

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**ADMINISTRATIVE ORDER 03-10**

(Amending the Superior Court Rules of Victims Compensation Program)

**WHEREAS** the Board of Judges of this Court have adopted new rules for the Crime Victims Compensation Program;

**NOW, THEREFORE**, it is by the Court

**ORDERED** that the Superior Court Rules of Crime Victims Compensation Program are amended as set forth below; and it is further

**ORDERED** that the above-enumerated rules shall take effect immediately and govern all claims hereinafter filed and, insofar as is just and practicable, all claims pending.

**AMENDMENTS TO THE  
DISTRICT OF COLUMBIA  
CRIME VICTIMS COMPENSATION RULES**

Rule 1. Purpose.

These rules govern the implementation of the Crime Victims Compensation Program ("Program") in the Superior Court of the District of Columbia ("Court"), as set forth in ~~D.C. Law 11-447, the "Victims of Violent Crime Compensation Act of 1996," effective December 6, 1996 and D.C. Law 11-243 the "Victims of Violent Crime Compensation Act of 1996," effective April 9, 1997~~ as amended, D.C. Code 4-501 et seq. The Program provides compensation to victims of violent crime for medical and related expenses, and loss of services, support and earnings.

Rule 3. Administration.

The Program, shall (a) investigate claims filed pursuant to D.C. Code § ~~3-421~~ 4-501 et seq., (b) obtain from agencies of the District of Columbia and the United States information, data and assistance to facilitate the determination of whether a crime was committed or attempted and whether the claimant is eligible for compensation, (c) process and maintain claims in the order filed, including claims filed under the Victims of

Violent Crime Compensation Act of 1981, (d) determine each claim filed and reinvestigate and reopen cases when necessary, (e) require and direct medical examinations of victims and secondary victims when necessary, (f) publicize the existence of the Program, and (g) provide printed informational materials about the program, including brochures and posters, in both English and Spanish.

Rule 5. Appointment and qualification of Advisory Commission members; designation of Chairperson; conduct of meetings.

(a) A Crime Victims Compensation Advisory Commission ("Commission") shall be established as set forth in D.C. Code § ~~3-424~~ 4-504 and shall consist of fifteen members, appointed by the Chief Judge of the Superior Court of the District of Columbia ("Chief Judge") to serve a three-year term, and until successors are appointed and qualified. An Advisory Commission member is eligible for reappointment at the expiration of the member's term.

(b) – (d) (unchanged)

Rule 6. Appointment of Crime Victims Compensation Appeals Board members and alternates; designation of Chairperson; conduct of meetings; compensable expenses; conflicts of interest.

(a) A Crime Victims Compensation Appeals Board ("Board") shall be established and shall consist of five members from among the qualified membership of the Advisory Commission, appointed by the Chief Judge to serve at his or her pleasure. At least one of the members must be an attorney. The Chief Judge may appoint qualified members of the Advisory Commission to serve as alternates on the Board in the event of the unavailability of a Board member. Three Board members shall constitute a quorum, provided that either the Chairperson or person designated to act as presiding officer in his or her absence is present.

(b) – (e) (unchanged)

Rule 7. Eligibility ~~of claimant~~ for compensation.

(a) A claimant is eligible for compensation if:

(1) The claimant suffered injury as a result of a crime;

(2) The crime upon which the claim is based was reported to appropriate law enforcement officials within seven days of its occurrence or, if it could not reasonably be reported within that time, within seven days of when it could reasonably have been reported;

(3) The claimant files a claim with the Crime Victims Compensation Program within 1 year of the occurrence of the crime, or within one year of learning of the existence of the program provided that the claimant makes an adequate showing that the delay in learning of the program was reasonable;

(4) The claimant was at the time of the crime:

(A) a person who suffered personal injury or death in the District of Columbia;  
(B) a resident of the District of Columbia who suffered personal injury or death as a result of a terrorist act or act of mass violence committed outside of the United States;

