

VICTIMS' RIGHTS BRIEF

For Arizona's Criminal and Juvenile Justice Administrators, Practitioners, and Advocates

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Victims' Rights in Action: The Key to Effective Advocacy

Victim advocacy at its best employs the use of many tools. One of those tools is victims' rights. *How well are you using this tool in furthering victim justice? What obligations, if any, do you have when you observe that the "tool is not used, misused, or broken?" How can you use victims' rights to "unlock" the door to the justice system for crime victims?* Readers of this issue of the Brief will be challenged to think of victims' rights in new ways. The scenarios that follow will challenge you to examine present practices against intended results, and consider new approaches to victim advocacy.

Scenario ①: A murder case is in trial. The judge has ordered the jury, the prosecutor, the defense attorney, the defendant and the court reporter, as well as herself, to go to the scene of the crime, an abandoned trailer in the desert. The victim, Mrs. Clark, whose 19-year-old-son was murdered at that site in what has been presented as a drug-deal-

gone awry, has indicated she wants to go as well. The defense objects. *From a victims' rights perspective, how would the advocate in this case respond?*

Response ①: A.R.S. § 13-4401 (18) provides that Mrs. Clark is the legal victim because this statute says that if the "person against whom the criminal offense is committed is killed..., the victim is that person's spouse, parent, child or other lawful representative...." Also, A.R.S. § 13-4420 provides that the victim has the right to be present throughout all criminal proceedings in which the defendant has the right to be present. Finally, 'criminal proceeding' is defined in A.R.S. § 13-4401(7) as "a hearing, argument or other matter scheduled by and held before a trial court but does not include any deposition, lineup, grand jury proceedings, or other matter not held in the presence of the court." Together, these laws seem to support Mrs. Clark's right to go to the scene of the crime with the others in the case.

The role of an advocate is not to foster dependence, but rather to empower. Advocates help victims analyze situations and understand their rights and their options, in the interest of victims making decisions for themselves. In part, good advocacy therefore entails advising victims of their rights, and in this case, what may be Mrs. Clark's right to attend the scheduled proceeding. However, also in this case, a skilled advocate would discuss the pros and cons of going to the crime scene and the options available to the victim, including: 1) what she hopes to achieve by going; 2) what she thinks she might see there; 3) how she might react emotionally; 4) prosecutorial concerns that an emotional reaction might cause a

mis-trial; 5) arrangements for viewing the scene at a different time, one that might provide Mrs. Clark with privacy and includes support people; 6) her feelings if she *didn't* go; and 7) best-case and worst-case scenarios.

Scenario ②: Tracy, a sexual assault victim, is sharing with you her dread of the upcoming trial in her case and her fear that she has contracted AIDS as a result of the crime. *From a victims' rights perspective, how could you assuage her concerns?*

Response ②: To address her dread of the trial, Tracy could be reminded of her right, pursuant to A.R.S. § 13-4419, to confer with the prosecutor, who may well be able to answer her questions, and thus alleviate her concerns. To address Tracy's fear of having contracted AIDS, she could be referred to her local public health agency for information about HIV and AIDS. Also, her rights under A.R.S. § 13-1415 should be explained: the prosecuting attorney, if Tracy requests, must petition the court for an order requiring the defendant to submit to HIV testing. By law, she would be provided with the results and counseling. Tracy should also be advised that the attorney will have to provide her name and address to the department of health services for notification purposes, but assure her that the law also requires that her name and address be kept confidential.

Scenario ③: Ten months after sentencing, business owner George Colby, whose accountant embezzled \$750,000 from him, has complained of not receiving any



The *Victims' Rights Brief* is published every other month by the Arizona Attorney General's Office of Victim Services, who remains wholly responsible for its content. The goal in distributing it is to promote justice and healing for crime victims by sharing information and fostering sensitivity within the justice system. Questions regarding content can be directed to Teena Olszewski at (602) 542-8502. To learn more about victims' rights via the internet, visit us at www.ag.state.az.us

restitution. His accountant pled to one count of theft, was sentenced to seven years probation and ordered to pay \$400 per month in restitution. *From a victims' rights perspective, what is an appropriate response?*

Response ③: Arizona's Constitution gives victims the right to prompt restitution from the person convicted of the conduct that caused their losses. Supreme Court Administrative Order 94-16 requires a probation officer, upon finding a defendant two months in arrears, to notify the court. This notice may be either a petition to modify, a petition to revoke, or a memorandum outlining the reasons for non-payment. A copy of the memorandum must be provided to the victim, if the victim requested post-conviction notice.

Mr. Colby's concerns could be addressed initially by asking a few questions: Has he moved? If so, has he provided the Clerk of the Court with his new address? Did he request post-conviction notice (i.e., send in his post-conviction notification request form)? If so, has he received any notices and/or copies of petitions or memoranda from the probation department? Depending on his answers, the clerk and assigned probation officer might be appropriate referrals / contacts. Mr. Colby should be warned, however, that sometimes the resolution of a defendant's failure to comply with restitution orders involves reducing the defendant's monthly payment amount. Alternatively, were the defendant incarcerated, future payments would

be even more unlikely. Although not pleasant to hear, the realities of restitution should be explained to Mr. Colby. One reality is that courts must order restitution for a victim's entire loss, regardless of the defendant's ability to pay. In determining monthly payment amounts, however, courts must consider the defendant's ability to pay. Ultimately, this means that restitution, as a reliable form of reimbursement for victim losses, often becomes improbable.

Scenario ④: A pre-trial conference in a domestic violence case has just ended. While the prosecutor is gathering her papers, and the victim, Jill Jones, and the advocate are squeezing down the aisle to leave the court room, the defense attorney, Mike Adams, approaches Ms. Jones and states, "If you would just agree to diversion, this could all be over." *From a victims' rights perspective, how should the parties in the courtroom -- the advocate, the bailiff, the prosecutor -- respond?*

Response ④: A.R.S. § 13-4431 requires that before, during and immediately after any court proceeding, the court must provide safeguards to minimize contact between victims and the defendant, his family and witnesses. Further, the Victims' Bill of Rights gives victims the right to be free from intimidation, harassment and abuse throughout the justice process.

The advocate could literally intervene, immediately stepping

between the defense attorney and Ms. Jones, if possible, and suggest to Adams that subsequent contact with the victim occur through the prosecutor. The advocate, after ensuring that the victim is "okay," could then talk to the prosecutor about what happened.

Depending on the intensity of the situation, the bailiff could intervene, escorting Ms. Jones safely and calmly out of the courtroom.

The prosecutor could follow up the event with the defense attorney, reminding him, by letter, of the victim's constitutional right to be free from intimidation, and requesting that any future contact with the victim be made through her. The prosecutor might also consider filing a complaint with the State Bar, if she surmised that, to do so, would protect victims from harm in the future.

Finally, in a later debriefing with the victim, the advocate could explain the respective (differing) roles of the state and the victim. While victims have the right to confer with the prosecutor, case outcome is neither their prerogative nor their burden to bear. ♦

PLEASE NOTE:



The Director of the AG's Office of Victim Services, Teena Olszewski, can now be reached at the Phoenix office of the Attorney General's Office, 1275 W. Washington, Phoenix, AZ 85007. Her new telephone number is (602) 542-8502.

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Ⓞ A 3-minute update.

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