

County of Santa Clara

Office of the District Attorney

County Government Center, West Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-7400
www.santaclara-da.org

FILED

AUG - 6 2014

DAVID H. YAMASAKI
Chief Executive Officer/Clerk,
Superior Court of CA County of Santa Clara
BY BRITNEY HUELBIG



Jeffrey F. Rosen
District Attorney

MEMORANDUM

To: Honorable Brian C. Walsh
Presiding Judge
Santa Clara County Superior Court

From: Jeff Rosen *JR*
District Attorney

Re: Response to Santa Clara County Civil Grand Jury Report
Victim Restitution – Promises Unfulfilled

Date: August 6, 2014

The June 2014 Civil Grand Jury Report [Victim Restitution – Promises Unfulfilled] contains two findings and recommendations regarding the District Attorney's Office.

Finding 1: *The District Attorney's Office has an important role in collecting victim loss information prior to the time the defendant is sentenced, but attention to completion of victim loss information is not consistent within the Office.*

Recommendation 1: *The District Attorney should develop ways to improve the collection of victim loss information prior to the time the defendant is sentenced.*

Generally, the sentencing practices are different depending on whether the defendant has been found guilty of a misdemeanor or a felony. For the most part, misdemeanor sentencing occurs immediately after the defendant's plea. Felony sentencing is commonly scheduled at least four to six weeks after the plea so that the matter may be referred to the Adult Probation Department for a pre-sentence report. The victim restitution owed, as determined by Probation, is generally relied upon by both parties and the Court.

Misdemeanor Cases

A. Determination of Amount Owed

Since the defendant is generally sentenced contemporaneously to his guilty plea in misdemeanor cases; if the loss is known, it has been the practice of the Court to order the

defendant to pay the loss amount and establish a monthly minimum payment for restitution at the time of sentencing. Although the Court will make a general order of restitution if the amount of loss is unknown, it is the best practice to provide the loss amount to the Court at time of sentencing.

Prior to November 2012, two staff members from the Victim Witness Assistance Center contacted victims to obtain statements of loss, records, and receipts so that the restitution amount could be proven to opposing counsel and the Court. In November of 2012, the Victim Witness Assistance Center informed the District Attorney's Office that their agency would no longer be able to provide a victim advocate to assist with misdemeanor victim restitution because that job fell outside the scope of the terms of their funding from the State of California's Department of Justice. After efforts to persuade the Department of Justice and the Victim Witness Assistance Center to change their interpretation of the funding guidelines failed, the victim advocate who had been doing all tasks related to misdemeanor restitution departed, and the District Attorney's Office took over the administrative tasks involved in misdemeanor restitution.

We currently have a support staff member dedicated full time to misdemeanor restitution. A letter is typed and sent to the victim with a "Statement of Loss Questionnaire" to determine the amount of restitution sought. Follow-up calls to the victim are made if necessary to clarify information provided or to obtain updated address information to send the letter. While we are pleased with how we collect misdemeanor loss information, additional staffing is paramount for improvement in this area. The sheer volume of misdemeanor cases [in any given week approximately 700 new misdemeanor cases appear for arraignment] presents the greatest challenge to our Office.

B. Payment Review Calendars

The majority of misdemeanor defendants are placed on court [also called "informal" or "summary"] probation. Defendants on court probation do not have a supervising probation officer. In mid-2007, now-retired Judge Randy Rice permitted Deputy District Attorney Kathy Storton to develop a system to file a "violation of probation" in those cases where defendants were on court probation. In September of 2008, a specific calendar for misdemeanor court probation cases involving restitution was instituted and that calendar continues today [every Wednesday morning in Department 42]. The Department of Revenue [DOR] refers cases where defendants are not paying or have fallen behind on payments to DDA Storton. These matters are reviewed by DDA Storton, a court date is selected, DOR sends the paperwork to the court and the court then notifies the defendant of the court date. The court then sets a payment plan and starts to monitor payments. If the defendant fails to appear in court, a bench warrant is issued. We are the only County in the State of California with this program.

