

## Commission on Victims in the Courts

**Friday, March 22, 2019**

10:00 a.m. to 12:00 p.m.

Conference Room 329/330

1501 West Washington Street

Phoenix, Arizona 85007

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**Present:** Judge Ron Reinstein (chair), Timothy Agan, Michael Breeze, Colleen Clase, Judge Maria Elena Cruz, Sydney Davis, Jon Eliason, Amy Bock (proxy for Kristin Flores), Vanessa Helms, Leslie James, Judge Kellie Johnson Christine Kelly, Captain John Leavitt, Dan Levey, Sergeant James Markey (Ret.), Chief Rod McKone, Judge Sam Myers, Jane Nicoletti-Jones, Elizabeth Ortiz, William Owsley, Laura Penny, Judge Richard Weiss

**Telephonic:** Judge Antonio Riojas, Kimberly Chichester

**Absent:** Judge Evelyn Marez, Karyn Rasile

**Presenters/Guests:** Beckie Miller, R. Keith Perkins, Chris Groninger, Jerry Landau

**Staff:** Sabrina Nash, Susan Pickard, Administrative Office of the Courts (AOC)

### I. REGULAR BUSINESS

- A. **Welcome and Opening Remarks** - With a quorum present, the March 22, 2019, meeting of the Commission on Victims in the Courts (COVIC) was called to order at 10:03 a.m. by Judge Ronald Reinstein, Chair.

Judge Reinstein made the following announcements:

- Acknowledged Judge Maria Elena Cruz's candidacy for the Supreme Court and wished her well.
- Reminded members of the Victim Right's Week Awards Luncheon, April 10, 2019 at the Shriners Auditorium.
- Noted the "What's Next for the Death Penalty" Symposium at ASU on March 20, 2019.
- Welcomed Susan Pickard and Sabrina Nash as current staff to COVIC.

- B. **Approval of Minutes** - The draft minutes from the October 19, 2018 meeting of the COVIC were presented for approval.

**Motion:** To approve the October 19, 2018 minutes as amended. **Moved:** Sydney Davis **Second:** Judge Sam Myers. **Vote:** Passed unanimously.

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. Legislative Update (taken out of order)

Jerry Landau, AOC Government Affairs Director, speaking telephonically, noted that the criminal justice reform bills that resulted from the Fair Justice Task Force will not be moving, however, there will be further discussion of these bills during the summer. Mr. Landau also noted that HB 2466 – the Attorney General’s cleanup bill on victims’ rights is now a strike everything bill.

### B. Parents of Murdered Children (POMC)

Becky Miller, PMOC, Valley of the Sun Chapter, provided a brief history of POMC and shared their mission to provide support and assistance to all survivors of homicide victims through on-going emotional support, education, prevention, advocacy, and awareness. POMC provides monthly grief support meetings, accompanies survivors to court, and has programs that help survivors with their need for action and in some instances closure. She outlined some of the issues that families of murdered children encounter:

- Long wait times - average 3-4 years before going to trial.
- The expense of travel and housing to attend out-of-county or state court hearings.
- Delayed justice and restitution.
- Death penalty appeal process is too long.
- Restitution not paid in full before perpetrator is released.

### C. Never Again Foundation

R. Keith Perkins, Never Again Foundation (NAF), discussed the now 20-year-old foundation and the provision of legal services to victims of domestic violence. Mr. Perkins presented the numerous changes in laws impacting the abuse of women as property (civil tort) to the abuse of women as persons (domestic tort). He explained domestic torts as the legal means to claim damages for financial losses and emotional suffering inflicted on victims of domestic violence. These judgments can establish garnishment of the abuser’s wages and affect the distribution of life insurance (when there is a homicide) and marital property in divorces, child custody, and termination of parental rights. The awarded judgment helps provide victims with a sense of hope and justice.

