

Committee on Criminal Rules Regarding Victims

State Courts Building, Phoenix

Meeting Minutes: January 26, 2021

Members attending: Hon. Andrew Gould (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 (all members present)

Guests: Delaney Krauss

AOC Staff: Mark Meltzer, Angela Pennington

1. Call to order; introductions; approval of committee rules; review of A.O. No. 2020-183. The Chair called the first meeting of the Committee on Criminal Rules Regarding Victims ("CRV") to order at 1:03 p.m. He welcomed the members and members then introduced themselves. The Chair advised members that CRV meetings will be audio recorded, which serves as a meeting record pending the preparation of meeting minutes. He reminded members that CRV meetings are open to the public.

The Chair briefly reviewed the materials in today's meeting packet. The materials include Administrative Order No. 2020-183, which established the committee; the appendix to the petition in R-20-0031, which contains proposed rule amendments that are foundational for this committee's work; excerpts from meeting minutes of two prior Supreme Court task forces, one on Criminal Rules (2016-2017) and the other on Rule 32/post-conviction relief (2018-2019), which contain discussions of proposed amendments to criminal rules concerning victims; and a table prepared by staff that shows current criminal rule provisions that include the word "victim." The Chair noted that the packet also includes a single page of rules for conducting the committee's business, which includes provisions on a quorum, decision-making, the use of proxies, and the call to the public. Prior to today's meeting, staff sent members a hyperlink to the Rules Forum page for petition number R-20-0031, which was filed by the Arizona Voice for Crime Victims ("AVCV"). This webpage includes public comments on the petition.

2. Remarks by the Chair and Vice Chair; comments by the petitioner. The Chair provided his remarks as a preface to the members' discussion of R-20-0031. The Chair began by noting that victims' rights are well-established in Arizona law, as provided by the Arizona Constitution, Art. 2, Sec. 2.1, and Arizona Revised Statutes §§ 13-4401, *et seq.* Criminal Rule 39 is a complementary rule of procedure that implements those rights in court proceedings. The CRV's purpose is not to modify these rights or to create new ones. Rather, and after considering R-20-0031, the CRV's stated purpose is to clarify these rights in the current criminal rules, if necessary; to improve the organization

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of the victims' rights provisions in the criminal rules, to the extent possible; and to protect victims' rights to justice and due process. The focus is on restyling, if members conclude that is necessary, rather than on substantive changes. The Chair also asked members to consider whether any of the proposed rule amendments might be redundant.

The Court previously considered petitions filed by the AVCV that were similar to R-20-0031. The Court declined to adopt rule amendments proposed by the previous petitions, but at its August 2020 rules agenda, which included R-20-0031, the Court concluded that it would be appropriate to reconsider these recurring issues. It accordingly established this committee to review those issues and to make recommendations to the Court. The Chair observed that the committee could recommend adoption or rejection of the petition as a whole, or it could examine each proposed amendment and make a recommendation on each one. He added that it would be beneficial for the committee to obtain comments from interested stakeholders before determining its recommendations. He noted that A.O. No. 2020-183 requires the committee to submit its recommendations to the Court no later than May 28, 2021.

The Chair then requested the members' preliminary views on these issues, beginning with Ms. Clase, who filed R-20-0031 on behalf of the AVCV. Ms. Clase thanked the Court for establishing this committee. She acknowledged that the AVCV had filed two previous petitions in recent years but said that the current petition is different from the earlier ones because it addresses concerns raised by stakeholders in their comments to the prior filings. She generally believes that victims' rights should be integrated into various criminal rules governing specific court events rather than being confined within Rule 39. Ms. Clase would prefer that the Court adopt all the amendments proposed by R-20-0031 rather than just some of them, as she believes this would more satisfactorily improve a victim's experience during court proceedings. Although she recognizes that victims under the current law can file a special action seeking appellate review of an alleged trial court error, she does not believe victims should be required to resort to that process to secure just treatment. She believes the rule amendments proposed in R-20-0031 would help trial judges ensure that the criminal justice process is fair for victims.

The Chair asked Ms. Clase to clarify whether her goal was to abrogate Rule 39 or to retain it. Ms. Clase responded that she initially wanted to eliminate Rule 39, but after discussions with stakeholders, she is agreeable to retaining it with modifications. The Chair also inquired about the R-20-0031 proposal to add a new Rule 1.10. Ms. Clase clarified that the text of provisions in that proposed rule is substantially the same as the text of corresponding provisions in current Rule 39.