It has become clear that if a defendant has to make regular court appearances, the incentive to pay victim restitution increases dramatically. In other words, court monitoring of victim restitution payments increases victim restitution payments.

Felony Cases

A. Determination of Amount Owed

There are many non-violent felony matters where the victim's financial loss is at the crux of the case [i.e., embezzlement, grand theft]. Depending on the totality of circumstances [including the defendant's criminal history], payment of full restitution prior to plea or sentencing will likely effect the negotiated disposition and/or sentence. In these cases, it is common for the prosecutor to actively work with the victim to ensure that the victim "is made whole."

Violent crimes often involve restitution [i.e., medical bills, counseling costs], but it is the violence and concern for community safety that takes priority in negotiating a disposition or advocating for a particular sentence. In other words, a convicted rapist will be responsible to pay for the victim's medical bills stemming from the attack. However, it is fair to state that payment of full restitution in a rape case will likely *never* result in a reduced sentence.

As noted above, felony cases generally involve a post-plea referral to the Probation Department. It is the practice of the Probation Department to contact the victim and inquire about victim losses. Historically, prosecutors have relied upon the Probation Department's pre-sentence report for determination of the restitution amount. However, we recognize that by the time the case is referred to Probation, a significant amount of time may have passed since the offense [perhaps one to two years], and the victim contact information may have changed. Therefore, it is beneficial to contact victims earlier in the procedural process specifically to determine financial losses.

When a felony case is filed, the victim receives written notification of the criminal charges and a copy of "Marsy's Law." Although Marsy's Law provides information on a victim's right to restitution, our standard letter does not specifically address restitution. To better serve our victims, we are drafting a new initial notification that will specifically advise the victim of his/her right to restitution. We will also include a "Statement of Loss Questionnaire" for the victim to fill out and return to our Office; thereby providing us with the necessary information much earlier in the case than is currently the practice. Additionally, we are discussing the ways to augment our website to better facilitate the reporting of losses.

Follow-up phone calls to victims to clarify information provided or to obtain updated address information to send the letter will require adjustment in our staffing. To that end, we have discussed establishing a Senior Volunteer program similar to the one we currently have in Consumer Mediation. For many years, we have benefitted from senior volunteers who mediate consumer complaints. The volunteers work a three (3) hour shift on different days of the week and were required to pass a background check and attend three (3) training sessions to be considered for a volunteer position. It must be noted that some of our volunteers have been here over 20 years, which underscores the successfulness of this program.

We are exploring the practicality of asking our current senior volunteers to assist in contacting victims for purposes of determining restitution amounts. Initial discussions with DA employees who oversee this program have been encouraging. Our goal, however, is to establish a new Senior Volunteer program devoted exclusively to restitution.

C. Payment Review Calendars

From 2007 to late 2013, a felony restitution payment review calendar operated in this County. However, that calendar has been disbanded by the Superior Court. During the operation of the calendar we noted that requiring the defendant to make regular court appearances increased the incentive to pay victim restitution. Re-instituting a felony restitution payment calendar is encouraged.

Finding 2: *The 2011 escheated victim restitution funds were sent by the Department of Revenue to the District Attorney's Office and were not deposited into a designated victim services account.*

Recommendation 2: *The District Attorney should deposit escheated victim restitution funds into an account designated for victim services.*

The District Attorney deposits escheated victim restitution funds into a separate Trust Fund, the Escheated Victims Restitution Fund. These funds are then transferred to the General Fund in order to cover the costs of a Senior Paralegal assigned to victim restitution responsibilities.

This process complies in full with California Government Code sections (50050-50057) that govern the use of escheated victim restitution funds, as well as with the Grand Jury's recommendation.

Conclusion

The Civil Grand Jury's findings and recommendations have been taken seriously and carefully reviewed. The Civil Grand Jury's report is appreciated as it invited us to look at areas where we can improve victim restitution. My staff has responded with creative solutions and I am confident that our work ethic and commitment to victim restitution will produce improvements.