

**Committee on Criminal Rules Regarding Victims
State Courts Building, Phoenix (virtual meeting)**

Meeting Minutes: May 21, 2021

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

Members absent: Ryan Green

Guests: Theresa Rassas

AOE Staff: Mark Meltzer, Angela Pennington

1. **Call to order; approval of meeting minutes.** The Chair called the fifth—and first virtual—meeting of the Committee on Criminal Rules Regarding Victims (“CRV”) to order at 12:03 p.m. The Chair then requested members to review draft minutes of the April 16, 2021 meeting. Ms. Clase requested a correction on page 4 of those minutes; the subject of the correction concerned whether the waiver provision of current Rule 39(f) appeared in the R-20-0031 appendix. After confirming that the waiver provision did appear in the appendix, staff proposed placing a period after the words “indeed the case” in the pertinent paragraph on page 4 and deleting the remainder of that paragraph. Members concurred in this edit.

Motion: A member moved to approve the draft April 16, 2021 meeting minutes with the correction noted above. The motion received a second and it passed unanimously. CRV-005.

2. **Continuing review of proposed rule amendments.** Members then proceeded with their review of the proposed rule amendments. The Chair noted that a new document prepared by staff (a “consolidated appendix” beginning at page 23 of the meeting packet), consolidated three items (a) the original R-20-0031 appendix; (b) the Rassas/Twist amendments to the R-20-0031 appendix; and (3) revisions suggested by CRV members at the April 16 meeting. This new document will be the basis for today’s review, but members should continue to refer to the original documents when necessary. Although the April 16 CRV session left off at Rule 1.9, members began today’s session with Rule 1.2.

Rule 1.2 (“purpose and construction”). Staff restyled and reorganized Rule 1.2 as members had previously directed and as shown in the new document. However, there were two residual issues. First, Rule 1.2(a) (“generally”) uses the word “should” (“should construe these rules”) whereas Rule 1.2(b) (“construction of victims’ rights”) uses the

word “must” (“these rules must be construed”). A similar divergence exists in the current rules; compare current Rule 1.2 and current Rule 39(b). After discussion, members left the verbiage of the proposed amendments unchanged. Their rationale was that “should” in section (a) allowed desirable flexibility in construing general provisions, while “must” in section (b) specifically referred to construing rights of constitutional magnitude. The second issue involved two of the three subparts in Rule 1.2(c) (“limitations on victims’ rights”) that were duplicated in proposed amendments to Rule 1.4; members considered this issue during their discussion of Rule 1.4.

Rule 1.4 (“definitions”). The three subparts of proposed Rule 1.2(c) referenced in the preceding sentence are titled, “(1) cessation of victim status,” “(2) legal entities,” and “(3) victims are not parties.” Proposed Rule 1.4(j) contains a definition of “victim,” followed by subparts that duplicate proposed Rule 1.2(c)(1) and (2). Because those two subparts are currently Rule 39(a)(3)(A) and (B), staff proposed relocating them to proposed Rule 1.10. Ms. Clase was not opposed to this change. She preferred, however, that proposed Rule 1.2(c)(3) retain its prominent location in Rule 1.2 because she wanted to eliminate issues about whether victims had the status of parties. One member would retain proposed Rule 1.2(c) as it is currently organized. The Vice Chair suggested reversing the order of the subparts so that what is now (c)(3) would become (c)(1). Members had no consensus today on where to locate or how to sequence these provisions and they will revisit this matter later.

Rule 1.5 (“interactive audio visual systems”). Staff noted that a proposed amendment to subpart (c)(4) (“change in a hearing’s scope”) would require notice to a victim if an initial appearance conducted by videoconference was rescheduled because of a change in its scope. Should this provision be qualified with the phrase “upon request?” Members generally agreed that if the scope of an initial appearance (“IA”) changes, it’s probably no longer an IA. This scenario often occurs when a defendant wishes to enter a plea during the IA. It is unlikely, however, that a video IA would be continued as an in-person IA with a broadened scope. Accordingly, members made no change to the proposed amendment to Rule 1.5(c)(4).

