

Commission on Victims in the Courts
APPROVED 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

Commission on Victims in the Courts
Meeting Minutes-DRAFT
Friday, December 14, 2007 10:00 AM-2:00 PM
Judicial Education Center
Silver & Turquoise Conference Rooms
541 E. Van Buren St., Phoenix, AZ 85007
Conference Call Number: 602-452-3192; Access Code 1114
C.O.V.I.C Website <http://www.supreme.state.az.us/covic>

COVIC Members Present

Chair: Hon. Ronald Reinstein
Dr. Kathryn Coffman
Mr. Jack Ballentine
Mr. Steve Twist
Hon. Carter Olson
Ms. Kathy Waters
Mr. Dan Levey
Hon. Richard Weiss
Hon. Anna Montoya-Paez
Hon. Antonio Riojas, Jr.
Mr. Doug Pilcher
Mr. Anthony Vidale
Hon. William O'Neil
Hon. Lex Anderson
Mr. Gary Husk
Ms. JoAnn Del Colle

Proxy

Ms. Anne Marreel for AG's Office
Ms. Karen Duffy for Hon. Patricia Noland

Staff Present

Ms. Nicole Garcea

Ms. Carol Mitchell

Members Absent

Mr. Stephen Dichter
Ms. Karen Sullivan
Mr. Edwin Cook
Mr. Marc Budoff
Ms. Emily Johnston
Ms. Kimberlie Musselman
Ms. Sydney Davis

Guests

Hon. Mary Helen Maley, Santa Cruz
County Judge
Kristi Murphy, Childhelp
Maureen Domogala, Childhelp
Julie Williams, MCAO Victim Services
Sarah Lynne Vasquez, ADJC, Juvenile
Corrections
Mark Stodola, Tempe Municipal Court
Kim Knox, Maricopa County Finance

Welcome and Call to Order

The Chair officially called the meeting to order at 10:08 AM, at the Judicial Education Center in Phoenix, Arizona. Introductions were made of commission members and guests.

The Chair took a moment to recognize Honorable Lex E. Anderson for his latest DVD project, entitled "Bait and Switch". The Arizona Republic ran an article in the paper about this project that highlights the terror and tragedy of child prostitution. Judge Anderson explained the project has been 2 years in the making and will plan to provide COVIC with a presentation and clips from the DVD.

Approval of September 14, 2007 Minutes

Motion: To approve the draft minutes from September 14, 2007 as amended. The motion was seconded and unanimously passed.

Approval of 2008 Meeting Dates

Motion: To approve the following meeting dates for 2008: March 28th, June 6th, September 12th, and December 12th (if necessary). The motion was seconded and unanimously passed.

Membership Attendance/Reappointment

The reappointment process was briefly discussed as was potential future implementation of the rules for committee member attendance. Currently, 15 COVIC members' terms are expiring in March. Judge Reinstein and Carol will be contacting those members to determine if they are seeking reappointment.

Victim Rights Statement Update

At our last meeting Judge Cruikshank, Presiding Criminal Judge from Pima County, discussed differing interpretations of the statute relating to the reading of the victim rights statement. A follow-up email was sent from Judge Cruikshank, and discussions will continue in effort to address concerns raised by COVIC regarding some judges' methods of carrying out A.R.S. § 13-4438.

Appellate Court Victim Notification

The Supreme Court and Court of Appeals Clerks have developed forms, posted on their respective websites, to provide victims a mechanism to request a copy of the memorandum decision or opinion pursuant to §13-4411. The copy of the form available from the Clerk of the Supreme Court was provided for review.

System Alert: Arizona's Criminal Justice Response to Domestic Violence

Senior Policy Analysts Bill Hart and Richard Toon from the ASU Morrison Institute for Public Policy presented highlights from their recent report concerning Arizona's criminal justice response to domestic violence cases. High points of the presentation include:

- ❖ DV Victims are often overwhelmed by the system and feel that it is not sympathetic to their needs or wants.
- ❖ Police, prosecutors, and judges often feel that the victims are reluctant and back out too frequently when their abuser could be prosecuted.
- ❖ The system is under-resourced and swamped by cases.
- ❖ There is no assurance that any treatment program for offenders will actually work since they have not been evaluated.
- ❖ The challenge is for everyone to rethink their point-of-view, enhance criminal justice system, and come up with alternatives to the traditional punitive approach to DV cases.

The Chair explained the Committee on Impact of Domestic Violence in the Courts (CIDVC) will take the lead in evaluating the recommendations from this report and Judge O'Neil extended an invitation for any COVIC member to join one of the two new workgroups created on CIDVC to address victim barriers and offender treatment assessment.

Circles of Peace Program

Judge Mary Helen Maley was present to speak about the history and operations of Circles of Peace, a unique restorative justice treatment program for domestic violence. It operates out of Santa Cruz County. Currently, it is one of only two restorative justice programs in the state of Arizona.

The restorative justice approach involves the restoration of individuals, families, and communities harmed by violence through the "Circles of Peace". It is a group effort that entails the offender, a counselor to act as Circle Keeper, any willing victims, and a host of individuals who make up the "care community".

Through meetings, the group focuses on past and current issues, reasons/cultures/family practices that created the issues, a plan for addressing the issues and consequences for non-compliance by the offender. The circle acts as a support system for the offender. The circle may also address the court with any concerns and with the offender's progress.

Some statistics of the Circles:

- ❖ 100 cases have been referred to this program since it began in September 2005.
- ❖ 23 of them are currently in progress.
- ❖ 10 of them are on a waiting list.
- ❖ 41 of them have been completed.
- ❖ 8 cases were dismissed.
- ❖ 9 offenders had warrants issued for failure to obey.

- ❖ 2 offenders were deported.
- ❖ 7 are in residential rehab or substance abuse counseling.

Workgroup Summary

ACJA 5-204: Administration of Victims' Rights Code Section

The final changes to the Code Section were available for review. All of the changes were approved by AJC as written. Section D, the Victims' Rights statement, will still need to be re-written for the next submission to AJC. Limited Jurisdiction Judges will be included in the workgroup to attempt to rework the language so that it can provide verbalization of the statement to reach the most attendees in the most efficient matter within the court process.

Children in the Court

The Children in the Court workgroup met one time prior to our meeting today. While many issues were discussed, the main topic to focus on initially was the use of Guardian Ad Litem (GALs) in court. The issues of standardization and supervision will be discussed as well as the apparent disconnect that can occur when a different GAL is assigned to the same child in different cases/courts (e.g., Family, Substance, Criminal, etc.).

Administration of Justice

There were no updates at this time.

Education

Due to time constraints and the fact that Ms. Musselman was unable to attend the meeting, Carol will forward the summary to the members.

Restitution

The Restitution Workgroup is primarily working on putting together a restitution site on the Internet. A basic site has been created with links to restitution resources by county, by state, and nationally. A few screen shots from the webpage were displayed for the commission. More information will continue to be added to make it more useful.

Public Comment

A Call to the Public was made. There were no public attendees that wished to comment.

Workgroup meetings convened following the formal commission meeting.

