the Maricopa County case transfer system. One example that exemplifies many of these problems is *State v. Ronnie James Taft*, CR 2005-111795-001 DT . This case involved multiple delays resulting in a dismissal with prejudice by the trial court. Ultimately, this dismissal was appealed and reversed by the Arizona Court of Appeals, Division I.

The defendant was charged with Burglary in the Second Degree, a class three felony, pursuant to A.R.S. § 13-1507. Thus, the case had Victims' Rights implications. The defendant's original "last day" pursuant to Rule 8 of the Arizona Rules of Criminal Procedure was calculated to be September 25,

2005. Trial was initially set for July 25, 2005, two full months prior to the expiration of the defendant's speedy trial rights.

On August 17, 2005, the trial was continued for the first time, to September 26, 2005, due to scheduling conflicts for both counsel and defense counsel's need to complete two additional pre-trial interviews. On September 26, 2005, a second defense motion to continue the trial was granted with a Rule 8 time waiver. According to the pleading, defense counsel had just completed a trial on Friday, September 23, 2005, and needed more time to prepare for this trial. The trial was continued for week to October 3, 2005 and a new "last day" was set for November 4, 2005. State's counsel appeared to be ready for trial on September 26, 2005, but did not object to the motion to continue out of professional courtesy.

On October 3, 2005, the original trial judge Douglas Rayes was unavailable to proceed due to his own scheduling conflicts. For this reason, he placed the case into the case transfer system. On October 6, the State filed a motion to continue because the trial did not start as scheduled and the prosecutor had a long-planned vacation from October 11th to October 16th, 2005. She filed the motion because it was not clear if the case would be picked up by a new judge while she was unavailable to try to the case. Judge Rayes retained the case in his Division thereafter and reset the trial date to October 17, 2005, indicating that the case would be placed back in case transfer on that date.

Sometime after October 17, 2005 (no Minute Entry was filed), the case was taken out of case transfer by Judge Gerald Porter. The prosecutor recalls that only a few days had passed before the case was taken out of case transfer by Judge Porter. However, his Division was understaffed for the trial and so the case languished further. During this interim period, a necessary witness for the State clarified that he was unavailable from October 26th through November 11th, 2005, due to a pre-planned trip to Michigan.

Given this new information, the State filed a motion to continue on October 25th, 2005. The motion stated that "the trial date was originally scheduled for August 17th and then September 26th; both trial dates were continued by the defense without objection by the State. The parties originally entered into case transfer on October 3, 2005 and then again on October 17, 2005. Both parties are prepared to begin trial [after November 11th, 2005]." The motion also proposed, as an alternative, that a jury be picked on October 27th and be brought back for the two-day trial in mid-November.

The State subsequently learned that Judge Porter was not inclined to continue the trial. Thus, given the witness issue, the State filed a motion to dismiss without prejudice and avowed that it was not made for the purpose of avoiding Rule 8. On October 28, 2005, Judge Porter heard arguments on the motion to continue and the motion to dismiss without prejudice. At this hearing, he not only denied the motion to continue, but found there was no good cause to dismiss the case without prejudice. Accordingly, he dismissed the case *with* prejudice. The Court noted that it was a victim case, but added that "at the end of the day, we have specific rules in place that are for the benefit of the defendant…" Transcript of hearing, 10/28/08. The defendant received this case dispositive ruling despite having six prior felony convictions against him as alleged by the State in its pleadings. Moreover, the dismissal occurred one week prior to the defendant's "last day," which in turn fell only one week prior to the availability of the State's main witness for trial. The State appealed this decision.

On February 1, 2007, the Arizona Court of Appeals overturned the trial court's dismissal with prejudice in a Memorandum Decision, 1 CA-CR 1183[1]. The Court took the opportunity to comment on the practical effects of the Maricopa County case transfer system. The Court analyzed the series of events in this particular case as follows:

---

[1] This memorandum decision is not being cited as precedent for any particular legal finding. Rather, the case is cited as a factual analysis of the Maricopa County case transfer system as applied to an actual criminal case. 17A A.R.S. Sup.Ct.Rules, Rule 111.

> The State was forced to move for a dismissal of the case because the Superior Court was unable to procure a trial judge during the time that the case was in case transfer. As a result of that delay, a necessary witness became unavailable. Consequently, the State found itself in a position of not being able to go forward with the case on October 28, 2005 because of Maricopa County's case transfer system and the lack of any judicial officer available to try the case during the time that the case was in case transfer.

Id. at 8-9. The Court found that a dismissal with prejudice was inappropriate because the defendant failed to show actual prejudice. It also found that the various delays were caused by the "inefficiency and ineffectiveness" of Maricopa County's case transfer system. *Id.* at 9.

The Court of Appeals did not do a strict "victims' rights" analysis in coming to its conclusion. Clearly, however, the Court was able to conclude that Maricopa County's case transfer system is flawed. As a result of the delays, the case could not be tried and was dismissed. Even if the dismissal had been without prejudice, as would have been appropriate, the defendant would have been released absent the immediate re-filing of the case. That issue has implications on not only the victim involved in the case that is dismissed, but also potential victims.

Upon the apprehension of the defendant on multiple new offenses[2], the victim was re-contacted by the prosecutor who handled the case. The victim expressed that he was still extremely frustrated with the entire process he had been through. When he learned that the defendant was in prison on new offenses, the victim indicated that he did not want to go through the process again. Given the passage of time, there may have been other witness issues with the case as well.

---

[2] Ronnie Taft is presently in the Arizona Department of Corrections. The Court of Appeals was unable to correct the trial court's decision until its opinion was published on February 1, 2007. The State was, of course, unable to refile the Burglary case in the interim period due to the prejudice attached to the dismissal. He had been in jail pending trial in this case and was released upon its dismissal. The defendant was arrested again multiple times after his release and ultimately charged in four separate complaints. He was charged with crimes occurring on March 19, 2006 (CR 2006-114890-001 DT); June 14, 2006 (CR 2006-011459-002 DT); August 21, 2006 (CR 2006-011396-001 DT); and September 6, 2006 (CR 2006-155174-001 DT). The defendant ultimately pled guilty to Burglary in the Third Degree, Possession of Narcotic Drugs for Sale, and Armed Robbery - each committed on a separate occasion. The fourth complaint was dismissed in conjunction with the plea agreement. The defendant was imprisoned for ten years (having received concurrent terms) only due to committing these new crimes involving new victims.