(C) a resident of the District of Columbia who suffered personal injury or death outside the District of Columbia in a state that does not have a crime victims compensation program that is eligible for funding under the Victims of Crime Act of 1984 (98 Stat. 2170, 42 U.S.C. 10601 et seq.), as a direct result of:

~~(A i)~~ a crime;

~~(B ii)~~ ~~lawfully~~ assisting lawfully to apprehend a person reasonably suspected of committing or attempting to commit a crime;

~~(C iii)~~ assisting a person against whom a crime has been committed or attempted if the assistance was rendered in a reasonable manner;

~~(D iv)~~ attempting to prevent the commission of a crime; or

~~(E v)~~ a violation of sections 9 or 10 of the District of Columbia Traffic Act (D.C. Code 50-2201.04 and 50-2201.05) or a comparable state law regarding driving violations; and

(5) The claimant was a victim, secondary victim, or a person (not a provider of services) acting on behalf of a victim or secondary victim.

(b) Factors to be considered in determining the reasonableness of the reporting time shall include, but are not limited to:

(1) the physical or mental incapacity of the victim;

(2) the age of the victim;

(3) whether the injury to the victim was reasonably discoverable;

(4) the lack of a police report through no fault of the victim; and

(5) the failure or non-cooperation of persons who could reasonably have aided the victim in filing a report;

A victim who does not report the crime to appropriate law enforcement officials may satisfy the reporting requirement (1) if he or she has been sexually assaulted, by ~~obtaining~~ seeking a sexual assault examination from a licensed medical treatment facility within a reasonable time period, ~~or~~ (2) if he or she is the victim of domestic ~~abuse~~

violence, by obtaining a civil protection order or (3) if he or she is the victim of cruelty to children, by the filing of a neglect petition. If a victim of domestic ~~abuse~~ violence is seeking assistance with temporary emergency housing and a civil protection order has not yet been issued but a temporary protection court order has been issued, the temporary protection order may satisfy the reporting requirement until the civil protection order is issued.

(c) An application for assistance may be denied in whole or in part if the Program finds that:

(1) Denial is appropriate due to the nature of the victim's or secondary victim's involvement in the events leading to the relevant crime; or

(2) The claimant failed to provide information to a requesting law enforcement agency or did not reasonably cooperate with law enforcement officials in apprehending the offender, except that refusal of a victim or claimant to testify against the offender may be excused if testifying would subject the victim or claimant to a substantial risk of serious physical or emotional injury.

Reasonable cooperation by the victim may include, but is not limited to, the following:

(A) Providing law enforcement officers with a true and accurate report of the crime;

(B) Participating in the investigation of the crime to assist law enforcement officers in the identification of a suspect; and

(C) Participating in prosecution procedures, including deposition, grand jury and trial.

(d) A claimant is not eligible for compensation if:

(1) The claimant/victim knowingly or willingly participated in or aided in the commission of the crime upon which the claim is based, as determined by evaluation of the Police Report, except that a secondary victim is not automatically ineligible for compensation under such circumstances;

(2) The claimant's/victim's consent, substantial provocation or substantial incitement caused the injury or death for which compensation is sought. Factors to be considered in determining consent, substantial provocation, and substantial incitement may include but are not limited to law enforcement documentation indicating:

(A) Whether charges were filed against the suspect;

(B) Whether the victim attempted to withdraw from the incident;

(C) Whether the victim deliberately provoked the offender by means of fighting words, racial or other bias-motivated taunting, or by threats coupled with overt actions indicating the victim's intent to carry out the threats;

(D) Comparable or reasonable force on the part of the suspect in response to an action of the victim;

(E) The amount of time from the beginning of the interaction between the victim and the suspect and the criminal act committed by the suspect;

(F) The age of the victim; and

(G) Comparable size or strength of the victim and suspect.

(e) Gang membership or co-habitation with the offender is not a disqualifying factor under this ~~subsection~~ rule, unless the claimant would be substantially and unjustly enriched by an award.

