

Commission on Victims in the Courts
DRAFT MINUTES
Friday, March 28, 2008
10:00 am to 12:00 pm
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 345A/B

Members Present:

Hon. Lex Anderson
Dr. Kathryn Coffman
Mr. Edwin Cook
Ms. Sydney Davis
Ms. JoAnn Del Colle
Mr. Dan Levey
Hon. Anna Montoya-Paez
Hon. Carter Olson (Telephonically)
Hon. William O'Neil
Mr. Doug Pilcher
Hon. Ronald Reinstein (Chair)
Mr. Steve Twist
Ms. Kathy Waters
Hon. Richard Weiss

Members Absent:

Hon. Antonio Riojas, Jr.
Ms. Karen Sullivan

New Members* Present:

Mr. James J. Belanger
Ms. Patricia Bigwood
Captain Larry D. Farnsworth
Ms. Daisy Flores
Ms. Leslie James
Ms. Karen Duffy
Mr. Paul Prato
Ms. Pamela Wessel

New Members *Absent:

Mr. Michael Branham

Presenters/Guests:

Detective Edward DeCastro
Ms. Sarah Schmoll
Ms. Sarah Lynne Vasquez
Ms. Alice Eng

Staff:

Ms. Carol Mitchell
Ms. Nicole Garcea
Ms. Carrin Huff

*New members official appointment terms
began on April 1, 2008 according to AO 2008-30
signed on March 27, 2008

I. Regular Business

A. Welcome and Opening Remarks

The March 28th meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:15 am. The Chair announced new members, reappointments and gave recognition of outgoing members: Hon. Patti Noland; Stephen Dichter; Gary Husk; Jack Ballentine; Kim Musselman; Tony Vidale and Emily Johnston.

Announcements: Dan Levey gave information on two upcoming events: the Governor's Office will host a victim's rights week event on April 14th and the Maricopa County Adult probation and court staff will host a victim panel/victim rights presentation on April 17th.

B. Approval of December 14, 2007 Minutes

Minutes for the December 14, 2007 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the December 14, 2007 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

C. Approval of Revised 2008 Meeting Dates

Revised meeting dates for calendar year 2008 were presented for approval. The new dates were proposed to allow sufficient time between COVIC and Arizona Judicial Council meetings.

MOTION: To approve the 2008 revised meeting dates for the Commission on Victims in the Courts as presented. *Motion seconded and passed unanimously.*

II. Business Items / Potential Action Items

A. Bait and Switch Presentation

Detective Edward DeCastro of the Phoenix Police Department and Honorable Lex Anderson, Presiding Magistrate of the Youngtown Municipal Court presented segments of a recently created video entitled "Bait and Switch: The terror and tragedy of child prostitution." The video focused on educating adolescents on how they are targeted for prostitution and how they can reach out for help. Det. DeCastro and Judge Anderson discussed obstacles they have faced trying to show the video in public schools. They have met opposition due to the nature of the subject and as a result it has only been presented by Officer DeCastro in two public schools to date. Copies of this video are available for free by contacting the Foundation for Legal Education through the State Bar of Arizona.

Discussion relating to the video

- Suggestions were made by the committee for alternative methods of using the video including showing it at juvenile detention centers, the Law for Kids website, Juvenile Court, Juvenile Corrections; as well as, showing it to parents in addition to children.
- A recommended change to the teaching curriculum would be to have a school counselor present and available during the presentation. The counselor could talk with kids after watching

the video to help address those children having difficulties in their home life, which is often the reason for kids turning to the streets.

