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State Victim Advocate

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Via email to Joseph.DelCiampo@jud.ct.gov

Re: OVA's Response to Comments

Division of Criminal Justice, Office of the Chief State's Attorney

1. Re Rule 3.8: Mistakes occur, it's unfair to hold a prosecutor responsible who merely called the file to court.

All prosecutors must uphold crime victims' rights pursuant to C.G.S. §51-286e. These "mistakes" deny crime victims access to the court and the opportunity to practice their limited rights. Crime victims have a right without a remedy, so when their rights are violated, they cannot seek to reopen the matter and appeal. The right is gone forever.

2. Re Rule 3.8: Places an unfair burden on prosecutors when so many other parties play a role in this process.

Prosecutors must uphold crime victims' rights pursuant to C.G.S. §51-286e. A large percentage of crime victims do not have the assistance of the OVA or OVS court-based advocates. The OVA can file a limited appearance in court on behalf of crime victims when they contact the agency. OVA cannot appear in court without a client. OVS court-based victim advocates can only assist crime victims that have suffered physical injury. If there is no physical injury, the burden is entirely on the prosecutors to provide information to crime victims. If the information is not properly placed in the SAVIN notification system, the OVA, OVS court-based advocates, and crime victims will not receive timely notice.

3. Re Rule 3.8: Sanctioning prosecutors is inconsistent with the policy behind C.G.S. §54-224.

This statute was passed in 1986 and predates the 1996 passage of the Constitutional Amendment that affords crime victims' rights.

4. Re Rule 3.8: It completely ignores the role of the Office of the Victim Advocate

Every crime victim is not represented by the OVA. The OVA provides advocacy to crime victims when a violation of their state constitutional and statutory rights are at issue. If a violation does not occur, the OVA cannot file an appearance. If the OVA is granted a hearing on a violation, the

crime victim's concerns rarely impact the decisions that have already been made because defendant's rights are protected and enforceable. If the court no longer has jurisdiction on the matter, OVA's motion is denied.

The OVA has submitted this proposal pursuant to its charge to:

- Coordinate and cooperate with other private and public agencies concerned with the implementation, monitoring and enforcement of the constitutional rights of victims; and
- Recommend systemic changes in state policies to ensure the proper treatment and protection of crime victims.

5. Re Rule 3.8: Office of Victim Services is responsible for providing notification and assistance.

The OVS provides sufficient notice when the hearing dates are made in advance and are properly logged in the SAVIN notification system. Adequate notice for quick turn-around hearings is not provided. Further, crime victims only receive notice that a hearing is scheduled. Details such as the type of hearing, the plea agreement, and the sentence are not provided via the notification system, rather these matters must be communicated by the prosecutor or court-based victim advocate to the crime victim. The OVS court based advocates can only assist crime victims who were physically injured. All other crime victims must receive information from the prosecutor.

Judge Bernadette Conway

Re Sec 30a-1 and Sec 30a-5: Due to the 2017 changes, I believe the juvenile system has a sufficient process in place to avoid violating crime victims' rights.

CBA Standing Committee on Professional Ethics

Re Rule 3.8: It would impose substantive obligations on prosecutors that do not currently exist.

Prosecutors must uphold crime victims' rights pursuant to C.G.S. §51-286e.

CBA Criminal Justice Section

1. Re Rule 3.8: Requirements are redundant and unnecessary.

Requirements are necessary because crime victims' rights are being violated via the court process. When crime victims are not given information about the case or notification of hearings, pleas agreements, or sentencing, they are not able to practice their rights to be in court hearings, make a victim impact statement, make a statement regarding the plea agreement, or make a statement regarding sentencing. When their rights are violated, they cannot seek to reopen the matter. The right is gone forever.

2. Re Rule 3.8: Blurs the line between the prosecution representing the State of Connecticut versus representing individual victims.

Prosecutors must uphold the accused rights pursuant to Rule 3.8 (2). This responsibility has not raised concerns of blurred lines between the prosecution and defense. Similarly, the OVA proposal, would require the prosecutor to uphold the limited rights of crime victims.