### D. Arizona Coalition for Victims Services (ACVS)

Amy Bock, AZ Coalition for Victims Services Chair, stated that ACVS is non-profit network of individual victim services providers and community stakeholders focused on networking, improving services to crime victims through education and advocacy, and offering nationally accredited training to service providers at all governmental and non-profit levels who work with crime victims. One of their biggest components to assist victims is the accredited Arizona Victims Assistance Academy which provides training for victim advocates both experienced and new to the field. Training topics includes:

- How to communicate with victims and their families,
- How to deal with restitution issues,
- How to deal with trauma,
- Self-care for advocates and
- Sex trafficking.

Ms. Bock also stated that ACVS has a small relocation project in Maricopa County for victims who need to relocate to a place of safety. The project is not limited to domestic or sexual assault survivors.

#### **E. Advancing Technology to Assist Arizona Crime Victims**

Chris Groninger, Arizona Bar Foundation for Legal Services and Education (Foundation), noted that the Foundation's mission is to increase access to legal information, referral assistance, and justice to all Arizonans with civil law issues. Ms. Groninger informed the COVIC members of a technology grant that the Foundation received in October 2018. The two-year grant is the first step in determining litigant need and identifying the technology that would be most helpful to them. Ms. Groninger invited COVIC members to participate and provide input on family law and housing issues.

#### **F. Restitution Workgroup Update**

Amy Bock, Arizona Coalition for Victims Services Chair (proxy for Kirstin Flores) noted that the *Judges Restitution Reference Manual* has been finalized and submitted. The manual will include quick links in Wendell to Rule 39, the Victims Bill of Rights, victims' rights statutes, case law, the AOC restitution resource page, and the Order to Show Cause Bench Card. The workgroup's next steps are to better understand the garnishment process, create a bench card for judges, and incorporate information about how the process works along with forms for victims on the AOC Restitution webpage.

#### **G. Case Law Update** (Judge Cruz left the room during the discussion of Item b.)

Judge Reinstein, discussed:

- a death penalty case in which the victim was trying to get the more expansive Arizona Victims' Bill of Rights to apply in the federal system.
- a trial court decision in Pima County from December 2018, that dealt with future economic loss that may head to the Court of Appeals.
- the Mohave County Attorney's Office petition seeking a local rule that would allow the deposition of crime victims when the victim is not cooperative. The question, "what if the victim didn't want to testify or be deposed and wanted to maintain their privacy?" arose.

### **III. Good of the Order/Call to Public**

A. Judge Reinstein noted:

1. that those COVIC members whose terms were expiring in June inform Susan Pickard or himself about the member's wishes regarding reappointment by April 15<sup>th</sup>.

2. that the meeting packet contained a list of rule change petitions developed by Mark Meltzer, AOC, that may be of interest to COVIC and encouraged them to review the list.
- B. Colleen Clase asked that R-19-0016 be placed on the June 14 agenda.
  - C. Judge Cruz asked to present Mexico's laws regarding victims as parties.

**Call to the Public:** None present.

**Adjournment:** Meeting adjourned at 12:00 p.m.

Next Meeting:

**Friday, June 14, 2019**

10:00 a.m. to 3:00 p.m.

State Courts Building, Room 119

1501 West Washington Street

Phoenix, Arizona 85007

## Commission on Victims in the Courts

Friday, June 14, 2019

10:00 a.m. to 12:00 p.m.

Conference Room 345 A/B

1501 West Washington Street

Phoenix, Arizona 85007

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**Present:** Judge Ron Reinstein (chair), Timothy Agan, Michael Breeze, Collen Clase, Judge Maria Elena Cruz, Sydney Davis, Jon Eliason, Amy Bock (proxy for Kristin Flores), Vanessa Helms, Leslie James, Judge Kellie Johnson, Dan Levey, Sergeant James Markey (Ret.), Chief Rod McKone, Jane Nicoletti-Jones, William Owsley, Laura Penny, Karyn Rasile, Judge Patti Starr (proxy for Judge Sam Myers)

**Telephonic:** Kimberly Chichester, Captain John Leavitt, Elizabeth Ortiz, Judge Antonio Riojas, Judge Richard Weiss

**Absent:** Christine Kelly, Judge Evelyn Marez

**Staff:** Sabrina Nash, Susan Pickard, Administrative Office of the Courts (AOC)

### I. REGULAR BUSINESS

- A. **Welcome and Opening Remarks** - With a quorum present, the March 22, 2019, meeting of the Commission on Victims in the Courts (COVIC) was called to order at 10:03 a.m. by Judge Ronald Reinstein, Chair.