State v. Ronnie Taft is but one example of the problems inherent in the Maricopa County case transfer system. Constant uncertainty in the availability of a trial judge is especially prejudicial to the State because the entire burden of proof rests on its shoulders. With this burden comes the necessity of having most or all of the witnesses lined up and available for trial. It is simply unrealistic to expect all of the State's witnesses to be available on short notice over an extended period of time given the hectic daily schedules of attorneys, witnesses and victims who are people from all walks of life. The result of this is predictable: many cases do not hold together, resulting in dismissal or last-minute plea agreements that do not reflect the severity of the charges. These many people end up justifiably feeling abused by the criminal justice system because they are, in fact, taken for granted and relegated to the sidelines during the process. A cursory survey will reflect that similar injustice is rampant due to Maricopa County's case transfer system.[3]

V. CONCLUSION

The proposed amendment requires a court to provide the parties with at least five business days notice of the date a trial will actually begin. This would ensure that the parties have sufficient time to notify and schedule the victims or witnesses that will need to appear. The proposed amendment also allows the court to begin trial in less than five business days in those cases in which both parties are ready and consent to starting the trial sooner. Having this kind of flexibility in the Rule will ensure the parties have sufficient time to notify all victims and witnesses, while taking into account that, in some situations, the parties may not need or desire five business days to make those arrangements.

Additionally, the proposed amendment recognizes that finding a new judge to preside over the trial the very same day that the trial is scheduled to begin may not be realistic. This proposed

---

[3]The Maricopa County Attorney's Office has interviewed many attorneys regarding these issues and has found them to be systemic. Due to the nuance involved in each case, only one has been specifically cited for the purpose of brevity and because it was subject to appellate review.

amendment will only apply to those cases in which the delay in starting the trial is more than one business day after the scheduled trial date, giving the court one business day to find another trial judge. Delaying the start of a trial two or more business days after the scheduled trial date is likely to cause the parties to have difficulty in rescheduling the appearance of the victim and witnesses.

Most importantly, in Arizona, crime victims have Constitutional rights to justice and due process, to be treated with fairness, and to fair notice of hearings that involve or affect them. The Maricopa County case transfer system does not adequately safeguard this right. The proposed Rule change would conform Rule 10.5 of the Rules of Criminal Procedure with the Victims' Bill of Rights and Arizona Revised Statutes. This new Rule would ensure that on those occasions when a scheduled trial is delayed by more than one business day, adequate notice of the new date will be provided to the parties so that they can make any necessary arrangements to ensure their appearance and the appearance of all necessary witnesses.

VI. EXPEDITED CONSIDERATION

Pursuant to Rule 28(G) of the Rules of the Supreme Court, the Petitioner submits this request for expedited consideration by the Court, as the compelling circumstances presented in the petition render the annual processing cycle inadequate to timely address this urgent matter.

////

////

////

////

////

////

Wherefore, it is respectfully requested that this Court amend Rule 10.5 of the Arizona Rules of Criminal Procedure as set forth in Exhibit A.

Respectfully submitted this 3 of September, 2008.

BY: _____

STEVE TWIST
PRESIDENT, ARIZONA VOICE FOR CRIME VICTIMS

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

BY: _____

PHILIP J. MACDONNELL
CHIEF DEPUTY

JEFFREY TRUDGIAN
DEPUTY COUNTY ATTORNEY

REBECCA BAKER
DEPUTY COUNTY ATTORNEY

EXHIBIT A

Text of Proposed Rule Change

(Rule 10.5 (A) & (B) remain unchanged, language for a new paragraph C is capitalized.)

C. UNLESS BY CONSENT OF ALL PARTIES AND AFTER GOOD FAITH ATTEMPT BY THE PROSECUTOR TO CONSULT WITH THE VICTIM, IF A CASE IS TRANSFERRED FROM THE ASSIGNED TRIAL JUDGE TO A NEW TRIAL JUDGE FOR TRIAL AND THE TRIAL DOES NOT COMMENCE BY THE BUSINESS DAY FOLLOWING THE SCHEDULED TRIAL DATE, THE NEW TRIAL JUDGE SHALL PROVIDE THE PARTIES AND ANY ATTORNEY WHO HAS FILED A NOTICE OF APPEARANCE ON BEHALF OF A VICTIM WITH AT LEAST 5 BUSINESS DAYS NOTICE OF THE ACTUAL DATE THE TRIAL WILL COMMENCE BEFORE THE NEW JUDGE. ALL TIME BETWEEN THE DATE OF THE TRANSFER AND THE COMMENCEMENT OF THE TRIAL BEFORE THE NEW TRIAL JUDGE SHALL BE EXCLUDED FROM RULE 8.2 TIME COMPUTATION. BEFORE ANY TRANSFER OF A CASE, THE COURT SHALL CONSIDER THE IMPACT OF THE TRANSFER ON THE RIGHTS OF THE VICTIM TO JUSTICE AND DUE PROCESS, TO NOTICE OF PROCEEDINGS, AND TO A SPEEDY TRIAL.

Honorable Barbara Rodriguez Mundell
Presiding Judge
Superior Court of Arizona, Maricopa County
125 W. Washington St.
Phoenix, AZ 85003
(602) 506-6130

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of: PETITION TO AMEND RULE 10.5 OF THE ARIZONA RULES OF CRIMINAL PROCEDURE	Supreme Court No. R-08-0022 COMMENT OF THE SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY IN OPPOSITION TO THE PETITION TO AMEND RULE 10.5

The Presiding Judge of the Superior Court in Maricopa County files the following comment pursuant to Rule 28, Arizona Rules of the Supreme Court, in opposition of Petition R-08-0022, concerning the proposed amendment of Rule 10.5, Arizona Rules of Criminal Procedure. The Superior Court in Maricopa County supports the right of victims to receive timely notice of court proceedings. That right currently is guarantied by state statute and it should not be diminished or diluted by the proposed rule. Accordingly, the Superior Court in Maricopa County opposes the Petition to Amend Rule 10.5 for the following reasons:

1. The proposed rule contradicts the Victim's Rights Statute by removing the court's discretion to schedule a proceeding with less than five days' notice if it finds that it is not reasonable to provide such notice.