Motion to Adjourn

Motion: Meeting ended at 12:22PM

Respectfully Submitted,
Carol Mitchell, Court Specialist
Staff to the Commission on Victims in the Courts

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.

FINAL

Commission on Victims in the Courts

Meeting Date:

March 28, 2008

**Type of Action
Required:**

- Formal Action
Request**
- Information
Only**
- Other**

Subject:

Bait and Switch:
"The terror and
tragedy of child
prostitution"

FROM:

Judge Lex Anderson

PRESENTER(S):

Officer Edward DeCastro, City of Phoenix Police Department
Judge Lex Anderson, Presiding Magistrate, Youngtown Municipal Court

DISCUSSION & TIME ESTIMATE:

30 minute presentation about the prevalence and impact of child prostitution.

RECOMMENDED MOTION (IF ANY): None

TO: Ron Reinstein, Carol Mitchell
FROM: Jennifer Greene
DATE: July 2, 2008
RE: Background on conflicting policies for payment of restitution

As you know, the amendment of the Victims' Rights code section adopted in February directly conflicts with Juvenile Court Rule 103(B). I did some research on the various policies and rules in place governing payment of restitution which I thought you might want to have. On June 12th, the Supreme Court suspended section 5-204(K)(4) in Administrative Order No. 2008-55. The portion that was suspended read:

4. Restitution that has been ordered and collected on cases that have been appealed *shall continue to be disbursed to victims* throughout the appeal period.

COVIC proposed this and other amendments to the code section last year; AJC approved the proposal on a consent agenda last December, and it was adopted, effective February 28, 2008, by Administrative Order No. 2008-23. Although COVIC representatives presented the amendment to numerous standing committees last year, including the Committee on Juvenile Court, no one identified the conflict with the Juvenile Rule until after the code section was adopted.

COVIC's proposal came on the heels of the Supreme Court's decision in *State v. Hansen*, 215 Ariz. 287, 160 P.3d 166 (May 30, 2007). In *Hansen*, the Court upheld A.R.S. §13-804(D) as a valid exercise of the legislature's rulemaking authority under the Victims' Bill of Rights. The Court affirmed the Court of Appeals unpublished ruling on Hansen's motion to enjoin the Department of Corrections from withholding restitution from her prison wages. The Court of Appeals order reportedly denied the injunction but ordered that all withholdings *be retained by the clerk of the superior court* during the pendency of her appeal.

A.R.S. §13-804(D) provides:

- (D) Restitution payments that are ordered pursuant to section 13-603 and this section, shall not be stayed if the defendant files a notice of appeal, and the *payments may be held by the court* pending the outcome of an appeal.

This subsection of the statute was adopted in 1997, Laws 1997, Chap. 126, section 6, 43rd Legislature, First Regular Session. The original version of the bill (HB2015) sought only to require that restitution payments not be stayed pending an appeal. The phrase, "and the payments may be held by the court" was added to the bill as part of an amendment proposed by Senator Kaites, then-Chairman of the Senate Judiciary Committee. Unfortunately, the minutes of that Senate Judiciary Committee meeting do not disclose the reasoning behind the amendment, but the question whether to distribute restitution pending an appeal was a prominent feature of the debate on the bill. As described in the Final Revised Senate Fact Sheet, the bill was:

[A]n emergency measure to alter substantive and procedural aspects of present law relating to victims' rights including . . . mandating that restitution payments to victims not be stayed in the event of an appeal.

* * *

Additionally, under the constitution, all victims who receive compensation are to receive "prompt restitution." There is also, however, a constitutional provision which mandates that a defendant is to receive due process. The situation becomes problematic when the defendant exercises his or her right to appeal the restitution decision. The question is whether a defendant should still have to pay restitution when the case is on appeal, and if not, then how does this affect a victim's right to prompt restitution? The proponents of this legislation argue that not pursuing these issues risks not affording victims of adult and juvenile crime their full rights

Prior to last July, Rule 31.6 of the Arizona Rules of Criminal Procedure read as follows:

A sentence to pay a fine or restitution shall be stayed pending appeal.

Rule 31.6 was amended in July of last year along with the emergency adoption of rules implementing Proposition 100. The Rule 28 petition, R-07-0003, changed Rule 31.6 to reflect some renumbering that was done to a different rule and also to conform the rule to the requirements of the statute that was upheld in *Hansen*. The adopted rule petition made the following amendment to the rule:

A sentence to pay a fine ~~or restitution~~ shall be stayed pending appeal.

Unlike ACJA § 5-204(K)(4), neither the statute nor the criminal rule requires the court to distribute restitution payments to the victim during an appeal. The Juvenile Rule specifically addresses distribution. That rule provides as follows:

Rule 103. Initiation of an Appeal

* * *

(B)The order of the juvenile court shall not be suspended or the execution thereof stayed pending the appeal except the appellate court may suspend or stay the execution thereof provided suitable provision is made for the care and custody of the child. In exercising its discretion hereunder, the appellate court may consider the likelihood that the order on appeal will be reversed, the best interests of the child, and any other pertinent legal or equitable questions. *If restitution is ordered to be paid, monies paid for restitution shall be held by the clerk of the superior court from which the appeal is filed pending the final outcome of the appeal.*

* * *

The last sentence of this subsection was added in 2004 at the request of the State Bar and the Juvenile Law Section, *see* Rule 28 petition filed by Robert Van Wyck on May 19, 2004, Supreme Court No. R-04-0017. The petition noted that the criminal rules (31.6) stay payment of restitution pending an appeal, but the Rules of Procedure for Juvenile Court had no similar provision, leaving the juvenile without a clear path to recovering restitution from a victim in the event the juvenile prevailed on appeal.

If a victim receives restitution and then a juvenile prevails upon appeal, the Rules of Procedure for Juvenile Court set forth no means by which the juvenile may recover his or her funds. If the juvenile were to sue the victim, the victim could argue that he or she did nothing wrong in accepting funds from the Clerk of the Superior Court. However, if the juvenile does not pay restitution, he or she is subject to prosecution for violating probation. Thus, [if distribution of restitution is not stayed] the right to appeal a restitution order is essentially meaningless.

The proposed amendment gives meaning to a juvenile's right to appeal a restitution order. At the same time, a juvenile cannot avoid facing an immediate consequence simply by appealing, because the juvenile still would have to make payment to the clerk of the superior court. Furthermore, the victim would receive compensation as soon as the appeal is resolved. . . .

Moreover, in the vast majority of Division One juvenile-delinquency appeals in which a motion to stay a restitution is filed, the court enters an order directing the clerk of the superior court to refrain from distributing restitution monies pending the outcome of the appeal. Thus, the proposed amendment provides statewide consistency in a manner advantageous to all interested parties. Petition at 2-3.

