

Commission on Victims in the Courts
DRAFT MINUTES
Friday, February 6, 2009
10:00 am to 2:00 pm
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 119A/B

Members Present:

Attorney General's Office Representative
Hon. Lex Anderson
Mr. James J Belanger
Ms. Patricia Bigwood
Dr. Kathryn Coffman
Mr. Paul Ahler for Mr. Edwin Cook
Ms. Sydney Davis
Ms. JoAnn Del Colle (Telephonically)
Ms. Karen Duffy
Cpt. Larry Farnsworth
Ms. Daisy Flores
Ms. Leslie James
Mr. Dan Levey
Mr. Doug Pilcher
Mr. Paul Prato
Hon. Ronald Reinstein (Chair)
Hon. Antonio Riojas, Jr.
Ms. Kathy Waters

Members Absent:

Mr. Michael Branham
Hon. Anna Montoya-Paez
Hon. Carter Olson
Hon. William O'Neil
Ms. Karen Sullivan
Mr. Steve Twist
Hon. Richard Weiss

Presenters/Guests:

Hon. Robert Brutinel (Telephonically)
Ms. Melinda Hardman
Hon. Michael Jeanes
Ms. Caroline Lutt-Owens
Ms. Jamie Mabery
Hon. Roland Steinle

Staff:

Ms. Carol Mitchell
Ms. Kimberly Reid

I. Regular Business

A. Welcome and Opening Remarks

The February 6th meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:07 am. Sympathies go out to Michael Branham, whose wife just passed away. Hon. William O'Neil will not be with us because his wife was recently in a horse accident.

B. Approval of November 14, 2008 Minutes

Minutes for the November 14, 2008 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the November 14, 2008 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

II. Business Items / Potential Action Items

A. Dependency Attorney Certification & Other Training Efforts

The Children in the Courts workgroup proposed a rule petition for child attorney standards to the Arizona Judicial Council in December, 2008, which was not approved. Hon. Robert Brutinel, chair of the Committee on Juvenile Courts, shared the thoughts of the committee. A "one sizes fits all" rule isn't practical for the state of Arizona. They propose that each county be allowed to come up with their own standards. To adopt the standards as is would be extremely impractical and expensive for the rural counties. It is suggested that these be adopted as a best practice standards as opposed to a rule. Judge Brutinel expressed support for the possibility of a pilot program for county standards.

Judge Brutinel has been talking about a Child Welfare Specialist as a legal specialty in the state of Arizona. This would help in setting appropriate standards of practice. The State Bar created a committee to evaluate the possibilities.

Caroline Lutt-Owens passed out a hand out that explained the AOC's training efforts. They have focused on attorney training that has been conducted in the 13 rural counties. The curriculum of the training was based on the standards put together in 2002.

Discussion:

- Jim Belanger shared his understanding that the attorneys doing the best work in the juvenile field are public officers, not private attorneys. Another related issue that needs to be addressed is the attorney contract system.
- Judge Reinstein believes that those who will apply for the specialization will be the attorneys who already do good work.
- COVIC to work with COJC re: attorney standards

B. Supreme Court Rule 123 and Data Dissemination

Michael Jeanes, Chairman of the Supreme Court Rule 123 and Data Dissemination Committee, brought forth the latest Rule 123 proposal. Because of technology changes, the public's opinion of obtaining public documents has changed. The changes to this rule have already been submitted to AJC; however, the comment period is only open through April 1, 2009. The current changes don't change access to records at the court house. The main change submitted in this rule deal with internet access to documents. They are available to attorneys and litigants within the case. Because of the convenience added, fees will be assessed to the public to help maintain the system. The recommendations limit the civil and criminal cases and the types of documents that can be accessed to help protect privacy.

One problem they have noticed is that some people don't check the records as diligently as others. To avoid this, they recommend that the courts predominantly display the outcome of the case. The committee is considering other issues, such as how long documents will be available and access to bulk data.

Discussion

- Leslie James- Victims should be included in the party classification and not part of the general public.
 - Most people would agree with this but it comes down to technical issues of determining who is a victim and how they would be recognized by the system. Currently the system is unable to do this.
- The documents will not be available until all parties are served.

MOTION: Change Juvenile to Person as it refers to sexual assault victim. Motioned by Dan Levey, seconded by Leslie James. No objections.

Action Item: Carol will send out an e-mail vote on comments crafted by Leslie James and Dan Levey for approval by the committee.

C. Restitution Court Innovations

Hon. Roland Steinle discussed his recent work with the Maricopa County Adult Probation Department. Restitution typically isn't a high priority for defendants on probation because it is easier to violate them on issues other than failing to pay restitution. According to ARS 13-810, defendants who do not pay restitution may be held under civil contempt. Judge Steinle donates half a day, once a month to the Maricopa County Adult Probation Department and handles approximately six to eight new defendants a month. If realistic plans and honest efforts to pay the restitution have not been made, defendants will be held in contempt with possibility of work release until the debt or a court-ordered portion of the debt is paid. The program started in the beginning of August and since then they have collected \$44,000 in restitution. It is a great program but it takes strict cooperation between the court and probation to hold the defendants accountable.