Judge Reinstein made the following announcements:

- Acknowledged Laura Penny's last COVIC meeting and thanked her for her commitment.
- It is also Susan Pickard's last COVIC meeting, she was promoted and will be on another assignment.
- Introduced Jennifer Albright as Susan Pickard's replacement as staff to the commission.
- Announced that Patti Starr is the new Presiding Criminal Judge for Maricopa County.
- Announced that Jennifer Runge, Victim Services in Coconino County, has been appointed to the commission, and stated that a replacement for Chris Kelley was in the works.

- B. **Approval of Minutes** - The draft minutes from the March 22, 2019, meeting of the COVIC were presented for approval.

**Motion:** To approve the March 22, 2019 minutes as presented. **Moved:** Ms. Sydney Davis. **Second:** Dan Levey. **Vote:** Passed unanimously.

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. R-18-0035 – Petition to Amend Rule 15.3(a) of the Rules of Criminal Procedure

Judge Reinstein stated that the restyling of the Arizona Rules of Criminal Procedure in 2017 created the unintended consequence of removing the ability of the prosecutor to seek the deposition of crime victims who are otherwise unavailable to testify at trial, thus forcing prosecutors to dismiss some cases.

**Motion:** To support the petition to amend Rule 15.3(a) to the original language.

**Moved:** Ms. Sydney Davis. **Second:** Michael Breeze. **Vote:** 18 yeas, 3 opposed, 1 abstention.

### B. R-19-0016 – Petition to Modify the Rules of Criminal Procedure by Integrating Victims' Rights, Repeal Rule 39

Judge Reinstein noted that this petition was filed last year and declined. It has been refiled this year with changes to address discovery concerns. Colleen shared that changes were made to the new petition, incorporating some of the comments that were suggested. She stated that this is not an action item it is an update to the Commission.

### C. Legislative Update

Amy Love, AOC Government Affairs

- **H2055: JUVENILE COURT; JURISDICTION; UNDESIGNATED FELONY** - the juvenile court is required to retain jurisdiction after a juvenile's 18th birthday, designate an undesignated felony offense as a misdemeanor or felony even after an adjudication is set aside. Factors the court may consider when determining whether to set aside an adjudication for a person who has been adjudicated delinquent or incorrigible are listed. If the court grants an application to set aside an adjudication, any remaining unpaid monetary obligation is owed until paid. Signed by Governor.
- **H2080: CRIMINAL RIGHTS RESTORATION; APPLICATION PROCEDURES** - at the time of sentencing, the court is required to inform a person in writing of the person's right to the restoration of civil rights. Upon "final discharge" and without filing an application, any person who has not previously been convicted of a felony offense must automatically be restored any civil rights that were lost or suspended because of the conviction, other than a person's right to possess a firearm, if the person pays any victim restitution imposed. Two years from the date of final discharge, a person who has previously been convicted of a felony or who has not paid any victim restitution that was imposed is permitted to apply to the superior court to have the person's civil rights restored at the discretion of the judge. A person who is convicted of a dangerous offense, serious offense or a violent or aggravated offense is prohibited from filing for the restoration of the right to possess or carry a firearm. Signed by Governor.
- **H2466: CRIMINAL PROCEEDINGS; CHILD WELFARE; PRECLUSION** - extends the

statute of limitations from two years to twelve years or 30 years of age for victims of childhood sexual assault. Victims of childhood sexual abuse, who are currently barred from seeking civil restitution due to the current statute of limitation now have until December 31, 2020 to file for restitution. Emergency clause in effect. Signed by Governor.