The ACJA section also conflicts with a pending amendment to the SCRAP-Criminal rules. R-08-0001, filed by Judge Anagnost, is directed, in part, at SCRAP-Criminal Rule 7. His proposal reads, “. . . an order requiring payment of restitution shall not be stayed, but restitution payments shall be paid to, *and held by*, the clerk of court, during the pendency of the appeal.” The petition indicates it was proposed to conform the rule to the Court of Appeals decision in *Hansen*. Judge Anagnost's petition was filed before adoption of ACJA §5-204(K)(4) and obviously conflicts with that section.

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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.

FINAL

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
November 14, 2008	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	2009 Meeting Dates

FROM: Commission on Victims in the Courts

PRESENTER(S): Hon. Ron Reinstein, Chair

DISCUSSION & TIME ESTIMATE:

Commission members will review the attached proposed meeting dates for 2009.

(5 minutes)

RECOMMENDED MOTION (IF ANY):

Motion to approve the proposed 2009 COVIC meeting dates

Arizona Supreme Court
Commission on Victims in the Courts (COVIC)

Proposed 2009 COVIC meeting dates

February 6, 2009

May 8, 2009

September 11, 2009

November 6, 2009

Meetings will be held on Fridays at the State Courts building, unless otherwise announced.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
November 14, 2008	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	PETITION TO AMEND RULE 10.5 OF THE ARIZONA RULES OF CRIMINAL PROCEDURE

PRESENTER(S): Honorable Anna Baca, Maricopa Superior Court

DISCUSSION & TIME ESTIMATE:

Arizona Voices for Victims, in conjunction with Maricopa County Attorney's Office, submitted a rule change petition which addresses the transfer of cases already set for trial due to the unavailability of the trial judge.

Judge Anna Baca will provide an update from Maricopa Superior Court.

(See attachments- 15 minutes)

RECOMMENDED MOTION (IF ANY):

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
November 14, 2008	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Rule petition: Restitution payment processing in appeal cases

PRESENTER(S): Ms. Jennifer Greene, Esq.

DISCUSSION & TIME ESTIMATE:

Ms. Greene will present a proposed rule petition to amend Rule 31.6 of Criminal Procedure; Rule 103, Rules of Procedure in Juvenile Court; and Rule 6, Superior Court Rules of Appellate Procedure-Criminal to resolve the conflict between restitution payment language cited within these court rules and section K (4) of ACJA § 5-204.

(See attachment-15 minutes)

RECOMMENDED MOTION (IF ANY):

Motion to approve rule change petition to submit to Supreme Court in January 2009.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
November 14, 2008	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Code Section Workgroup/ Legislative Proposal Update

FROM: Code Section Workgroup

PRESENTER(S): Hon. Richard Weiss, Chair

DISCUSSION & TIME ESTIMATE:

Judge Weiss will provide an update regarding potential changes to the victim code section and status of legislative proposal.

RECOMMENDED MOTION (IF ANY):

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
November 14, 2008	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Restitution Workgroup Update

FROM: Restitution Workgroup

PRESENTER(S): Mr. Dan Levey, Chair

DISCUSSION & TIME ESTIMATE:

Dan Levey will provide an update regarding current restitution-related issues including information from the Arizona Department of Corrections.

(10 minutes)

RECOMMENDED MOTION (IF ANY):

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
November 14, 2008	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Children in Court Workgroup

FROM: Children in Court Workgroup

PRESENTER(S): Dr. Kathy Coffman, Chair

DISCUSSION & TIME ESTIMATE:

Dr. Coffman will provide an overview of the issues, comments and recommendations discussed regarding the development of proposed standards for legal representation of children in court. The workgroup seeks COVIC's recommendation to proceed with plans to submit a rule change petition.

(30 minutes)

RECOMMENDED MOTION (IF ANY):

Motion to approve rule change petition to submit to Supreme Court in January 2009.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
November 14, 2008	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	DV Fatality Review

FROM: City of Phoenix Family Advocacy Center

PRESENTER(S): Libby Bissa, Phoenix Family Advocacy Center Operations Mgr.
City of Phoenix Domestic Violence Fatality Review Team

DISCUSSION & TIME ESTIMATE: Results of the first DV Fatality Review conducted by the City of Phoenix; 20 minutes.

RECOMMENDED MOTION (IF ANY): none

STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES.

PREFACE

These standards apply to all lawyers representing children as either attorney or guardian ad litem in dependency, guardianship, termination of parental rights and adoption proceedings. These standards do not apply to nonlawyers when such persons are appointed as guardians ad litem or as “court appointed special advocates” (CASA).

PART I—STANDARDS FOR THE CHILD'S ATTORNEY

A. DEFINITIONS

A-1. The Child's Attorney. The term "child's attorney" means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

A-2. Lawyer Appointed as Guardian Ad Litem. A lawyer appointed as "guardian ad litem" for a child is an officer of the court appointed to protect the child's interests without being bound by the child's expressed preferences.

A-3. Developmentally Appropriate. "Developmentally appropriate" means that the child's attorney and guardian ad litem should ensure the child's ability to provide client-based directions ~~by structuring~~ structure all communications with the child to account for the individual child's age, level of education, cultural context, and degree of language acquisition.¹

B. GENERAL AUTHORITY AND DUTIES

B-1. Basic Obligations. The child's attorney and guardian ad litem should:

- (1) Obtain copies of all pleadings and relevant notices;**
- (2) Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;**
- (3) Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;**

¹ Amended to apply to both attorneys and guardians ad litem.

- (4) Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
- (5) Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;
- (6) Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
- (7) Identify appropriate family and professional resources for the child.

B-2. Conflict Situations.

~~(1) If a lawyer appointed as guardian ad litem determines that there is a conflict caused by performing both roles of guardian ad litem and child's attorney, the lawyer should continue to perform as the child's attorney and withdraw as guardian ad litem. The lawyer should request appointment of a guardian ad litem without revealing the basis for the request.~~

~~(2) If a lawyer is appointed as a "child's attorney" for siblings, there may also be a conflict which could require that the lawyer decline representation or withdraw from representing all of the children.²~~

B-3. Client Under Disability With Diminished Capacity. The child's attorney should determine whether the child's capacity to make adequately considered decisions in connection with a representation is diminished is "under a disability" pursuant to the Model Arizona Rules of Professional Conduct or the Model Code of Professional Responsibility with respect to each issue in which the child is called upon to direct the representation.³

B-4. Client Preferences. The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation.

- (1) To the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request appointment of a guardian ad litem.
- (2) To the extent that a child does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests.
- (3) If the child's attorney determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the lawyer may request appointment of a separate guardian ad litem and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation. The child's attorney shall not reveal the basis of the request for appointment of a guardian ad litem

² Section removed as attorneys should be expected to identify conflicts consistent with ethics rules. In addition, lawyers should not be appointed as both attorney and GAL

³ Amended to comply with ER 1.14, Rule 42, Arizona Rules of Professional Conduct Amended June 9, 2003, effective Dec. 1, 2003.

which would compromise the child's position.

B-5. Child's Interests. The determination of the child's legal interests should be based on objective criteria as set forth in the law that are related to the purposes of the proceedings. The criteria should address the child's specific needs and preferences, the goal of expeditious resolution of the case so the child can remain or return home or be placed in a safe, nurturing, and permanent environment, and the use of the least restrictive or detrimental alternatives available.

