

# **Committee on Criminal Rules Regarding Victims**

## **Meeting Agenda**

Tuesday, October 18, 2022

Noon. to 1:30 p.m.

State Courts Building, Phoenix, Room 331

Telephone number: 1 602 753 0140 Webinar ID: 988 2973 6745

Zoom link [here](#) Passcode: 485944

Item no. 1	<b>Call to Order</b>  <b>Introductory remarks</b>	<i>Hon. John R. Lopez IV Chair</i>
Item no. 2	<b>Discussion of comments submitted in R-22-0035 by:</b>  - Prof. Paul Cassell - Maricopa County Indigent Representation Offices - Arizona Voice for Crime Victims <u>and</u> letters of support  <b>Note:</b> All of the foregoing documents are available for review on the R-22-0035 webpage: <a href="#">click here</a> .	<i>All</i>
Item no. 3	<b>Discussion of a draft reply to the comments</b>	<i>All</i>
Item no. 4	<b>Consideration of motions</b>	<i>All</i>
Item no. 4	<b>Roadmap:</b>  <b>Next meeting date: This is the final CRV meeting</b>  <b>Deadline for submitting a reply in R-22-0035:</b>  • Friday, October 21, 2022	<i>Justice Lopez</i>
Item no. 5	<b>Call to the Public</b>  <b>Adjourn</b>	<i>Justice Lopez</i>

*The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order.*

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Sabrina Nash at (602) 452-3849. Please make requests as early as possible to allow time to arrange accommodations.



**Committee on Criminal Rules Regarding Victims**

**State Courts Building, Phoenix**

**Meeting Minutes: July 1, 2022**

**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 by his proxy Hon. Kent Cattani, Hon. Maria Del Mar Verdin, Cathryn Whalen

**Guest:** Theresa Rassas

**AOC Staff:** Mark Meltzer, Sabrina Nash

**1. Call to order; introductory remarks; approval of meeting minutes.** The Chair called the fifteenth meeting of the Committee on Criminal Rules Regarding Victims ("CRV") to order at 12:01 p.m. The meeting was virtual. The primary purpose of the meeting was to consider approval of a revised report, version 07.01.2022, which incorporates the members' comments and directions during the June 27, 2022, meeting. The Chair first asked members to review draft minutes of the June 27, 2022, CRV meeting. There were no corrections to the draft.

**Motion:** A member moved to approve the draft June 27, 2022, meeting minutes, the motion received a second, and it passed unanimously. **CRV-017**

**2. Review of the Committee's report.** Committee staff prepared the initial revisions to the June 27 draft and circulated the revised version to the members on June 28. Several members thereafter provided staff with additional revisions to the draft, and staff with the Chair's approval incorporated those revisions in an updated draft.

A member proposed deleting several paragraphs, beginning at page 5 of the previous draft, which summarized views on integration presented by five "learned individuals" at the second Committee meeting. The Chair declined this pre-meeting request but brought it to the members' attention during today's meeting. The basis of the deletion request, as noted in the ensuing discussion, was twofold. First, the positions of the presenters in large measure duplicated the views of various members, and therefore the presenters' views were given undue emphasis. Second, the names of the presenters were specified in the report, whereas similar comments made by members were not attributed to them. In short, the report marginalized the members' views notwithstanding that they were chosen to serve because of their credentials and expertise, which were comparable to those of the presenters. The view opposing deletion was that

the presenters' summaries were an accurate record of what they said at the second meeting, and their remarks and titles were appropriately considered by the members. The Chair observed that the members are just as "learned" as the presenters, and further, the Court is well-aware of the members' expertise, which was the reason for their appointment to this Committee. The discussion concluded by deleting the word "learned" to describe the presenters but otherwise retaining the paragraphs concerning the presenters.

There were no further comments or corrections to the report and appendices.

**3. Approval of the Committee's Report.** The Chair then asked members whether they wished to formally approve the report, and a member made a motion to that effect. Staff clarified that the motion was directed to approval of the report, not approval of the recommendations in the report, which was a separate motion that the members had considered during the June 27 meeting. Staff added that these minutes would reflect the vote on the motion to approve the report, but the report itself would adequately convey the sense of the Committee without including the result of this vote.