Discussion

- What do you do with the people that don't see jail as a deterrent?
 - There have only been two problem cases and they have been caught up to date within three months.
 - Dan Levey thinks that this is a great program. It holds the defendants accountable to the restitution.
 - Judge Steinle thinks that judges need to be more diligent when ordering restitution payments to be more realistic in being able to reach the total payment amount
 - Judge Steinle is more than willing to do presentations to other judges or groups to help further the program
 - Maricopa County Superior Court has a self-help center where victims can get the process started on their own, however they have to hire their own process server. Probation officer, County Attorney or Court on own can initiate action against a non-paying defendant.
 - It is possible that the probation officer would be willing to serve the defendant.

D. New Discussion Topics

1. DNA/Post Conviction Conference

Judge Reinstein attended the DNA/Post Conviction Conference. Arizona has a grant through the program. Judge Reinstein will be presenting in Texas next month. Texas has had 39 exonerations in the past 24 months. Judge Reinstein has been engaging in conversations about when you notify the victim that the defendant has requested DNA testing.

2. ARS 13-1415 HIV/STD Testing

There is a hole in the statute regarding how testing is done and who pays for it. Judges are more than willing to provide the court orders. The problem is with out-of-custody defendants who need to be tested. Where do you send them? Who pays for it? Correctional Health Services handles this in Maricopa County for in-custody defendants. The defendant is asked to submit a sample, if they refuse, a notice of their refusal is sent to the court.

Discussion:

- Dr. Kathy Coffman explained there are medications that prevent transmission within 72 hours of exposure. However the statute has a 10 day window. There is a simple, fairly inexpensive test that takes 20 minutes with a saliva sample, so it is non invasive. It does not test for hepatitis C, only HIV.
- Sydney Davis: most perpetrators are not arrested in 72 hours.

Action Item: Judge Reinstein will talk to Jerry Landau about whether forfeiture funds could be allocated to HIV/STD testing, as noted by Jim Belanger.

3. Child Witness/Facility Dogs

Preliminary tests have been taking place as to the effect of facility dogs on child witnesses on the stand. They are currently in practice in four other states. The results have been favorable. The dogs lower blood pressure which helps the child's recollection. Maricopa County Victim Witness is currently training Sam, a golden retriever facility dog, to aid children in the court. He is being funded 100% through donations. No one expressed concern about whether judges will allow the dog in the witness box,

however there may be need to be hearing to determine necessity. There may be issues with use of the dog prior to court as well.

Announcement: There is a petition to amend Rule 39 of the Criminal Rules of Procedure. The statute provides that grandparents and siblings are classified as victims and are allowed to be present in the courtroom; however, Rule 39 did not include the same definition.

- Jamie Mabery pointed out what she believed may be another shortcoming of this rule. In-laws of a victim were afforded victim's rights even though they were pro-defendant and testifying as witnesses on the defendants behalf.

E. Workgroup Updates

1. Restitution

Dan Levey announced that the restitution website should be up and running prior to the next meeting. Also, a senator is working on legislation regarding persons who owe restitution and prevails on a suit against the county or state for any reason. Part of the judgment will go to pay off restitution.

Announcement: Kathy Waters explained that AOC will be piloting a curriculum for all probation officers regarding restitution, leadership and victim sensitivity. They will present on March 9, 2009 and it will take place in the afternoon in room 345B of the State Courts Building.

Announcement: The Chair asked members to route names of potential future member candidates, particularly from counties other than Maricopa, to Carol for the next appointment cycle.

III. Business

A. Next Meeting:

May 8, 2009
State Courts Building
Phoenix, AZ 85007

B. Call to the Public

None.

C. Adjournment

The meeting was adjourned at 12:31

Commission on Victims in the Courts
DRAFT MINUTES
Friday, May 8, 2009
10:00 am to 2:00 pm
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 119A/B

Members Present:

Mr. Paul Ahler
Hon. Lex Anderson
Mr. James J. Belanger
Ms. Patricia Bigwood
Dr. Kathryn Coffman
Ms. Sydney Davis
Ms. JoAnn Del Colle (Proxy: Terri)
Ms. Karen Duffy
Cpt. Larry Farnsworth
Ms. Daisy Flores
Hon. Andrew Gould
Mr. Dan Levey
Hon. Anna Montoya-Paez
Hon. William O'Neil
Mr. Doug Pilcher
Hon. Ronald Reinstein (Chair)
Hon. Antonio Riojas, Jr.
Hon. Richard Weiss

Members Absent:

Mr. Michael Branham
Ms. Leslie James
Ms. Hilary Peele
Mr. Paul Prato
Mr. David Sanders

Presenters/Guests:

Hon. Gary Donahoe
Mr. Bob James
Ms. Kim Knox
Ms. Keli Luther
Ms. Jamie Mabery
Mr. Phil MacDonnell
Mr. Bill Owsley
Mr. Steve Twist

Staff:

Ms. Carol Mitchell
Ms. Kimberly Reid

I. Regular Business

A. Welcome and Opening Remarks

The May 8th meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:08 am. Newly appointed members, Judge Gould and Paul Ahler, introduced themselves to the committee. Judge Reinstein offered his sincere appreciation to Steve Twist, who recently resigned from the commission, for his *support and years* of service to this commission. Judge Reinstein acknowledged that the Attorney General's Office held its annual recognition meeting in observance of National Crime Victims Rights week in which Chief Justice McGregor and Dan Levey were recognized. Finally, Jamie Mabery introduced Sam, Maricopa County Attorney's Office victim therapy dog and his handlers.