C. ACTIONS TO BE TAKEN

C-1. Meet With Child. Establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of the child's age, the child's attorney and guardian ad litem should have a meaningful visit with the child prior to each substantive court hearings and when apprised of emergencies or significant events impacting on the child. The attorney and guardian ad litem may use trained and qualified staff to conduct visits with the child following the Preliminary Protective Conference and Hearing.

C-2. Investigate. To support the client's position, the child's attorney and guardian ad litem should conduct thorough, continuing, and independent investigations and discovery which may include, but should not be limited to:

- (1) Reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case;
- (2) Reviewing the court files of the child and siblings, case-related records of the social service agency and other service providers;
- (3) Contacting lawyers for other parties and nonlawyer guardians ad litem or court-appointed special advocates (CASA) for background information;
- (4) Contacting and meeting with the parents/legal guardians/caretakers of the child, with permission of their lawyer;
- (5) Obtaining necessary authorizations for the release of information;
- (6) Interviewing individuals involved with the child, including school personnel, child welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;
- (7) Reviewing relevant photographs, video or audio tapes and other evidence; and
- (8) Attending treatment, placement, administrative hearings, other proceedings involving legal issues, and school case conferences or staffings concerning the child as needed.

C-3. File Pleadings. The child's attorney and guardian ad litem should file petitions, motions, responses or objections as necessary to represent the child. Relief requested may include, but is not limited to:

- (1) A mental or physical examination of a party or the child;

- (2) A parenting, custody or visitation evaluation;
- (3) An increase, decrease, or termination of contact or visitation;
- (4) ~~An order r~~Restraining or enjoining a change of placement;
- (5) Contempt for non-compliance with a court order;
- (6) Termination of the parent-child relationship;
- (7) Child support;
- (8) A protective order concerning the child's privileged communications or tangible or intangible property;
- (9) ~~Request S~~services for child or family; and
- (10) Dismissal of petitions or motions.

C-4. Request Services. ~~Consistent with the child's wishes, t~~The child's attorney and guardian ad litem should seek appropriate services (by court order if necessary) to access entitlements, to protect the child's interests and to implement a service plan as necessary to represent the child. These services may include, but should not be limited to:

- (1) Family preservation-related prevention or reunification services;
- (2) Sibling and family visitation;
- (3) Child support;
- (4) Domestic violence prevention, intervention, and treatment;
- (5) Medical and mental health care;
- (6) Drug and alcohol treatment;
- (7) Parenting education;
- (8) Semi-independent and independent living services;
- (9) Long-term foster care;
- (10) Termination of parental rights action;
- (11) Adoption services;
- (12) Education;
- (13) Recreational or social services; and
- (14) Housing.

C-5. Child With Special Needs. ~~Consistent with the child's wishes, t~~The child's attorney and guardian ad litem should assure ensure that a child with special needs receives appropriate services to address the physical, mental, or developmental disabilities as necessary to represent the child. These services may include, but should not be limited to:

- (1) Special education and related services;
- (2) Supplemental security income (SSI) to help support needed services;
- (3) Therapeutic foster or group home care; and
- (4) Residential/in-patient and out-patient psychiatric treatment.

C-6. Negotiate Settlements. The child's attorney and guardian ad litem should participate in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child. The child's attorney and guardian ad litem should use suitable mediation resources.

D. HEARINGS

D-1. Court Appearances. The child's attorney and guardian ad litem should attend all hearings and participate in all telephone or other conferences with the court unless a particular hearing involves issues completely unrelated to the child.

D-2. Client Explanation. The child's attorney and guardian ad litem should explain to the client, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

D-3. Motions and Objections. The child's attorney and guardian ad litem should make appropriate motions, including motions *in limine* and evidentiary objections, ~~to advance the child's position as necessary to represent the child~~ at trial or during other hearings. If necessary, the child's attorney and guardian ad litem should file briefs in support of evidentiary issues. Further, during all hearings, the child's attorney and guardian ad litem should preserve legal issues for appeal, as appropriate.

D-4. Presentation of Evidence. The child's attorney and guardian ad litem should present and cross examine witnesses, offer exhibits, and provide independent evidence as necessary. Neither the attorney nor the guardian ad litem shall be called to testify as a witness.

D-5. Child at Hearing. ~~In most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify.~~ At every substantive hearing, such as the Preliminary Protective Hearing, the Report and Review Hearing and the Permanency Hearings, the child who is the subject of a dependency proceeding shall be present. Upon motion of the child, the court may enter a written order excusing a child from each hearing, for good cause shown. The Court shall determine whether counsel for the child has meaningful contact with the client prior to each substantive hearing.⁴

⁴ Proposed Change to Juvenile Court Rule 41 as recommended by Judge Brutinel and approved by Committee on Juvenile Courts. "Counsel" may be changed to "attorney and guardian ad litem."

D-6. Whether Child Should Testify. The child's attorney and guardian ad litem should decide whether to call the child as a witness. The decision should include consideration of the child's need or desire to testify, any repercussions of testifying, the necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions which may substitute for direct testimony by the child, and the child's developmental ability to provide direct testimony and withstand possible cross-examination. Ultimately, the child's attorney is bound by the child's direction concerning testifying.

D-7. Child Witness. The child's attorney and guardian ad litem should prepare the child to testify. This should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination and ensuring that testifying will cause minimum harm to the child.

D-8. Questioning the Child. The child's attorney and guardian ad litem should seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner.

D-9. Challenges to Child's Testimony/Statements. The child's competency to testify, or the reliability of the child's testimony or out-of-court statements, may be called into question. The child's attorney and guardian ad litem should be familiar with the current law and empirical knowledge about children's competency, memory, and suggestibility and, where appropriate, attempt to establish the competency and reliability of the child.

~~**D-10. Jury Selection.** In those states in which a jury trial is possible, the child's attorney should participate in jury selection and drafting jury instructions.⁵~~

D-11. Conclusion of Hearing. If appropriate, the child's attorney and guardian ad litem should make a closing argument, and provide proposed findings of fact and conclusions of law. The child's attorney and guardian ad litem should ensure that a written order is entered.

D-12. Expanded Scope of Representation. The child's attorney and guardian ad litem may request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment. For example:

- (1) Child support;
- (2) Delinquency or status offender matters;
- (3) SSI and other public benefits;
- (4) Custody;
- (5) Guardianship;
- (6) Paternity;
- (7) Personal injury;
- (8) School/education issues, especially for a child with disabilities;

⁵ No jury trials in Arizona.

- (9) Mental health proceedings;
- (10) Termination of parental rights; and
- (11) Adoption.

D-13. Obligations after Disposition. The child's attorney should seek to ensure continued representation of the child at all further hearings, including at administrative or judicial actions that result in changes to the child's placement or services, so long as the court maintains its jurisdiction.

E. POST-HEARING

E-1. Review of Court's Order. The child's attorney and guardian ad litem should review all written orders to ensure that they conform with the court's verbal orders and statutorily required findings and notices.