Rule 1.9 (“motions, oral argument, and proposed orders”). The discussion focused on an amendment to section (b) (“service of motion; response; reply”) proposed by the Rassas/Twist table that would add this sentence: “The victim has standing to seek an order, to bring a special action or to file a notice of appearance in a trial court or an appellate proceeding, seeking to enforce any right or to challenge an order denying any right guaranteed to victims.” Staff noted that the proposed provision appeared to mix the concepts of standing to seek an order and simply filing a notice of appearance. Staff also noted that the proposed provision’s reference to special actions omitted to mention

Rule 2(a)(2) of the Rules of Procedure for Special Actions, which provided greater specificity of this victims' right. One member raised the possibility of amending the Rules of Procedure for Special Action, but the Chair concluded an amendment to that set of rules would be beyond the scope of the CRV's charge. Members agreed, however, that adding a provision concerning special actions in Rule 1.9 might be confusing, and that it might be more sensible to relocate the provision to proposed Rule 1.10. The Chair then directed staff to draft language for a relocated provision.

Rule 1.10 ("victims' rights: exercising the right to be heard, the right to representation; victim and court obligations"). This new rule purports to import verbatim the content of current Rule 39(c) through (h). If the members integrated Rule 39, as proposed by R-20-0031, would Rule 39 be abrogated? Ms. Clase observed that abrogating Rule 39 would eliminate conflict with other rules, but she was also open to the alternative of retaining portions of current Rule 39. Another member suggested that it might be premature to have this discussion now and proposed that the Committee defer it. Other members agreed. They accordingly will defer the philosophical issue posed by Rule 1.10 (i.e., the relocation of current Rule 39(c) through (h) to Rule 1.10), and consider it later, possibly in conjunction with staff's draft Rule 1.3.

Rule 4.1 ("procedure upon arrest"). Proposed Rule 4.1 ("prompt initial appearance") contains this new sentence: "Upon request, the victim must be informed of the date, time, and place for the initial appearance in accordance with 13-4406 and 13-4409 [sic]." The underlined language derived from the Rassas/Twist table, and a member noted that the comprehensive document being reviewed today omitted the underlined language in a similar amendment to Rule 4.1(c) ("on arrest with a warrant.") Staff acknowledged the omission. The issue with Rule 4.1, however, was whether the amendment to section (c) was unnecessary because it repeated what was in section (a). Members agreed the proposed text in section (c) was redundant. To avoid uncertainty, however, they requested that text be added to section (a) to clarify that section (a) applied to sections (b) ("arrest without a warrant") and (c). The clarification might include changing the title of section (a) to "generally." Staff proposed resequencing the sentences in section (a). Staff also suggested adding "A.R.S. §" before the referenced statutes. The Chair directed staff to draft provisions that reflect this discussion.

Rule 4.2 ("initial appearance"). Staff noted a pending rule petition, R-21-0022, which was filed on February 4, 2021 and that would amend Rules 4.2, 6.1, 6.5, 6.6, 7.2, and 7.4. Those proposed amendments would modify bail and release provisions to better ensure that a defendant's lack of financial resources did not by itself cause unnecessary pretrial detention. The comment deadline in R-21-0022 is June 4, and Ms. Clase indicated that the AVCV would be filing a comment. The proposed amendment before CRV today

concerned Rule 4.2(c) (“combining an initial appearance with an arraignment.”) The proposed amendment would require that the victim, “if requested,” be given “notice and an opportunity to be present and heard” in the circumstances described in this section. Ms. Clase noted that “if requested” should be changed to “upon request” in this rule and elsewhere (see, for example, proposed Rule 5.1(a), which also says “if requested”) to assure the phrase appears uniformly throughout the proposed rule amendments. Members had no further comments or questions concerning Rule 4.2.