B. Approval of February 6, 2009 Minutes

Minutes from the February 6, 2009 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the February 6, 2009 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

II. Business Items / Potential Action Items

A. Rule 10.5

Judge Reinstein welcomed the following individuals who will address the commission in the following order: Phil MacDonnell, Maricopa County Attorney's Office; Steve Twist of Arizona Voice for Victims, Honorable Gary Donahoe and Bob James with Maricopa County Superior Court.

Phil MacDonnell, Chief Deputy County Attorney, discussed the reasoning behind the creation of this petition with Steve Twist of Arizona Voice for Crime Victims. This petition set out to address problems with transferred criminal cases in Maricopa Superior Court related to the volume of cases and the previous calendaring system.

Since the filing of the petition, the Court has instituted a new master calendar system which seems to be working well; however, a concern still exists that criminal cases will be lost in the system, and will considerably impact crime victims. This rule is proposed as a preventative measure to ensure the system continues to function as desired.

The proposed rule states that if a case is reassigned and cannot be heard within 48 hours of the originally scheduled date, it must be rescheduled at least five days out. This mirrors statutory language and would allow time to notify victims so they may make necessary arrangements to facilitate their attendance.

Steve Twist urged the group to favorably support the rule proposal. He believes this rule will help ensure victims' constitutional right to be present at all court proceedings.

Criminal Presiding Judge Gary Donahoe addressed the commission on behalf of the Maricopa Superior Court. He explained this rule will have no effect on their court because of the specific language used in the petition, such as “assigned judge” and “case transfer system”, which no longer exists due to the new master calendar. The new calendaring method sets a firm trial date and the case is heard within the time frame set with this petition; therefore making it unnecessary. He firmly asserted that Maricopa Superior Court is committed to honoring firm trial dates and has alternate back up plans in place for each case that may be re-scheduled to avoid a delay longer than one to two days.

Discussion:

A summary of some comments are listed below:

- Judge Reinstein expressed concern that this rule will add further delay and it also takes away any judicial discretion with the one party objection provision.
- Judge O’Neil asked why Maricopa is opposed to this rule if it will not even affect them and this should be considered because it would have a positive impact for victims in all courts across the state if implemented by rule.
- Judges O’Neil and Weiss expressed that case delays occur in other counties because of a lack of resources to set firm trial dates.
- Sydney Davis inquired as to why a rule is needed when the statute already declares that a victim must be give five days notice.
- Multiple members agree that the idea behind the rule is good but they are concerned that it doesn’t fix the problem.

After a lengthy discussion, the chair confirmed the petitioners were willing to working with members of COVIC to attempt to resolve the differences of the various positions as to the petition.

ACTION ITEM: Carol will file a petition to receive a time extension on the comment period. A small work group, comprised of COVIC members, Judge Weiss, Judge O’Neil, Paul Ahler and Jim Belanger, will coordinate with Phil and Keli Luther to formulate the commission’s formal comment.

MOTION: A subcommittee is formed, including a representative from Maricopa, to re-craft the proposed rule. The commission agrees with the general concept of giving appropriate notice to the victims when it comes to assignment or reassignment of a case for trial. *Motioned and seconded. Approved with no objections.*

MOTION: The commission endorses an extension of time for the comment period. *Motioned and seconded. Approved with no objections.*

B. Rule 804 (b) (5)

Phil MacDonnell explained his office submitted this rule petition to admit a hear-say statement when it can be proven that the defendant has caused the witness to be unavailable. It mimics a similar rule that exists in the federal rules of procedure. The question arose whether this would apply in all cases, and it

was believed it would apply in all cases in which the rules of evidence apply; however, some family court cases, the rules of evidence are suspended.

MOTION: The Commission will file a comment supporting the adoption of Arizona Rule 804 (b) (5).
Motioned and seconded. Approved with no objections.

ACTION ITEM: Staff will file a comment in support of this rule.

C. Rule 57.1 & 57.2

The Arizona Supreme Court's AOC filed this petition to conform to legislation, HB 2321, that went into effect January 1, 2009. This rule deals with identify theft in the commission of a crime. An individual may file a declaration to show that they were innocent.

Discussion

- Judge O'Neil suggests the addition of subsection 4 that would read as follows.
Upon a determination of the defendant's guilt in a criminal matter, the criminal court may contemporaneously enter a determination of the victim's factual innocence without hearing or submission of proof by affidavit. A determination of the defendant's guilt is deemed entered upon the defendant's change of plea or guilty verdict.

MOTION: For the committee to file a comment in support of changes with the addition of subsection 4 as above mentioned. *Motioned and seconded. Approved with no objections.*

D. 2010 Strategic Agenda Plans

Carol Mitchell offered a brief overview of the new collaboration tool available for the Supreme Court's upcoming five year Strategic Agenda. As Vice Chief Justice Berch transitions into the role of Chief Justice, she and members of the planning committee are seeking input from all Supreme Court Committee/Commission members for important issues that should be considered for inclusion in the new strategic agenda. Members will need to sign up and register on the site, www.sp2010.courts.az.gov, which is structured similarly to the Court's Rules Forum. Once registered, members are asked to submit any recommendations or suggestions by August 2009.