The Victim's Rights Statute relating to notice, A.R.S. § 13-4409, provides:

> Notice of criminal proceedings
> A. Except as provided in subsection B, the court shall provide notice of criminal proceedings, for criminal offenses filed by information, complaint or indictment, except initial appearances and arraignments,

> to the prosecutor's office at least five days before a scheduled proceeding to allow the prosecutor's office to provide notice to the victim.
>
> B. If the court finds that it is not reasonable to provide the five days' notice to the prosecutor's office under subsection A, the court shall state in the record why it was not reasonable to provide five days' notice.
>
> C. On receiving the notice from the court, the prosecutor's office shall, on request, give notice to the victim in a timely manner of scheduled proceedings and any changes in that schedule, including any continuances.

The proposed rule directly conflicts with paragraph B. The statute gives the court the discretion, upon a finding that "it is not reasonable to provide the five days' notice," to proceed without giving such notice. The proposed rule requires the consent of the parties to proceed without the five days' notice. The proposed rule removes all of the court's discretion and allows the parties to decide whether and when a trial will proceed. To remove the trial court's discretion and place the decision in the hands of the parties is not only contrary to state law, but also contrary to good case management practices.

2. Removing the court's discretion will result in more case delay and negatively impact victims.

Consider this scenario: Trial is set for Monday in an aggravated assault (domestic violence) case, and the trial is expected to last two days. No judge is available to start the case on Monday. However, a judge is available to start the case on Wednesday. The victim does not object to starting on Wednesday. Applying the proposed rule, absent both parties' consent, the case could not be reset until after at least a five-day delay. If the case had started on Wednesday, it would have been resolved by Thursday, well before the trial could have been reset under the proposed rule. The victim would have received closure (except

for sentencing if a guilty verdict were returned) on Thursday and would not have had to experience another case delay. It is not unrealistic to think that the defendant would not consent to the two-day delay because by withholding the required consent, the defendant would have additional time to try to persuade witnesses not to appear for trial.

When a judicial officer decides that a case may proceed without the five days' notice, the judicial officer must state on the record why it is not reasonable to provide the five days' notice. However, nothing in the proposed rule prevents a party from withholding consent in bad faith or for an improper purpose, such as that described in the scenario above. Additionally, as can be seen from the aforementioned scenario, this proposed rule would significantly increase case delay, not reduce it.

3. The proposed rule is unnecessary because the Superior Court in Maricopa County's case transfer system that the proposed rule originally was offered to change will cease to exist no later than July 6, 2009.

The petition is highly critical of this Court's case transfer system. However, the petition overlooks the fact that the case transfer system described in the petition ceased to exist over two years ago. In addition, this Court has continued to make significant changes in its criminal case processing system since the *Taft* opinion in order to assure firm trial dates. In furtherance of this objective, this Court implemented a master calendar pilot program utilizing six trial divisions. The program has been so successful in assuring the trial date is a firm date, that beginning July 6, 2009, all criminal cases filed downtown will be on the master calendar system. Until such time as all criminal cases filed in the Southeast Judicial District are transferred downtown, any overflow trials will be handled through the master calendar trial assignment system. Accordingly, there will be no case transfer system as of July 6, 2009, and the proposed rule is not needed to address the problem discussed in the petition.

Conclusion

The proposed rule is not needed. The Victim's Rights Statute relating to notice, A.R.S. § 13-4409, applies and is all that is needed. Adoption of the proposed amendment would amount to judicial legislation and harm victims by causing trial delays.

Respectfully submitted this 20th day of May, 2009.

Honorable Barbara Rodriguez Mundell
Presiding Judge
Superior Court of Arizona, Maricopa County

Original and six (6) copies delivered this
20th day of May, 2009 to:

Clerk of the Arizona Supreme Court
1501 W. Washington, Suite 402
Phoenix, AZ 85007

Copy mailed this
20th day of May, 2009 to:

Philip J. MacDonnell
Chief Deputy
Office of the County Attorney
301 W. Jefferson Street, Suite 800
Phoenix, Arizona 85003

Steve Twist
President, Arizona Voice for Crime Victims
P.O. Box 12722
Scottsdale, AZ 85267

Hon. Ronald Reinstein, Ret,
on behalf of members of Rule 10.5 Workgroup
Commission on Victims in the Courts
1501 W. Washington, Phoenix, AZ 85007
602-452-3138

IN THE SUPREME COURT

OF THE STATE OF ARIZONA

In the Matter of:

PETITION TO AMEND RULE 10.5, ARIZONA RULES OF CRIMINAL PROCEDURE	)))	Supreme Court No. R-08-0022 COMMENT

Judge Ron Reinstein, Chair of the Supreme Court's Commission on Victims in the Courts (the Commission), respectfully submits the following comment. The Commission was asked to review this petition because it proposes procedural changes that would impact crime victims in superior court matters. The full Commission unanimously supported the general concept of giving appropriate notice to victims and witnesses regarding assignment or reassignment of a case for trial; however, after a lengthy discussion and concerns expressed by some Commission members, the Commission was unable to come to a consensus and voted to establish a workgroup to recommend changes to the petition's existing language and to motion the Court to extend the comment period to submit a comment on this petition.

Commission members who volunteered for the workgroup included the Commission chair, two superior court judges (from rural counties), a defense attorney and a victim advocate representative. Additionally, one of the petitioners, a victim rights' attorney, and the Criminal Presiding Judge from Maricopa Superior Court joined the workgroup meetings.