Division of Public Defender Services

1. Re Rule 3.8: May infringe on the independence of the prosecutorial authority.

Prosecutors must uphold the accused rights pursuant to Rule 3.8 (2). This responsibility has not raised concerns regarding the independence of the prosecutorial authority. Similarly, the OVA proposal, would require the prosecutor to uphold the limited rights of crime victims.

2. Re Rule 3.8: There are significant processes and procedures currently in place to ensure that victims receive reasonable notice of hearings and are given the opportunity to speak at dispositional hearings.

Yet the system still fails and crime victims' rights are violated. When crime victims are not given information about the case or notification of hearings, pleas agreements, or sentencing, they are not able to practice their rights to be in court hearings, make a victim impact statement, make a statement regarding the plea agreement, or make a statement regarding sentencing. When their rights are violated, they cannot seek to reopen the matter. The right is gone forever.

CT Criminal Defense Lawyers Association

1. Re Rule 3.8: Proposal appears to be redundant of other provisions and a codification of practices that are already in place.

Requirements are necessary because crime victims' rights are being violated via the court process. When crime victims are not given information about the case or notification of hearings, pleas agreements, or sentencing, they are not able to practice their rights to be in court hearings, make a victim impact statement, make a statement regarding the plea agreement, or make a statement regarding sentencing. When their rights are violated, they cannot seek to reopen the matter. The right is gone forever.

2. To create an ethical obligation of a prosecutor that runs directly to a victim has the potential to make the prosecution more about redressing individual rights, than asserting the interests of the State.

Prosecutors have an ethical obligation to uphold the accused rights pursuant to Rule 3.8(2). This responsibility have not raised concerns regarding individual rights. Similarly, the OVA proposal, would require the prosecutor to uphold the limited rights of crime victims.

3. Continuances affect the due process rights of the defendant and improperly prolong detention or otherwise delay resolution.

Continuances are routinely granted for a variety of reasons unrelated to the case at hand. If the court fails to comply with the constitutional and statutory requirements, a continuance should be granted. Crime victims should not be dismissed because the court system failed to implement the law regarding their rights.

Referenced Statutes/Rules

Sec. 51-286e. Notification of victims re judicial proceedings. (a) For the purposes of this section, "victim" includes the legal representative of the victim or a member of the deceased victim's immediate family.

(b) The state's attorney for a judicial district wherein an offense has been committed shall notify any victim of the offense, if such victim has requested notification and provided the state's attorney with a current address, of any judicial proceedings relating to the victim's case including (1) the arrest of the defendant, (2) the arraignment of the defendant, (3) the release of the defendant pending judicial proceedings, and (4) proceedings in the prosecution of the defendant, including the dismissal of the charges against the defendant, the entry of a nolle prosequi to the charges against the defendant, the entry of a plea of guilty by the defendant, and the trial and sentencing of the defendant.

Rules of Professional Conduct Rule 3.8 (2) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel.

Constitution of the State of Connecticut, Article XXIX, Rights of Victims of Crime

In all criminal prosecutions, a victim, as the General Assembly may define by law, shall have the following rights:

- The right to be treated with fairness and respect throughout the criminal justice process;
- The right to timely disposition of the case following arrest of the accused, provided no right of the accused is abridged;
- The right to be reasonably protected from the accused throughout the criminal justice process;
- The right to notification of court proceedings;
- The right to attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person's testimony would be materially affected if such person hears other testimony;
- The right to communicate with the prosecution;
- The right to object to or support any plea agreement entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea of guilty or nolo contendere by the accused;
- The right to make a statement to the court at sentencing;
- The right to restitution which shall be enforceable in the same manner as any other cause of action or as otherwise provided by law;
- The right to information about the arrest, conviction, sentence, imprisonment and release of the accused.

The General Assembly shall provide by law for the enforcement of this subsection. Nothing in this subsection or in any law enacted pursuant to this subsection shall be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case.

Respectfully Submitted,


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