ACTION ITEM: Due to the limited time remaining for this presentation staff will email a copy of the presentation and instructions for COVIC members to sign up on the Strategic Plan 2010 collaboration website.

E. Workgroup Updates

1. Restitution

Dan Levey shared that the restitution webpage continues to be updated and reviewed. It is expected to be posted online within the next few months. He also explained the workgroup will be considering some restitution-related questions related to the post-sentence jurisdiction.

The workgroup has received a couple questions come up about who retains jurisdiction over restitution.

2. Children in the Court

Bill Owsley discussed the attorney standards proposed by the workgroup along with Dr. Kathy Coffman. It was suggested that in lieu of statewide standards implemented by rule, each county could adopt their own version, which may be more feasible for the Committee on Juvenile Courts to accept.

Bill will redraft the standards and return to the Committee on Juvenile Courts. Judge O'Neil suggested the standards may be drafted or implemented through a judicial code of administration, versus rule.

MOTION: The Commission reaffirms its prior support of the attorney standards idea. *Motioned and seconded. Approved with no objections.*

III. Business

A. Next Meeting:

September 11, 2009
State Courts Building
Phoenix, AZ 85007

B. Call to the Public

None.

Judge Reinstein introduced Keli Luther, with the Crime Victim Enforcement Project, whom he plans to nominate as a candidate to replace Steve Twist. Additionally, the chair asked for recommendations from members for individuals, particularly outside Maricopa County, who may be candidates for future reappointment cycles.

C. Adjournment

The meeting was adjourned at 12:31p.m.

Commission on Victims in the Courts
DRAFT MINUTES
Friday, September 11, 2009
10:00 a.m. to 1:00 p.m.
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 119A/B

Members Present:

Hon. Lex Anderson
Mr. James J. Belanger
Mr. Michael Branham
Ms. Sydney Davis
Ms. JoAnn Del Colle (telephonically)
Ms. Karen Duffy
Opt. Larry Farnsworth
Ms. Daisy Flores
Hon. Andrew Gould
Mr. Dan Levey
Ms. Keli Luther (Proxy: Mischa Hepner)
Hon. Anna Montoya-Paez
Hon. William O'Neil
Mr. Doug Pilcher
Mr. Paul Prato
Hon. Ronald Reinstein (Chair)
Hon. Antonio Rojas, Jr.
Mr. David Sanders
Hon. Richard Weiss (telephonically)

Presenters/ Guests:

Chief Justice Rebecca White Berch
Ms. Jennifer Greene
Ms. Patience Huntwork
Ms. D.K. (telephonically)
Ms. Kim Knox
Mr. Ken Kung
Ms. Amy Love
Mr. Gordon Mulleneaux
Hon. Ann Scott Timmer
Ms. Julie Williams

Staff:

Ms. Carol Mitchell
Ms. Kimberly Reid

Members Absent:

Mr. Paul Ahler
Ms. Patricia Bigwood
Dr. Kathryn Coffman
Hon. Gary Donahoe
Ms. Leslie James
Ms. Hilary Peele

I. Regular Business

A. Welcome and Opening Remarks

The September 11th meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:10 a.m. Judge Reinstein introduced newly appointed Chief Justice Rebecca White Berch. Chief Justice Berch expressed her gratitude to those who serve on this committee and encouraged everyone to continue their great work and ask the Court for help if needed.

Judge Ronald Reinstein introduced Chief Judge Ann Scott Timmer from Court of Appeals, Division One. He acknowledged her vital role in resolving a recent victim issue. A victim in a case that occurred in the 1970s contacted the Supreme Court. She was upset that her full name and identifying information was published in the appellate court opinion and available on the Internet. The victim was referred to COVIC staff, who sought assistance from Judge Timmer. Judge Timmer made contact with Westlaw and within a day, the victims' identifying information except first name and last initial had been redacted. Since this issue was brought to light, Judge Timmer has assembled a volunteer committee to go through old cases and identify other opinions using full names involving minors or sexual assault victims.

Dan Levey made an announcement about the National Day of Remembrance for Murder Victims on September 25. Parents of Murdered Children-Valley of the Sun Chapter will be having a commemorative event on September 26 in the Phoenix area. In Tucson, Homicide Survivors will be having an event on September 25.

Carol Mitchell announced that the AOC has taken steps to prevent the spread of infections and has placed hand sanitizer dispensers in all of the conference rooms and restrooms in the building. She also announced that COVIC will now be using an online RSVP function on our website.

B. Approval of May 8, 2009 Minutes

Minutes from the May 8, 2009 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the May 8, 2009 Commission on Victims in the Courts minutes as presented. Motion seconded and passed unanimously.

II. Business Items / Potential Action Items

A. Amendment to ACJA §1-202

Jennifer Greene introduced the proposed changes to the code section involving public meetings. The purpose of the amendments are to clarify the following: a) Facilities planning to ensure the public can attend any public meeting involving video conferencing or teleconferencing by members, b) How to handle a request from a member of the public to record a public meeting, and c) Proper and improper use of email by council members and staff to ensure that all council discussions and legal actions involving a quorum of members are conducted in public.

