

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

IN THE SUPREME COURT

STATE OF ARIZONA

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

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

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

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

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

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

victims and leaves the victim's status in a criminal proceeding somewhat vague. The proposed amendments therefore provide desirable clarity. Moreover, Rule 1.9 codifies in a court rule the standing of a victim to "enforce any right or to challenge an order denying any right guaranteed to victims," as expressly provided in A.R.S. §13-4437. Rule 1.9(v) does not add a new right in this context, it simply makes it more prominent.

CRV members also considered Maricopa's contention, at pages 7 to 9 of its comment, that the definition of "victim" in proposed Rule 1.4(v) inappropriately deviated from the statutory definition. Although the CRV had attempted to paraphrase the text of A.R.S. § 13-4401(19) in Rule 1.4(v), members agreed during its discussion of the Maricopa comment that the deviation could unnecessarily give rise to litigation about the significance of these differences and that the text of Rule 1.4(v) should not deviate from the text of A.R.S. § 13-4401(19). The CRV accordingly recommends that the text of Rule 1.4(v) mirror the text of the statute, as proposed by the Maricopa comment. The recommended change is shown in the Appendix to this Reply.

In response to other issues raised in the Maricopa comment, CRV members refer to their July 1, 2022, report to the Court, and to the appendices to this rule petition that were filed on July 12, 2022.

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

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

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

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

Rule 15.1(v)(1). The comment requests a change in the text of this provision based on a 2022 amendment to A.R.S. §13-4434. That statute was amended in accordance with HB 2709. A summary of HB 2709 was included in the March 25,

2022, CRV meeting materials. Members did not make any changes to Rule 15.1 in anticipation of this pending legislation, and they do not see the necessity of doing so now. Moreover, the AVCV's proposed amendment does not fully embody all of the provisions of the legislative amendment (it includes the content of A.R.S. §13-4434(D) but it omits the content of A.R.S. §13-4434(C)(5)), and members accordingly recommend against the AVCV's proposed change.

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

Rule 19.1(v)(2). The AVCV proposes adding the words “or the victim consents” to this provision. The proposed amendment is consistent with the language of A.R.S. §13-4434(A), and the CRV has no objection to the amendment. The recommended change, with a slight technical modification, is shown in the Appendix to this Reply.

Rule 24.3(v). The AVCV proposes to add a reference to the Victims' Bill of Rights. The members believe the reference is unnecessary. First, the referenced VBOR provision is general (“to receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury”), whereas the CRV's proposed reference to Rule 39 provides more specificity

regarding restitution. Moreover, the AVCV's proposed reference to the entire VBOR, rather than specifically to § 2.1(A)(8), is overbroad.

4. Letters of support. The AVCV's comment was accompanied by an appendix containing several "letters of support." Those letters were submitted by the AVCV's board president, the national organization of Parents of Murdered Children, the Valley of the Sun Chapter of Parents of Murdered Children, and two individuals, Beckie A. Miller and Debbie Carlson. This Reply does not respond to those letters but notes them for the Court's consideration.

Conclusion. Petitioner requests to change the definition of "victim" in proposed Rule 1.4(v), as proposed by the Maricopa comment, and to include the AVCV's proposed amendment to Rule 19.1(v)(2). The requested revisions to these two rules are shown in the Appendix. Otherwise, and with the concurrence of CRV members, Petitioner reaffirms the Committee's recommendations in its [July 1, 2022, report](#), which is incorporated in this Reply by reference. Petitioner specifically notes the report's conclusion, which advised that by a formal 8-2 vote of the members at their June 27, 2022, meeting, the Committee (for the second time) rejected further integration of victims' rights into the Rules of Criminal Procedure.

Respectfully submitted this 20th day of October 2022.

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

Copies emailed this
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APPENDIX

This Appendix shows additional changes to the rules proposed in Appendix A, which was filed with this rule petition on July 12, 2022. Deletions below are shown with ~~strikethrough~~. Newly added text is shown with double underline and, in Rule 19.1(v)(2), with **yellow highlight**.

Rule 1.4. Definitions.

(a) through (g). [no change]

(v) Victims' Rights. ~~“Victim” means a person or entity against whom the criminal offense has been committed or a representative who is designated or appointed to act on their behalf. If the person against whom the offense was committed was killed or incapacitated, “victim” includes the person’s spouse, parent, child, grandparent, or sibling, or another individual specified in A.R.S. § 13-4401, unless that person is in custody or is the accused.~~ “Victim” means a person against whom the criminal offense has been committed, including a minor, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person, except if the person or the person's spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.

Rule 19.1. Conduct of Trial

(a) through (e). [no change]

(f) Use of a Facility Dog. The court can allow the assistance of a facility dog as provided in A.R.S. § 13-4442.

(v) Victims' Rights.

(1) Victim's Opportunity to Confer with the Prosecutor. The victim must have an opportunity to confer with the prosecutor about trial before the trial begins.

(2) Identifying and Locating Information. A victim has the right to refuse to testify regarding any identifying or locating information unless **the victim consents**

or the court orders disclosure after finding a compelling need for the information. The court must conduct a proceeding on a motion to require such testimony *in camera*.

(3) *Representative of a Minor or Incapacitated Victim*. If a representative of a minor victim or an incapacitated victim requests to be recognized during trial, the representative must notify the prosecutor, who must then inform the court of the request outside the presence of the jury. Any communications between the representative and the court during trial must be conducted in the presence of the parties or their counsel, and outside the jury's presence. Any substantive communications must be on the record.