

Committee on Criminal Rules Regarding Victims

State Courts Building, Phoenix

Meeting Minutes: September 2, 2021

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

Guests: Theresa Rassas

AOC Staff: Mark Meltzer, Angela Pennington

1. Call to order; approval of meeting minutes. The Chair called the ninth meeting of the Committee on Criminal Rules Regarding Victims (“CRV”) to order at 10:07 a.m. The Chair and staff were present in the State Courts Building; all others appeared by Zoom. The Chair welcomed Mr. Heade as proxy for Ms. Whalen. The Chair then requested members to review draft minutes of the August 19, 2021 meeting. Members had no corrections or comments to the draft.

Motion: A member moved to approve the draft August 19, 2021 meeting minutes. The motion received a second and it passed unanimously. **CRV-009**

The Chair noted that members have now reviewed and discussed all of the AVCV’s proposed amendments. Today’s meeting packet included two versions of the consolidated appendix, both of which contain the agreed-upon changes. One version has markup and the other does not. In the latter version, each provision that includes a change, in lieu of markup, contains an annotation describing the change. There are about 50 such annotations. Today’s packet also includes a revised version of draft Rule 1.3, as well as a draft Committee report, version 08.26.2021, which was updated after the August meeting.

2. Discussion of recommendations. The Chair observed that members discussed, but deferred voting on, a recommendation to the Court at the August meeting, and inquired if they could reach a consensus recommendation at today’s meeting. The Court would not be bound by the Committee’s recommendation, but it would be appropriate for the members to offer one. He noted that members had discussed at the last meeting an option of “Rule 1.3 plus,” that is, recommending that the Court adopt Rule 1.3 and selective amendments to other rules. The Chair asked the AVCV at the

August meeting to review the complete set of proposed rule amendments and determine if it could narrow dozens of amendments to a more limited number. The AVCV reported today that it had done so, and it then identified the following rules: 1.7, 1.8, 4.1(b), 4.2, 6.3, 7 (all), 8 (all), 15.1, 15.2, 25.6, 16.3, 19.7, 24.3, 26.4, 26.7, 26.10, 27.3, 27.4, 27.8, 27.10, 31.3, 32.7, 32.9, 33.7, and 33.9. The AVCV subsequently withdrew Rule 31.3 from its list.

A member then asked whether, if amendments to the foregoing rules are adopted, corresponding provisions in Rule 39 would be removed. Members had differing views. Some believed that the corresponding provisions should be removed from Rule 39, and that doing so would avoid duplication and potential conflicts between rules. Others believed that the Rule 39 provisions could be retained without inviting conflicts. The Chair then asked members to state their views on the Rule 39 Plus option, whether provisions should continue to remain in Rule 39 if that was the recommended option, and other thoughts concerning the Committee's recommendations. Here is a summary of the views of the ten Committee members.

- Rule 39 works well now. Judges and lawyers are well-trained on the current rules and they know how to find pertinent provisions. There is no need to change any rules. The Committee should recommend rejection of the petition.
- Picking out a few rules and amending just those rules, as the 1.3 Plus option proposes, would be confusing. Why would particular rules be selected? Are those rules more important than other rules? Partial integration will lead to more litigation. Arizona has perhaps the best victims' rights provisions in the country—Rule 39 serves as a national model—and those provisions have proven workable over the years. Tinkering with Rule 39 would detract from victims' rights and invite litigation.
- Rule 39 should be honored and followed. Integration won't improve compliance. If judges require more training, that's a separate issue. Integration would instead require even more training.
- The rules AVCV selected for partial integration were the result of a difficult choice, because all of the AVCV's proposed amendments are important. Members clearly have a philosophical difference on integration. However, the Court's charge to the Committee was to integrate. Stakeholders should be able to look at a particular rule and readily locate provisions that apply to a victim.
- The premise is that there's a need for integration, but that need has not been established. There has been anecdotal information about some judges not abiding by the rules, but that's a training issue.

Committee on Criminal Rules Regarding Victims
Draft minutes 09.02.2021

- The Committee has several options: complete integration; partial integration with retention of Rule 39 and not eliminating any of Rule 39's current provisions and doing so with or without draft Rule 1.3; and doing nothing. Complete integration is the least preferred option.
- No integration is necessary.
- Full integration is the best choice. Rule 39, which is in Part IX ("miscellaneous") at the end of the rules, is located like an afterthought. Even if full integration isn't the majority recommendation, the Committee, which has invested 8 months of work on full integration, should at least include that as a recommendation to the Court.
- Nothing should be deleted from Rule 39. Partial integration is a potential recommendation, but it has the perils of duplication, potential conflicts, and arbitrary selection of the "plus" provisions, as other members have noted.
- Rather than an afterthought, Rule 39 represents a strong statement by the Court that it will honor victims' rights. It makes those rights more accessible by aggregating them in a single location. Every member supports victims' rights, but the Committee should not recommend full integration. Rule 1.3, by comparison, may serve as a useful and prominent guidepost for victims' rights. The draft rule does not appear to conflict with other provisions, and even if there are conflicts, they can be removed by revising the draft.