(f) The award of compensation to the claimant shall not enrich the offender except in extraordinary circumstances where the interests of justice so require. Factors to be considered in determining whether an offender will be unjustly enriched shall include, but are not limited to:

(1) Whether the claimant is cooperating with law enforcement officers in the investigation and prosecution of the crime;

(2) Whether the offender will have access to the compensation paid to the claimant or a service provider on behalf of the victim;

(3) The claimant's familial relationship to the offender; and, or

(4) The presence of the offender in the claimant's household at the time of the award.

#### Rule 8. Filing of application.

A claim is considered filed when the claimant submits a completed Application for Crime Victims Compensation ("Application"), to the Program Office. The Application may be mailed or delivered in person to the Program Office. If a person eligible for compensation is a minor or legally incompetent, a claim may be filed on such person's behalf by the person's parent, guardian or personal representative.

COMMENT: The intent of the Rule is to allow guardians ad litem, even if not specified in the Rule, to file claims on behalf of minors or legal incompetents.

Rule 9. Contents of application.

The application for a claim shall contain the following:

- (a) Information or facts sufficient to establish eligibility;
- (b) Whether the claim is for injury, death benefits, ~~temporary emergency housing, crime scene clean-up, replacement value of clothing kept as evidence or other~~ compensable economic losses, or an emergency award;
- (c) Whether the claimant is a victim, a secondary victim or a person (not a provider of services) acting on behalf of the victim;
- (d) A description of the injury or death, date of crime, and any known information concerning the offender;
- (e) The name, address, phone number, social security number, birth date, sex, and primary language of the victim and/or the claimant;
- (f) The name(s), address(es), social security number(s), birth date(s), sex and marital status of all dependents;
- (g) Itemizations of:
  - (1) out-of-pocket expenses;
  - (2) medical expenses;
  - (3) collateral sources of income, including restitution;
  - (4) income;
  - (5) loss of earnings;
  - (6) loss of support;
  - (7) loss of services;
  - (8) funeral expenses;
  - (9) cost of temporary emergency food and housing ~~for domestic abuse victims~~;
- and**
- (10) cost of replacement value of clothing kept as evidence;

- (11) cost of cleaning the crime scene;
- (12) cost of replacement doors, windows, locks or other items to secure the victim's home;
- (13) cost of rental car for the period the victim's automobile is being held by the police as evidence or to collect evidence;
- (14) expenses for moving where necessary for health and safety; and
- (15) transportation expenses incurred by the victim or secondary victim for the following purposes:
  - (i) to participate in court proceedings;
  - (ii) to participate in the investigation or prosecution of the case;
  - (iii) to obtain medical care, supplies or equipment;
  - (iv) in the case of secondary victims, to obtain psychiatric, psychological, or mental health counseling required as a direct result of the crime;
  - (v) in the case of victims, to obtain physical or occupational therapy and rehabilitation;

or

- (vi) to obtain any other services required as a direct result of the crime.

(h) A declaration of subrogation and suit notification to be signed by the claimant;

(i) An information release authorization, including a written waiver of the physician-patient privilege regarding all medical records relating to the victim's injuries, and an affirmation to be signed by the claimant; and

(j) Such other information as the Program reasonably may require.

#### Rule 16. Procedure for claim determination.

(a) Upon the receipt of verification requests, a claims examiner of the Program shall process and initially determine whether a claimant qualifies for program benefits. If the claimant is eligible for benefits, the claim examiner shall evaluate crime related losses, and:

(1) May refer claimant to collateral sources;

(2) Shall contact providers to confirm payments from collateral sources and/or the victim's receipt or entitlement to such payment;

(3) Shall compute entitlement to Program benefits ~~such as loss of earnings or support, and clothing reimbursement~~;

(4) Shall prepare payment requests for approval by the Director and transmittal to the ~~Financial~~ Budget and Finance Operations Division of the Superior Court; and

(5) Shall make appropriate deductions in compensation where the conduct of the victim in the crime causes a partial denial of compensation.

(b) If verification is not received, the claim may be processed, but the provider from whom pending documentation has not been received shall be sent a letter informing the provider that benefits will be considered only upon receipt of verification;

(c) Upon recommendation of denial of a claim, the claims examiner shall explain and document the reasons for denial, and forward the file to the Director for final decision.