- **S1250: Injunction Against Harassment – Prohibiting possession of firearm** – allows a person who is a victim of certain acts of sexual violence to obtain an Injunction Against Harassment based on only one incident. This assumes the victim does not have a qualifying relationship with the defendant that would allow for an Order of Protection. Signed by Governor.
- **H1315: Victim’s Right; Refusal of Interviews** – the right of a victim and a victim’s representative to refuse an interview, deposition or any other discovery request by the defendant, the defendant’s attorney or any other person acting on behalf of the defendant remains enforceable beyond a final disposition of the charges. Allows a victim to bring special action seeking to enforce any right or challenge order denying any right guaranteed to the victim. Victims cannot be charged a filing fee to file a special action or to seek an order to invoke victim’s rights. Except in cases involving a dismissal with prejudice or acquittal, Signed by Governor.

#### **D. Victim Right to Privacy & Safety – Body Cam Video Redacted/Unredacted to Defense**

Dan Levey, Executive Director, Arizona Crime Victim Rights Law Group, discussed concerns regarding SB1313. Concerns expressed related to victim privacy and safety issues because the bill would allow prosecutors to turn over body cam video, without viewing, unredacted video to the defense. Other issues are: that there are not enough resources to redact victim identifying information from body cam videos, delays caused by redaction, discovery issues between prosecutors and defense, finding specific purposeful consideration of body cam video requests. It was suggested that an Attorney General Opinion be requested.

#### **E. Restitution Workgroup Update**

Kirstin Flores, Office of the Attorney General, stated that the workgroup hasn’t met however, they are working on a restitution presentation for the judicial conference. Topics include enforcement tools and what is available, location of website(s) to educate victims and judges.

#### **F. Mexico’s Treatment of Victims as Parties**

Judge Maria Elena Cruz provided a quick overview of how victim rights have been reformed in Mexico. Recent changes include criminal trials with a three-judge panel, public trials, a Victim’s Rights Law, and victim advocates provided by the state who participate as a party to the case with the victim. Victims are permitted to be a party to the proceedings and may cross examine, call witnesses and offer opening statements/closing argument. Judge Cruz stated that Arizona State University and Tec

de Monterrey formed a partnership to help train victim advocates. She noted that there are still challenges to be overcome such as financial resources to help victims and victim advocates, and the equitable training of judges, prosecutors, law enforcement, defense attorneys and investigator. She also mentioned that women attorneys who speak Spanish are needed to help with training and asked for referrals of interested attorneys.

**G. Form IV(C) Release Questionnaire; Intimate Partner Risk Assessment**

Judge Reinstein indicated that the City of Phoenix Intimate Risk Assessment form shows the victim's date of birth and phone number. It is felt that having that information listed on the risk assessment creates a risk to the victim. There is also the question of whether the form is a public record. Pima County had a paper triplicate form where the victim's date of birth and phone number are visible only on the prosecutor's copy with the information redacted on the law enforcement and court copies. Pima county Sheriff and local police departments now have an ap that permits them to complete the form electronically.

**H. Case Law Update**

Judge Reinstein postponed until the next meeting

**III. Good of the Order/Call to Public**

**Call to the Public:** None present.

**Adjournment:** Meeting adjourned at 12:07 p.m.

**Next Meeting: Friday, October 18, 2019**

10:00 a.m. to 12:00 p.m.

State Courts Building, Room 345 A/B

1501 West Washington Street

Phoenix, Arizona 85007

## Commission on Victims in the Courts

Friday, October 18, 2019

10:00 a.m. to 12:00 p.m.

Conference Room 345 A/B

1501 West Washington Street

Phoenix, Arizona 85007

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**Present:** Judge Ron Reinstein (chair), Colleen Clase, Judge Maria Elena Cruz, Sydney Davis, Jon Eliason, Kristin Flores, Raymond Hanna (proxy for Michael Breeze), Leslie James, Judge Kellie Johnson, Captain John Levitt, Dan Levey, Chief Rod McKone, Karyn Rasile, Jennifer Runge, Christina Spurlock, Judge Patricia Starr, Judge Richard Weiss.