The Commission was not able to meet to approve any comments before the deadline for further comments on this petition. As a result, this comment is submitted by the Chair, who also served on the workgroup created by the Commission referred to above. The workgroup held telephonic meetings on two occasions between June 1st and June 8th. Over the course of the two meetings, the workgroup continued to discuss the proposal's merits and how this proposal will impact all counties throughout the state.

Despite support of the concept, the majority of the Commission members participating on this workgroup believed the current proposal will not accomplish the goal of moving cases forward in a timely manner and may cause further delay at the victim's expense. Furthermore, it was acknowledged by some members of the workgroup that since most crime victims do not have an attorney, the interest of the state and defense, and not the victim, may be the priority when deciding to continue proceedings for the full five days.

In the alternative, it was suggested that incorporating the language of A.R.S. §13-4409 into the Criminal Rules might alleviate the victims' concerns raised by the requested rule change. In any event, educating the judicial community and the Bar regarding the appropriate use of Rule 39(b) of the Rules of Criminal Procedure, in conjunction with A.R.S. § 13-4409, would likely resolve the underlying concern raised by this proposal from a victims' rights perspective.

RESPECTFULLY SUBMITTED this _____ day of June, 2009.

By_____
Hon. Ron Reinstein, Ret.,
On behalf of members of Rule 10.5 Workgroup
Commission on Victims in the Courts
1501 W. Washington, Phoenix, AZ 85007
602-452-3138

Original and copies of the foregoing
Hand-delivered on the date of signing to:
CLERK'S OFFICE
ARIZONA SUPREME COURT
1501 W. Washington
Phoenix, AZ 85007-3231

Original and copies of the foregoing
Mailed on the date of signing to:

Andrew P. Thomas
Maricopa County Attorney

Philip J. MacDonnell
Chief Deputy

Jeffrey Trudigan
Deputy County Attorney
Rebecca Baker
Deputy County Attorney
301 W. Jefferson St, Suite 800
Phoenix, AZ 85003

Steve Twist
President, Arizona Voice for Crime Victims
P.O. Box 12722
Scottsdale, AZ 85267

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 1, 2010	[ ] Formal Action Request [X] Information Only [ ] Other	Children in the Court Update

FROM: Committee on Juvenile Courts

PRESENTER(S): Hon. Richard Weiss

DISCUSSION & TIME ESTIMATE:
Review recently approved Rule proposal developed by the Court Improvement Project workgroup of the Committee on Juvenile Courts.

10minutes

RECOMMENDED MOTION (IF ANY):

Finalized Draft of The Attorney Standards for Child Representation

Pursuant to Article VI, Section 3, of the Arizona Constitution, the following Standards for Dependency Cases (the Standards) are issued under the authority of the Supreme Court of the State of Arizona. All attorneys and guardians ad litem appointed to represent children in dependency cases in the State of Arizona shall adhere to these Standards. Privately retained attorneys shall become equally familiar with these Standards. In developing the Standards, the Court considered best practices within Arizona and well-accepted standards developed by nationally recognized organizations. In particular, the standards for representation outlined in the American Bar Association's *Standards for Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, the National Association for Counsel for Children's *Revised Version of the ABA Standards*, and the *Resource Guidelines* published by the National Council for Juvenile and Family Court Judges were instructive in developing the Standards for Arizona. In addition to adhering to the Standards for Dependency, Arizona attorneys and guardians ad litem should be familiar with and consult these national standards and references to ensure the highest standard of practice in this important area of the law.

Arizona Courts shall have broad discretion in enforcing the Standards and to impose sanctions when appropriate. Attorneys providing representation in Arizona may also be subject to sanctions under the Arizona Rules of Professional Conduct for failure to adhere to the Standards. Sanctions may include the removal of the attorney or guardian ad litem from a particular case or from representation of children for a period of time.

1. Attorneys appointed for children shall make clear to children and their caregivers whether their appointment is as a guardian ad litem or as an attorney and the ethical obligations associated with their role

2. Attorneys and guardians ad litem shall inform the child, in an age and developmentally appropriate manner, about the nature of the proceedings, the attorney's role, that the child has the right to attend hearings and speak to the judge, the consequences of the child's participation or lack of participation, the possible outcomes of each hearing, and other legal rights with regards to the dependency proceeding and the outcomes of each substantive hearing.

3. Attorneys and guardians ad litem shall participate in discovery and file pleadings when appropriate and attorneys must develop the child's position for each hearing. The duties of the attorney and guardian ad litem may include identifying appropriate family and professional resources for the child, as well as subpoenaing witnesses, and the attorney and guardian ad litem shall inquire of the child regarding potential placements and communicate this information to Child Protective Services as appropriate.

4. The attorney and guardian ad litem shall meet in person with the child before the preliminary protective hearing, if possible, or within fourteen (14) days after the preliminary protective hearing. Thereafter, the attorney and guardian ad litem for the child shall meet in person with the child and have meaningful communication before every substantive hearing. Substantive hearings include all preliminary protective hearings, all periodic review hearings, permanency hearings, any hearings involving placement, visitation or services, or any hearing to adjudicate dependency, guardianship or termination. If the child is under the age of 5 or is not able to communicate effectively, meetings should include observations within each placement home. At each substantive hearing the attorney or guardian ad litem shall inform the court as to the child's position concerning pending issues and, if the child is not present, an explanation for the child's absence. In all cases, attorneys and guardians ad litem for children should also communicate with placements, and if practicable, observe the placement.

   Upon a showing of extraordinary circumstances, the judge may modify this requirement for any substantive hearing.

5. Attorneys and guardians ad litem shall also maintain contact with caretakers, case managers, service providers, daycare providers, CASAs, relatives and any other significant person in the child's life as appropriate in order to meet the obligations of informed representation of the child.

6. To the extent possible, attorneys and guardians ad litem should attend or provide input to Child Protective Services staffings, Foster Care Review Board reviews and Child and Family Team meetings.

7. Attorneys and guardians ad litem may use appropriately trained support staff to assist in the performance of the duties listed herein unless otherwise required by law. The support staff performing these duties must adhere to these standards.

