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**CODE OF FEDERAL REGULATIONS
TITLE 28—JUDICIAL ADMINISTRATION
CHAPTER I—DEPARTMENT OF JUSTICE
PART 45—EMPLOYEE RESPONSIBILITIES**

Current through December 28, 2005; 70 FR 76935

§ 45.10 Procedures to promote compliance with crime victims' rights obligations.

(a) Definitions. The following definitions shall apply with respect to this section, which implements the provisions of the Justice for All Act that relate to protection of the rights of crime victims. See 18 U.S.C. 3771.

Crime victim means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights, but in no event shall the defendant be named as such guardian or representative.

Crime victims' rights means those rights provided in 18 U.S.C. 3771.

Employee of the Department of Justice means an attorney, investigator, law enforcement officer, or other personnel employed by any division or office of the Department of Justice whose regular course of duties includes direct interaction with crime victims, not including a contractor.

Office of the Department of Justice means a component of the Department of Justice whose employees directly interact with crime victims in the regular course of their duties.

(b) The Attorney General shall designate an official within the Executive Office for United

States Attorneys (EOUSA) to receive and investigate complaints alleging the failure of Department of Justice employees to provide rights to crime victims under 18 U.S.C. 3771. The official shall be called the Department of Justice Victims' Rights Ombudsman (VRO). The VRO shall then designate, in consultation with each office of the Department of Justice, an official in each office to serve as the initial point of contact (POC) for complainants.

(c) Complaint process.

(1) Complaints must be submitted in writing to the POC of the relevant office or offices of the Department of Justice. If a complaint alleges a violation that would create a conflict of interest for the POC to investigate, the complaint shall be forwarded by the POC immediately to the VRO.

(2) Complaints shall contain, to the extent known to, or reasonably available to, the victim, the following information:

(i) The name and personal contact information of the crime victim who allegedly was denied one or more crime victims' rights;

(ii) The name and contact information of the Department of Justice employee who is the subject of the complaint, or other identifying information if the complainant is not able to provide the name and contact information;

(iii) The district court case number;

(iv) The name of the defendant in the case;

(v) The right or rights listed in 18 U.S.C. 3771 that the Department of Justice employee is alleged to have violated; and

(vi) Specific information regarding the circumstances of the alleged violation sufficient to enable the POC to conduct an investigation, including, but not limited to: The date of the

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alleged violation; an explanation of how the alleged violation occurred; whether the complainant notified the Department of Justice employee of the alleged violation; how and when such notification was provided to the Department of Justice employee; and actions taken by the Department of Justice employee in response to the notification.

(3) Complaints must be submitted within 60 days of the victim's knowledge of a violation, but not more than one year after the actual violation.

(4)(i) In response to a complaint that provides the information required under paragraph (c)(2) of this section and that contains specific and credible information that demonstrates that one or more crime victims' rights listed in 18 U.S.C. 3771 may have been violated by a Department of Justice employee or office, the POC shall investigate the allegation(s) in the complaint within a reasonable period of time.

(ii) The POC shall report the results of the investigation to the VRO.

(5) Upon receipt of the POC's report of the investigation, the VRO shall determine whether to close the complaint without further action, whether further investigation is warranted, or whether action in accordance with paragraphs (d) or (e) of this section is necessary.

(6) Where the VRO concludes that further investigation is warranted, he may conduct such further investigation. Upon conclusion of the investigation, the VRO may close the complaint if he determines that no further action is warranted or may take action under paragraph (d) or (e) of this section.

(7) The VRO shall be the final arbiter of the complaint.

(8) A complainant may not seek judicial review of the VRO's determination regarding the complaint.

(9) To the extent permissible in accordance with the Privacy Act and other relevant statutes and regulations regarding release of information by the Federal government, the VRO, in his discretion,

may notify the complainant of the result of the investigation.

(10) The POC and the VRO shall refer to the Office of the Inspector General and to the Office of Professional Responsibility any matters that fall under those offices' respective jurisdictions that come to light in an investigation.

(d) If the VRO finds that an employee or office of the Department of Justice has failed to provide a victim with a right to which the victim is entitled under 18 U.S.C. 3771, but not in a willful or wanton manner, he shall require such employee or office of the Department of Justice to undergo training on victims' rights.

(e) Disciplinary procedures.

(1) If, based on the investigation, the VRO determines that a Department of Justice employee has wantonly or willfully failed to provide the complainant with a right listed in 18 U.S.C. 3771, the VRO shall recommend, in conformity with laws and regulations regarding employee discipline, a range of disciplinary sanctions to the head of the office of the Department of Justice in which the employee is located, or to the official who has been designated by Department of Justice regulations and procedures to take action on disciplinary matters for that office. The head of that office of the Department of Justice, or the other official designated by Department of Justice regulations and procedures to take action on disciplinary matters for that office, shall be the final decision-maker regarding the disciplinary sanction to be imposed, in accordance with applicable laws and regulations.

