

## Commission on Victims in the Courts

Friday, June 12, 2020

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

Virtual Meeting

1501 West Washington Street

Phoenix, Arizona 85007

---

**Appearing virtually:** Judge Ron Reinstein (chair), Timothy Agan, Michael Breeze, Kimberly Chichester, Colleen Clase, Judge Maria Elena Cruz, Sydney Davis, Judge Ronda Fisk (proxy for Judge Patricia Starr), Kirstin Flores, Vanessa Helm, Delia Hiser (proxy for Christina Spurlock), Leslie James, Judge Kellie Johnson, Sandra Klotz (proxy for Jennifer Runge), Captain John Leavitt, Dan Levey, Sergeant James Markey (ret.), Chief Rod McKone, Jane Nicoletti-Jones, Elizabeth Ortiz, William Owsley, Karen Rasile, Judge Antonio Riojas, Judge Richard Weiss

**Absent:** Jon Eliason, Judge Evelyn Marez

**Presenters/Guests:** Justice Bill Montgomery, Elise Kulik, Mark Perkovich, Judge Maria Elena Cruz, Kirstin Flores, Colleen Clase, Rosanna Cortez, Teri Munn, Cathy Clarich

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

### I. REGULAR BUSINESS

- A. **Welcome and Opening Remarks** - With a quorum present, the June 12, 2020, meeting of the Commission on Victims in the Courts (COVIC) was called to order at 10:05 a.m. by Judge Ronald Reinstein, Chair.
- B. **Approval of Minutes** - The draft minutes from the March 13, 2020 meeting of the COVIC were presented for approval.

**Motion:** To approve the March 13, 2020 minutes. **Moved:** Colleen Clase.

**Second:** Michael Breeze. **Vote:** Passed unanimously.

### II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

#### A. Legislative Update

Elise Kulik, AOC Legislative Analyst, stated that in March the legislature passed a skinny budget with no new initiative funding beyond what was funded last year to enable agencies to continue to operate. She stated that the legislature is unsure of what the pandemic's impact will be on state general fund revenue. The legislature went sine die two weeks ago and unfortunately no AJC supported House Bills were approved and will need to be presented again next year. The only bill of interest to COVIC to pass the legislature is SB1441: Protection orders; modification; residence possession. This legislation allows the court to give a party in an order of protection exclusive use of the residence while the order of protection is in effect. If the party awarded exclusive use of the residence moves out, they are required to notify the court that they moved

within five days of the move. The other party, not granted exclusive use of the residence, can petition the court in writing for a hearing to determine possession of the residence. There is discussion that the governor may call for a special session to deal with COVID related legislation or the budget.

**B. STRIVE – Sustainable Technology Resources & Interventions for Victim Empowerment**

Mark Perkovich, Assistant Director, NAU-Family Violence Institute, provided a brief history. In 2018, the Family Violence Institute received a \$750,000.00 grant from the National Crime Victim Law Institute. Arizona created STRIVE whose purpose is to link crime victims in rural communities via technology. The National Crime Victim Law Institute funded three programs; STRIVE, Montana’s Legal Services Association and South Carolina’s Victim Assistance Network. STRIVE was set up in the rural communities of Santa Cruz, Cochise and Yuma counties. Our goal is to connect crime victims with low and pro bono representation in criminal court. Mr. Perkovich stated that they are currently applying for a new grant from the Office for Victims of Crime (OVC) of 1.5 million that will allow STRIVE to expand into Pima county and increase access to justice for crime victims throughout the rural communities in Arizona. AZPOINT has been a positive resource for our rural victims. STRIVE currently has a mobile app in beta testing to increase availability of services to victims. Mr. Perkovich briefly outlined the legal services provided and thanked their community partners.

**C. Restitution Court Bench Book – General Jurisdiction**

Judge Maria Elena Cruz, Court of Appeals, reported that a workgroup was created to develop a restitution court bench book for the general jurisdiction courts. Workgroup members are Judge Patricia Starr, Dan Levey, Kirstin Flores, Chief Rod McKone, Richard Jones and Randall Udelman. Meetings were held in April and May and the next meeting will be on June 26, 2020. The workgroup anticipates having a draft of the bench book completed and ready to share at the October COVIC meeting.

**D. Victim’s Rights Assessment; Waiver Concerns**

Kirstin Flores explained that the AOC removed the Victim’s Rights Program and the Arizona Criminal Justice Commission’s Victim Compensation was removed from CJEF and a new fine/fee of \$9.00 was created that is assessed to remedy the reductions that were affecting the victim community. It has been recently noticed by the Attorney General’s Office that the fee was being waived regularly in Pima. Concern was shared that this waiver of an important fee could be happening in other city/county courts. Two questions were discussed, (a) whether this is a practice statewide, and (b) whether the issue could be addressed so that these funds are not negatively impacted as these funds are a critical need for victim’s services.

**Discussion:** included training judicial officers that the \$9.00 fee is available for mitigation only not community restitution and can be waived. The AOC list of priority fines and fees that can be adjusted to give higher priority to the \$9.00 fee to lessen the chances it will be waived. It was suggested perhaps legislation was needed to amend

the statutory fee to be non-waivable. COVIC members will continue to research this issue and report back at the next meeting.