- The committee discussed the standards for whether victim rights are extended to minor prostitutes and if they are charged when they turn themselves when seeking help. In addition, discussion involved the barriers to prosecution and the inadequate sanctions for those convicted in these types of cases.
- Det. DeCastro and Hon. Lex Anderson called for recommending statutory changes to juvenile prostitution to make any child prostitute a victim.
 - *Action Item: Judge O'Neil to provide information on Juvenile court resources and using the video in detention centers.*
 - *Action Item: Judge Anderson to follow up on the possibility of posting on Law for Kids website.*

III. Old Business and Updates

A. Maricopa Superior Court Tower Design

Dan Levey provided a handout detailing results of focus groups held regarding the Maricopa County Superior Court Criminal Tower design. Recommendations were made for design and separation of victims and ideal setup from a victim perspective for the new courthouse. Leslie James discussed a follow up meeting where potential designs were shown.

Discussion

Judge O'Neil suggested the commission should make a recommendation to AJC for adopting standards regarding courthouse.

- *Action Item: The administration of justice workgroup should begin working on this idea by identifying national standards, including materials from the state of Utah and coordinating with staff from Maricopa County to serve as a model for standards development.*
- *Action Item: A tour of the proposed mock of floor/specific rooms is scheduled to be available at one of the Durango facilities. Paul Prato offered to obtain more information and a contact person to potentially schedule a tour of the victim room for COVIC members.*

B. Governor's Office Legislation

Hon. Reinstein discussed a conflict with ACJA § 5-204K (4) with Rule 103(B) of the Rules of the Juvenile Court.

- *Action Item: The Code Section workgroup will need to work toward a resolution of either proposing a rule change, which can take over one year or amending the code section.*
- *Action Item: Hon. Reinstein may reach out to Judge Willet to talk with the Chief Justice regarding this conflict.*

Dan Levey discussed multiple bills currently in the house:

- HB2687-Expanded definition of victim to include misdemeanors, legislation would have Victim's Rights statement read in lower courts and posting victim rights signs in English and Spanish. Chairman refused to hear bill and it was voted down, legislation is effectively dead. They are hoping to try to push the bill again next year. Committee discussed alternatives including writing a rule and determined process is too lengthy. Judge O'Neil suggests that the committee

write a recommendation and send it to the presiding judges statewide to post victims' rights in English/Spanish. Details to be crafted in Code Section workgroup and forwarded to Chair Hon. Reinstein.

Motion: Commission to draft recommendation for limited jurisdiction presiding judges to encourage them to read victim rights statement out loud and post signs in courthouse displaying the victims' rights statement in English and Spanish. *Motion seconded and passed unanimously.*

- Three additional bills, which are sitting with rules committee include:
 - A proposal for a homicide victim memorial, need ability to start process for organizing, no hearing yet.
 - Another bill would exempt law enforcement witness rewards from being taxed; this bill is sitting with committee with hearing yet.
 - Last bill would allow parents of murder child to claim an exemption for that child for an additional 5 years after death; this bill is also not moving.

IV. Workgroup Reports

The Chair discussed the important work undertaken by COVIC workgroups and encouraged any committee member interested in being on a workgroup to talk to Carol Mitchell.

A. Children in Court Workgroup

Dr. Coffman discussed the group's progress on the standards, training, and case limits of children's representation in courts. The group is hoping to make recommendations this year regarding this topic. Group is also discussing 0-3 infant group, a special team looking at young children and making recommendations on the child's behalf.

Chair Hon. Reinstein and Carol Mitchell briefly overviewed a presentation given at the Committee on Juvenile Courts in February. Issues resulting from the meeting needing to be addressed by the workgroup include; representation of parents, budget issues in rural communities relating to representation of children as well as getting attorneys to take on the cases in these rural areas. Carol also mentioned the need for statewide standards to assist the rural areas with verifying that the attorneys representing the children are adequately trained. In addition there is also concern with standards that an already small pool of attorneys able to work in these rural areas would be significantly limited by these standards. Another issue involves conflicting orders between juvenile court and other courts, when the parties have cases in multiple courts. The main issue relates to multiple orders being issued without communication between judges.

B. Code Section Workgroup

The outstanding issue, involving the conflict between ACJA§ 5-204 and Juvenile Court Rule 103B, was discussed earlier in the meeting.