Discussion:

- 10 11 JbAnn Del Colle explained that because open meeting rules don't apply to workgroups, they are a good way to keep work going if a quorum or meeting notifications requirements are not met.
- 10 11 This also brings to light that rule comments, done by a workgroup, still need to be approved by the full committee before they can be filed on behalf of the committee.

MOTION: To forward the recommendation to AJC for passage of the proposed code amendments. Motioned and seconded. Approved with no objections.

B. Legislative Update

Amy Love distributed a one page summary of the following bills that were recently approved by the legislature.

Chapter 57: DOMESTIC VIOLENCE; CHILD CUSTODY -Impact: Judges must now make specific findings when there are allegations of domestic violence in a contested custody case.

Chapter 129: DOMESTIC VIOLENCE; DATING RELATIONSHIPS -Impact: The changes will require modification of the Arizona Rules of Protective Order Procedure, Supreme Court approved forms under A.C.J.A. § 5-207 and AZTEC forms module, as well as, any other case management system that generates protective order forms. The short title is misleading as the change has no effect on dating relationships in the statute for the Injunction Against Harassment under A.R.S. §12-1809. Reference rule petition R-09-0026.

Chapter 138: FIDUCIARIES -Impact: The change will require an amendment to A.C.J.A. § 7-202.

The following bills were discussed:

- 10 11 Cold Case Registry- will require certain steps be taken by law enforcement for follow up with victims on cold cases.
- 10 11 Sex Offender GPS monitoring- judges were given more authority to decide if an offender needs to be kept on GPS monitoring or if they could be removed from the monitoring.
- 10 11 Removal of life with the possibility of parole after 25 years- was not passed. Concern was expressed that it would take a bargaining option away from the prosecutors and could have a negative impact on victims.
- 10 11 Finger Print Cards- The Department of Corrections has been monitoring the number of people who enter the system, but are released without being fingerprinted. A piece of legislation targeted this issue.

Discussion:

- ☐ Judge Reinstein brought up two issues on behalf of Judge Gary Donahoe which may be discussed at the November meeting:
 - §41-105 was used to allow a Mexican national to transfer to Mexico to serve the remainder of a vehicular manslaughter sentence. The concern involves whether the victim and the prosecutors are being notified and the level of accountability in Mexico. Jerry Landau will be contacted to assist in researching this issue.
 - When a court orders blood testing based on the applicable statute, who pays for the testing? Currently it is not defined in the statute, leading to confusion.
 - ☐ Mischa Hepner said that in Pinal County, the Department of Health Services handles the testing and paid for the financing.
 - ☐ Daisy Flores shared that in Gila County, the Department of Health Services also handles the testing.
 - ☐ Judge Reinstein asked others to research what procedures occur in their counties for discussion at the next meeting.

C. Court Rules Update

Patience Huntwork, from the Supreme Court's Staff Attorney's Office, provided an overview of several rule petitions with criminal and/or victim-related issues:

- ☐ R-08-0019- RULE 28, RULES OF PROCEDURE FOR JUVENILE COURT et al. would allow for court orders that juveniles or adults summoned to court and who are charged with specified offenses report to the arresting agency and submit biological samples for DNA testing.
- ☐ R-08-0022-RULE 10.5, ARIZONA RULES OF CRIMINAL PROCEDURE Would create a new paragraph "c" which addresses the transfer of cases already set for trial date due to the unavailability of the trial judge- the Supreme Court continued this item and referred back to COVIC for comment.
- ☐ R-08-0037- RULE 39, ARIZONA RULES OF CRIMINAL PROCEDURE would amend the definition of "victim" in rule 39(a) to conform to statutory changes broadening the definition appearing in A.R.S. sections §3-382, §13-703.01, §13-703.03, and §13-4401-Adopted.
- ☐ R-09-0001- RULE 31.6, RULES OF CRIMINAL PROCEDURE et al. would require disbursement of restitution payments collected by the court pending an appeal unless the defendant can demonstrate to the court sufficient grounds for a stay. This proposed change was rejected.
- ☐ R-08-0039-RULE 123, RULES OF THE SUPREME COURT et al. to provide greater access to case records while being mindful of sensitive information that might be contained within the records- Adopted.

- R0
E1
 R-09-0012- RULE 92(a)(1), RULES OF THE SUPREME COURT would require the presiding judge in each county to create a random case assignment system within each judicial division for all cases in which a judge has not previously been involved- Adopted.

- R0
E1
 R-08-0016- RULE 1.6, ARIZONA RULES OF CRIMINAL PROCEDURE would provide for appearances by defendants via videoconferencing for initial appearances, arraignments, and some other hearings.

- R0
E1
 R-08-0027- PROMULGATE RULE 57.1 AND 57.2, ARIZONA RULES OF CIVIL PROCEDURE would provide a procedural mechanism for a victim of identity theft to petition for declaration of factual innocence when the victim's identity has been used in the commission of a criminal offense and a declaration of improper party status in civil cases- Adopted.

- R0
E1
 R-09-0009- PROMULGATE RULE 804(B)(5), ARIZ RULES OF EVIDENCE- would add a new hearsay exception when the defendant has deliberately acted to make the declaring witness unavailable for trial- Adopted.