**Telephonic:** Kimberly Chichester, Elizabeth Ortiz, William Owsley, Judge Antonio Riojas

**Absent:** Timothy Agan, Vanessa Helms, Jane Nicoletti-Jones, Evelyn Marez, Sargent James Markey

**Guests:** Chief Justice Robert Brutinel, Arizona Supreme Court, Commander Melissa Zabor, Commander Tracy Nadzieja, Maricopa County Superior Court

**Staff:** Sabrina Nash, Jennifer Albright, Theresa Barrett, Administrative Office of the Courts (AOC)

### I. REGULAR BUSINESS

- A. **Welcome and Opening Remarks** - The October 18, 2019, meeting of the Commission on Victims in the Courts (COVIC) was called to order at 10: a.m. by Judge Ronald Reinstein, Chair.

Judge Reinstein introduced three new members; Judge Patricia Starr, presiding criminal judge, Maricopa County Superior Court; Christina Spurlock, chief deputy clerk, Mohave County, Jennifer Runge, executive director, Victim Witness Services, Coconino County.

- B. **Approval of Minutes** - The draft minutes from the June 14, 2019, meeting of the COVIC were presented for approval. Judge Kellie Johnson stated that she was present at this meeting.

**Motion:** To approve the June 14, 2019 minutes as amended. **Moved:** Judge Richard Weiss. **Second:** Sydney Davis. **Vote:** Passed unanimously.

### II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

#### A. **Remarks on 2020-2024 Strategic Agenda & Victims and the Court**

Chief Justice Brutinel explained that goal of the new five-year strategic plan is to provide a baseline for the courts and all who interact with the court system on the direction the courts will take under the new Chief Justice. In the new strategic agenda, there is still an emphasis on access to justice for domestic violence victims and self-represented

litigants. Justice Brutinel stated that the Task Force on the Delivery of Legal Services (LSTF), chaired by Justice Timmer, released their report and recommendations and noted a few of the recommendations.

- Proposed amendment to Supreme Court Rule 38(d) would clarify that recent law graduates may be certified to engage in the limited practice of law under the supervision of an attorney.
- Proposed amendment to Supreme Court Rule 42, ethical rules 7.1 to 7.5 relative to alternative business structures that would allow capital investment in law firms by non-lawyers.
- Tiered changes to the Arizona Certified Legal Document Preparer program.

He also noted a few of the recommendations from the Committee on Mental Health and the Justice Systems.

- Use of the sequential intercept model to increase awareness of mental health issues.
- How to deescalate inappropriate behaviors and train law enforcement, judges and court staff to recognize mental health issues.
- Creating a partnership with the Arizona Health Care Cost Containment System (AHCCCS) to create crisis drop off centers where law enforcement can take mentally ill individuals to provide them with the mental health services they need.

Justice Brutinel stated that his emphasis is making the courts, judges and court employees more efficient and effective. He discussed the need to provide needed resources and services to the courts, and to collect data to demonstrate that the courts are effective in resolving society's disputes. Some ideas to assist with these goals are:

- Time standards to expedite the processing of court cases.
- Train new judges.
- Creation of a trial judge college.
- Pre-trial release assessment to include victim input.
- Online dispute resolution.

**Discussion:** Members discussed the lack of consistency with the ordering, collecting and enforcing of restitution orders, the lack of statistics to use when trying to come up with viable solutions, and the considerate and compassionate treatment of mental health defendants and all court visitors.

## **B. Pre-trial Release Decisions & Victim's Rights**

Commissioner Melissa Zabor, presiding IA commissioner and Commissioner Tracy Nadzieja, associate presiding IA discussed how Maricopa county makes its pre-trial release decisions. The IA court in Maricopa county is open 24-hours a day, seven days a week, and holds court every three hours for individuals who've been arrested to determine release conditions or set bond. In the preparation time prior to court, the

commissioner reviews the police report, the defendant's criminal history and the research-based recommendation provided to the commissioner before court. The research is based on the following indicators:

- defendant's criminal history
- age
- violence of the offense
- probability of re-offending
- number of failures to appear
- victim statement

The court then makes a recommendation on release or bond. Commissioners are not bound by research-based recommendations however, it does provide them with a research-based informed decision.

