



REPORT AND RECOMMENDATION OF THE WISCONSIN CRIME VICTIMS RIGHTS BOARD

Wisconsin Statutes section 950.09(3) authorizes the Crime Victims Rights Board (“Board”) to “issue reports and recommendations concerning the securing and provision of crime victims’ rights and services.” The Board has become aware of a situation that provides the Board with an opportunity to recommend to criminal justice professionals best practices to protect a victim’s right to a speedy disposition.

Factual Background

A complaint was filed by the husband of a victim who died as a result of a car crash caused by a driver who fell asleep. The victim’s husband alleged that his right to a speedy disposition of the case was violated because the case took nearly four years to reach a disposition.

The Crime Victims Rights Board analyzes the right to a speedy disposition guaranteed by Wis. Stat. § 950.04 (1v)(k) using four factors. First, the Board identifies each delay. Second, the Board determines the reason for each delay. Third, the Board determines whether each delay is reasonable. Fourth, if a delay is unreasonable, the Board determines whether the delay is attributable to the respondent. Violation of the right to a speedy disposition occurs only if each of the four elements is present.

The respondents offered as explanation for the delay that there had been multiple judicial transfers, that the county suffered from a chronically congested court calendar and that there was a lengthy period of time during which the defendant was deployed to Iraq.

The record showed that the case was referred to the district attorney’s office approximately three months after the crash. The prosecution filed a criminal complaint within two weeks of receiving the referral. Negotiations regarding a plea took place shortly thereafter, supportive of the victim’s request that the case be resolved quickly. The case was interrupted when the defendant entered active duty with the United States Army, three months after the criminal complaint was issued. The defendant’s subsequent deployment to Iraq lasted eleven months. Upon his return, he promptly notified the court that he was back in Wisconsin. However, the district attorney’s office was unaware of his return due to the erroneous expectation that the defendant’s attorney would keep them updated. There was one judicial transfer and one request for substitution. Both actions were completed within eleven days. The judge assigned to the case noted in correspondence to the parties that the case had “dragged on for

quite some time” and “given the age of the case, I do want to keep it moving.” It took four months from when the case was assigned to him before a hearing was held in the matter. The hearing occurred as scheduled, approximately eight months after the defendant returned to Wisconsin. Fifteen months elapsed from that hearing until the plea/sentencing hearing. The defendant received a deferred prosecution agreement and a judgment of conviction on an amended misdemeanor charge was entered approximately one year later.

Statutes Involved

Wisconsin Stat. § 950.02(4)(a). defines “victim” to include “[a] family member of the person who is deceased.”

Wisconsin Stat. § 950.02(3) defines “family member” to include a “spouse, minor child, adult child, sibling, parent, or legal guardian.”

Wisconsin Stat. § 950.04 (1v)(k) provides that victims of crime have the right to “a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.”

Military Deployment of Defendants

The deployment of the defendant in this case accounted for a delay of fourteen months. The district attorney did not inform the military of the impending prosecution nor did he seek information to verify the defendant’s active duty, deployment or return dates. All information presented to the court about the defendant’s military service came from the defense attorney who represented a longer deployment than occurred and incorrectly identified the military branch in which the defendant served, according to court transcripts.

The United States military employs a high level of cooperation to support civilian prosecutions. If requested by a prosecutor, a commander may choose not to deploy a person who is the subject of a criminal prosecution. Likewise, National Guard reservists are held back from deployment and even pulled back from deployment if they are involved in a criminal prosecution, unless the prosecutor approves of deployment.

In order to effect this cooperation, the responsibility is with the prosecutor to obtain accurate information about the branch of service to which the defendant belongs and to contact the defendant’s unit commander. Each branch of the military has staff to assist in locating a soldier and the commanding officer and also to provide information regarding deployment status.

The Adjutant General serves as Wisconsin's senior military officer and commander of the Wisconsin Air and Army National Guard. The Office of the Adjutant General may be of similar assistance concerning defendants that belong to the Guard.

Proposed Remedy Submitted to the Board

The respondents appeared to be in agreement that the county suffered from chronic scheduling congestion exacerbated by county workload and staffing constraints. Both respondents also represented that despite these challenges, there were changes that had been and would be made to reduce the type of delay that occurred in this case. As part of the disposition of the formal complaint filed by the victim, the respondents proposed they would submit information to the Board regarding these systemic improvements. The complainant was eager to focus on changes that might prevent another victim from enduring such a lengthy prosecution.

The prosecutor submitted a letter stating that the victim witness coordinator would start advising prosecutors of excessive delays in cases with victims who “have strong desires to have cases moved through the system as quickly as possible.” Additionally, he stated that he would continue to seek an increase in staffing and resources.