D. Restitution thresholds

Mr. Gordon Mulleneaux, from the Superior Court of Maricopa County's Clerk's Office, addressed COVIC to suggest an increase in current restitution threshold disbursements. He explained his office currently collects restitution for victims and issues a check once the amount reaches \$10.00. Once a year, they lower the threshold to \$1.00 to empty out the accounts. The proposal is to raise that threshold to \$30.00, resulting in a savings of \$1,500.00 per month. Gordon provided a handout for July 2009 restitution payments from the Department of Corrections (DOC) inmates allocated by specific dollar amounts, to illustrate the proportion of payments that fall below the proposed \$30.00 threshold.

Discussion:

- R0
E1
 Dan Levey expressed concern with the fact that it could delay payment to a victim.
 - Gordon explained that a victim could ask the court to issue them a check at any time.
 - R0
E1
 Jim Belanger would like disbursement procedures to be included in the information that victims get when they are ordered restitution.

- R0
E1
 Ken Kung from the AOC explained that the Minimum Accounting Standards (MAS) refers to this code section directly. If this code is amended, it will be amended in (MAS).

- R0
E1
 The statistics that are represented on the handout are only for Department of Corrections (DOC). Judge Weiss asked for additional statistics for non-DOC payments.
 - Gordon agreed to gather statistics; however, the large majority of the payments under \$30.00 come from DOC.

- R0
E1
 Judge William O'Neil recommended the Clerks' Association review the issue and return with a petition to amend the code.

MOTION: Table until we hear back from the Clerk's Association. Motioned and seconded. Approved with no objections.

E. Workgroup Updates

1. Restitution

Dan Levey announced the Attorney General's Office has put together a Victim's Committee to advise the Attorney General of victims' current issues and insights.

The restitution handout provided showed how much money has been collected from the "new restitution law" that allows DOC to take portions of monies sent to inmates owing restitution. The language DOC is requesting that judges use in the court orders, to be able to collect restitution in this manner was also included on the handout. Without this specific language, DOC believes they lack authority to collect the restitution.

Carol Mitchell displayed the new restitution website which is intended to be a "one-stop shop" of information for victims regarding restitution. It is not currently available to the public, but will be after it is reviewed by a number of groups.

2. Children in the Courts- No report provided

3. Administration of Justice

Judge Reinstein would like to get this workgroup going again and asked for a volunteer to serve as chair.

III. Business

A. Next Meeting:

November 6, 2009

10:00 a.m.

State Courts Building

Phoenix, AZ 85007

Conference Room 106

B. Call to the Public

Kim Knox addressed the Commission on the issue of Criminal Restitution Orders (CRO). She explained the process of creating CROs but also explained that sometimes they are missed. Recently two different cases were brought to light. Both defendants appealed the restitution orders because they were "not created in a timely manner." One was for \$8,000 and the judge overturned the restitution order. The other was for millions of dollars with multiple victims. The order was upheld, but the CRO had to be recreated with victims' names listed individually. Kim plans to ask the Attorney General's Office to appeal the decision in the case that was overturned. The case law created by this case could have major implications in the future.

Ms. D.K. then addressed the Commission as the victim in the case that Judge Ronald Reinstein discussed at the beginning of the meeting. She found her and her sister's personal information involving the case on multiple websites. In the past two weeks, she has observed that the system is very insensitive to

victims. She has been told that it will take too many tax dollars to redact the information. She and her sister would like to see this information removed from the various Internet sites because it has caused them severe emotional distress. Dan Levey expressed his concern and appreciation for her contacting COVIC. Judge Reinstein asked if Mischa Hepner, from Arizona Voice for Crime Victims and Dan Levey of the Attorney General's Office of Victim Services would be willing to follow up with D.K. Both agreed and Carol Mitchell will route their contact information to the victim. D.K. thanked COVIC for the opportunity to share her very personal experience.

C. Adjournment

The meeting adjourned at 12:31 p.m.

DRAFT

Commission on Victims in the Courts
DRAFT MINUTES
Friday, November 6, 2009
10:00 a.m. to 1:00 p.m.
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 106

Members Present:

Ms. Patricia Bigwood
Dr. Kathryn Coffman
Ms. Sydney Davis
Ms. JoAnn Del Colle (telephonically)
Hon. Gary Donahoe
Ms. Karen Duffy
Cpt. Larry Farnsworth
Ms. Daisy Flores (telephonically)
Hon. Andrew Gould
Ms. Keli Luther
Hon. Anna Montoya-Paez
Hon. William O'Neil
Mr. Doug Pilcher
Mr. Paul Prato
Hon. Ronald Reinstein (Chair)
Hon. Antonio Riojas, Jr. (Telephonically)
Hon. Richard Weiss

Presenters/Guests:

Ms. D.K. (telephonically)
Mr. Gordon Mulleneaux
Ms. Julie Williams

Staff:

Ms. Carol Mitchell
Ms. Kimberly Reid
Ms. Amy Wood

Members Absent:

Mr. Paul Ahler
Hon. Lex Anderson
Mr. James J. Belanger
Mr. Michael Branham
Ms. Leslie James
Ms. Hilary Peele
Mr. David Sanders

I. Regular Business

A. Welcome and Opening Remarks

The November 6th, 2009 meeting of the Commission on Victims (COVIC) in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:12 a.m.