8. Attorneys and guardians ad litem should promptly identify any potential and actual conflicts of interest that would impair their ability to represent a child. Either the attorney or the guardian ad litem shall, if necessary, move to withdraw or to seek the appointment of an additional attorney or guardian ad litem if they deem such action necessary.

9. Attorneys and guardians ad litem shall be knowledgeable of the child welfare and public systems and community-based service providers and organizations serving children (e.g.behavioral health, developmental disability, health care, education, financial assistance, counseling support, family preservation, reunification, permanency services and juvenile justice). Attorneys and guardians ad litem shall be knowledgeable about how these services are accessed and shall advocate for such services as appropriate for the child.

10. Attorneys and guardians ad litem shall be familiar with the substantive juvenile law. Attorneys and guardians ad litem shall stay abreast of changes and developments in relevant federal and state laws and regulations, Rules of Procedure for the Juvenile Court, court decisions and federal and state laws concerning education and advocacy for children in schools. Attorneys and guardians ad litem shall complete an introductory six (6) hours of court approved training prior to their first appointment unless otherwise determined by the presiding judge of the juvenile court for good cause shown and an additional two (2) hours within the first year of practice in juvenile court. All attorneys and guardians ad litem shall complete at least eight (8) hours each year of ongoing continuing education and training. Education and training shall be on juvenile law and related topics, such as child and adolescent development, (including infant/toddler mental health), effects of substance abuse by parents and by and upon children, behavioral health, impact on children of parental incarceration, education, Indian Child Welfare Act, parent and child immigration status issues, the need for timely permanency, the effects of the trauma of parental domestic violence upon children and other issues concerning abuse and/or neglect of children. Some or all of this training and continuing education may qualify as mandatory Continuing Legal Education under State Bar of Arizona requirements.

    Attorneys shall provide the judge with an affidavit of completion of the six (6) hour court approved training requirement prior to or upon their first appointment as attorney or guardian ad litem for a child after the adoption of these standards. The affidavit of completion shall include a list of courses including the name of the training, the date of the training, the training provider, and the number of hours for each course.

    All attorneys shall file annually an affidavit with the presiding judge certifying their compliance with this section. Such affidavit shall be filed concurrently with the affidavit of compliance with State Bar MCLE and shall include a list of courses including the name of the training, the date of the training, the training provider and the number of hours for each course.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 1, 2010	**[X] Formal Action Request** **[ ] Information Only** **[ ] Other**	Victim Identification Protections

FROM: Arizona Court of Appeals and COVIC Chair

PRESENTER(S): Hon. Ann S. Timmer and Hon. Ron Reinstein

DISCUSSION & TIME ESTIMATE:
Update from Judge Timmer regarding Division One's efforts for victim protection and additional considerations.

Discuss other trial court documentation and identify alternatives to victim identification, particularly for minor crime victims.

20 minutes

RECOMMENDED MOTION (IF ANY):

Make motion to assign project to COVIC workgroup to consider recommendations to revise code of judicial administration to include victim identity protections.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 1, 2010	[ ] Formal Action Request [X] Information Only [ ] Other	Court Rules Update

FROM: Arizona Supreme Court Staff Attorney's Office

PRESENTER(S): Patience Huntwork

DISCUSSION & TIME ESTIMATE:
Review minutes from the August 2010 Supreme Court Rules meeting

http://azcourts.gov/Portals/20/2010Rules/Amended%20Minutes%208_31_10_Rules%20Agenda.pdf

10 minutes

RECOMMENDED MOTION (IF ANY): N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 1, 2010	[X] **Formal Action Request** [ ] **Information Only** [ ] **Other**	Guilty Plea by Mail in Limited Jurisdiction Courts: Proposed Criminal Rule 17.1(a)(4)

FROM: LJC Staff

PRESENTER(S): Judge Antonio Riojas, Jr.

DISCUSSION & TIME ESTIMATE (10 minutes)**:** The Justice 20/20 Strategic Agenda identified a goal of streamlining court processes. In support of this goal, the Committee on Limited Jurisdiction courts proposed that LJ courts be authorized to accept pleas of guilty or no contest to misdemeanors by mail.

To implement this initiative, the LJC has drafted a proposed amendment to Rule 17.1(a) of the Rules of Criminal Procedure. The proposed amendment is a new subsection 17.1(a)(4). This new subsection is modeled after existing Rule 17.1(a)(3), which allows telephonic pleas of guilty or no-contest in LJ courts. The committee which proposed Rule 17.1(a)(3) in 1993 included a comment that many defendants in misdemeanors cases were passing through the Arizona when the offense occurred, but never intended to return to the state; and because there was no mechanism other than an in-person appearance for a guilty plea, these cases often remained on the court's docket for years without resolution. Proposed Rule 17.1(a)(4) is similarly intended to facilitate disposition of more misdemeanors cases, but without the need for a fingerprint as required on the telephonic plea form (a notarized signature will be required for a plea by mail), and without the need for a telephonic dialogue between the defendant and the court to proceed with the plea.

Unlike Rule 17.1(a)(3), the proposed amendment to allow a guilty plea by mail would exclude five categories of cases. Those categories are cases in which the court may impose a jail term, cases in which the court may impose a term of probation, offenses for which ARS section 13-607 requires the taking of a fingerprint at the time of sentencing (i.e., misdemeanor offenses of theft, shoplifting, and DUI), and cases in which a guilty plea by mail would not be in the interests of justice. The fifth category excluded from the proposed rule is cases in which there is a victim. If the alleged offense(s) involve a victim, a guilty plea by mail would not be permitted.

The proposed rule amendment would include a form [Rule 41, Form 28(a)] for entry of the plea, which has not yet been finalized.

RECOMMENDED MOTION: That COVIC supports the proposed amendments to Rule 17.1(a).

LJC: May 5, 2010. Revised August 12; Sept 1; Sept 2; Sept 10; Sept 22, 2010
Proposed Amendment to Rule 17.1, Rules of Criminal Procedure

Rule 17.1. Pleading by defendant

a. Personal Appearance; Appropriate Court.