The Vice Chair advised that he does a substantial amount of judicial training, going back to the adoption of Rule 39 more than 20 years ago. He believes having the rules concerning victims in a single location, i.e., in Rule 39, makes it easier for judges to

locate pertinent provisions. He noted that the constitutional and statutory provisions concerning victims are in a single, readily accessible location, and that dispersing Rule 39 provisions throughout the rules would not necessarily assist judges or, by implication, be of benefit to victims. On the other hand, he would concur with relocating the entirety of Rule 39 to a more prominent location in the criminal rules. He believes that retaining Rule 39 as a unified rule would assist in the development of case law and in the training of new judges. He believes most judges want to comply with victims' rights requirements, but some judges had no experience with criminal law before taking the bench, and some limited jurisdiction court judges are not lawyers. These judges appreciate training that helps them correctly identify and apply victims' rights provisions.

3. Remarks from committee members. The Chair then asked for comments from the other 8 committee members in the room.

(1) The first member to speak, a judge who serves as dean of the Judicial College, agreed with the Vice Chair's comments. The member does not believe, for example, that reciting the victim's position on a motion to continue would prompt a judge to refer to Rule 8. The judge would more likely review Rule 39 on that issue.

(2) The second member, also a judge, agreed with the preceding comments. When an issue concerning a victim is presented, this judge will typically turn to Rule 39. The judge believes that if Rule 39 is retained yet other victims' provisions are interspersed throughout the criminal rules, as proposed, the result might be conflicting provisions. Furthermore, if a judge was required to review all of the rules to locate a particular victims' provision, it would increase the possibility of overlooking one.

(3) The third member is a prosecutor who trains new prosecutors. This member believes that new prosecutors learn most effectively when pertinent provisions are in a single location. However, he would support integrating a few of the Rule 39 provisions in critical places, such as the rule concerning service of filed documents. The member would take a pragmatic approach. Proposed Rule 1.10 causes this member consternation because it is such a massive rule.

(4) The fourth member, a defense attorney, cautioned that changing the rules on victims could undermine existing case law. The member expressed concern that amendments to the victims' rights provisions could create new legal issues and lead to unintended consequences. The member prefers giving meaning to the existing rules rather than altering them by new amendments.

(5) The fifth member, also a prosecutor, joined the other members in expressing strong support for the current victims' rights provisions. The member also joined in

previous comments about how the AVCV's proposed amendments could create conflicts between various victims' rights provisions. The member believed that relocating Rule 39 provisions might diminish victims' rights rather than enhance them. The member agrees that Rule 39 in its entirety could be relocated to a more prominent place in the criminal rules, but the member's preference is that the provisions be retained in a single location. The member noted that having victims' rights provisions in one location would better inform victims, especially those without counsel, that they have rights, and what those rights are. The member added that enforcement of victims' rights requires that judges be well-trained. If some judges need additional training, that does not implicate a problem with the rules themselves. Rather, it's a training issue.

(6) The sixth member, a director of indigent defense services, observed that new practitioners would be better served by having a single location for victims' rights, i.e., a single constitutional provision, a single statutory chapter, and one criminal rule rather than many dispersed rules. The member concurred that having dozens of victims' rules would complicate learning and comprehension not only for judges and practitioners but also for most victims, who are unrepresented.

(7) The seventh member, a judge, agreed with the importance of training judges about victims' rights, although a few judges might continue to be non-compliant even after training. The member did not see the benefit of relocating Rule 39 because all the rules apply in a criminal case and each rule matters. The member suggested that the committee review proposed Rule 1.10 to determine if there are any new provisions that should be included in Rule 39. On the subject of service of documents, the member questioned why a victim who has counsel is entitled to service of documents that are filed by other parties, but an unrepresented victim is not.

(8) The eighth member, a retired judge, recommended that the committee review all the proposed rules and ask whether each amendment would further safeguard victims' rights. The member emphasized the need for clarity in the rules and having provisions that are readily understood and that function well for everyone involved in the process.

4. Roadmap. The Chair would like the committee to receive and consider comments from other stakeholders at the next committee meeting, which is set for February 19. He directed staff to contact those stakeholders and arrange for their virtual appearance at that meeting.

5. Call to the public; adjourn. There was no response to a call to the public. The meeting adjourned at 2:13 p.m.