The judge submitted a list of guidelines including:

- The court will give each case involving a victim a priority number (one through four with number one as top priority). The presence of a number will alert his judicial assistant that the case involves a victim and the number assigned will provide guidance regarding scheduling priority.
- The judicial assistant will communicate more regularly with the victim witness coordinator so that the court is aware of victims’ wishes and any special circumstances relevant to scheduling.
- Approximately 8-12 cases will be scheduled for trial on the same trial day. One week before trial, the Court will select the case that will be heard and the other scheduled trials will be ranked and held ready until one or two days prior to the scheduled trial date, in the event that the first case resolves.
- Except for good cause, any case not settled at least one week prior to the trial date shall be resolved only by trial on the charges, a plea to the charges or a dismissal of all the charges.
- Any case scheduled but not selected or tried shall be set for the first available scheduling conference to be set for trial on the first available date.

The respondents’ representation that improvements are in place or in progress to reduce the type of problem that resulted in the formal complaint is not borne out by the materials submitted to the Board. The proposed systemic improvements submitted by the respondents do not appear to be significantly different than the process that led to the victim’s frustration. Nor do they address one of the factors they each cited as a cause for delay: the proper verification and follow up of a defendant’s military deployment. The prosecutor’s remedy that victim witness will advise him of excessive delays involving victims who wish for a

more timely prosecution addresses a problem that did not exist in this case. The record clearly shows that the prosecutor was well aware that the case was delayed and that the victim wanted it resolved quickly. The judge's remedy focuses on making the court more aware when a case involves a victim and when the victim is dissatisfied with delays in prosecution. Both factors are considerations he was aware of in this case and in fact concerned about, based on his correspondence to the parties.

The Board is disappointed that what appeared to be a promising solution that would simultaneously address problems in the county and provide reassurance to the complainant very likely achieved neither.

Recommendations

1. The administratively condoned judicial practice of unreasonably stacking cases under the guise of judicial economy should be replaced with the court's recognition of the legislative mandate to consider the emotional and practical effect of continuances on victims of crime. *See* Wis. Stat. § 971.10 (3)(b)3.
2. Delays and cancellations and even some level of over scheduling are unavoidable in a busy court system. However, when the county practice is to over schedule trials to the extent that seven to eleven trials will be rescheduled every trial day, the result is that victims are repeatedly subjected to the anxiety of cancelled and delayed proceedings. There is an added burden when the cancellations come only one or two days prior to the trial. Such a system is prone to produce unnecessary hardship on victims, many of whom have rearranged their lives around a trial date. Victim witness staff will find themselves repeatedly trying to explain cancellations to victims, which may erode trust and even possibly reduce the cooperation of victims and/or witnesses who are experiencing anxiety because of cancellations and delays.
3. Any written procedure that prioritizes cases for scheduling should also note the duty of the court to expedite proceedings that involve child victims:

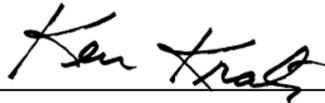
971.105 Child victims and witnesses; duty to expedite proceedings. In all criminal and delinquency cases, juvenile fact-finding hearings under s. 48.31 and juvenile dispositional hearings involving a child victim or witness, as defined in s. 950.02, the court and the district attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of the child's involvement in the proceeding. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

4. When a defendant is called to duty or deployment by the military, the prosecutor should at minimum ask for verification and contact information in order to perform status checks if such involvement with the military will cause a delay in the prosecution. A prosecutor may additionally wish to ask that deployment be delayed (or that a deployed person be returned) in order to commence a criminal prosecution. As a matter of standard operating

procedure, the military will cooperate with civilian authorities concerning a pending criminal matter against a member of the military.

5. Prosecutors should not rely on defense attorneys to provide information about a deployed defendant. A prosecutor can make contact with the defendant's military commander in order to know with certainty when the defendant has returned to the state.
6. The victim in this case was exceedingly patient regarding delays endured by him and his family. The record shows that he had from the beginning and throughout the case expressed an interest in resolving it quickly. The ultimate disposition of the case, the negotiated plea, is substantially similar to the agreement that was drafted years earlier. The years that elapsed between caused the victim anxiety and frustration. With each step, the victim held out hope that the case would finally move to a conclusion. With each delay, that hope was diminished and the victim began to feel that if not for his phone calls, the case would not move along at all. That sentiment grew to the point of asking the Department of Justice to intervene. The Board's review of that complaint resulted in another lengthy process ultimately ended by the respondents' reassurances that systemic changes could improve the county's ability to serve victims. As discussed earlier, the information they submitted on that issue lacked the substance expected and represented an abuse of the victim's patience and goodwill.

Dated this 13th day of March, 2009.



KENNETH R. KRATZ

Chairperson, Crime Victims Rights Board