(1) *Superior Court.* [No change.]

(2) *Courts of Limited Jurisdiction.* [No change.]

(3) *Telephonic Pleas in Courts of Limited Jurisdiction.* [No change.]

(4). *Guilty Pleas by Mail in Courts of Limited Jurisdiction.* Notwithstanding the requirements in Rules 1.6, 14.2, 17.1(a)(1), 17.2, 17.3, and 26.9 that the defendant personally appear before a judicial officer, courts of limited jurisdiction may accept a written plea of guilty to a misdemeanor or petty offense if the court is satisfied that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration. Except as noted above, a guilty plea submitted by mail must comply with the requirements of Rule 17 and must be signed by the defendant and acknowledged by a notary public.

The defendant shall use the guilty/no contest plea by mail form appearing in the Appendix to these rules for entry of a plea by mail. The form shall recite that the defendant waives his or her constitutional rights, enters a plea of guilty or no contest to the offenses described in the complaint, and consents to the entry of judgment. The guilty plea by mail form must include a statement for the court to consider when determining the appropriate sentence.

The court shall send the defendant by mail a copy of a judgment entered pursuant to this rule. The judgment of guilt may be used as a prior conviction in the event of a subsequent conviction.

A guilty plea by mail shall not be available for the following:

(i) Cases involving a victim;
(ii) Cases in which the court may impose a jail term, unless the defendant is sentenced to time served, or the defendant is currently incarcerated and the proposed term of incarceration would not extend the period of incarceration and would be served concurrently;
(iii) Cases in which the court may sentence the defendant to a term of probation;

(iv) Offenses for which A.R.S. § 13-607 requires the taking of a fingerprint upon sentencing; and
(v) When this method of entering a guilty plea would not be in the interests of justice.

The local court shall establish a policy for participation by the prosecutor in guilty pleas by mail.

b. Voluntary and Intelligent Plea. [No change.]

c. Pleas of No Contest. [No change.]

d. Record. [No change.]

e. Waiver of Appeal. [No change.]

Comment: A guilty plea by mail would be entered by utilizing Form 28(a), which is modeled after Form 28 that is used for a telephonic guilty plea.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 1, 2010	[ ] Formal Action Request [X] Information Only [ ] Other	Defense Initiated Victims Outreach

FROM: Defense Initiated Victims Outreach (DIVO)

PRESENTER(S): Linda King

DISCUSSION & TIME ESTIMATE:
Introduce the concept of DIVO and its underlying restorative justice philosophies. 20 minutes

RECOMMENDED MOTION (IF ANY): N/A

16A A.R.S. Rules Crim.Proc., Rule 2.3

Rule 2.3. Content of Complaint

16A A.R.S. Rules Crim.Proc., Rule 2.3

Arizona Revised Statutes Annotated Currentness
Rules of Criminal Procedure (Refs & Annos)
II. Preliminary Proceedings
Rule 2. Commencement of Criminal Proceedings (Refs & Annos)
➡**Rule 2.3. Content of Complaint**

a. A complaint is a written statement of the essential facts constituting a public offense, that is either signed by a prosecutor, or made upon oath before a magistrate, or made in accordance with A.R.S. § 13-3903.

b. Upon filing a charging document in a criminal case in which a juvenile is alleged to be the victim of any offense listed in A.R.S Title 13, chapters 14 or 35.1, the prosecuting agency shall advise the clerk that the case is subject to the provisions of Supreme Court Rule 123(g)(1)(C)(ii)(h).

CREDIT(S)

Amended May 7, 1975, effective Aug. 1, 1975; Jan. 24, 2003, effective March 1, 2003; Sept. 3, 2009, effective Jan. 1, 2010.

COMMENT [AMENDED 2007]

A.R.S. § 13-1422 [renumbered as § 13-3903] does not encroach upon this court's power to formulate rules of procedure. State ex rel. Purcell v. Superior Court In and For Maricopa County, 107 Ariz. 224, 485 P.2d 549 (1971).
16A A. R. S. Rules Crim. Proc., Rule 2.3, AZ ST RCRP Rule 2.3

Current with amendments received through 5/15/10

END OF DOCUMENT

Rule 123, Rules of the Supreme Court

(g) Remote Electronic Access to Case Records.

(1) A court may provide remote electronic access to case records as follows:

(A) *Parties, Attorneys, and Arbitrators*. Parties, attorneys, and arbitrators may be provided remote electronic access, upon registering, to case records which are not sealed in all case types in which the person is an attorney of record, arbitrator, or named party, including an individual, partnership, corporation, association, or public or private organization. An attorney of record on the staff of a public or private law firm may extend access to any other attorney or person working for or on behalf of that public or private law firm, upon the other attorney's or person's registration.
(B) *Governmental Entities and Public Purpose Organizations*. Any federal, state, tribal, or local governmental entity or public purpose organization may be provided remote electronic access to any case records necessary to carry out a particular governmental or public purpose responsibility. The terms of such access shall be set forth in a memorandum of understanding between the entity or organization and the custodian that includes provisions for safeguarding the confidentiality of any closed records.
(C) *General Public, Registered Users*.
(i) Members of the public who hold an Arizona driver license or nonoperating identification license may be provided remote electronic access, upon registering and paying any established fee, to all of the following categories of case records unless sealed or otherwise made confidential by rule or law:
(a) Civil case records in any action brought to enforce, redress, or protect a private or civil right but not:
• Juvenile dependency and delinquency or other matters brought under ARS Title 8;
• Family law, paternity, or other matters arising out of ARS Title 25;
• Orders of protection, injunctions against harassment and all proceedings, judgments or decrees related to the establishment, modification or enforcement of such orders, including contempt; or
• Probate proceedings brought under ARS Titles 14 and 36.
(b) Civil traffic case records in any action brought as such under ARS Titles 28 or 41 or a matter expressly designated as a civil traffic violation by a traffic ordinance of a city or town, and any boating violation punishable by a civil sanction under ARS Title 5, chapter 3, articles 1 through 11, or a non-traffic ordinance expressly designated a civil violation or a boating ordinance by a city or town.
(c) Criminal case records in any action instituted by the government to punish offenses classified as a misdemeanor or felony brought pursuant to ARS Titles 4, 13, 28, or local ordinance and case records in any action instituted to punish petty offenses classified by ARS § 13-601.
(d) Case records in any action instituted by a county to enforce an ordinance that provides for criminal and civil penalties pursuant to ARS §§ 11-251 and 11-808.
(ii) The following documents shall not be accessible by remote electronic access to users registered under paragraph (g)(1)(C) due to the inability to protect sensitive data that is likely to be contained within these documents:
(a) booking-related documents;
(b) warrants, including search warrants, confidential wiretaps, pen registers, handwriting exemplars, trap and trace, and bench warrants;