C. Restitution Workgroup

The workgroup is nearing completion of final revisions for the restitution website and the group anticipates it will be able to be posted in near future. Dan Levy discussed that a bill regarding early termination of probation may affect restitution issues in the near future.

D. Education Workgroup

Kathy Waters replaced Kim Musselman as chair of the Education Workgroup. Kathy discussed the goal of the education workgroup is to help develop a victim rights related presentation every other year for the judicial conference, so the next conference would be for the summer of 2009. Kathy also discussed new victims' rights training curriculum developed by the National Office of Victims of Crime. Maricopa County Probation will be participating in the pilot training of this curriculum beginning in August and later in regional trainings for probation offices around the state. After finalization of the training, Kathy will bring the modules to COVIC for review and any committee members interested in critiquing the curriculum should see Kathy.

E. Administration of Justice Workgroup

The Chair may seek another person to serve as chair of this workgroup as Judge O'Neil may no longer continue in this position due to his varied responsibilities which include chair of the Commission for the Impact of Domestic Violence and the Courts.

V. Strategic Planning Discussion

Due to time constraints, this topic was pushed to the next meeting agenda. Suggestions for additional topics or issues should be directed to Carol Mitchell.

VI. Other Business

A. Next Meeting:

May 30th, 2008
State Courts Building
Phoenix, AZ 85007

B. Call to the Public

Call to the public was made, no public response.

C. Adjournment

The Chair declared the meeting adjourned at 12:15pm.

Action Items from today's meeting

- Judge O'Neil to provide info on Juvenile court resources and using the video in detention centers.
- Hon. Lex Anderson to follow up on the status of possibility of posting on Law for Kids website.
- Det. DeCastro and Hon. Lex Anderson recommended research into legislative changes regarding juvenile prostitution to make any child prostitute a victim

- Hon. Reinstein will bring in a video “Elder Abuse” that addresses the need for accommodating victims in the court.
- Administration of Justice workgroup to begin working on developing victim-related courtroom construction standards.
- Schedule tour of mock room design for the Maricopa County Superior Court building.
- Code Section workgroup to resolve language conflict between code and rule.
- Commission to draft recommendation for limited jurisdiction presiding judges to encourage them to read victim rights statement out loud and post signs in courthouse displaying the victims’ rights statement in English and Spanish.
- New members interested in participating in a workgroup to see Carol Mitchell
- Kathy Waters to bring copies of the probation curriculum pilot modules to COVIC for review and comments.

DRAFT

Commission on Victims in the Courts
DRAFT MINUTES
Friday, September 12, 2008
10:00 am to 2:00 pm
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 119A/B

Members Present:

Ms. Amy Bocks (Attorney General's Office)
Hon. Lex Anderson
Ms. Patricia Bigwood
Mr. Michael Branham
Dr. Kathryn Coffman
Mr. Bruce Bowers for Mr. Edwin Cook
Ms. Sydney Davis
Ms. JbAnn Del Colle
Opt. Larry Farnsworth
Ms. Daisy Flores (Telephonically)
Ms. Leslie James
Mr. Dan Levey
Hon. Anna Montoya-Paez
Mr. Doug Pilcher
Mr. Paul Prato
Hon. Ronald Reinstein (Chair)
Hon. Antonio Rojas, Jr.
Mr. Steve Twist
Hon. Richard Weiss

Members Absent:

Ms. Karen Duffy
Mr. James J Belanger
Hon. Carter Olson
Hon. William O'Neil
Ms. Karen Sullivan
Ms. Kathy Waters

Presenters/ Guests:

Ms. Jennifer Greene
Ms. Jamie Mabery
Ms. Gabriela Quinto
Ms. Katy Proctor
Ms. Sarah Lynne Vasquez
Ms. Amy Wood

Staff:

Ms. Carol Mitchell
Ms. Kimberly Reid

I. Regular Business

A. Welcome and Opening Remarks

The September 12th meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:15 am. The Chair announced that the Attorney General's Office is seeking a new Director for the Victim's Office. Anne Marreel will be the COVIC representative as Interim Director. The Chair recognized Dan Levey as the recipient National Peyton Tuthill Award from the Interstate Compact Association. Also, the National Center for Victims of Crime has released two popular brochures on forensic DNA testing in Spanish; they may be viewed at www.novc.org.