(2) Disciplinary sanctions available under paragraph (e)(1) of this section include all sanctions provided under the Department of Justice Human Resources Order, 1200.1.

[Order No. 2789-2005, 70 FR 69653, Nov. 17, 2005]

<General Materials (GM) - References, Annotations, or Tables>

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Effective: October 30, 2004

United States Code Annotated Currentness
 Title 18. Crimes and Criminal Procedure (Refs & Annos)
 ▣ Part II. Criminal Procedure
 ▣ Chapter 237. Crime Victims' Rights (Refs & Annos)

→ § 3771. Crime victims' rights

(a) **Rights of crime victims.**--A crime victim has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(b) **Rights afforded.**--In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

(c) **Best efforts to accord rights.**--

- (1) **Government.**--Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).
- (2) **Advice of attorney.**--The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

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(3) Notice.--Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

(d) Enforcement and limitations.--

(1) Rights.--The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

(2) Multiple crime victims.--In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

(3) Motion for relief and writ of mandamus.--The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. 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.

(4) Error.--In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

(5) Limitation on relief.--In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if--

(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

(B) the victim petitions the court of appeals for a writ of mandamus within 10 days; and

(C) in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.

(6) No cause of action.--Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

(e) Definitions.--For the purposes of this chapter, the term "crime victim" means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

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(f) Procedures to promote compliance.--

(1) Regulations.--Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

(2) Contents.--The regulations promulgated under paragraph (1) shall--

(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.

CREDIT(S)

(Added Pub.L. 108-405, Title I, § 102(a), Oct. 30, 2004, 118 Stat. 2261.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2004 Acts. House Report No. 108-711, see 2004 U.S. Code Cong. and Adm. News, p. 2284.

Prior Provisions

Section, Acts June 25, 1948, c. 645, 62 Stat. 846; May 24, 1949, c. 139, § 59, 63 Stat. 98; May 10, 1950, c. 174, § 1, 64 Stat. 158; July 7, 1958, Pub.L. 85-508, § 12(k), 72 Stat. 348; Mar. 18, 1959, Pub.L. 86-3, § 14(g), 73 Stat. 11; Oct. 17, 1968, Pub.L. 90-578, Title III, § 301(a)(2), 82 Stat. 1115, relating to criminal procedure, including verdicts, was repealed by Pub.L. 100-702, Title IV, § 404(a)(1), Nov. 19, 1988, 102 Stat. 4651 eff. Dec. 1, 1988, see Pub.L. 100-702, § 407, set out as a note under 28 U.S.C.A. § 2071.

Short Title

2004 Acts. Pub.L. 108-405, Title I, § 101, Oct. 30, 2004, 118 Stat. 2261, provided that: "This title [enacting this section and 42 U.S.C.A. §§ 10603d and 10603e, repealing 42 U.S.C.A. § 10606, and enacting provisions set out as a note under this section] may be cited as the 'Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act'."

Reports to Congress

Pub.L. 108-405, Title I, § 104(a), Oct. 30, 2004, 118 Stat. 2265, provided that: "Not later than 1 year after the

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date of enactment of this Act [Oct. 30, 2004] and annually thereafter, the Administrative Office of the United States Courts, for each Federal court, shall report to Congress the number of times that a right established in chapter 237 of title 18, United States Code [18 U.S.C.A. § 3771 et seq.], is asserted in a criminal case and the relief requested is denied and, with respect to each such denial, the reason for such denial, as well as the number of times a mandamus action is brought pursuant to chapter 237 of title 18, and the result reached."

RESEARCH REFERENCES

ALR Library

98 ALR, Fed. 901, Extension of Grand Jury Term Under 18 U.S.C.A. § 3331 or Under Rule 6(G) of Federal Rules of Criminal Procedure, as Amended in 1983.

6 ALR, Fed. 665, Withdrawal of Plea of Guilty or Nolo Contendere, Before Sentence, Under Rule 32(D) of Federal Rules of Criminal Procedure.

8 ALR, Fed. 586, Construction and Application of Provisions of Federal Bail Reform Act of 1966 (18 U.S.C.A. §§ 3146, 3147) Governing Pretrial Release or Bail of Persons Charged With Noncapital Offense.

Encyclopedias

Am. Jur. 2d Federal Courts § 551, Supervisory Powers.

Forms

1B West's Federal Forms § 601, Rule 1-Scope of Rules; Title.

Treatises and Practice Aids

Wright & Miller: Federal Prac. & Proc. § 1, In General.

Wright & Miller: Federal Prac. & Proc. § 1006, Amendments to the Federal Rules-Rulemaking Activity from 1939 to 1956.

Wright & Miller: Federal Prac. & Proc. § 3939, Judicial Councils.

Wright & Miller: Federal Prac. & Proc. § 6186, Rule 612 Rights in Criminal Cases.

