

Approved

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 15, 2013

ATTENDEES

Laura Dupaix - Chair
Judge Vernice Trease
Diane Abbeglen
Craig Barlow
Patrick Corum
Craig Ludwig
Vincent Meister
Todd Utzinger

EXCUSED

Judge Michele Christiansen
Judge Brendan McCullagh
Jeremy Delicino
Steven Major

STAFF

Brent Johnson

GUESTS

Heidi Nestel

I. WELCOME / APPROVAL OF MINUTES

Laura Dupaix welcomed the committee members to the meeting. Todd Utzinger moved to approve the minutes from the previous meeting. Craig Barlow seconded the motion. The motion carried unanimously.

II. PROPOSAL FROM THE CRIME VICTIMS CLINIC

Ms. Dupaix welcomed Heidi Nestel to the meeting. Ms. Nestel stated that she is from the Crime Victims Clinic, which is a non-profit organization that was created eight years ago. Ms. Nestel stated that the representatives of the clinic spend a lot of time in court and they have a lot of experiences with court processes. Ms. Nestel stated that Utah has good victims laws and therefore the primary issue in Utah is enforcing the laws. Ms. Nestel stated that she has traveled to conferences throughout the country and it is evident that Utah does very well. Ms. Nestel stated that she has learned that other states have developed a victims colloquy for judges to give at the beginning of proceedings. Ms. Nestel noted that victims do not have the benefit of legal counsel and it would be helpful to have a colloquy to explain victims rights. Ms. Nestel distributed a proposal to amend rule 35. Ms. Nestel also distributed examples of what other states have done in this area. Ms. Nestel stated that she did not know whether this would take the

form of a specific script for whether judges or judges would be provided the general concepts from which they could work.

Ms. Dupaix stated that she sees this more as a notice issue and not a court requirement that judges do a colloquy. Ms. Dupaix stated that at the beginning of court proceedings all victims who are interested in the day's calendar might not be present. Ms. Dupaix stated that her experience is that people are often going in and out of courtrooms, depending on when their cases might be called. Vincent Meister noted that, for defendants' first appearances, a video is shown explaining defendants' rights. Mr. Meister suggested that a video could be used for victims and it would remove judges from potentially being in the position of receiving questions from victims at the end of the colloquy. Mr. Meister also stated that with electronic filing, the notices explaining victims rights will automatically be generated by the prosecutor's office and sent to the victims. Judge Vernice Trease asked about the potential consequences from the rule because the proposal states that it "shall" be given. Ms. Nestel stated that there is already a statute in place that will govern these issues. The statute allows a victim to raise certain issues, and allows the judge to consider whether a plea should be set aside based on whether the outcome may have been different if the victim had been allowed to speak. Ms. Dupaix asked whether notice of victims' rights is currently posted outside of courtrooms. Ms. Nestel stated that they are not currently posted, but she will be working with the Administrative Office of the Courts to see if those can be posted.

Ms. Dupaix stated that everyone seems to agree with the concept of notifying victims of their rights, but wondered whether a colloquy is the best mechanism. Ms. Nestel stated that, in her area, victims are usually there at the beginning of proceedings and it would work for the colloquy to be given in her area. Ms. Nestel stated that, no matter what, her organization is hoping for a regular, on-going process for the courts. Mr. Barlow asked whether a colloquy would be given at the beginning of trial. Ms. Nestel stated that the colloquy would not be given at the beginning of trial because the statute does not give victims the right to be heard at the trial. Mr. Barlow noted that there have also been issues about saying "victim" versus "alleged victim." Ms. Nestel stated that the statute defines a victim as one against whom a crime is alleged to have been committed. Mr. Meister stated that he believes the objectives can be accomplished by posting notices outside the courtrooms, along with the prosecutors sending notices. Ms. Nestel stated that her organization is open to all suggestions and maybe those steps can be tried. Ms. Nestel stated that her organization would like the courts to be more involved. Todd Utzinger agreed that posting notices would be best because it would otherwise be hit and miss on who would be in the courtroom when a colloquy is given. Mr. Meister stated that his office often has victims intentionally outside the court to prevent any interaction between victims and defendants and defendants' families.

Ms. Dupaix asked whether judges currently have a crib sheet to ensure that they address victims rights in court proceedings. Judge Trease stated that each judge does things differently. Judge Trease stated that most judges are aware of the issues and will ask prosecutors about victims. Judge Trease stated that this is most important before plea hearings and before sentencing. Mr. Meister stated that if attention is brought to a victim at the beginning of a proceeding the victim may be more likely to become a target of the defendant. Mr. Meister

stated that this is already an issue in many cases. Ms. Dupaix suggested that other rules be amended, such as rules 11 and 22, to remind judges to address victims issues at the time of taking a plea and at the time of sentencing. Ms. Dupaix noted that the examples from other states seem to take this approach. Mr. Meister stated that the three important proceedings are bond hearings, plea hearings, and sentencing. Ms. Nestel stated that she will take the committee's input and present additional proposals at the next meeting.

III. RULE 40

Mr. Meister stated that he had discussed with law enforcement officials the issue of sealing search warrants and they expressed a concern about cold cases. Mr. Meister stated that some cases may go unresolved for many years and there would be a burden on law enforcement to have to request sealing every six months. Mr. Meister stated that they are proposing that the six month renewals occur for a period of up to three years and after that time law enforcement could request indefinite sealing to protect the investigation until the case is revived in some manner. Patrick Corum expressed concerns about First Amendment issues when there is an indefinite sealing. Mr. Corum stated that sealing for relatively short periods is justifiable, but there should still be a burden on law enforcement to request additional six month periods. Ms. Dupaix noted that the media and the public could still seek an unsealing of the record during the extended periods. Mr. Corum asked why three years should be the standard. Mr. Meister stated that ninety-eight percent of all cases are finished within three years and at that point cases that are open are typically open for much longer periods. The committee agreed that this issue should be discussed at the next meeting after all the comments are received on the rule.

IV. OTHER BUSINESS / ADJOURN

Staff distributed proposed rule amendments making the language in the rules gender-neutral. Staff stated that the committee members should review the proposals and suggest changes as appropriate. The next meeting is scheduled for March 19.