E-2. Communicate Order to Child. The child's attorney and guardian ad litem should discuss the order and its consequences with the child.

E-3. Implementation. The child's attorney and guardian ad litem should monitor the implementation of the court's orders and communicate to the responsible agency and, if necessary, the court, any non-compliance.

F. APPEAL

F-1. Decision to Appeal. The child's attorney and guardian ad litem should consider and discuss with the child, as developmentally appropriate, the possibility of an appeal. ~~If after such consultation, the child wishes to appeal the order, and~~ appropriate and the appeal has merit, the lawyer attorney and guardian ad litem should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the child during the pendency of the appeal. Ultimately, the child's attorney is bound by the child's direction concerning the appeal.

F-2. Withdrawal. If the child's attorney determines that an appeal would be frivolous or that he or she lacks the necessary experience or expertise to handle the appeal, the lawyer should notify the court and seek to be discharged or replaced.

F-3. Participation in Appeal. The child's attorney and guardian ad litem should participate in an appeal filed by another party unless discharged.

F-4. Conclusion of Appeal. When the decision is received, the child's attorney and guardian ad litem should explain the outcome of the case to the child.

F-5. Cessation of Representation. The child's attorney and guardian ad litem should discuss the end of the legal representation and determine what contacts, if any, the child's attorney and guardian ad litem and the child will continue to have.

G. General Competency Requirements. All attorneys and guardians ad litem appointed by the juvenile court in dependency, guardianship, termination of parental rights or adoption proceedings

must meet the minimum standards of competence set forth in these rules. The attorney or guardian ad litem shall, within 10 days of his or her first appearance in dependency court, have on file with the juvenile court a Certificate of Competency, which demonstrates that the attorney has met the minimum standards for training;

1. Participated in eight (8) hours of training in juvenile dependency law, which shall include applicable case law and statutes, rules of court, child development, child abuse and neglect, substance abuse, domestic violence, trial advocacy, family reunification and preservation and reasonable efforts; or
2. At least six (6) months of experience in dependency and termination of parental rights proceedings in which the attorney has demonstrated competence in the attorney's representation of his or her client under the supervision of a certified attorney.

Following certification, all attorneys and guardians ad litem shall participate, at a minimum, in eight (8) hours of continuing legal education per year, which is specific to the area of juvenile law. Attorneys shall file a renewal Certificate of Competency by September 15th of each year following the original certification.

When an attorney or guardian ad litem fails to submit a Certificate of Competency, the presiding judge of the juvenile court shall notify the attorney that he or she will have 20 days to complete and file the certificate. If the attorney fails to submit the certificate, the presiding judge of the juvenile court shall order that the attorney or guardian ad litem receive no additional appointments pending receipt of the certificate.

H. Caseloads. The child's attorney and guardian ad litem must have caseloads that allow the attorney to perform the duties required under these rules and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet the requirements of these rules.

DRAFT No. 2
October 9, 2008

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)
PETITION TO AMEND) Supreme Court No. R-08-____
RULE 31.6, RULES OF CRIMINAL)
PROCEDURE; RULE 103, RULES OF)
PROCEDURE IN JUVENILE COURT;)
AND RULE 6, SUPERIOR COURT)
RULES OF APPELLATE PROCEDURE -)
CRIMINAL)
_____)

Pursuant to Arizona Supreme Court Rule 28, [identify petitioner], respectfully petitions this Court to adopt the attached proposed rule amendments to the Arizona Rules of Criminal Procedure, Procedure for Juvenile Court, and Superior Court Rules of Appellate Procedure – Criminal.

Background and Purpose of the Proposed Rule Amendments

Crime victims in Arizona are entitled to receive “prompt restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury.” Ariz. Const. art. 2, §2.1(A)(8); *State v. Hansen*, 215 Ariz. 287, 160 P.3d 166 (2007). During the pendency of an appeal, present law requires the defendant to pay restitution into the court, but stops short of requiring the court to disburse the money collected to the victim, “[restitution] payments *may* be held by the court pending the

outcome of an appeal,” A.R.S. §13-804(D)(emphasis added). While the rules of procedure applicable in adult criminal cases are silent on whether to disburse restitution, the rules applicable in juvenile delinquency and criminal cases originating in limited jurisdiction courts require the court to hold the money pending appeal. A statewide standard is needed to ensure victims will receive consistent judicial rulings from case to case and across all case types in which restitution may be ordered.

The amendments proposed herein establish a standard for determining whether the victim will receive restitution payments collected by the court pending an appeal. The proposed amendments add language modeled after Rule 7.2(c)&(d) of the Rules of Criminal Procedure, governing the trial court’s determination whether to release or detain a defendant pending appeal. The proposed amendments require disbursement of restitution unless the defendant can demonstrate to the court sufficient grounds for a stay. This burden parallels the one the defendant must meet to delay a sentence of imprisonment pending appeal.

RESPECTFULLY SUBMITTED this _____ day of _____, 20__:

By _____
Name, Title of petitioner
Address
Phone Number

Appendix A

Rules of Criminal Procedure

Rule 31.6. Stay of execution of sentence and credit pending appeal

(a) A sentence of imprisonment shall be stayed pending appeal when the defendant is released in accordance with Rule 7.2 (c). A defendant who remains in custody during the pendency of an appeal shall receive the same benefits as if no appeal has been taken.

(b) A sentence to pay a fine shall be stayed pending appeal. A sentence to pay restitution shall not be stayed pending appeal. Disbursement of restitution collected by the court shall not be stayed pending appeal, unless the defendant establishes, by a preponderance of the evidence, reasonable grounds to believe the conviction may either be set aside on a motion for new trial, reversed on appeal, or vacated in any post-conviction proceeding, or that the restitution order may be reduced or vacated. The stay on disbursement shall be revoked if the defendant fails to prosecute the appeal diligently.

Superior Court Rules of Appellate Procedure - Criminal

Rule 6. Bond on Appeal

a. and b. [no changes]

c. Execution of sentence shall be stayed pending appeal when defendant posts bond pursuant to Rule 7.2, Arizona Rules of Criminal Procedure, or when the appeal is taken on defendant's own recognizance. "Sentence" shall include any fine, jail term, or other penalty, including a term of probation, imposed by the court. Notwithstanding the foregoing, an order requiring the payment of restitution shall not be stayed, ~~but during the pendency of the appeal restitution payments shall be paid to, and held by, the clerk of court.~~ Disbursement of restitution collected by the court shall not be stayed pending appeal, unless the defendant establishes, by a preponderance of the evidence, reasonable grounds to believe the conviction may either be set aside on a motion for new trial, reversed on appeal, or vacated in any post-conviction proceeding, or that the restitution order may be reduced or vacated. The stay on disbursement shall be revoked if the defendant fails to prosecute the appeal diligently.