B. Approval of September 11, 2009 Minutes

Minutes from the September 11, 2009 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the September 11, 2009 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

II. Business Items / Potential Action Items

A. Approval of 2010 COVIC Meeting Dates

The Commission will change from quarterly meetings to three meeting dates in 2010: February 5, May 14 and October 1.

MOTION: To approve the proposed 2010 meeting dates. *Motioned and seconded. Approved with no objections.*

B. Amendment to ACJA§ 5-204

As discussed at the September 2009 meeting, the proposed amendment to Arizona Code of Judicial Administration, Part 5, Chapter 2, Section 204, Paragraph K, "Restitution Payment Processing," is to raise the disbursement of restitution threshold from ten to thirty dollars and to clarify the use of business versus calendar days in the payment process. The current Code sets a mandatory threshold of ten dollars for the release of payments; however, Maricopa County has requested that the threshold be increased to thirty dollars. This change was discussed with the Clerks of the Court Association in their September meeting and was unanimously supported because it does not require any change to current practices. Dave Byers, Director of the Administrative Office of the Courts, gave his approval of this issue to go out to all of the committees for consideration as a change to the Arizona Code of Judicial Administration.

The current practice of restitution disbursements varies by county. Some counties will disburse restitution once ten dollars is received, whereas other counties disburse all restitution monies as they are received, no matter the amount. The proposed amendment does not require change by any Clerk or any court, but allows them to extend the threshold to thirty dollars if they wish.

The motivation for this amendment is due to budget/resource issues. There is the potential to save, specifically Maricopa County Clerk's Office, over one thousand dollars per month due to the reduction of the large volume of payments currently mailed to victims.

The restitution payment system used by Maricopa County Clerk's Office has the ability to manually send out checks of less than ten dollars if requested. In the past years, they honored all requests to do so. At the request of the COVIC Committee, Maricopa County has proposed new language in the code requiring notification be sent to parties receiving restitution of the change in the threshold amount.

Gordon Mulleneaux, of Maricopa County Superior Court Clerk's Office, has presented this proposed rule change to the Limited Jurisdiction Committee (unanimously supported) and will be presenting it to Committee on Superior Court and the Juvenile Court Committee in the next few days.

Discussion:

- Gordon Mulleneaux will follow up to determine whether functionality exists in Maricopa County Superior Court Clerk's Office automated system to allow a victim to request an automatic monthly disbursement for amounts below the threshold or if they will be required to make the request each month.

MOTION: To accept the amendment as written. *Motioned and seconded. Approved with no objections.*

A. Maricopa Master Calendar Update

Judge Gary Donahoe, Judge of the Superior Court of Maricopa County, gave an update on the Master Calendar system currently in use at Maricopa County Superior Court. This update is in relation to the petition for rule change that would require a case to be continued if it did not go to trial within three days of its firm trial date. For the week of October 26, 2009 through October 30, 2009, twelve cases were assigned for trial. Of those cases, seven went to trial on the firm trial date; four went to trial one day after the firm trial date and one went to trial two days after the firm trial date. Since the implementation of the Master Calendar system, Maricopa County Superior Court has heard 216 cases. Of those 216 cases, only eight have started more than three days after the firm trial date. The assignment judge notes the delays were due to prosecutorial trial date requests.

Discussion:

- Prior to the implementation of the new master calendar system there were complaints from victims regarding cases that were continued 20, 30 or even 60 days from the original trial date.
- The directive under the master calendar system is for the judge to take the case the day it is assigned unless there are extraordinary circumstances. An example of an extraordinary circumstance would be pre-trial motions which have not yet been ruled upon.
- Judge Donahoe is considering requiring a minute entry to be entered and forwarded to him each time a case is continued two or more days beyond the trial date.
- Judge Richard Weiss, Judge of the Superior Court of Mohave County, explained that the three day policy would be difficult to uphold in rural counties where there are not enough judges to hear all of the cases.
- Keli Luther described her experience with trials that are being held as scheduled. Arizona Voice for Crime Victims is changing their practices to keep up with the quick processing of cases.

- Keli Luther is concerned that some victims get confused with the change of judges that occurs, including the change from motion judge to trial judge.
- Judge Weiss asked how Maricopa County handles Notices of Change of Judges. Judge Gary Donahoe explained that the Notice of Change of Judge is issued to the parties before they leave the courtroom.
- Doug Pilcher, Court Administrator for Phoenix Municipal Court, explained that Phoenix Municipal Court also uses the Master Calendar system in place at Maricopa County Superior Court. They have found that it is helpful in monitoring which party has been delaying a case through filing multiple motions and the court has been addressing those issues.
- Judge Donahoe mentioned the Capital Oversight committee:

B. Capital Case Oversight Committee (new topic which did not appear on the agenda)

Judge Reinstein explained that the Capital Case Oversight Committee stemmed from the backlog of pending capital cases in Maricopa County. There are nine members on the committee, four of whom are on COVIC: Judge Reinstein, Judge Donahoe, Paul Prato and Dan Levey. The largest issue facing victims in capital cases is the lengthy time to trial; some cases take five years to make it to trial. The committee recently voted to recommend that the Supreme Court extend the maximum time to trial from 18 to 24 months. Judge Reinstein presumes that when the recommendation makes it to the annual Supreme Court Rules Meeting, it will be clear what effect the Master Calendar system is having on the processing of capital cases.