**Motion:** A member moved to approve the July 1, 2022, version of the Committee's report. The motion received a second and it passed unanimously. **CRV-018**

**4. Roadmap.** Today is the report filing deadline, and staff will file the report and appendices in case number R-20-0031 later this afternoon. The Chair believes the Court will open the report for public comment, in which event the Court will be asked to extend the Committee's term beyond July 1, 2022. An extension would enable members to meet again to discuss and file a reply to any public comments. On the other hand, the Court might not open the report for comments. In that case, this will be the final Committee meeting, and the Chair asked the members for their authority to finalize today's meeting minutes.

**Motion:** A member moved that the Chair have authority to finalize today's meeting minutes. It received a second and passed unanimously. **CRV-019**

**5. Call to the public; concluding remarks; adjourn.** There was no response to a call to the public. The Chair concluded the meeting by expressing his appreciation to the members for their time, expertise, and willingness to serve in this endeavor.

The meeting adjourned at 12:23 p.m.

Justice John R. Lopez IV, Chair  
Committee on Criminal Rules Regarding Victims  
1501 W. Washington St.  
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

IN THE MATTER OF: ) No. R-22-0035  
)  
PETITION TO AMEND THE ) **REPLY**  
ARIZONA RULES OF )  
CRIMINAL PROCEDURE )  
(Section (v) amendments) )  
\_\_\_\_\_ )

**Introduction.** Administrative Order No. 2022-82, entered on July 13, 2022, extended the terms of the Committee on Criminal Rules Regarding Victims (“CRV”) and its members to permit them to file a Reply to any comments concerning this petition. Three comments were filed on October 3, 2022, the R-22-0035 comment deadline. Several letters of support for the petition also were submitted as an appendix to one of those comments. See section 4 of this reply. CRV members met on October 18, 2022, to consider those comments and letters, and Petitioner now submits this Reply. Because of the abbreviated time for preparing this Reply, it does not address every topic in each of these comments. The CRV’s [July 1, 2022, Report](#)

to the Court, however, provides further details concerning the CRV's position on these topics.

**1. Comment from Professor Paul Cassell.** Professor Cassell made a presentation to the CRV at its February 19, 2021, meeting. The CRV's [July 1, 2022, Report](#) to the Court contained a single paragraph, at page 5, concerning Professor Cassell's presentation. That single paragraph summarized the previous presentation, while Prof. Cassell's recent 3-page comment elaborates on his views, and CRV members have nothing further to add.

**2. Comment from the Maricopa County Indigent Representation Offices ("Maricopa").** CRV members viewed this comment as having two parts. The first half of the comment reviews the history of this rules project. This history, however, is also contained in the CRV's report to the Court, *supra*, and once again, CRV members have nothing further to add to that.

The second part of the Maricopa comment addresses its issues with particular rules. Regarding Rule 1.9(v), for example, the Maricopa comment, at page 5, contends that the proposed revision "... fundamentally changes the nature of a victim's role in a criminal proceeding and elevates victims to party status." CRV's proposed Rule 1.3, however, clearly provides, "Although a victim is not a party in a criminal proceeding, a victim has a right to participate in the proceeding..." The current set of Criminal Rules does not contain a similar statement concerning the

status of victims and leaves the victim's status in a criminal proceeding somewhat vague. The proposed amendments therefore provide desirable clarity.

Moreover, Rule 1.9 codifies in a court rule the standing of a victim to “enforce any right or to challenge an order denying any right guaranteed to victims,” as expressly provided in A.R.S. §13-4437. Rule 1.9(v) does not add a new right in this context, it simply makes it more prominent. Petitioner acknowledges that the sentence in Rule 1.9(v) permitting a victim to “file a response to a party's motion if the party's motion impacts a victim's right,” is not expressly stated in §13-4437. But if a party's motion does in fact impact a victim's right—a matter for judicial determination—is the Maricopa comment suggesting that a victim must remain silent? That position would be contrary to not only the letter but also the spirit of the victims' rights laws. A victim should have an opportunity to respond in that circumstance.