Announcement: Hon. Ron Reinstein has been teaching at New Judge Orientation. This week they had criminal presentation from Keli Luther, Dan Levey and Mike Pizzareta. It was a very good presentation. Challenge of getting more time with heavy agenda of other items which new judges need to be made aware.

B. Approval of March 28, 2008 Minutes

Minutes for the March 28, 2008 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the March 28, 2008 Commission on Victims in the Courts minutes as presented. Motion seconded and passed unanimously.

II. Business Items / Potential Action Items

A. Posting of Victim Rights

Doug Pilder passed around copies of the Victims' Bill of Rights document posted throughout Phoenix Municipal Court. Presiding Judge Song Ong decided to act on COVIC's discussion from the previous meeting. They are posted next to the dockets for each courtroom. It was done with little to no cost because existing docket sleeves were used for posting. The language was lifted straight out of the Arizona Constitution. It is presented in both English and Spanish.

Discussion:

- Praise was given to the leadership demonstrated at Phoenix Municipal Court by various members of the committee.
- Clarification that concerns previously expressed by limited jurisdiction courts had more to do with the reading of the victims' rights statement than the posting of it in the courtroom, although there was some resistance to posting as well.
- Acknowledgement that Judge Howard Hantman in Pima County was probably the first to post this outside of courtroom in English and Spanish a number of years ago.

B. Restitution Research/ Rule Conflict

Ms. Jennifer Greene of the AOC presented information regarding a conflict between the victim code section and the juvenile court rule. The new subsection, proposed by COVIC and approved by AJC, deals with restitution collection and disbursement of restitution on appeal. A juvenile rule was in place which conflicts with the language in the code section. The Supreme Court had no choice but to suspend COVIC's code provision as rule cannot conflict with code section. The current rule states that restitution is collected but not disbursed when a ruling is on appeal. This committee has the option to propose a rule change which would then go through the regular rule process. The other option is to revise the language in the code section to have it apply to adult criminal matters and have a separate subsection for juvenile matters. Alternatively, a proposed change to statute could be made.

Discussion

- In actual practice, are the clerks disbursing restitution while a case is on appeal? Ms. Greene has not made that inquiry.
- When the code section was modified, the committee was dealing with the constitutional provision. The committee was attempting to establish the policy of quicker distribution. It wasn't recognized that the juvenile rule had different language, it was probably only recognized that the other rules were silent on the matter.
- Code section revision passed through AJC on a consent agenda following considerable discussion with other committees.
- Paul Prato believes that there are major due process problems on the disbursement issue because the conviction is not final until direct appeal has been completed. We are creating litigation that is unnecessary by disbursing restitution. Disbursement should not occur until the conviction is final.
- When a clerk holds restitution funds is it in an interest bearing account? The members of the commission believe it is in a regular account.
- Consider death penalty cases where there is a lifetime appeal. Remember that this would only apply to those who go to trial which is around 2 to 2.5% of the cases. Anyone who pleads has given up the right to appeal.
- Juvenile should not be able to avoid making payments by filing an appeal. This will not happen as payments are still due to the clerk.
- Maricopa County pays interest out to whoever is receiving the restitution money. Interest does not begin to accrue until there is a criminal restitution order.

Motion: To refer this to the Code Section Workgroup, Chaired by Judge Weiss, to try and resolve the conflict with the assistance of Jennifer Greene. Motion seconded and passed unanimously.