Rule 20. Appeal of determination or decision on reconsideration.

(a) – (g) (unchanged)

(h) All witnesses shall testify under oath or by affirmation. All hearings shall be recorded by a court reporter or an electronic sound recording device, and maintained as the Board directs. The Program may examine the claimant and all witnesses.

(i) – (k) (unchanged)

Rule 23. Computation of compensation award.

(a) The compensation award shall be equal to the claimant's economic loss decreased by the amount received or available to the claimant from any emergency payments and collateral sources including payments and benefits from:

(1) The person who committed the crime, or someone on his or her behalf;

(2) A wage continuation program of an employer;

(3) A contract of life, health, disability, liability, or fire and casualty insurance, or a contract providing prepaid hospital or health care benefits;

(4) Proceeds of a lawsuit brought as a result of a crime;

(5) Life Insurance proceeds of more than \$50,000; and

(6) The United States, the District of Columbia, a state or territory of the United States or its political subdivisions, or an agency of the foregoing, including Social

Security, Medicare, Medicaid, Workers' Compensation, ~~and~~ Public Employees' Disability Compensation, the Department of Human Services, the Department of Health, the Child and Family Services Agency, and Court Social Services.

(b) Compensation awards may be reduced if it is determined by the Program that a reduction is warranted due to the nature of the victim's involvement in the events leading up to the crime, or the claimant's failure to cooperate with law enforcement officials.

Rule 25. Funeral, burial or cremation expenses.

Compensation of up to ~~\$3,000~~ \$6,000 may be awarded for reasonable expenses incurred for actual services related to funeral, burial or cremation. Compensation shall not be payable ~~for transportation of family members to make burial arrangements or attend funeral services, or~~ for clothing for the victim's family members or dependents.

Rule 26. Crime scene clean-up.

Compensation of up to \$1000 may be awarded to claimants for reasonable costs associated with cleaning up the crime scene. Compensable items include the reasonable cost of cleaning supplies, rented or purchased equipment necessary for cleanup, and labor associated with the cleanup. Except as otherwise provided in these rules, ~~No~~ reimbursement shall be awarded to replace or repair property damaged as a result of the crime, i.e., ~~windows, doors, carpets or paint.~~

Rule 28. Loss of earnings.

Loss of earnings may be compensated for a total period of up to 52 weeks after the date of the crime, in an amount not to exceed the lesser of 80 % of the victim's net pay ~~or~~ \$10,000. An award of loss of earnings shall be subject to ongoing review, based on the claimant's average earnings at the time of the crime, and computed and paid out periodically in accord with guidelines established by the Program. If the victim was unemployed, was receiving unemployment compensation at the time of the crime, and the compensation was terminated because the victim no longer qualified for compensation as a result of circumstances relating directly or indirectly to the crime, an award may be made in the amount of money the victim would have received in unemployment compensation benefits but for the crime.

Rule 29. Temporary emergency food and housing.

Upon referral by a prosecutor, law enforcement officer, judicial officer, or victims advocate, ~~the~~ cost of temporary emergency food and housing for a period of up to

~~ninety (90) 120 days may be awarded to battered partners and minor children. Temporary housing awards are subject to the following limitations and conditions:~~

~~(a) . The maximum award shall be limited to a rental deposit, where required, of up to \$700 and \$700 per month rental per family unit, or a maximum award of \$2,100 for temporary emergency housing shall be \$3,000. The maximum award for emergency food shall be \$400. No award shall be made for temporary emergency housing until a victim has exhausted all benefits under any program administered by the U.S. Attorney's Office including the U.S. Attorney's Emergency Witness Assistant Program.~~

~~(b) Claims for temporary housing must be substantiated by tangible proof of the cost of the newly acquired housing, including, but not limited to, a copy of a new lease or a landlord's statement of rental cost issued on official letterhead, copies of bills, canceled checks or vouchers to cover utility bills.~~

~~(c) Emergency awards for temporary housing are subject to the same limits prescribed in Rule 33.~~

#### Rule 30. Loss of support.

Loss of support for dependents resulting from death or disability shall be limited to \$2,500 per dependent not to exceed \$7,500 per victimization.