In response to other issues raised in the Maricopa comment, CRV members refer to their July 1, 2022, report to the Court, and to the appendices to this rule petition.

**3. Comment from the Arizona Voice for Crime Victims (“AVCV”).**

The AVCV comment requests amendments to the following six rules or rule amendments proposed by R-22-0035.

**Rule 1.4(v).** The AVCV proposed removing the word “entity” from the definition of “victim.” CRV members recognize that the word entity is not included in the statutory definition of “victim” as it appears in A.R.S. §13-4401(19). However, the next Criminal Code section, A.R.S. §13-4401.01, refers to a “neighborhood association,” which is an entity, and Rule 39(a)(3)(B) refers to “legal entities,” so the inclusion of “entity” in Rule 1.4(v) is warranted. CRV members therefore recommend against the AVCV’s proposed change.

**Rule 4.2(v)(1).** CRV members agree that the right to be heard can encompass both oral and written statements. They do not agree, however, that the CRV’s proposed language needs to be added to Rule 4.2(v), first, because Rule 39(c) contains a detailed provision on “exercising the right to be heard,” and second, because if the proposed language is added to Rule 4.2(v), it might also be necessary to add it to other rules whenever a reference is made to the victim’s right to be heard. CRV members therefore recommend against the AVCV’s proposed change.

**Rule 15.1(v)(1).** The comment requests a change in the text of this provision based on a 2022 amendment to A.R.S. §13-4434. That statute was amended in accordance with HB 2709. A summary of HB 2709 was included in the March 25, 2022, CRV meeting materials. Members did not make any changes to Rule 15.1 in anticipation of this pending legislation, and they do not see the necessity of doing so now. Moreover, the AVCV’s proposed amendment does not fully embody all of the

provisions of the legislative amendment (it includes the content of A.R.S. §13-4434(D) but it omits the content of CRV A.R.S. §13-4434(C)(5)) and members accordingly recommend against the AVCV's proposed change.

**Rule 15.3.** The title of the current as well as the proposed rule is "depositions." The AVCV requests adding the words "and other discovery requests" to the title. Because Rule 15.3 only concerns depositions, but not other discovery requests, the proposed amendment to the title would be inappropriate.

**Rule 19.1(v)(2).** The AVCV proposes adding the words "or the victim consents" to this provision. The proposed amendment is consistent with the language of A.R.S. §13-4434(A), and the CRV has no objection to the amendment.

**Rule 24.3(v).** The AVCV proposes to add a reference to the Victims' Bill of Rights. The members believe the reference is unnecessary. First, the referenced VBOR provision is general ("to receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury"), whereas the CRV's proposed reference to Rule 39 provides more specificity regarding restitution. Moreover, the AVCV's proposed reference to the entire VBOR, rather than specifically to § 2.1(A)(8), is overbroad.

**4. Letters of support.** The AVCV's comment was accompanied by an appendix containing several "letters of support." Those letters were submitted by

the AVCV's board president, the national organization of Parents of Murdered Children, the Valley of the Sun Chapter of Parents of Murdered Children, and two individuals, Beckie A. Miller and Debbie Carlson. This Reply does not respond to those letters but notes them for the Court's consideration.

**Conclusion.** Petitioner requests inclusion of the AVCV's proposed amendment to Rule 19.1(v)(2) discussed above. Otherwise, and with the concurrence of CRV members, Petitioner reaffirms the Committee's recommendations in its [July 1, 2022, report](#), which is incorporated in this Reply by reference.

Respectfully submitted this 21st day of October 2022.

/s/ \_\_\_\_\_  
Justice John R. Lopez IV  
Chair of the Committee on  
Criminal Rules Regarding Victims

Copies emailed this  
21<sup>st</sup> day of October 2022, to:

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**Staff's draft: 10.12.2022**

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