C. Legislative Proposal

Hon. Richard Weiss is requesting language in the restitution payment statutes. The purpose is to have a recordable criminal restitution order that would accrue interest from the date of entry. Under the present system, victims are unable to get a recordable judgment until the defendant finishes their prison sentence or probation. If this is corrected, interest on the judgment can accrue in the favor of the victim.

Katy Proctor, from the legislative office of the AOC, explained this proposal is going through the internal committee process before it makes it to AJC in late October for approval. If approved by AJC, this would be one of the bills which would be supported by the AOC. Earlier in the morning it was reviewed by the Committee on Probation who had significant concerns. Probation may be extended for up to five years and result in the offender's ultimate restitution amount being higher than originally ordered. This would fiscally impact our probation departments. Another concern was how the clerk would monitor the third party payment if a lien was issued and how probation would be notified once this was corrected? Also, how would it be recorded that the lien is corrected? Some people were also concerned about the 10% being counter productive to the restorative justice process with juveniles. The Committee on Probation's vote was not to support the current format without questions being addressed. They do not have another opportunity to vote on the proposal before it goes to AJC.

Discussion:

- There is another juvenile issue with the word custodial parent. It should encompass all parents.
- Dan Levey raised a concern that the synopsis from the Committee on Probation (COP) seemed to not take victims into consideration. Mr. Branham, also a member of COP, explained that was not the case. He shared there was substantial discussion regarding victims and feels that COP was looking to support, but needed to find a way to understand the mechanics of how it will work before they would be able to support the proposal.
- Members of COP are willing to meet with COMIC representative(s) to discuss workable solution.
- It is questioned whether the interest will make a significant difference in the process.
- It is possible for members of multiple committees to get together and develop the proposal further before it goes to the next committee.
- Juvenile Committee meets next Friday (September 19th) and the Committee on Superior Court meets in 2 weeks (September 26th).
- Katy clarified that her role in this portion of the process is as liaison, not advocate.

Motion: The commission finds a need for reform of the statutes identified by Judge Weiss and others endorses the concept behind this proposed reform. We request that he, on behalf of the commission, meet with other committees of the Supreme Court to reach a consensus. Motion made by Mr. Twist, seconded by Mr. Branham and passed unanimously.

D. Child Victim Names in the Media

Mr. Levey raised a concern about the use of specific names of surviving children in child abuse cases and high profile crimes in the Daily Star. He would like to raise awareness about the dangers of printing child victim's names in newspaper articles. Judge Reinstein and Dan are meeting with Dan Barr, an attorney

for various newspapers to discuss this issue on October 8, 2008. After consulting various community members, Mr. Levey would like the input from the committee on the issue.

Discussion

- Why isn't there a parallel practice to the rape victim practice?
- In Flagstaff they have had great success with speaking with the staff at the newspapers and just explaining to them their point of view and why they shouldn't report child victims' names.
- Maybe other newspapers that don't do it should be consulted as to why they don't and those points could be used to persuade other newspapers.
- Another option would be to look to the police department PIOs for help because they usually have good working relationships with the newspapers.
- Some examples of how this would be detrimental and potentially harmful in the future involved: child sexual assault victim names used and schoolmates reading about the incident, using names in a Google search and crime-related articles would be associated with them for years to come.
- One example of a situation in which a victim name appearing would be detrimental includes the name of a child who was sexually molested appearing in the paper and having schoolmates read about the incident.
- Another related matter is what is included in minute entries (and other public records). If the victims name appears in the minute entry, it is available online in Maricopa County.
- Consider amending §13-4434 statute concerning victims right to privacy to include provisions governing names getting into public record.

ACTION ITEM: Carol will send the articles Mr. Levey has discussed out via e-mail.

E. Elder Abuse Video

Hon. Ron Reinstein brought in a video, developed by the Office for Victims of Crimes (OVC), for review and comment about elder abuse and courts' response. An evaluation form was administered to COVIC regarding the content of the video. Judge Reinstein will return responses to OVC.