Rules of Procedure for the Juvenile Court

Rule 103. Initiation of an Appeal

(A) [no change]

(B) The order of the juvenile court shall not be suspended or the execution thereof stayed pending the appeal except the appellate court may suspend or stay the execution thereof provided suitable provision is made for the care and custody

of the child. In exercising its discretion hereunder, the appellate court may consider the likelihood that the order on appeal will be reversed, the best interests of the child, and any other pertinent legal or equitable questions. If restitution is ordered to be paid, monies paid for restitution shall not be held by the clerk of the superior court from which the appeal is filed pending the final outcome of the appeal, unless the juvenile establishes, by a preponderance of the evidence, reasonable grounds to believe the final order of the juvenile court may either be set aside on a motion for new trial, reversed on appeal, or vacated in any post-adjudication proceeding, or that the restitution order may be reduced or vacated. The stay on disbursement shall be revoked if the juvenile fails to prosecute the appeal diligently.

(C) through (G) [no changes]

1 ANDREW P. THOMAS
2 MARICOPA COUNTY ATTORNEY
3 (FIRM STATE BAR No. 0003200)
4 PHILIP J. MACDONNELL
5 (STATE BAR NUMBER 003813)
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11 PO BOX 12722
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13 TELEPHONE: (480) 600-2661

13 IN THE SUPREME COURT OF THE STATE OF ARIZONA

14
15 In the Matter of

16 PETITION TO AMEND RULE 10.5,
17 ARIZONA RULES OF CRIMINAL
18 PROCEDURE

Supreme Court
No. R- _____

PETITION TO AMEND RULE 10.5 OF
THE ARIZONA RULES OF CRIMINAL
PROCEDURE

19
20 The Maricopa County Attorney and Arizona Voice for Crime Victims hereby move, pursuant to
21 Rule 28 of the Arizona Rules of the Supreme Court, to amend Rule 10.5 of the Arizona Rules of

22 ///

23 ///

24 ///

25 ///

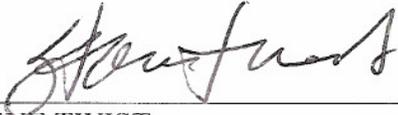
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27 ///

28

1 Criminal Procedure by creating a new paragraph "C", which addresses the transfer of cases already set
2 for trial due to the unavailability of the trial judge.

3 Respectfully submitted this 3 day of September, 2008.

4
5
6 BY: 
7 STEVE TWIST
8 PRESIDENT, ARIZONA VOICE FOR CRIME
9 VICTIMS

10 ANDREW P. THOMAS
11 MARICOPA COUNTY ATTORNEY

12 BY: 
13 PHILIP J. MACDONNELL
14 CHIEF DEPUTY

15 JEFFREY TRUDGIAN
16 DEPUTY COUNTY ATTORNEY

17 REBECCA BAKER
18 DEPUTY COUNTY ATTORNEY

1 **I. SUMMARY OF PROPOSED CHANGE**

2 In Maricopa County, the case transfer system was created by the Superior Court to address the
3 problem of having multiple criminal cases set for trial at the same time before the same judge. In this
4 system, if an assigned trial judge is not available on the day of the scheduled trial, the case is systematically
5 placed onto a list of cases awaiting trial. As judges become available for trial, they contact court
6 administration to accept a case from the case transfer list. A trial can be delayed for a day to weeks at a
7 time, waiting for a Superior Court judge to become available. This system leaves the parties, as well as
8 crime victims and witnesses, in limbo for an indefinite period of time. This can create enormous notice
9 problems for attorneys, witnesses and victims who suddenly find themselves in trial after being in a
10 “holding pattern” for weeks. The trial may then commence the day it is assigned to a new judge.

11
12 The proposed amendment to Rule 10.5 addresses problems which arise when a criminal case is
13 transferred from one trial judge to another, based upon the unavailability of the assigned trial judge. If the
14 trial does not begin by the business day following the scheduled trial date, the amendment requires the
15 newly-assigned trial judge to provide the parties with at least five business days notice of when the trial
16 will actually commence. The purpose of the proposed rule change is to address the systematic problems
17 that occur when a trial judge has multiple cases ready for trial at one time, requiring a delay in the trial as
18 the matter is awaiting transfer to a new judge.

19
20
21 The amendment is being jointly proposed by the Maricopa County Attorney’s Office and
22 Arizona Voice for Crimes Victims. The Maricopa County Attorney’s Office is responsible for the
23 prosecution of more than 40,000 felony criminal cases each year.

24
25 Arizona Voice for Crime Victims is an organization dedicated to ensuring that crime victims
26 receive their rights to justice, due process and dignified treatment throughout the criminal justice
27 process. The vision of Arizona Voice for Crime Victims is to establish a compassionate justice
28

1 system in which crime victims are informed of their rights, fully understand those rights, know how
2 to assert their rights, have a meaningful way to enforce those rights, and know how to seek
3 immediate crisis intervention when they become victims of crime.

4 **II. PRACTICAL EFFECTS OF THE CURRENT SYSTEM**

5
6 The case transfer system in Maricopa County leads to predictable miscarriages of justice as
7 attorneys are routinely forced to put their case together in as little as a day's notice of a new judge being
8 assigned to the case. This includes requiring attorneys to notify, and perhaps even re-subpoena, victims
9 and witnesses upon receiving notice that they have been assigned to a new judge for trial. This can be
10 especially difficult for victims or witnesses from lower socio-economic backgrounds, who are
11 unfortunately commonly involved in criminal prosecutions due to the locations and circumstances which
12 tend to produce crime. Often, these individuals do not have a phone number by which they can be easily
13 reached. That makes it very likely that the victim or witness will not find out that trial has been delayed
14 until they have actually appeared for trial at the scheduled time and location. Once the case is in the case
15 transfer system, if an attorney has less than a day's notice of a trial beginning before a new judge, ensuring
16 that the victim and witnesses are aware of when and where they will next be required to appear will be
17 difficult and time consuming. In-person contact may be necessary based on a number of variables outside
18 the control of the parties.
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21 The parties and witnesses must also make allowances in their daily schedules for whatever trial
22 schedule the newly-assigned judge intends to follow. This can be particularly demanding as some judges
23 only conduct trials on certain days of the week, and others may only conduct trial in the afternoons.
24 Victims and witnesses who have already had to made accommodations to their work and daily schedules
25 are then forced to make last minute changes which could result in having to take additional time off from
26 work or cancel important personal matters. Thus, they may have no choice but to use additional vacation
27
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1 time or take additional time off from work without pay. This can cause victims and witnesses to have to
2 reschedule or cancel vacations and personal appointments or find last minute daycare.