(a) Surviving Spouse. If the claimant is the surviving spouse with or without a dependent child or children, the Program shall:

(1) Determine the victim's average net weekly income for the three (3) months immediately preceding the crime and multiply by 52, or if the victim was ~~for~~ self-employed ~~victims~~, the net annual profit for the calendar year immediately preceding the crime, subtracting the tax liability for social security tax, federal income tax, city income tax and local wage taxes to establish the net adjusted profit;

(2) Attribute 80% of the net adjusted profit or income as support to the surviving dependents;

(3) Multiply the net annual loss of support by the number of years of expected support.

(b) Guardian. If the claimant is a guardian of the dependent child or children of the victim, the Program shall:

(1) Determine the victim's net annual income for the twelve (12) months immediately preceding the crime, or if the victim was ~~for~~ self-employed ~~victims~~, the net annual profit for the calendar year immediately preceding the crime, subtracting the tax-, liabilities for social security, Federal income tax, city income tax and local wage taxes to establish the net adjusted profit;

(2) Attribute 80% of annual income or the net adjusted profit as support to the surviving dependent or dependents;

(3) Determine the number of years until the dependent or dependents shall attain the age of 18 and could have reasonably expected to be supported by the victim;

(4) Multiply the number of years of expected support by the net annual loss of support; and

(5) Prorate the award among the dependent children.

(c) Principal Supporter. If the victim is or was responsible for the principal support of the claimant the Program shall determine the amount of annual support provided by the victim to the claimant and multiply the net annual amount of support contributed by the victim to the claimant by the number of years during which support could have been expected.

(d) Pensioner. If the victim was a pensioner, the Program shall attribute 80% of all pension income received by the victim as support to the claimant. The claimant must submit documents to show the amount of support received from the pensioner.

#### Rule 32. Securing residence.

Compensation of up to \$1,000 may be awarded for the reasonable cost of replacement of doors, windows, locks or other items necessary to secure the victim's home or other place of residence, except that the costs of guard dogs, other animals, guns or other weapons shall not be awarded.

#### Rule 33. Rental car.

Compensation of up to \$2,000 may be awarded for the reasonable cost of a rental car for the period of time that a victim or secondary victim's automobile is being held by the police as evidence or to collect evidence.

#### Rule 34. Moving expenses.

Upon referral by a prosecutor, law enforcement officer, judicial officer, medical or mental health services provider, or victims advocate, compensation of up to \$1,500 may be awarded for reasonable moving expenses where necessary for health or safety. No award shall be made for moving expenses until a victim has exhausted all benefits under any program administered by the U.S. Attorney's Office including the U.S. Attorney's Emergency Witness Assistant Program.

Rule 35. Transportation expenses.

Up to \$500 for necessary out of state travel and up to \$100 for all local transportation, not to exceed a total of \$600 per claim, may be awarded for reasonable transportation expenses incurred by the victim or secondary victim for the following purposes:

- (1) to participate in court proceedings;
- (2) to participate in the investigation or prosecution of the case;
- (3) to obtain medical care, supplies or equipment;
- (4) in the case of secondary victims, to obtain psychiatric, psychological, or mental health counseling required as a direct result of the crime;
- (5) in the case of victims, to obtain physical or occupational therapy and rehabilitation;  
or
- (6) to obtain any other services required as a direct result of the crime.

Rule ~~32~~ 36. Payments of Claims.

Awards may be paid in a lump sum, in trust, in installment payments or may be paid directly to a provider of medical services or for other expenses relating to economic loss.

Rule ~~33~~ 37. Emergency awards.