III. Workgroup Reports

A. Code Section Work Group

Judge Weiss indicated the Code Section Work Group's report was covered by the restitution research/rule conflict item.

B. Children in the Court

Dr. Coffman reviewed the focus of this workgroup and goal of improving representation of children in the court. The three focuses were: continuity of representation across the spectrum (between different courts), ensure those representing the children are attorneys and that they are held to standards of continuing education, as these are not currently mandated. Dr. Coffman explained that there are two

basic models. The attorney/traditional model is where the wishes of the child are represented regardless of anything else and confidentiality is paramount. This has been termed as “robotic allegiance”. Second, there is the GAL Model in which the best interest of the child is represented. The committee is experiencing the expression of very strong polarized opinions as to which are better.

Maricopa County uses the GAL model and provides a great deal of latitude to GAL's. Pima Superior Court uses the attorney model. At one point in time there was discussion about creating a hybrid model but it was not feasible.

Discussion

- Judges on benches dealing with the same child need to communicate so that there are not conflicting orders.
- Issue with rural areas because there are so few attorneys, concern that strict standards would reduce the number of available attorneys.
- Some thought has been given to a specialty group of attorneys specializing in juvenile.
- Consider standards for courts – a judge over a dependency case should trigger a request to determine if there are related criminal cases.
- A no contact order should trump a visitation order. This could be done through rule.
- Further complications arise in the orders of protection which are issued in limited jurisdiction courts, but which need to be transferred to Superior Court if there is a related divorce proceeding.

Everyone agrees on standards and continuity of care. There are two rough drafts of proposals, one encompassing each model so that courts may choose the one reflecting the model they use. An update will be provided to the Committee on Juvenile Courts next week. Dr. Coffman will report back to COVIC on the outcome of that discussion.

C. Restitution Workgroup

Dan Levey spoke on the restitution statute that was passed two years ago was implemented about a month ago at the Arizona Department of Corrections (ADC). This is the statute that allows the department of corrections to take from 20-50% of the inmates' deposits to their earnings or wage accounts for the purpose of restitution. The wording that the legal department at ADC recommends is: “While in the Department of Corrections, restitution shall be paid as provided in ARS31-230”. The only remaining question is whether or not it applies retroactively. The judge's order happened in the past and explicitly provides for a specific amount. A similar law was applied retroactively in California, but their statutes regarding restitution payments in prison were different than Arizona's.

The restitution website has been being developed over the past year. The goal is for this to be an up-to-date one-page-stop for restitution. It has been modeled after Colorado's Supreme Court Restitution webpage. It includes statutes and forms as well as links to clerk's pages and contact information. If you have suggestions feel free to let Carol know. It is not yet available for use by the public.

Discussion

- Currently doesn't look like the constitutional right to restitution is shown in the list of statutes, this should be added.

- Next steps will include review by the attorney general's office and others to ensure that the process has been accurately represented.

Motion: To accept the webpage with recommended changes. Motion seconded and passed unanimously.

IV. Other Business

A. Next Meeting:

November 14, 2008
State Courts Building
Phoenix, AZ 85007

B. Call to the Public

- Jamie Mabery would like help from Judges to review the judicial portion of the Maricopa County Attorney's Office protocol for cases involving the elderly.
- Hon Richard Weiss, acting as Chair, asked if any other matters needed to be addressed.
- Steve Twist shared that Arizona Voices for Crime Victims and the Maricopa County Attorney's office filed a petition for a case transfer rule change with the Supreme Court. The court denied the petition for expedited review. Justice Ryan asked that it be brought to the attention of the commission. It will appear on the COVIC's November agenda.
- Leslie James mentioned that the appellate clerks' websites are not as informative as the information available on public access for the state courts, where minute entries and additional information is available. Leslie believed this area should improve and would be helpful for victims.
- If any member is interested in chairing the Administration of Justice Workgroup, please see Carol.
- Dan Levey wanted to bring the following problem to the attention of the Commission. If a defendant is placed on lifetime probation and then violates their probation on a technicality, they are taken off probation and placed in prison. Because their probation is revoked and their prison sentence is complete (which may be very short), the defendant is no longer on lifetime probation supervision because double jeopardy attaches. Dan thinks this is something the commission should look into.