3 Additionally, a last minute change in the judge often results in a change in the location of the trial
4 which may present transportation issues for the parties, victims and witnesses. In Maricopa County the
5 two courthouses which handle criminal matters are approximately 20 miles apart, directly in the flow of
6 commuter traffic. Moreover, counsel (generally the prosecutor) often is forced to present his or her
7 witnesses out of order when a case in case transfer is suddenly set for trial. This results in a jury receiving
8 the evidence in an illogical or unorganized manner. Giving the parties at least five business days notice of
9 a new trial date will provide the parties with sufficient time to address all of these issues once a case has
10 been assigned to a new trial judge.
11

12 A longer-term problem is that witnesses and victims conclude that the criminal justice system is
13 incompetent and arbitrary. An unfortunate yet foreseeable result is that they become reluctant to re-
14 involve themselves in the criminal justice system due to their prior negative experience. The case transfer
15 system in Maricopa County too often treats the participants as fungible pieces of evidence rather than those
16 who are doing a civic duty while sacrificing personal time and other priorities.
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19 **III. VICTIM'S RIGHTS**

20 The proposed amendment to Rule 10.5 is needed as the case transfer system currently does not
21 provide adequate notice to victims of sudden changes in trial date and location. The Victims' Bill of
22 Rights guarantees victims rights under the Arizona State Constitution to preserve and protect their rights
23 to justice and due process. Arizona Revised Statute § 13-4418 specifies that the victims' rights statutes
24 "shall be liberally construed to preserve and protect the rights to which victims are entitled."
25
26

27 The Victims' Bill of Rights provides victims the rights to "justice and due process," to be treated
28

1 with fairness,” and a “speedy trial or disposition and prompt and final conclusion of the case after the
2 conviction and sentence.” Ariz. Const. Art. II, § 2.1(A) (1), (10); These rights are further implemented
3 through both Statutes and Rules. See, e.g. A.R.S. §13-4409 (implementing the right the notice of all
4 criminal proceedings), Ariz. R. Crim. P., Rule 39(b)(15). Pursuant to Rule 39(b)(3)&(4) of the Arizona
5 Rules of Criminal Procedure, a victim has the “right to be given *reasonable notice* of the date, time and
6 place of any criminal proceeding” and “to be present at all criminal proceedings.” (emphasis added.)
7

8 Further, A.R.S. § 13-4409 specifically requires the prosecution to “give notice to the victim in a
9 timely manner of scheduled proceedings and any changes in that schedule.” To facilitate this, A.R.S. §
10 13-4409 provides that “the court shall provide notice of criminal proceedings ... to the prosecutor's
11 office at least *five days before* a scheduled proceeding to allow the prosecutor's office to provide notice
12 to the victim.” (emphasis added.) The statute requires the court to create a record on those occasions
13 when the court finds it is not reasonable to provide five days notice. Clearly, the case transfer system,
14 on its face, ignores victims’ rights and frequently violates the Constitutional rights of victims.
15

16 17 **IV. EXAMPLE**

18 There have been many cases which have shown the problems inherent in the Maricopa County
19 case transfer system. One example that exemplifies many of these problems is *State v. Ronnie James*
20 *Taft*, CR 2005-111795-001 DT . This case involved multiple delays resulting in a dismissal with
21 prejudice by the trial court. Ultimately, this dismissal was appealed and reversed by the Arizona Court
22 of Appeals, Division I.
23

24 The defendant was charged with Burglary in the Second Degree, a class three felony, pursuant to
25 A.R.S. § 13-1507. Thus, the case had Victims’ Rights implications. The defendant’s original “last day”
26 pursuant to Rule 8 of the Arizona Rules of Criminal Procedure was calculated to be September 25,
27
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1 2005. Trial was initially set for July 25, 2005, two full months prior to the expiration of the defendant's
2 speedy trial rights.

3 On August 17, 2005, the trial was continued for the first time, to September 26, 2005, due to
4 scheduling conflicts for both counsel and defense counsel's need to complete two additional pre-trial
5 interviews. On September 26, 2005, a second defense motion to continue the trial was granted with a
6 Rule 8 time waiver. According to the pleading, defense counsel had just completed a trial on Friday,
7 September 23, 2005, and needed more time to prepare for this trial. The trial was continued for week to
8 October 3, 2005 and a new "last day" was set for November 4, 2005. State's counsel appeared to be
9 ready for trial on September 26, 2005, but did not object to the motion to continue out of professional
10 courtesy.
11

12 On October 3, 2005, the original trial judge Douglas Rayes was unavailable to proceed due to his
13 own scheduling conflicts. For this reason, he placed the case into the case transfer system. On October
14 6, the State filed a motion to continue because the trial did not start as scheduled and the prosecutor had
15 a long-planned vacation from October 11th to October 16th, 2005. She filed the motion because it was
16 not clear if the case would be picked up by a new judge while she was unavailable to try to the case.
17 Judge Rayes retained the case in his Division thereafter and reset the trial date to October 17, 2005,
18 indicating that the case would be placed back in case transfer on that date.
19

20 Sometime after October 17, 2005 (no Minute Entry was filed), the case was taken out of case
21 transfer by Judge Gerald Porter. The prosecutor recalls that only a few days had passed before the case
22 was taken out of case transfer by Judge Porter. However, his Division was understaffed for the trial and
23 so the case languished further. During this interim period, a necessary witness for the State clarified
24 that he was unavailable from October 26th through November 11th, 2005, due to a pre-planned trip to
25 Michigan.
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1 Given this new information, the State filed a motion to continue on October 25th, 2005. The
2 motion stated that “the trial date was originally scheduled for August 17th and then September 26th; both
3 trial dates were continued by the defense without objection by the State. The parties originally entered
4 into case transfer on October 3, 2005 and then again on October 17, 2005. Both parties are prepared to
5 begin trial [after November 11th, 2005].” The motion also proposed, as an alternative, that a jury be
6 picked on October 27th and be brought back for the two-day trial in mid-November.
7

8 The State subsequently learned that Judge Porter was not inclined to continue the trial. Thus,
9 given the witness issue, the State filed a motion to dismiss without prejudice and avowed that it was not
10 made for the purpose of avoiding Rule 8. On October 28, 2005, Judge Porter heard arguments on the
11 motion to continue and the motion to dismiss without prejudice. At this hearing, he not only denied the
12 motion to continue, but found there was no good cause to dismiss the case without prejudice.
13 Accordingly, he dismissed the case *with* prejudice. The Court noted that it was a victim case, but added
14 that “at the end of the day, we have specific rules in place that are for the benefit of the defendant...”
15 Transcript of hearing, 10/28/08. The defendant received this case dispositive ruling despite having six
16 prior felony convictions against him as alleged by the State in its pleadings. Moreover, the dismissal
17 occurred one week prior to the defendant’s “last day,” which in turn fell only one week prior to the
18 availability of the State’s main witness for trial. The State appealed this decision.
19
20

21 On February 1, 2007, the Arizona Court of Appeals overturned the trial court’s dismissal with
22 prejudice in a Memorandum Decision, 1 CA-CR 1183¹. The Court took the opportunity to comment on
23 the practical effects of the Maricopa County case transfer system. The Court analyzed the series of
24 events in this particular case as follows:
25

26
27 ¹ This memorandum decision is not being cited as precedent for any particular legal finding. Rather, the case is cited as a
28 factual analysis of the Maricopa County case transfer system as applied to an actual criminal case. 17A A.R.S. Sup.Ct.Rules,
Rule 111.

