



**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 prosecutors and judges the best practice for protecting a victim's right to have his or her interests considered when the court is deciding whether to grant a continuance in the case.

Factual Background

In April 2010, a defendant pleaded guilty to three counts of theft in a business setting and entered into a deferred entry of judgment agreement ("DEJ"). The terms of the DEJ were described but not finalized during the sentencing hearing. The primary requirement of the DEJ involved the payment of restitution. In July 2010, a restitution hearing was held at which the court took testimony from multiple victims to determine the amount of restitution owed. The defendant pledged properties as security for payment. The court expressed concern that the DEJ had not been reduced to writing. In August 2010, an additional restitution hearing was held at which the judge ruled on the amount of restitution owed. The first restitution payment was to be paid in November, 2010.

By July 2011, the DEJ remained incomplete because the defendant had not provided information about the pledged properties and had not signed the agreement. The restitution payment due in November, 2010, was not paid in full and additional payment due dates had passed without payment. The court ordered the prosecutor to prepare the DEJ in writing and to schedule the first of annual restitution payments for September, 2011.

In December, 2013, one of the victims in the case filed a complaint with the Board alleging that the defendant was not compliant with the terms of the DEJ and that the prosecutor was not addressing the noncompliance. The complainant alleged that every time there was a hearing to impose the sentence, the defendant would claim to be closing a sale on a property that could be used for restitution. The prosecutor would then move to postpone the hearing to enter judgment to allow the defendant to complete the impending sale, which would inevitably fall through. In the meantime, the defendant remained in violation of the DEJ without consequence.

The case involved multiple victims therefore the prosecutor had multiple interests to balance. Some victims wanted to keep the defendant out of confinement, believing it would maximize the potential for restitution collection. It was their preference that the entry of judgment be delayed.

Others, including the complainant, did not believe the defendant was sincere about paying restitution whether in confinement or not and wanted the judgment entered. Multiple continuances were requested by the prosecutor and defense and accepted by the court, as the defendant fell more and more behind in payments. The prosecutor and defense attorney conveyed to the court that continued deferral was in the interest of the victims. It was not clear to the Board whether the complainant's interest against further continuances (which he had conveyed to the prosecutor) was ever shared with the court.

Under its authority pursuant to Wis. Stat. § 950.09(2)(c), the Board may “[s]eek appropriate equitable relief on behalf of a victim if such relief is necessary to protect the rights of the victim.” Under this authority, the Board directed its legal counsel to send the presiding judge a letter, with copies to the prosecutor and the defendant's attorney, asking that the court schedule a status conference to which every victim would be invited, to ensure the court was able to consider the interests of each victim before the court next considered a request for a continuance in the case.

The presiding judge responded in writing, with copies to the prosecutor and defendant's attorney, directing the prosecutor to send each victim written notice of an upcoming hearing on the state's most recent motion to enter judgment. In the letter, the judge informed the parties that if parties proposed an adjournment of the hearing the court would give each victim the opportunity to address the court before considering the request. The prosecutor provided such notice and the complainant attended that hearing and had the opportunity to communicate his interests directly to the judge.

The court revoked the deferred entry of judgment agreement, and entered judgment against the defendant. The defendant was sentenced to 18 years: 3 years initial confinement and 15 years extended supervision, with the opportunity for early discharge after two years if restitution is paid.

Having ensured that the court was able to consider the interests of the complainant prior to ruling on the request for a continuance, the Board determined that no further relief was appropriate and that a Report and Recommendation would be issued concerning the matter.

Statutes Involved

Wisconsin Stat. § 950.04(1v)(ar) provides that a victim of a crime has the right “[t]o have his or her interest considered when the court is deciding whether to grant a continuance in the case, as provided under s[ec.] . . . 971.10(3)(b)3.”

Wisconsin Stat. § 971.10(3)(a) provides that “[a] court may grant a continuance in a case, upon its own motion or the motion of any party, if the ends of justice served by taking action outweigh the best interest of the public and the defendant in a speedy trial. A continuance shall not be granted under this paragraph unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of the continuance outweigh the best interests of the public and the defendant in a speedy trial.”

Wisconsin Stat. § 971.10(3)(b) provides that “[t]he factors, among others, which the court shall consider in determining whether to grant a continuance under par. (a) are:

1. Whether the failure to grant the continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice.
2. Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the periods of time established by this section.
3. The interests of the victim, as defined in s. 950.02(4).

Recommendations:

1. The Board recognizes that in cases with multiple victims, a prosecutor may encounter that victims have conflicting interests. It is important that all victims are given information about and equal access to the statutory processes that provide opportunities for victim input.
2. It is the duty of the prosecutor to not only inform a victim of his or her rights under s. 950.04 (1v) but also to give the victim information about *how to exercise those rights* even if the prosecutor knows the victim does not agree with his or her prosecutorial strategy. *See Wisconsin Stat. § 950.08(2r)(b).*
3. In this case, victims held different opinions about the impact of delays and continuances. The issue before the Board was not whether the prosecutor correctly balanced those interests—that is not an issue over which the Board has jurisdiction. The issue was whether all victims enjoyed the statutory right of having their interests considered by court when the court determined whether to grant continuances.
4. The ultimate decision about a continuance is made by the court. It is mandatory that the interests of statutory victims are considered prior to granting a continuance. If a prosecutor is aware that victims are not in agreement as a group, he or she should not refer to the victims as a group, implying that their interests are aligned.
5. In the case at hand, allowing the DEJ to remain incomplete and unsigned for the period of time it was pending was unacceptable. The DEJ should have been completed and put in writing to reflect the terms stated in court, according to the court’s order. Failure to do so greatly exacerbated the complainant’s sense that his interests were not being considered and that the defendant’s crimes were not taken seriously by the prosecutor.

Dated this 19th day of May, 2015.



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