C. Adjournment

Hon. Richard Weiss acting as Chair declared the meeting adjourned at 12:10pm.

Commission on Victims in the Courts
DRAFT MINUTES
Friday, November 14, 2008
10:00 am to 2:00 pm
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 345A/B

Members Present:

Ms. Patricia Bigwood
Ms. Sarah Vasquez for Mr. Michael Branham
Dr. Kathryn Coffman
Mr. Paul Ahler for Mr. Edwin Cook
Ms. JoAnn Del Colle (Telephonically)
Ms. Karen Duffy
Cpt. Larry Farnsworth
Ms. Daisy Flores (Telephonically)
Ms. Leslie James
Mr. Dan Levey
Hon. Anna Montoya-Paez
Hon. William O'Neil
Mr. Paul Prato
Hon. Ronald Reinstein (Chair)
Hon. Antonio Riojas, Jr.
Hon. Richard Weiss

Members Absent:

Attorney General's Office Representative
Hon. Lex Anderson
Mr. James J Belanger
Ms. Sydney Davis
Hon. Carter Olson
Mr. Doug Pilcher
Ms. Karen Sullivan
Mr. Steve Twist
Ms. Kathy Waters

Presenters/Guests:

Hon. Anna Baca
Ms. Libby Bissa
Ms. Stephanie Bradley
Ms. Jennifer Greene
Mr. Bob James
Ms. Kim Knox
Mr. Bill Owsley
MCAO staff

Staff:

Ms. Carol Mitchell
Ms. Kimberly Reid

I. Regular Business

A. Welcome and Opening Remarks

The November 14th meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:10 am. The Chair announced that Sydney Davis is not at the meeting today because she is involved in a theatrical production.

B. Approval of September 12, 2008 Minutes

Minutes for the March 28, 2008 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the March 28, 2008 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

Announcement: Reappointments will be taking place shortly. For those whose terms are expiring, please inform Carol Mitchell if you would like to be reappointed.

II. Business Items / Potential Action Items

A. Criminal Rule 10.5 Petition

Hon. Anna Baca spoke on the petition. She noted that the data cited in this rule petition is from 2005. This rule states that once a case has been placed into case transfer, if it is not scheduled to be heard in the next 24 hours, there must be 5 business days notice of the later scheduled date. Currently almost all cases are removed from case transfer within 2 days. Judge Baca presented a statistical overview for the number of days cases were waiting in case transfer: 2006= up to 40 days; 2007=up to 20 days and in 2008 the average time is less than 2 days. The Court's position is that this rule change would add a significant waiting time.

Discussion:

- Dan Levey brought up concerns about the amount of notification time needed for victims to make new arrangements for childcare and work. Judge Baca responded that because the trials are only being delayed by such a short amount of time this shouldn't be an issue.
- Leslie James hypothesizes that perhaps this rule is proposed to continue the new case transfer methodology though formal administrative changes.
- Bob James says that this rule guarantees delays that the current system is able to overcome.
- The petition was filed in September of this year, so some people apparently the petitioners still think this is a problem.

MOTION: To postpone a vote on this rule until the next meeting when Mr. Twist and members from the Maricopa County Attorney's Office are available for comment and the vote can fall within the comment period. *Motion seconded and passed unanimously.*

Action Item: Ensure that a representative from the Maricopa County Attorney's Office and Mr. Steve Twist is available at the next meeting for comment/questions.

B. Restitution Research/Rule Conflict

Ms. Jennifer Greene presented information regarding the updated rule changes. She found two federal district court opinions on the stay of disbursement of restitution pending appeal. In both cases the government had to reimburse the defendants whose appeals were successful. A process to address this potential problem should be created before the situation comes up.

