

Introduction to Victims' Rights for Attorneys

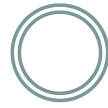
Presented By:

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Educational Objectives



- Understand the importance of victim standing and how you can successfully argue for it.
- Discuss the surmountable hurdles that stand in the way of victim participation in criminal justice system.
- Learn how to enter a case as a victim's attorney.



You tell me why we can't

I'll tell you how we can

Victims' Rights



- Every jurisdiction has victims' rights laws
- Def of Victim & Common rights:
 - Treated with Fairness, dignity, & respect
 - Notice
 - Present
 - Heard
 - Restitution
 - Confer/consult
 - Speedy disposition
- Rights of Participation!

Victim Standing; what it is, why it's important

Legal Standing



- What is it?
 - A victim's ability to seek a judicial order that governmental personnel must comply with victims' rights laws *or* that provides a remedy for a violation of those laws.
- What are its tools & remedies?
 - Motion practice
 - "Do-overs"
- Why is it important?
 - This victim has redress right now.
 - Establishes precedent for future victims and practitioners.

Who Asserts and Seeks Enforcement of Victims' Rights?



- Prosecutor asserting on behalf of victim and seeking enforcement
- Individual victim asserting and seeking enforcement him- or herself
- Attorney Representation
 - Attorney Client relationship
 - Motion practice

Core Legal Concepts



- Standing is fact-specific.
 - “Does *this* victim have standing *at this moment* to do _____?” (Fill in the blank with the right and remedy the victim is seeking.)
- Answer can be explicit.
 - “The crime victim or the crime victim’s lawful representative, and the attorney for the Government may assert the rights.” 18 U.S.C. § 3771 (d)(1).
 - “The district court shall take up and decide any motion asserting a victim’s right forthwith.” 18 U.S.C. § 3771 (d)(3).
 - If denied, victim may file a writ of mandamus and “The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. . . . If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.” 18 U.S.C. § 3771 (d)(3).

Cont'd



Or may require analysis of 3-part test:

- The United States Supreme Court has explained that the question of standing:
 - “...is whether the party seeking relief has ‘alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.’”

Test :

1. Injury
2. Causation
3. Redressability

Hurdles; victims can overcome

The hurdles to independent victim standing:



- Cultural Resistance
- Legal Obstacles

Misperception of History



- Despite the fact that history reveals a victim-centric criminal justice system, people believe that a shift from the current two-interest system is a threat.
- Recognizing the origins of our criminal justice system is useful in overcoming this first cultural resistance.

Misperception of Scope of Rights



- **Opponents believe victims' rights:**
 - Infringe on prosecutorial discretion.
 - Convert the justice system into a system of personal vengeance.
- **Fundamental flaws in objection:**
 - Victims' rights are predominately due process rights.
 - Victims' rights inject just one more interest into analysis.

Misperception that Rights are a Zero Sum Game



- Opponents believe affording a victim rights means taking a right from a defendant.
- Fundamental flaw in objection:
 - More than one participant can have rights!
 - Judiciary is regularly tasked with affording multiple rights in same case.

“Legal” Hurdles



- Non-party Status
- Double Jeopardy
- Mootness
- Ripeness

Non-party Status – the Red Herring



- **A common objection:**
 - Only the state and defendant are parties.
- **But**
 - Non-parties routinely come in when rights are at issue:
 - ✦ Media
 - ✦ People with privileges

Double Jeopardy



- “[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb.” U.S. Const. amend. V
- The key is that the stage at which rights violation occurs is critical to determining if jeopardy really will bar a remedy.

Generally no bar! **Except Trial**

- Release
- Plea
- Sentencing

Mootness & Ripeness



- **Mootness:**

- A case is moot if no case or controversy exists.
- Result: Generally, a court cannot hear the case.

- **Ripeness**

- An issue may not be ripe if asserted before the procedural stage at which it can be afforded or before sufficient facts are known.
- Result: Court will not rule.

Entering a Case

How are the Rights Asserted?



Notice of Appearance

File a Notice of Appearance and Assertion of Rights.

- Asserts the victim's rights.
- Helps to ensure that you receive copies of filings (in theory).

Motion Practice

File proactive/preemptive motions or responsive motions/oppositions.

- Protects the victim's rights.
- Preserves the record.

Appellate Practice

File a Petition for Special Action.

- Challenges rights violations.
- Sets precedent.

Limits on Relief



- May be explicit in jurisdiction's laws
- Remedy cannot violate defendant's constitutional rights
 - *See Ford v. State*, 829 So. 2d 946, 948 (Fla. Dist. Ct. App. 2002) (refusing to vacate defendant's plea because victims' rights must not "interfere with the constitutional rights of the accused").

What Relief is Available?



When seeking enforcement, what should you ask for?



As You Enter the Case . . .



Step 1

- Identify the legal victims

Step 2

- Identify the stage of the case

Step 3

- Identify the rights implicated by developments before your involvement
- Identify the rights implicated now/in future



Step 4

- Ask the client which rights he/she wishes to assert

Step 5

- Identify whether a violation has occurred

Step 6

- Prepare for future assertion of the rights



Step 7

- Introduce yourself to defense counsel/the prosecutor
- File a Notice of Appearance and Assertion of Rights

Step 8

- File forms that may be required to trigger notice obligations from responsible agencies

Step 9

- Strategy moment: Advise record holders that victim is now represented by counsel and discuss certain best practices when served with a subpoena or other request for information.

Agency Notice to the Victim



**Practice
Pointers:
*Ensuring
the Victim
Receives
Notice***

Make sure the appropriate agencies have the victim's current contact information.

When to Take Action



**Practice
Pointer:
*Pretrial
Litigation
Strategies***

- Don't wait to take action until your client's rights have been violated.
- Be proactive!

Pretrial Litigation Strategies



Anticipate issues for motion practice

- Identify key grounds for supporting the victim's motions or opposing defense motions

Prepare the victim for participating in court

- Discuss the right to be heard and ways to exercise the right
- Explain direct/cross-examinations procedures

Prepare to seek victim restitution

- Identify recoverable losses now
- Identify key issues, *e.g.*, timing, plea bargains, and restitution as condition of probation vs. sentence

Technical Assistance



NCVLI provides legal research and educational writing to attorneys, advocates, judges, and legislatures. NCVLI also provides resources and referrals to victims. NCVLI's technical assistance request form is located on our website.



www.ncvli.org

For Victims: 1-888-768-6556

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