

MINUTES

**Supreme Court's Advisory Committee
on the Rules of Criminal Procedure**

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

January 21, 2014

ATTENDEES

Patrick Corum- Chair
Judge Michele Christiansen
Judge Brendan McCullagh
Judge Vernice Trease
Craig Barlow
Jeffrey Gray
Craig Ludwig
Steven Major
Cara Tangaro

EXCUSED

Professor Jensie Anderson
Vincent Meister
Douglas Thompson

STAFF

Brent Johnson

I. WELCOME / APPROVAL OF MINUTES

Patrick Corum welcomed the committee members to the meeting. Craig Ludwig moved to approve the minutes from the previous meeting. Craig Barlow seconded the motion. The motion carried unanimously.

II. RULE 7 - UPDATE

Staff stated that at a recent meeting with the members of the Supreme Court they asked staff to get feedback from law enforcement agencies about the proposed change from 48 hours to 24 hours. Staff stated that he had received feedback from law enforcement agencies and they are not opposed to the amendment. Most of them are already doing reviews within 24 hours. The only concern expressed was that some rural areas might have difficulty complying in certain cases. Staff stated that, based on this information, the Supreme Court will probably make the rule effective sooner than anticipated.

III. RULE 40 - GPS WARRANTS

Vincent Meister was not at the meeting and therefore this item was postponed until the next meeting.

IV. RULE 14 - SUBPOENAS

Patrick Corum stated that he has been attempting to communicate with the Utah Crime Victims Clinic about his proposal. He stated that he recently discovered that his previous contact with the clinic no longer works there. He will therefore be working with Heidi Nestel and he will have a proposal ready for the next meeting.

V. REORGANIZATION OF THE RULES

Judge McCullagh stated that he has been working on the proposal and has created five distinct sections. He noted that the word "paper" is used throughout the rules and he wants to communicate with Tim Shea on how the Committee on the Rules of Civil Procedure has been dealing with this issue in light of e-filing. Judge McCullagh stated that he will have an outline of the sections by the next meeting.

VI. FALKNER V. LINDBERG

Judge McCullagh stated that he has a proposal to address the issue raised by Falkner and he will present it at the next meeting. Judge McCullagh stated that the proposal will clarify that the district court retains jurisdiction to reinstate an appeal and that if an appeal is reinstated the stay provisions under rule 27A and rule 27B will be put back into place. Cara Tangaro stated that there is an issue in her area because they do not receive scheduling notices from the district court on justice court appeals. She stated that she follows up on Xchange to find out when hearings are scheduled, but there are new attorneys who do not know that they should do this. Judge Vernice Trease stated that she thought Falkner was an aberration and a rule change is not necessary. Judge McCullagh stated that the case is not an aberration and he has seen it in other matters. Staff also stated that he has received several other petitions for extraordinary relief on the issue.

Craig Barlow asked whether there would be a standard for reinstatement, such as "good cause." Judge McCullagh stated that there will not need to be a standard because the bases for reinstatement will be straightforward. Mr. Corum asked whether Judge McCullagh would be presenting a proposal to define abandonment. Judge McCullagh stated that abandonment is defined by case law and the proposal will simply state that if a court finds abandonment, it will have jurisdiction to reinstate the appeal as may be appropriate.

VII. E-FILING RULES

Staff stated that he had received a request from Debra Moore, District Court Administrator, for a rule change requiring prosecutors to put citation numbers in informations. Judge McCullagh suggested that there also be a requirement to put in the law enforcement agency number. Judge McCullagh will draft a proposal as a part of his rule review.

VII. OTHER BUSINESS

Judge Trease asked whether Mr. Meister's committee on GPS procedures will also be addressing provisions on cell phones. Judge McCullagh stated that it is a good idea to address cell phone issues, but it might be possible to handle this through a template on the e-warrant system, without the need for a rule change. Mr. Barlow asked whether there will be proposals that are device specific, noting that technology is constantly changing and therefore provisions should be generic. Judge McCullagh stated that the templates should be developed first and then the committee can determine whether rule changes are necessary. Jeffrey Gray stated that the Fourth Amendment does not automatically require notice to those subject to a search, and therefore, for GPS and similar warrants, the rule could simply state that notice is required unless good cause is shown.

IX. ADJOURN

The meeting adjourned at 1:00 p.m. The next meeting is scheduled for March 18, 2014 at noon.