Discussion

- Mr. Paul Prato thinks that this proposed rule conflicts with 13-804(D), limiting the discretion to hold or disburse payments. By allowing the courts to hold the payments until the appeal has been decided, a balance has been reached. Additionally, he this could open the victim up to further problems if the appeal is successful and victims have to repay the defendant or possibly face a civil lawsuit. Finally, a balance should be found between defendant's due process rights and victims' constitutional rights.
- Hon. Riojas thinks that this rule could have massive implications on the limited jurisdiction courts. Currently judges are staying restitution orders upon appeal so the defendants aren't paying into the system until the appeal is decided on.
- Hon. O'Neil: This rule opens the door for more people to file a rule 32 stay of the restitution order. The rule needs to recognize the two different world of the court; limited and general jurisdiction.
- Mr. Levey: when a case is reversed we are always open to litigation whether there is restitution or not.

Motion: To approve the rule petition and request that it is forwarded through the rule process. *Motion seconded.*

Motion to Amend: Only amend Rule 31.6 and Rule 103 and exclude the references to Superior Court Rules of Appellate Procedure and limited jurisdiction courts. *Motion to amend seconded and passed unanimously.*

Original motion with the amendment passed with 14 aye and 2 nay votes.

Action Item: Carol and Jennifer will make the necessary changes to the rule petition to include it in the AJC mailing that will occur on Monday 11/17/08.

C. Child in the Court Rule Petition Proposal

Dr. Kathy Coffman and Bill Owsley presented the proposal. The proposal is based on the ABA standards for child representation. The biggest struggle in the process was determining whether to follow the GAL or the attorney model in the rule petition. The basic overview of the rule is to set up standards by which attorneys and GALs representing children must follow, so that child victims/clients receive the improved representation.

Discussion

- Judge O'Neil applauds this proposal because it has vision. He thinks that discovery and flexibility are extremely important.
 - The Attorney and the GAL should never be the same person.
 - The words "abuse and neglect cases" should be removed from the title. None of these standards should be limited to certain cases. It should be all cases in which they are representing the child.
 - These rules should be part of a Code of Judicial Administration.
- Judge O'Neil recommended the following changes :
 - Part I, Item B-1 (1) - "without cost" should be added.
 - Page 2, footnote 2 should be added as a rule instead of a comment.
 - Page 3, C-1. The last sentence should read, "The attorney and guardian ad litem may use trained and qualified staff to conduct visits with the child following *any hearing*"
 - Page 5, Item D-5. Remove "dependency proceeding" from the sentence, "...the child who is the subject of a dependency proceeding shall be present."
 - Page 5, Item D-5. Remove "of the child" from the sentence, "Upon motion of the child, the court may enter a written order..."
 - Page 8, Item G. Remove "dependency" because these rules apply to more than just dependency cases.

MOTION: To forward on and to be considered by the Arizona Judicial Council for the amendment to the rule and for consideration as part of the Administrative Judicial Code (including the changes discussed today). *Motion seconded and passed unanimously.*

Announcement: Mr. Owsley will be representing this item at AJC as Judge Reinstein and Dr. Coffman will be out of town.

D. Proposed 2009 Meeting Dates

MOTION: To approve 2009 meeting dates: February 6th; May 8th; September 11th and November 6th. *Motion seconded and passed unanimously.*

E. Fatality Review Presentation

Libby Bissa conducted a presentation as part of the City of Phoenix Domestic Violence Fatality Review Team. The presentation included information about the team, their most recent fatality review and how it impacts the courts. She also passed around a Fatality Review Sheet.

III. Business

A. Next Meeting:

February 6, 2009
State Courts Building
Phoenix, AZ 85007

B. Call to the Public

None.

C. Adjournment

Quorum was lost during the last presentation, effectively ending the meeting without adjournment.