Rule 5.1 (“right to a preliminary hearing; waiver; continuance”). A proposed amendment to Rule 5.1(c)(2) (“continuance”) would permit a magistrate to continue a preliminary hearing “after consideration of the victim’s right to a speedy trial.” Members observed that a trial is not set until an arraignment, and the arraignment is subsequent to a preliminary hearing. Accordingly, members changed “speedy trial” to “speedy disposition.” Members had no objections to the other proposed amendments to Rule 5.1(c)(2) or to the proposed amendments to Rule 5.1(d) (“hearing demand.”) The Chair inquired, however, whether statutory references in these and other proposed provisions are uniformly included throughout the rules, and whether including statutory references is beneficial. Ms. Clase noted that the AVCV’s proposed amendments did not initially include these references. Virtually every one of the proposed amendments, however, originates with a constitutional or statutory provision, and the inclusion of these references is intended to heighten awareness of notice requirements and similar matters, and therefore assure better compliance with victims’ rights. Ms. Rassas agreed that the references could help stakeholders gain more insight about applying these provisions, and she supports including the references. The Chair concluded that a proposed amendment could include a statutory reference if it provided guidance about a legal requirement, and in Rule 5.1, the references serve that purpose.

Rule 5.4 (“determining probable cause”). Rule 5.4(a) (“holding a defendant to answer”) allows a magistrate upon holding a defendant to answer to reconsider the defendant’s conditions of release. The proposed amendment would add “after giving the victim the right to be heard.” Members agreed that the proposed amendment was consistent with the Victims’ Bill of Rights.

Rule 5.8 (“notice if an arraignment is not held”). This rule applies only in counties that do not hold an arraignment after a defendant is held to answer. (Staff believes that Yavapai is the only county that currently follows that procedure.) In that event, Rule 5.8 requires the magistrate who conducted the preliminary hearing to advise the parties in writing of the dates set for further proceedings. The proposed amendment to section (a) (“notice”), subpart (3) would require the court to also give written notice to a victim, if requested pursuant to A.R.S. § 13-4409. The proposed amendment prompted discussion

because it would impose this obligation on the court rather than the prosecutor. (Ms. Rassas also advised that the referenced statute is inconclusive because it exempts initial appearances and arraignments. Another member noted that Maricopa County now conducts more preliminary hearings because of a reduction during the pandemic in the use of grand juries, and an arraignment might immediately follow the conclusion of the preliminary hearing, so providing a victim five days' notice of the arraignment isn't possible.) A member then proposed a change to subpart (a)(3) that would require the court to notify the parties, "and upon request, the prosecutor will notify counsel for the victim pursuant to statute." Members concurred with this proposal.

Rule 6.3 ("duties of counsel; withdrawal"). The combined amendments proposed by R-20-0031 and the Rassas/Twist table to section (c) ("withdrawal"), subpart (1) ("before granting a motion") would provide, "If a motion to withdraw may result in a continuance, the court must consider the victim's right to a speedy trial before granting the motion." Members discussed whether a victim has a right to be heard on defense counsel's request to withdraw. Often these requests are due to conflicts, ethical issues, or workloads, are made at an early stage of the proceeding, and don't affect the trial date, which is usually set at arraignment. A request to withdraw made closer to the trial date, however, might require that the trial be continued. Although current Rule 6.3 does not afford the victim a right to be heard on defense counsel's motion to withdraw, members agreed that a victim's right to a speedy disposition could be affected by a motion that's made at a late stage. Members therefore modified the proposed provision by adding this underlined language: "If a motion to withdraw may result in a continuance of the trial date, the court must consider the victim's right to a speedy trial before granting the motion."

3. Roadmap. At the next meeting, members will resume their review with Rule 6.7. After discussion with the members, the Chair set the next meeting for Friday, June 18, 2021, beginning at 10:00 a.m. The next meeting will be in-person.

4. Call to the public; adjourn. There was no response to a call to the public. The meeting adjourned at 3:03 p.m.