One member raised a concern that draft Rule 1.3 would require renumbering of other provisions of Rule 1 and suggested that Rule 1.3 be proposed as a new Rule 1.10. Staff responded that Rule 1.3 was a deliberately chosen location because it gives the rule the utmost possible prominence. It comes after two short rules, 1.1 and 1.2, which now total only three sentences, so Rule 1.3 would be readily apparent at the beginning of the criminal rules. Locating Rule 1.3 as Rule 1.10 would place it behind several lengthy rules on more mundane subjects such as document formatting and filing, which would detract from its prominence. Moreover, adding the draft rule as a new Rule 1.3 would require renumbering only one rule, current Rule 1.3 ("calculation of time"), and that rule would become a new Rule 1.10.

Staff also suggested a distinction in the Rule 1.3 Plus concept concerning which amendments to other rules might be selectively included. Staff distinguished proposed rule amendments that derive from current Rule 39 and amendments that have no origin in current Rule 39 and are entirely new. Staff acknowledged not having a list of those new provisions but mentioned that they would include an addition to Rule 5 concerning

a victim's rights at the preliminary hearing stage; an amendment to Rule 8.5 requiring the court to consider the victim's views; and new Rule 19.7 regarding a facility dog, which would apply to the use of a dog by a party or a witness, in addition to use by a victim. Another example is new Rule 7.3 on "victim protection." Ms. Rassas also noted new Rule 1.9(f), which implies that a victim's attorney has a right to request oral argument. For purposes of their recommendations to the Court, however, members did not find these distinctions persuasive.

Members also proposed the following revisions to the most recent version of draft Rule 1.3:

- Adding a comment to the rule to explain that it is not intended to conflict with Rule 39, and that the purpose of the rule is to assure that victims' rights are prominent and not overlooked by judicial officers.
- Modifying Rule 1.3(b)(1) to more carefully track the language of Rule 39(b)(1).
- Removing the word "reasonable" in Rule 1.3(b)(3), which has no basis in statute or current rule (i.e., "...to request ~~reasonable~~-notice ...")
- Considering whether Rule 1.3(b)(3)(H) ("the defendant's post-conviction release") correctly flows under Rule 1.3(b)(3) ("...criminal proceedings involving ...")

Members concurred with these revisions and draft Rule 1.3 would be revised accordingly.

3. Vote on recommendations. Members considered two suggestions before proceeding to a vote on the Committee's recommendations. One suggestion was to do a "ranked choice" vote, whereby members would assign a numerical order of preference on a menu of recommendations; the other was to do a roll call vote. Members declined both suggestions.

Members then proceeded to vote on the following four questions posed by the Chair (the Chair did not vote). A reference to "standalone adoption of Rule 1.3" in two of these questions means the adoption of Rule 1.3 only, and without partial integration of amendments to other criminal rules.

- (1) Do members recommend that the Court retain the criminal rules as they currently are and without any of the revisions discussed by the Committee?

Yes: 7

No: 3

- (2) Do members recommend to the Court full integration, as reflected in the Committee's work product?

Yes: 2

No: 8

- (3) Do members recommend to the Court as their first choice the standalone adoption of draft Rule 1.3?

Yes: 1

No: 9

- (4) If the Court rejects full integration of the rules, as reflected in the Committee's work product, yet it believes some other change to the Criminal Rules would be appropriate, do members recommend the standalone adoption of draft Rule 1.3?

Yes: 8

No: 2

4. Preparing the final report. The Committee is required to file its report to the Court on the Rules Forum, in rule petition number R-20-0031, by October 1, 2021. Pursuant to today's discussion, the report will note three options: (1) making no changes to the current rules; (2) full integration, as discussed above; and (3) adoption of Rule 1.3 as a standalone rule. The report will require a variety of revisions to assure alignment with the discussions today, and to improve the report's organization, make stylistic edits, and correct syntactical and grammatic errors. The appendices will require similar changes. The Chair asked members for their authority to make these changes, with assistance from staff, Ms. Rassas, or others involved with this project.

Motion: A member moved that the Committee provide the Chair with the requested authority. The motion received a second and it passed, 8 in favor, none opposed, two abstentions (Judge Verdin and Ms. Clase). **CRV-010**

Committee on Criminal Rules Regarding Victims
Draft minutes 09.02.2021

The Chair noted that the customary effective date of new rules and rule amendments is January 1 of the following year. (See Supreme Court Rule 28(g)(2).) The Court will probably consider R-20-0031, including the Committee's report, at its December Rules Agenda. If the Court adopts any rule changes in R-20-0031, there could be an interval of only a few weeks between the date of adoption and the effective date. Nonetheless, members will defer to the Court on whether any adopted rules should have a delayed effective date, and if so, what that date should be.

Members agreed that Ms. Rassas' contributions to this project should be noted in the Committee's report.

5. Roadmap. No further meetings are pending. If there is no objection, the Chair will review and finalize these minutes accordingly.

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

The Chair concluded the meeting by thanking members for their hard work and diligence, including their dedication in working several extra months beyond the originally anticipated term of this project. He noted the members' shared passion for justice for crime victims, their good faith in going about the work of this Committee, and their civility even when they disagreed about how to best protect victims' rights. He will share these observations with the other justices.

The meeting adjourned at 12:02 p.m.