(c) charging documents, including criminal and civil traffic charging documents;
(d) pre-sentence reports;
(e) defendant's financial statement;
(f) disposition report;
(g) transcripts; and
(h) all documents in criminal cases in which a juvenile is alleged to be the victim of any offense listed in ARS Title 13, chapters 14 or 35.1. The prosecuting agency, upon filing a charging document described in this paragraph, shall advise the clerk that the case is subject to this provision.
Upon motion by a party, by any person, or upon the court's own motion, and for good cause shown, the court in which such action is pending may issue an order to allow remote electronic access to members of the public, as provided in paragraph (g)(1)(C), to any case in which a juvenile is alleged to be the victim under paragraph (g)(1)(C)(ii)(h). The order may include any appropriate provision required to protect the juvenile from embarrassment or oppression. The burden of showing good cause for an order shall remain with the person seeking remote electronic access to the case record. Irrespective of an order limiting electronic access under this paragraph, the clerk shall provide non-registered users remote electronic access as set forth in paragraph (D)(ii) herein when the court generally provides such non-registered user access in other cases.
(D) *General Public, Non-Registered Users*. Unless otherwise provided by rule or law, members of the public may be provided remote electronic access, without registering, to:
(i) the following data elements in closed cases, including juvenile delinquency, mental health, probate, and criminal cases in which a juvenile is alleged to be the victim, as identified in paragraph (g)(1)(C)(ii)(h) above:
- party names,
- case number,
- judicial assignment, and
- attorney names.

(ii) individual case information extracted from a case management system in all civil, criminal, and civil traffic cases identified in paragraphs (g)(1)(C)(i)(a) through (d), and family law cases, including a list of documents filed, events, dates, calendars, party names, month and year of birth, residential city, state and zip code, case number, judicial assignment, attorneys, charges filed or claims made, interim rulings, and case outcomes, including sentence, fines, payment history, minute entries, and notices.
(iii) court of appeals and supreme court opinions and decisions in all case types, except that any appendix in criminal cases in which a juvenile is alleged to be the victim, as identified in paragraph (g)(1)(C)(ii)(h) above, shall not be provided by remote electronic access.

A.R.S. § 12-283

12-283. Powers and duties

A. The clerk, in addition to the other duties prescribed by law or rule of court, shall:

1. Attend each session of the court held in the county.
2. Keep a list of fees charged in actions.
3. Keep books of record required by law or rule of court.

B. The clerk may provide a consumer reporting agency as defined in section 44-1691 with a copy of:

1. A court order obligating a person to pay child support or spousal maintenance.
2. An order for assignment under section 25-323 or 25-504.

C. A clerk who provides the information in subsection B of this section to a consumer reporting agency shall also provide the information to the child support enforcement administration in the department of economic security.

D. The clerk, in accordance with procedures established by the board of supervisors, may appoint deputies, clerks and assistants necessary to conduct the affairs of the office of the clerk. The appointments shall be in writing and shall be filed in the office of the county recorder. The clerk shall be the appointing authority and shall administer and supervise all employees of the clerk's office.

E. The clerk shall submit an annual budget request, which shall be coordinated with the presiding judge, to the county board of supervisors. The clerk shall be responsible for the funds appropriated by the board to the clerk.

F. The clerk shall maintain and provide access to court records in accordance with applicable law or rule of court. The clerk shall keep a docket in the form and style as prescribed by the supreme court.

G. The clerk is responsible for the operations of the clerk's office.

H. The clerk may provide programs to assist in the enforcement of child support, spousal maintenance and parenting time and in the establishment and modification of child support.

I. From and after December 31, 2007, a clerk in a county with a population of two million persons or more shall compile and publish electronically all superior court criminal case minute entries, except as otherwise prohibited by law. At a minimum, the information shall be arranged or searchable by the case name, number and the name of the judge or commissioner.

J. Beginning on January 1, 2010, the clerk in a county with a population of less than two million persons shall compile and publish electronically all superior court criminal case minute entries, except as otherwise prohibited by law. At a minimum, the information shall be arranged or searchable by the case name, number and the name of the judge or commissioner.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 1, 2010	[ ] Formal Action Request [X] Information Only [ ] Other	Defense Initiated Victims Outreach

FROM: Defense Initiated Victims Outreach (DIVO)

PRESENTER(S): Linda King

DISCUSSION & TIME ESTIMATE:
Introduce the concept of DIVO and its underlying restorative justice philosophies. 20 minutes

RECOMMENDED MOTION (IF ANY): N/A

Principles of DIVO Practice

- Survivors should be provided as much information about the crime, the case and the process as possible, in non-technical language, without compromising due process for defendants.
- Survivors should be assisted in identifying and, to the extent possible, obtaining what they need through the justice process.
- Survivors should be provided as many options as possible for their involvement.
- All possible precautions should be taken to avoid or reduce additional trauma to victim-survivors through testimony, cross-examination or other parts of the process where the needs of the defense and the survivors intersect.
- If they wish, survivors should be provided contact, directly or indirectly, with defense attorneys in order to address the above principles.
- The confidentiality of the information provided to the VOS must be maintained, consistent with the survivor's wishes.
- VOS must do nothing to undermine the work of the defense team.
- A VOS should not be an immediate member of the defense team, should not be involved with any other aspect of the case (such as mitigation, advising) and, unless so requested by the survivor, should not have contact with or direct knowledge of the defendant or his/her family.
- Involvement with DIVO is fully voluntary on the part of survivors and should be available to them regardless of their stand on the death penalty. Once a relationship is established, the VOS should remain available to survivors throughout the legal proceedings and for a reasonable time beyond.
- DIVO practice should be regularly evaluated and stakeholders, including victims and victim advocates, should be on oversight committees.

