RC # 2019-004 d

# State of Connecticut
## DIVISION OF CRIMINAL JUSTICE

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Joseph J. Del Ciampo
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State of Connecticut, Judicial Branch
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Dear Attorney Del Ciampo,

I am writing to you in response to your request for comments on the proposed changes to the rules for the proper treatment of victims in criminal matters.

The Division of Criminal Justice consistently attempts to inform and protect victim's rights as guaranteed by the Connecticut Constitution throughout the adjudicatory process. In furtherance of that goal, DCJ does not object to certain changes to the process. These changes align with the suggestions our Supreme Court made in State v. Skipwith, 326 Conn. at 517.

Specifically, DCJ would suggest that a rule require the court at the "outset of a sentencing hearing or any judicial proceeding concerning the acceptance of a plea pursuant to a plea agreement," ascertain whether reasonable efforts have been made to inform the victim of his or her right "to make a statement to the court, orally or in writing, regarding the plea or sentence, and, if not, whether reasonable measures were undertaken to do so." State v. Skipwith, 326 Conn. at 538-39.

The Division believes that the proposed change to Rule 3.8 of the Rules of Professional Conduct is inappropriate and unwarranted. The Division acknowledges that mistakes occur and victims are sometimes not notified of upcoming court dates. There are a variety of factors beyond a prosecutor's control such as scheduling, illness of an attorney or Judge, a conflicting court date for an attorney or a continuance granted by the court without a prosecutor's knowledge or consent. This rule also presumes that each case is assigned to an individual prosecutor upon whom this responsibility should lie. In our system, most cases are not individually assigned and it would therefore be unfair to hold a prosecutor responsible who merely called the file in court. This rule would also place an unfair burden on prosecutors who rely on others such as OVS advocates, domestic violence advocates, rape crisis counselors and victim's attorneys who all act as victim liasions in criminal matters. To place this responsibility solely at the feet of the prosecutor and subject them to a grievance when so many other parties play a role in this process is fundamentally unfair.

The addition of sanctions against prosecutors would not seem to significantly advance the goal of ensuring that victims be advised of their rights so that they have an opportunity to exercise them. If the goal is to ensure that victims are properly and timely advised of their rights, the suggested revisions to the Practice Book, which would require the trial court, at the start of any plea or sentencing proceeding, to inquire of the state whether reasonable efforts had been undertaken to inform the victim or his or her rights, and which would allow the court to suspend proceedings if such efforts had not been made, would seem to be sufficient.

Sanctioning prosecutors is also inconsistent with the policy behind General Statutes § 54-224, which exempts "the state or any agent, employee or officer thereof" from liability for "(1) the failure to afford the victim of a crime any of the rights provided pursuant to any provision of the general statutes or (2) the failure to provide the victim of a crime with any notice pursuant to any provision of the general statutes." While the statute's reference to liability may be construed as civil liability, and while it is restricted to the rights provided to victims pursuant to the general statutes, the legislature's clear intent to protect state agents from punishment for violations related to victims' rights is at odds with a rule that would subject prosecutors to sanctions for conduct that runs afoul of the victim's rights amendment.

The proposed addition to Code of Professional Conduct § 3.8 is also troublesome because it would place the entire burden of notification on the prosecutor, completely ignoring the role of the victim's advocate. After the passage of the victim's rights amendment, the legislature enacted General Statutes § 46a-13c, which created the office of victim's advocate. The legislative history of that statute shows that it was adopted in response "to concerns of victim advocacy groups that passage of the victim's right amendment had yet to result in the anticipated improved treatment of crime victims." State v. Gault, 304 Conn. at 343. The legislature empowered the victim advocate to "'[f]ile a limited special appearance in any court proceeding for the purpose of advocating for a victim' the rights secured by subdivisions (4), (5), (7), (8), (9) and (10) of the victim's rights amendment." Id. at 343-44 (quoting P.A. 98-231, § 2). "In 2001, that charge was expanded to include advocacy 'for any right guaranteed to a crime victim by the [c]onstitution of the state or any right provided to a crime victim by any provision of the general statutes.'" Id. at 344 (quoting P.A. 2001, No. 01-211, § 12(5)).

Furthermore, as stated on the Connecticut Judicial System's website, the role of the Office of Victim's Services is, in part, to give victims "information about the CT Constitution Victim Rights and how to exercise those rights; giv[e]updates on the criminal case; and go[ ] to court and BOPP hearings with victims and advocate[e]for their rights." https://www.jud.ct.gov/crimevictim/advocacy.htm. The proposed rule would sanction prosecutors for failing to do what would seem to be more properly the charge and function of the victim's advocate.

Thank you for allowing us to provide input into this process. The Division will continue its efforts to adequately inform victims of their rights throughout the adjudicative process. We will strive, to the best of our ability, to assure that we comply with all the rules of court and our constitutional obligations in this area.

We look forward to working with the Committee on this issue.

Sincerely,

Kevin D Lawlor
Deputy Chief State's Attorney for Operations