#### E. Rule 39 Petition

Colleen Clase, Arizona Voice for Crime Victims (AVCV), reported that AVCV has filed a petition to amend the Arizona Rules of Criminal Procedure by fully integrating the rights guaranteed to victims by the Arizona State Constitution throughout each applicable rule provision. Rule 39 addresses victim's rights but does not adequately provide guidance to judges and criminal law practitioners on how the rules apply to various scenarios in criminal proceedings. AVCV believes that it would be extremely beneficial to judges and criminal law practitioners to know how a decision to continue a motion affects the rights of victims and impacts the duties of the defendant, victim and the courts within the criminal justice process and this could be accomplished by integrating various rights into procedural rules themselves. A clarification to the petition specifically states that victims are not parties in the case, which was a concern voiced in a prior rule petition seeking to make these same changes. The Chair, Judge Reinstein (ret.) sought COVIC's position on the petition to report to the Court for the August Rules Agenda. Ms. Clase made a motion.

**Discussion:** Whether concerns raised by AVCV are more of a training issue. The risk of unintended consequences if changes are made to the Criminal Rules of Procedure. This petition has been rejected four times in the past.

**Motion:** To support the petition as amended. **Moved:** Colleen Clase. **Vote:** 11 yes; 13 no.

#### F. Roundtable Discussion: COVID-19 and Impact on Victims in the Courts

Judge Ronda Fisk reported that Maricopa county superior court is holding weekly criminal justice stakeholder meetings. In addition, they have a criminal department COVID-19 task force that meets regularly to address issues that are brought to the attention of the task force. They are focusing on how to get victims access to hearings, they are currently using GoToMeeting and they are piloting a program with Microsoft and For the Record (FTR) that allow victims to appear in a proceeding virtually. While participating in the meeting there is a component that would allow the victim's right attorney to meet and confer with the victim. They are converting some appearance hearings into non-appearance hearings, unfortunately some pre-trial conferences have been vacated due to COVID-19 restrictions on in courthouse visits.

Kirstin Flores thanked Judge Fisk on ensuring that victim's rights are in the forefront in Maricopa County Superior Court's work. She received positive feedback on victims attending on the court's bridge line. Victim's advocates in Pima county are also expressing positive feedback. Issues that victims are experiencing are with the court calendar being erratic with cases being calendared and then falling off the calendar. Victims are concerned about homicide sentencing hearings; not getting notice of

hearings five days before and the hearings being continued the day before the hearing with little or no notice. This is having an impact on victims, caseload and travel. It was noted a large part of this issue is related to COVID-19 outbreaks in jails and the subsequent inability to transport an in-custody defendant. It was also noted there is a lack of clarity regarding whether advocates can attend hearings in person or virtually.

Rosanna Cortez stated her agency was running into similar experiences with the lack of consistency in superior courts. Some courts will call the victim to testify and others will ask the victim to call in, some judges indicate that only the victim can attend in person hearings and others are indicating that the victim and a support person can attend in person hearings.

Judge Kellie Johnson stated that she will bring the victims, victim advocates and homicide survivors concerns to the attention of Judge Liwski for consideration in the scheduling of hearings and continuances.

Judge Maria Elena Cruz asked if there was a database of all judges around the state assigned to criminal calendar? Judge Cruz proposed:

- The creation of a list of email addresses for criminal presiding judges and judges assigned to criminal cases, which is updated regularly to assist with disseminating information to criminal judges regarding victim's rights.
- COVIC create a letter to the courts on the impact victims are seeing due to the COVID-19 pandemic changes that are being made in the courts.

Judge Fisk thanked COVIC for the information about the impact COVID related changes are having on victims and stated that she would share the information with her court. She noted that judicial officers are also frustrated with the necessary COVID changes and the fluidity of the situation. She noted that every time there is an outbreak in a detention center it impacts the courts ability to hold hearings and therefore affects the court calendar.

Rod McKone stated that the chief probation officers meet weekly to discuss the impact COVID has had on how they operate. Primarily they contact probationers virtually or by phone. They have waived some of the draconian contact standards with good results. They are concerned about addicts on probation getting the support they need.

Bill Owsley stated that when they went to video hearings more juveniles participated in hearings as they are tech savvy and are not in school and easier to communicate with.

Jane Nicoletti-Jones noted that they are maintaining contact with victims via video chat or by phone. There are challenges for victims living in tribal communities who are still in lockdown or who have limited access to the telephone or internet.

John Leavitt stated that law enforcement is limiting the arrest of individuals if it is not a violent crime. Law enforcement is also concerned about substance abusers because the price of methamphetamine has doubled. Many addicts are switching to oxycodone which is really fentanyl, which is resulting in more deaths in Pima county. He noted for the first time in Pima County fentanyl-related deaths outpaced methamphetamine deaths.

### III. **Good of the Order:**

Dan Levey noted that bill 1278 (Victim's right to privacy; confidential information) had passed the Senate and the House judiciary and was scheduled to be heard by the full house and is now on hold due to the pandemic. The bill will be resubmitted next year.

Collen Clase mentioned that the third habeas petition for Clarence W. Dixon, the defendant who murdered Leslie James' sister twelve years ago, was denied. He has exhausted all his appellate remedies and has is sitting on death row.

Justice Bill Montgomery, who attended the meeting to learn more about the Commission's work, thanked COVIC for letting him participate and thanked members for the work that they do on COVIC. Judge Reinstein suggested that Justice Montgomery come back and talk about himself in a future meeting.

**Call to the Public:** None present. Staff reported no emails requesting opportunity to speak were submitted.

**Adjournment:** Meeting adjourned at 12:09 p.m.

#### **Next Meeting:**

Friday, October 16, 2020  
10:00 a.m. to 12:00 p.m.  
State Courts Building, Room 119  
1501 West Washington Street  
Phoenix, AZ 85007