1 The State was forced to move for a dismissal of the case because the
2 Superior Court was unable to procure a trial judge during the time that
3 the case was in case transfer. As a result of that delay, a necessary
4 witness became unavailable. Consequently, the State found itself in a
5 position of not being able to go forward with the case on October 28,
2005 because of Maricopa County's case transfer system and the lack of
any judicial officer available to try the case during the time that the case
was in case transfer.

6 *Id.* at 8-9. The Court found that a dismissal with prejudice was inappropriate because the defendant
7 failed to show actual prejudice. It also found that the various delays were caused by the "inefficiency
8 and ineffectiveness" of Maricopa County's case transfer system. *Id.* at 9.

9 The Court of Appeals did not do a strict "victims' rights" analysis in coming to its conclusion.
10 Clearly, however, the Court was able to conclude that Maricopa County's case transfer system is flawed.
11 As a result of the delays, the case could not be tried and was dismissed. Even if the dismissal had been
12 without prejudice, as would have been appropriate, the defendant would have been released absent the
13 immediate re-filing of the case. That issue has implications on not only the victim involved in the case
14 that is dismissed, but also potential victims.

15 Upon the apprehension of the defendant on multiple new offenses², the victim was re-contacted
16 by the prosecutor who handled the case. The victim expressed that he was still extremely frustrated
17 with the entire process he had been through. When he learned that the defendant was in prison on new
18 offenses, the victim indicated that he did not want to go through the process again. Given the passage of
19 time, there may have been other witness issues with the case as well.

20 ² Ronnie Taft is presently in the Arizona Department of Corrections. The Court of Appeals was unable to correct the trial
21 court's decision until its opinion was published on February 1, 2007. The State was, of course, unable to refile the Burglary
22 case in the interim period due to the prejudice attached to the dismissal. He had been in jail pending trial in this case and was
23 released upon its dismissal. The defendant was arrested again multiple times after his release and ultimately charged in four
24 separate complaints. He was charged with crimes occurring on March 19, 2006 (CR 2006-114890-001 DT); June 14, 2006
25 (CR 2006-011459-002 DT); August 21, 2006 (CR 2006-011396-001 DT); and September 6, 2006 (CR 2006-155174-001
26 DT). The defendant ultimately pled guilty to Burglary in the Third Degree, Possession of Narcotic Drugs for Sale, and
27 Armed Robbery - each committed on a separate occasion. The fourth complaint was dismissed in conjunction with the plea
28 agreement. The defendant was imprisoned for ten years (having received concurrent terms) only due to committing these new
crimes involving new victims.

1 *State v. Ronnie Taft* is but one example of the problems inherent in the Maricopa County case
2 transfer system. Constant uncertainty in the availability of a trial judge is especially prejudicial to the
3 State because the entire burden of proof rests on its shoulders. With this burden comes the necessity of
4 having most or all of the witnesses lined up and available for trial. It is simply unrealistic to expect all
5 of the State's witnesses to be available on short notice over an extended period of time given the hectic
6 daily schedules of attorneys, witnesses and victims who are people from all walks of life. The result of
7 this is predictable: many cases do not hold together, resulting in dismissal or last-minute plea
8 agreements that do not reflect the severity of the charges. These many people end up justifiably feeling
9 abused by the criminal justice system because they are, in fact, taken for granted and relegated to the
10 sidelines during the process. A cursory survey will reflect that similar injustice is rampant due to
11 Maricopa County's case transfer system.³

14 **V. CONCLUSION**

15 The proposed amendment requires a court to provide the parties with at least five business days
16 notice of the date a trial will actually begin. This would ensure that the parties have sufficient time to
17 notify and schedule the victims or witnesses that will need to appear. The proposed amendment also
18 allows the court to begin trial in less than five business days in those cases in which both parties are
19 ready and consent to starting the trial sooner. Having this kind of flexibility in the Rule will ensure the
20 parties have sufficient time to notify all victims and witnesses, while taking into account that, in some
21 situations, the parties may not need or desire five business days to make those arrangements.

23 Additionally, the proposed amendment recognizes that finding a new judge to preside over the
24 trial the very same day that the trial is scheduled to begin may not be realistic. This proposed
25

27 ³The Maricopa County Attorney's Office has interviewed many attorneys regarding these issues and has found them to
28 be systemic. Due to the nuance involved in each case, only one has been specifically cited for the purpose of brevity and
because it was subject to appellate review.

1 amendment will only apply to those cases in which the delay in starting the trial is more than one
2 business day after the scheduled trial date, giving the court one business day to find another trial judge.
3 Delaying the start of a trial two or more business days after the scheduled trial date is likely to cause the
4 parties to have difficulty in rescheduling the appearance of the victim and witnesses.

5 Most importantly, in Arizona, crime victims have Constitutional rights to justice and due
6 process, to be treated with fairness, and to fair notice of hearings that involve or affect them. The
7 Maricopa County case transfer system does not adequately safeguard this right. The proposed Rule
8 change would conform Rule 10.5 of the Rules of Criminal Procedure with the Victims' Bill of Rights
9 and Arizona Revised Statutes. This new Rule would ensure that on those occasions when a scheduled
10 trial is delayed by more than one business day, adequate notice of the new date will be provided to the
11 parties so that they can make any necessary arrangements to ensure their appearance and the appearance
12 of all necessary witnesses.
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16 VI. EXPEDITED CONSIDERATION

17 Pursuant to Rule 28(G) of the Rules of the Supreme Court, the Petitioner submits this request for
18 expedited consideration by the Court, as the compelling circumstances presented in the petition render the
19 annual processing cycle inadequate to timely address this urgent matter.
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EXHIBIT A

Text of Proposed Rule Change

(Rule 10.5 (A) & (B) remain unchanged, language for a new paragraph C is capitalized.)

C. UNLESS BY CONSENT OF ALL PARTIES AND AFTER GOOD FAITH ATTEMPT BY THE PROSECUTOR TO CONSULT WITH THE VICTIM, IF A CASE IS TRANSFERRED FROM THE ASSIGNED TRIAL JUDGE TO A NEW TRIAL JUDGE FOR TRIAL AND THE TRIAL DOES NOT COMMENCE BY THE BUSINESS DAY FOLLOWING THE SCHEDULED TRIAL DATE, THE NEW TRIAL JUDGE SHALL PROVIDE THE PARTIES AND ANY ATTORNEY WHO HAS FILED A NOTICE OF APPEARANCE ON BEHALF OF A VICTIM WITH AT LEAST 5 BUSINESS DAYS NOTICE OF THE ACTUAL DATE THE TRIAL WILL COMMENCE BEFORE THE NEW JUDGE. ALL TIME BETWEEN THE DATE OF THE TRANSFER AND THE COMMENCEMENT OF THE TRIAL BEFORE THE NEW TRIAL JUDGE SHALL BE EXCLUDED FROM RULE 8.2 TIME COMPUTATION. BEFORE ANY TRANSFER OF A CASE, THE COURT SHALL CONSIDER THE IMPACT OF THE TRANSFER ON THE RIGHTS OF THE VICTIM TO JUSTICE AND DUE PROCESS, TO NOTICE OF PROCEEDINGS, AND TO A SPEEDY TRIAL.

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.