**Discussion:** Members discussed victim statements, victim's appearance, telephonic appearances, remote appearance options for victims of violent crimes.

#### **C. National Organization for Victim Assistance (NOVA) Conference Update**

Kirstin Flores, director, Office of the Arizona Attorney General, updated COVIC on the national conference and discussed the creation of an interactive board game that shows the victim's journey through to legal system.

#### **D. Arizona Cold Case Conference**

Jon Eliason, deputy attorney, Maricopa County Attorney's Office, reported on the Cold Case conference he chaired in August and discussed some of the tools now being used to crack cold cases and bring justice to victims such as: familial DNA, locating fugitives in Mexico and extradite them back to US, and using cellphone technology to track and apprehend fugitives.

#### **E. Judicial Conference Update (taken out of order)**

Judge Reinstein stated that he attended the Judicial Conference in June and shared that the conference sponsored two sessions:

- Victim's issues featuring Leslie James, Kim Chichester and officer Jaime Cole, Goodyear Police Department, about their experiences in the justice system. The session was well received and highly impactful.
- The restitution session titled "*Real Money, Real People*" featured Kirstin Flores, Judge Bluff and Randy Udelman and generated a lot of discussion on restitution.

#### **F. Supreme Court Rules Agenda; Rules 15.3 & 39**

Judge Reinstein discussed the following two victim related rule change petitions:

- The Maricopa County Attorney's Office supports the petition for Rule 15.3(A) Arizona Rules of Criminal Procedure which seeks to correct a restyling of the rule that created an unintended consequence that currently affects the prosecutor's ability to dispose a crime victim in an appropriate case.

- Arizona Voice for Crime Victims (AVCV) submitted a petition to integrate the rights guaranteed to victims by the Arizona Constitution and Arizona Revised Statutes throughout each applicable rule provision and repeal Rule 39. The justices decided to keep Rule 39 but are receptive to hearing about specific rules that would merit a rule change.

#### G. Restitution Issues and Workgroup

Kirstin Flores, director, Office of the Arizona Attorney General, explained that the workgroup reviewed lower jurisdiction courts reference manual for restitution and updated case law.

Rod McKone stated that workgroup has discussed that it is unknown if we are doing well in the collection of restitution. He stated that he is meeting with probation chiefs, clerk's office representatives, AOC and others to discuss refining AJACS so the capacity to track restitution data is possible.

**Discussion:** to establish best practices for Restitution Courts. Judges Starr and Cruz, Kristin Flores, Rod McKone and Dan Levey to develop.

#### H. Capital Case Oversight Committee Capital Case Jury Issues Workgroup

Judge Reinstein mentioned that a workgroup is being formed in the Capital Case Oversight Committee to address the issue brought by the Arizona State Bar regarding the jury instructions given to jurors in capital cases. There is some discussion that the instructions may be difficult for jurors to understand.

### III. Good of the Order/Call to Public

- Colleen Clase briefly discussed two decisions one on restitution where the trial court didn't order restitution, and another on restitution caps that would assist victim with counseling.
- Judge Reinstein reported on a Capitol Times article regarding the lethality assessment tool used in domestic violence situations and how many law enforcement agencies are not using the lethality assessment or were unaware that it existed, how many JPs didn't know about the lethality assessment.
- Jennifer Albright shared information on the AZPoint web portal that allows victims to file petition for orders of protection and injunctions against harassment.
- Leslie James stated that the 9<sup>th</sup> circuit denied a rehearing petition on her sister's case and thanked everyone who's been involved with her sister's case.
- Jon Eliason shared that the neighborhood victim's rights statute needs work and stated that he'd be willing to assist.
- Kirstin Flores announced that AG's Office is starting basic victim rights training.
- Dan Levey announced that the Arizona Crime Victim Rights Law Group has a website [www.azvictimrights.org](http://www.azvictimrights.org) to assist anyone needing help.

**Call to the Public:** None present.

**Adjournment:** Meeting adjourned at 11:54 p.m.

**Next Meeting:** Friday, March 13, 2020the