

O'Donnell, Shanna

From: Del Ciampo, Joseph
Sent: Thursday, January 9, 2020 11:03 AM
To: O'Donnell, Shanna
Subject: FW: Proposal before the Rules Committee to Rule 3.8 of the Rules of Professional Conduct and various sections of the Practice Book to ensure the proper treatment and protection of crime victims
Attachments: OVA Victim Notification clean copy updated 12-31-19 (JJD).docx

From: Del Ciampo, Joseph
Sent: Thursday, January 2, 2020 3:14 PM
To: 'Pierre, Natasha' <Natasha.Pierre@ct.gov>
Cc: O'Donnell, Shanna <Shanna.ODonnell@jud.ct.gov>
Subject: Proposal before the Rules Committee to Rule 3.8 of the Rules of Professional Conduct and various sections of the Practice Book to ensure the proper treatment and protection of crime victims

Dear Attorney Pierre,

At its meeting on December 16, 2019, the Rules Committee considered your proposal to amend Rule 3.8 of the Rules of Professional Conduct and various sections of the Practice Book to ensure the proper treatment and protection of crime victims. After discussion, the Committee tabled the proposal until its meeting scheduled for January 13th at 2:00 p.m. in the Supreme Court courtroom. The Committee requests your presence at that meeting.

The Committee also requested that you respond in writing to the comments critical of the proposal and that I coordinate with you to create a revised draft of the proposal that incorporates all of the previous revisions and the withdrawal of portions of the proposal related to the Juvenile Rules.

Attached are the original and revised proposal and the comments on the proposals received by the Rules Committee. Attached also is a draft of the proposal that incorporates all of the previous revisions and the withdrawal of portions of the proposal related to the Juvenile Rules.

Please let me know if you have any questions. Thank you.

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OVA Proposals-Combined Version 1-1-2020 (Various versions combined for Rules Committee discussion.)

Rule 3.8 of the Rules of Professional Conduct

Rule 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- (1) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (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;
- (3) Make reasonable efforts to assure that the victim, the parent or guardian of such victim or such victim's counsel has been advised of their rights, the procedures for exercising such rights, and are given reasonable opportunity to exercise such rights;
- ~~[(3)]~~(4) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- ~~[(4)]~~(5) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and
- ~~[(5)]~~(6) Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.
- ~~[(6)]~~(7) When a prosecutor knows of new and credible evidence creating a reasonable probability that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall, unless a court authorizes delay:
 - (A) if the conviction was obtained outside the prosecutor's jurisdiction, promptly disclose that evidence to a court and an appropriate authority, and
 - (B) if the conviction was obtained in the prosecutor's jurisdiction, promptly disclose that evidence to the defendant, and a court and an appropriate authority.

Section 39-7 of the Connecticut Practice Book

Sec. 39-7. Notice of Plea Agreement

If a plea agreement has been reached by the parties, which contemplates the entry of a plea of guilty or nolo contendere:

(a) the judicial authority shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera at the time the plea is offered. Thereupon the judicial authority may accept or reject the agreement, or may defer his or her decision on acceptance or rejection until there has been an opportunity to consider the presentence report, or may defer it for other reasons[.];

(b) notice of the plea agreement and hearing shall be provided to the victim, the parent or guardian of such victim or such victim's counsel;

(c) If the victim is not present or has not submitted a written statement, the court shall ascertain from the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case:

(1) Whether the victim was informed of his or her right to make a statement to the court, orally or in writing, regarding the disposition, and, if not, whether reasonable measures were undertaken to do so;

(2) If the victim elected to provide a statement, whether the victim was notified of the date, place and time of proceeding;

(3) If the state has proposed a disposition, whether the victim has been informed of his or her right to be provided with the terms of the proposed disposition, orally or in writing;

(d) If the state's attorney, assistant state's attorney or deputy assistant state's attorney has not established that a reasonable attempt has been made to notify the victim of the foregoing rights, the court shall, unless doing so would violate a jurisdictional requirement or the defendant's substantive rights:

(1) Reschedule the hearing, or

(2) Proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and

(e) If the victim is present, the court shall inquire whether he or she has been informed of the foregoing rights and shall recess the hearing or undertake appropriate measures if necessary to afford the victim a reasonable opportunity to exercise those rights.

Section 43-10 of the Connecticut Practice Book

Sec. 43-10. Sentencing Hearing; Procedures To Be Followed

Before imposing a sentence or making any other disposition after the acceptance of a plea of guilty or nolo contendere or upon a verdict or finding of guilty, the judicial authority shall, upon the date previously determined for sentencing, conduct a sentencing hearing as follows:

(1) The judicial authority shall afford the parties an opportunity to be heard and, in its discretion, to present evidence on any matter relevant to the disposition, and to explain or controvert the presentence investigation report, the alternate incarceration assessment report or any other document relied upon by the judicial authority in imposing sentence. When the judicial authority finds that any significant information contained in the presentence report or alternate incarceration assessment report is inaccurate, it shall order the Office of Adult Probation to amend all copies of any such report in its possession and in the clerk's file, and to provide both parties with an amendment containing the corrected information.

(2) The judicial authority shall allow the victim and any other person directly harmed by the commission of the crime a reasonable opportunity to make, orally or in writing, a statement with regard to the sentence to be imposed.

(a) If the victim is not present or has not submitted a written statement, the court shall ascertain from the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case:

(i) Whether the victim was informed of his or her right to make a statement to the court, orally or in writing, regarding the sentence, and, if not, whether reasonable measures were undertaken to do so;

(ii) If the victim elected to provide a statement, whether the victim was notified of the date, place and time of proceeding;

(iii) If the state has proposed a sentence, whether the victim has been informed of his or her right to be provided with the terms of the proposed sentence, orally or in writing;

(b) If the state's attorney, assistant state's attorney or deputy assistant state's attorney has not established that a reasonable attempt has been made to notify the victim of the foregoing rights, the court shall, unless doing so would violate a jurisdictional requirement or the defendant's substantive rights:

(i) Reschedule the hearing, or

(ii) Proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and

(c) If the victim is present, the court shall inquire whether he or she has been informed of the foregoing rights and shall recess the hearing or undertake appropriate measures if necessary to afford the victim a reasonable opportunity to exercise those rights.

(3) The judicial authority shall allow the defendant a reasonable opportunity to make a personal statement in his or her own behalf and to present any information in mitigation of the sentence.

(4) In cases where guilt was determined by a plea, the judicial authority shall, pursuant to Section 39-7, be informed by the parties whether there is a plea agreement, and if so, the substance thereof.

(5) The judicial authority shall impose the sentence in the presence and hearing of the defendant, unless the defendant shall have waived his or her right to be present.

(6) In cases where sentence review is available, the judicial authority shall state on the record, in the presence of the defendant, the reasons for the sentence imposed.

(7) In cases where sentence review is available and where the defendant files an application for such review, the clerk shall promptly notify the court reporter of such application pursuant to Section 43-24 and the court reporter shall file a copy of the transcript of the sentencing hearing with the review division within sixty days from the date the application for review is filed with the clerk.