Federal Evidence App PART 1, Appendix Part 1. Legislative History.

Federal Information Disclosure § 13:8, Specific Withholding Statutes -- Grand Jury Materials.

Wright & Miller: Federal Prac. & Proc. § 66, Rules of Procedure in Non-Civil Cases.

Wright & Miller: Federal Prac. & Proc. § 241, History, Scope, and Validity of Rule.

Wright & Miller: Federal Prac. & Proc. § 301, Governing Provisions.

Wright & Miller: Federal Prac. & Proc. § 921, Effective Date.

Wright & Miller: Federal Prac. & Proc. § 3947, Scope and Application of Rules.

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Wright & Miller: Federal Prac. & Proc. App. A, Appendix A. Orders of the Supreme Court of the United States Adopting and Amending the Appellate Rules.

Wright & Miller: Federal Prac. & Proc. App. B, Appendix B. Advisory Committee Notes to the Appellate Rules.

Wright & Miller: Federal Prac. & Proc. App. B, Appendix B. Orders of the Supreme Court of the United States Adopting and Amending Rules.

Wright & Miller: Federal Prac. & Proc. App. B, Appendix B. Orders of the Supreme Court of the United States Adopting and Amending Criminal Rules.

Wright & Miller: Federal Prac. & Proc. App. C, Appendix C. Advisory Committee Notes for the Federal Rules of Criminal Procedure for the United States District Courts.

Wright & Miller: Federal Prac. & Proc. App. D, Appendix D. Rules Governing Section 2255 Proceedings for the United States District Courts.

Wright & Miller: Federal Prac. & Proc. R 1101, Applicability of Rules.

Wright & Miller: Federal Prac. & Proc. SUPR. CT. ORDERS, Orders of the Supreme Court of the United States Adopting and Amending Rules.

NOTES OF DECISIONS

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1. Construction with other laws

Following initial appearance by mail fraud defendant, government was required to notify alleged victims of joint waiver of speedy trial time, pursuant to Crime Victims' Rights Act (CVRA); although joint request was not "public court proceeding" automatically triggering victims' rights, consideration whether proposed waiver would result in unreasonable delay warranted notification. U.S. v. Turner, 2005, 367 F.Supp.2d 319. Criminal Law ⇨ 1220

2. Balance

Following initial appearance by mail fraud defendant, government was required to notify alleged victims of result and of their right to request reconsideration of relevant decisions made in their absence, pursuant to Crime Victims' Rights Act (CVRA); particular circumstances warranted balancing of victims' interest in reasonable, accurate, and timely notice of proceeding versus requirement that defendant be brought before magistrate judge without unnecessary delay. U.S. v. Turner, 2005, 367 F.Supp.2d 319. Criminal Law ⇨ 1220

3. Notice

Following initial appearance by mail fraud defendant, government was required to notify alleged victims of subsequent proceedings under Bail Reform Act and of subject matter of such proceedings, pursuant to Crime Victims' Rights Act (CVRA); information provided to victims was to enable them to make intelligent decisions

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whether to attend and seek to be heard when defendant's potential release was at issue. *U.S. v. Turner*, 2005, 367 F.Supp.2d 319. Criminal Law ⇌ 1220

4. Best efforts

Requirement of Victims' Rights Act that certain executive branch personnel use "best efforts" to secure for crime victims rights set forth therein was satisfied with respect to victim-impact witnesses in prosecution arising out of bombing of federal building by government's argument against sequestration of such witnesses made prior to district court's ruling barring them from courtroom during trial. *U.S. v. McVeigh*, C.A.10 (Colo.) 1997, 106 F.3d 325, rehearing denied.

5. Attorney client relationship

Sections of the Victims' Rights and Restitution Act giving crime victim the right to confer with government attorney in the case, and imposing on government attorney the duty to inform victim of any restitution or other relief, does not create a client-attorney relationship or a reasonable expectation of one. *U.S. v. Whittaker*, E.D.Pa.2001, 201 F.R.D. 363, reconsideration denied, reversed 268 F.3d 185.

6. Restitution

Government is obligated under the Crime Victims' Bill of Rights to assist crime victims to obtain restitution; where government attorneys believe that their ethical obligations to the United States require them to oppose a victim's restitution claim, they must still meet their "best efforts" obligations by referring the victim to another source of legal assistance. *U.S. v. Serawop*, D.Utah 2004, 303 F.Supp.2d 1259.

Right to restitution under the Victims of Crime Act, which was provided in context of sentencing convicted criminal, was not available in tort action against United States, absent showing that there was some ongoing or contemplated criminal prosecution. *Daugherty v. U.S.* N.D.Okla.2002, 212 F.Supp.2d 1279, affirmed 73 Fed.Appx. 326, 2003 WL 21666677.

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Current through P.L. 109-169 (excluding P.L. 109-162 through P.L. 109-164)
approved 1-11-06

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