Emergency awards not exceeding \$1,000 may be made when it appears likely that a claimant will be approved for compensation. Awards will only be granted where a claimant can show a compelling need or that the claimant is unable to afford the basic necessities of food, clothing and shelter, as a direct result of the crime that is the basis of the claim. To receive an emergency award, a claimant must produce law enforcement verification evidencing that a crime has been committed, written proof of the financial emergency (e.g., a notice of eviction from the landlord, a shut-off notice from the utilities company, other correspondence, bank records or other documents which demonstrate an inability to overcome the emergency, and if the financial emergency is caused by a wage loss, a letter or certificate from the employer stating that the victim was employed in good standing but cannot work due to the incident, and that the victim does not have any sick leave benefits available. If compensation is awarded, the Program shall deduct the amount of the emergency award from any final award. If the emergency award is greater than the final award, the claimant must repay the difference. If compensation is not awarded, the claimant must repay the emergency award in its entirety.

Rule ~~34~~ 38. Availability of monies in the crime victims fund.

(a) All compensation awards are subject to the availability of monies in the Fund. No compensation payments shall be made which exceed the amount of money in the Fund. The Court is not liable for a Final Determination of an award of compensation except to the extent that unencumbered monies are available in the Fund on the date the award is ordered.

(b) All compensation awards shall be paid in the order that they are forwarded to the ~~Financial~~ Budget and Finance Operations Division of the Court by the date of the Request for Payment. When a Final Determination for an award is made and forwarded to the ~~Financial~~ Budget and Finance Operations Division, the funds for payment of the award are thereby encumbered.

(c) If there are insufficient funds to pay an award, the claimant may agree to a proportional reduction of benefits. This reduction of benefits may be agreed to in order to receive compensation payments at an earlier date. A claimant who accepts a proportional reduction of benefits waives entitlement to the remaining portion of the settlement and thus may not in future years file for the amount of the reduction in claims.

Rule ~~35~~ 39. Attorney's fees.

(a) Reasonable fees and costs may be awarded to an attorney for services rendered only in connection with an appeal proceeding under the Act.

(b) No attorney may charge, demand, receive, or collect any fee for services rendered on any claim appeals proceeding in any amount larger than \$500 or 10% of the claimant's award, whichever is less, as set forth in D.C. Code § ~~3-432(g)~~ 4-512(g).

(c) If a claimant designates an attorney to represent the claimant's interests in the claim appeals proceeding, such attorney shall file a notice of appearance with the Program. Such notice shall remain in effect unless the party represented files with the Program a written discharge of the attorney, the attorney, with the consent of the claimant, files with the Program a written statement of withdrawal from the case, or the attorney makes an oral statement of withdrawal from the case on the record at the hearing, and states the reason for said withdrawal.

(d) To receive compensation for attorney's fees, the claimant or the claimant's attorney must file with the Program a statement of services listing the nature of each service rendered, the amount of time spent in rendering each service and the hourly rate charged by the attorney to claimant for the services performed.

(e) If an attorney asserts a false claim as to the services rendered or the time spent, the Program may reduce or deny the attorney's fee, in whole or in part.

Rule ~~36~~ 40. Restitution, subrogation, and preservation of civil action.

An award under these rules shall not affect the claimant's right to recover damages from the offender or third parties, or to obtain restitution from the offender. Upon applying for compensation, where a claimant recovers damages or receives restitution, a claimant must sign an agreement subrogating the District of Columbia to the claimant's right against the offender or third parties to the extent of any compensation awarded by the Program. On the application for compensation, the claimant must sign a declaration that the claimant will notify the Program of the institution of any suit against the offender for damages or restitution.

Rule ~~37~~ 41. Prosecution of false claims.

Upon a finding that a claim has been falsely asserted, the Program shall refer the claim to the appropriate law enforcement agency for investigation.

**SO ORDERED.**

**By the Court:**

**March 14, 2003**

**/s/**  
\_\_\_\_\_  
**Rufus G. King, III**  
**Chief Judge**

Copies:

**All Judges**  
**Magistrate Judges**  
**Executive Officer**  
**Clerk of the Court**  
**Division Directors**  
**Attorney Advisor**  
**Mildred Bailey, Librarian**  
**District of Columbia Bar**  
**Public Defender Service**  
**United States Attorneys Office**  
**Superior Court Trial Lawyers Association**  
**District of Columbia Association of Criminal Defense Lawyers**