Comments from/about Survivors

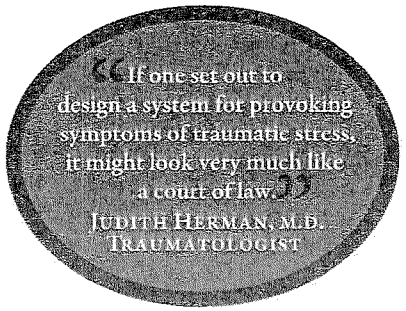
"The letter I first got from the VOS—it wasn't a letter stating she was there for the offender. It was an informational letter letting us know that she was there if we needed her...It seemed very inviting...It was, 'What can we do for you?'"

"The VOS made me comfortable. She's funny and she was easy to talk to...She's helped me a lot; letting me talk and express my feelings...She kind of let me do it on my own. She didn't push me into anything."

"The VOS arranged a meeting with the defense attorneys, the prosecutors, me and my daughter. At the meeting, I poured out my anger with the offender and his lawyers. It was a difficult encounter but it was a turning point."

"About a year later the VOS introduced me to a minister who had met the offender the day after his arrest. She told me he was inconsolable the next day—I never knew that!"

Institute for Restorative Justice & Restorative Dialogue (IRJRD) seeks to build a national mindset that embraces restorative justice principles. Its mission is to advance meaningful accountability, victim healing and community safety through the use of restorative solutions to repair the harm related to conflict, crime and victimization.



This project is supported by a grant from the Bureau of Justice Assistance (BJA), a component of the Office of Justice Programs, U.S. Department of Justice and developed with the assistance of The Council for Restorative Justice, Georgia State University School of Social Work, Atlanta, Georgia.

DEFENSE INITIATED VICTIM OUTREACH (DIVO)

Institute for
Restorative Justice
and
Restorative Dialogue

THE UNIVERSITY OF TEXAS AT AUSTIN
SCHOOL OF SOCIAL WORK

Marilyn Armour, PhD
Executive Director
Stephanie Frogge, MTS
DIVO Project Coordinator

1925 San Jacinto Blvd
Austin, Texas 78712
512 471 3197
divo@austin.utexas.edu

What Is DIVO?

Defense-Initiated Victim Outreach (DIVO) is a new program that seeks to address the needs of crime victims and their families throughout the legal process by providing a bridge between survivors and the attorneys who represent the defendant, especially in capital cases. Recognizing the historic gap between survivors and the defense and the responsibility of the defense to zealously represent the defendant, defense attorneys seek the assistance of trained Victim Outreach Specialists (VOS) to serve as a liaison for a survivor's questions and concerns that can be met most effectively by the defense. Although this service is requested by the defense, it is victim centered and victim driven. The VOS is considered an expert consultant but operates independently of the defense.

DIVO was born out of the ashes of the Oklahoma City bombing that created such grief that the defense wanted to reach out in some way to survivors and to acknowledge the depth of their pain and suffering. To that end, DIVO was created with the objective of reducing unnecessary tension with the defense for victim survivors who already bear the brunt of the crime. DIVO has been authorized in a growing number of federal cases and is fast emerging at the state level. The American Bar Association has issued guidelines in support of the connection between the defense and victim survivors through the services of a liaison, such as a VOS.

DIVO supports an open, ethical, and transparent process that is collaborative and mutually beneficial to all parties. The defense, therefore, is asked to notify the prosecution about their decision to use a VOS. Similarly, the VOS makes contact with the prosecution-based victim advocate to answer questions about DIVO, its services, and procedures. The VOS relationship with the survivor is confidential.

What Can DIVO Do for Survivors?

In the aftermath of murder, survivors feel disempowered and hungry for information. When survivors, through the services of the VOS, can share their concerns, request information, and receive a response directly from the defense, they experience some measure of control over the process.

- When my mother was killed the defense referred to her as "the victim." My mother had a name. She was a person. I want the defense to call her Danica and I wanted to be able to ask them to do something for me and for her.
- I want to know about the defendant's family. Who are they? How many children did they have? How did they raise them? How do they feel about what happened to us?
- When we go to court, I don't want to worry about the defense approaching me and saying something. Just do what they're supposed to do for the defendant. That's their job...to do the best they can so we don't have to go through this again.
- We wanted to know if the autopsy photos were going to be shown at a particular pre-trial hearing as we were planning on attending unless they were going to be shown. We didn't want to change anything; we justwnted to know one way or the other.
- We've heard that at times defense attorneys appear to be joking with the defendant during the trial. If this happens in our case we'd feel so insulted. It would dishonor our son still more. Can I ask the defense to not behave like that at the trial? It would help to know that I wouldn't have to endure watching that on top of everything else.
- The defendant killed both my daughter and her boyfriend. However, the coroner's report about who was killed first is inconclusive. I'd like to know who was shot first.

Survivors Should Consider That ...

- The DIVO process gives them an opportunity to identify needs that the defense can most effectively address.
- All communication between the survivor and the VOS is confidential except to the degree that permission is granted to share requests with the defense.
- Survivors are encouraged to utilize their existing support system in deciding whether or not to participate in DIVO and to what degree.
- The VOS does not seek to replace other victim advocates or supportive persons.
- The DIVO process is unconditional and in no way seeks to influence the survivors' stance on suitable punishment.

Defense Should Consider That ...

- Utilization of DIVO does not impact zealous advocacy of the defendant.
- Through the VOS, the defense has an opportunity to interact with survivors in a respectful manner, an opportunity not typically afforded by the criminal justice system.
- Principled engagement in the DIVO process may create additional options for the defendant.
- Engagement of DIVO services is within the sole discretion of defense counsel.