Discussion:

- Judge Donahoe explained that he voted against the time extension because he believes that the defense teams will procrastinate when dealing with the case. He cited the Martinson case as a prime example.
- Judge Reinstein explained his vote in support of the extension was because he wanted the Supreme Court to fully consider this issue and obtain input and public comment.
- Judge Donahoe encouraged COVIC to make a comment on the recommendation.
- Judge Andrew Gould, Judge of the Superior Court of Yuma County, explained that in rural counties, capital cases take time to be processed because most judges who lack experience with capital cases proceed extremely cautiously.
- Judge William O'Neil, Judge of the Superior Court of Pinal County, believes that there is a disregard to the 18 month rule. He believes that if capital cases can go to trial in 18 months in Maricopa, they can go to trial in any county.
- Paul Prato explained that at the Maricopa County Public Defender's Office, they are short-staffed when it comes to capital cases. They were recently unable to fill a vacancy due to lack of interest and are at their maximum caseload based on ABA standards.
- Keli Luther explained that 60% of Arizona Voice for Crime Victims' caseload is representing victims in capital cases.

C. A.R.S. § 13-1415 Testing Procedures

Judge Reinstein raised the issue of who pays for HIV testing when someone is in custody. At the last meeting, many counties reported that the County Departments of Health Services have been conducting and financing the tests.

Discussion:

- Dr. Kathy Coffman explained that the test she is most familiar with is OraSure or Oraquick. This test has minimal cost because there is no laboratory time and results are available in as little as 20 minutes. With minimal training, it can be performed by almost anyone. With the quick turn-around, if a test comes back positive, any potentially affected parties can be treated to prevent transmission.
- The main concern in Maricopa County has to do with what department will be financing the tests.

ACTION ITEM: Judge Reinstein will talk to Jerry Landau about the possibility of making a legislative change.

ACTION ITEM: Judge Donahoe will have Karen Westover contact Larry Farnsworth to set up a meeting with various agencies in Maricopa County to discuss how they will proceed.

D. New ACJA Forum

AOC recently developed a new electronic forum for pending Arizona Code of Judicial Administration proposals. The new ACJA Web Forum (similar to the Rules Forum) can be found at: <http://azdnn.dnnmax.com/Default.aspx?alias=azdnn.dnnmax.com/forumacja>.

This forum is designed to enable committee members and others to review and comment on proposed ACJA sections. Staff responsible for these sections will review comments in order to make modifications to drafts and bring issues forward for AJC. To comment on any proposed code section, registration is required; however, registration is not necessary for read only/ review access.

E. Strategic Planning Review

This item will be discussed at a future meeting.

F. Work Group Updates

1. Restitution

The restitution work group is in the final stages of reviewing the restitution webpage. The current focus is keeping the information as brief as possible so that readers do not have to search through pages of information. They also focused on using resources already available, for example, the website has a link to Maricopa County Adult Probation's page for frequently asked questions about restitution.

2. Children in the Courts

The Children in the Courts workgroup initially wanted to get the Child Dependency Attorney Guidelines reflected in court rules; however, the Arizona Judicial Council did not support the recommendation citing concerns for the attorney discipline issues and the impact to rural counties. The new focus is getting the guidelines implemented as Attorney Best Practice Standards.

At an earlier COVIC meeting, it was recommended that this be implemented as a change to the Arizona Code of Judicial Administration. The following judges will be consulted to help with this process: Judge Escher, Judge Brutinel, Judge Nelson and Judge Davis.

Discussion:

- This workgroup needs to be mindful of the challenges faced in rural counties when it comes to finding counsel for children.
- This workgroup might also want to look at attorneys for children in criminal and other legal matters.
- Judge O'Neil cautioned against trying to do too much. The focus should be narrow and once it is in place, it will be easier to build upon at a later time.

3. Administration of Justice

Judge O'Neil volunteered to chair the workgroup. One item that he would like to discuss is looking at how courts address victims' needs when there are both criminal and civil cases. In New Jersey, a criminal judge can establish an injury and place a judicial order of liability. Once the finding is established, the civil case solely needs to determine damages. This same idea may be helpful in a variety of case types in Arizona, including dissolution of marriage.

Please contact Carol Mitchell, Judge Reinstein or Judge O'Neil to participate in this workgroup.

III. Business

A. Next Meeting:

February 5, 2010
10:00 a.m.
State Courts Building
Phoenix, AZ 85007
Conference Room 119 A/B

B. Call to the Public

Ms. D.K. called in to give an update on her situation as described at the September 2009 COVIC meeting. She had several questions to be answered: Are all appellate opinions public? Judge Reinstein explained that they are public. She also asked, when a case is sealed in Superior Court, does the seal follow the case to appellate court? Follow up was done after the meeting to determine that the seal does not follow the case when it is appealed. Ms. D.K. also explained that she is still having problems removing her name from West Law. She and her sister are hesitant to get counseling through their private health insurance because of other stories they have heard about benefits being revoked. Arizona Voice for Crime Victims will reconnect with Ms. D.K. next week.

ACTION ITEM: Judge Reinstein will follow up with Judge Timmer on the progress of the volunteer work group that was assembled to review old opinions for information that needs to be redacted.

C. Adjournment

The meeting adjourned at 12:16 p.m.

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