

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, 2008

ATTENDEES

Craig Barlow
Judge Michele Christiansen
Patrick Corum
Laura Dupaix
Julie George
Samuel Harkness
Judge Bruce Lubeck
Craig Ludwig
Professor Eric Luna
Steven Major
Judge Brendan McCullagh
Vincent Meister

STAFF

Matty Branch
Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Laura Dupaix welcomed the committee members to the meeting. Craig Barlow moved to approve the minutes of the last meeting. The motion carried unanimously.

II. RULE 38

Judge Brendan McCullagh distributed proposed amendments to Rule 38. Judge McCullagh stated that current Rule 38 doesn't provide a clear procedure for justice court appeals. Judge McCullagh stated that the proposed rule will include a standard notice of appeal. The standard notice will include information such as address, the type of appeal, and whether the defendant is in custody.

Judge McCullagh noted that the current rule requires the justice court to send documents to the district court within twenty days. Judge McCullagh stated that this period is too long and

proposes five days. The proposed process will also require the district court to hold a hearing within five days to determine the issues to be resolved on appeal. The proposed rule also discusses the process for waiving a trial de novo and when an appeal is considered abandoned.

Craig Barlow asked what would happen to the justice court file after the district court case is completed. Judge McCullagh stated that the justice court will retain its file and destroy it according to the retention schedule. Laura Dupaix asked whether there will be a requirement that the district court notify the justice court of its disposition. Judge McCullagh stated that there will be. Patrick Corum asked how a defendant would be able to ask a court to reconsider a conclusion that a defendant abandoned an appeal. Judge McCullagh stated that he will clarify that process in the rule. Julie George asked whether the defendant's signature will be required for a dismissal. Judge McCullagh stated that dismissals will usually occur in court, and will be on the record, and therefore a defendant's signature will not be required.

The committee engaged in some discussion about which court would deal with probation violations. Judge McCullagh noted that the justice court judgment still exists and the justice court should probably be the one to deal with those violations if the judgment is not stayed. Judge McCullagh stated that he will amend the rule to provide clarification. Vincent Meister stated that the process should provide for efficiency so that a defendant does not have to go to different courts. Professor Eric Luna stated that he understands the efficiency argument, but the process should also negate any potential for judge-shopping, and the process should be consistent in every case. Mr. Meister stated that the rule should also include a provision requiring the record of subsequent events in justice court to be transmitted to the district court within five days. Judge McCullagh will make changes and bring the rule back at the next meeting.

III. RULE 27

Judge McCullagh also distributed proposed amendments to Rule 27. Judge McCullagh noted that the current rule is not organized very well and he has reorganized the rule and clarified that the rule will apply in courts of record, with a new Rule 27A applying to courts not of record. Judge McCullagh briefly explained the structural changes. There was no further discussion on this rule.

IV. RULE 27A

Judge McCullagh distributed a proposed new Rule 27A. Judge McCullagh stated that there are three separate processes covered by the rule. The first is a stay of a case in which a defendant is only ordered to pay a fine. The second is when a defendant is ordered incarcerated for less than 30 days. The third is incarceration for more than 30 days.

The process for incarceration less than 30 days includes a presumption that a stay will be granted. A defendant is not required to file a motion to obtain a stay. The notice of appeal serves

as the request. A judge can deny a stay if the judge finds that there is a safety risk to an individual or the community.

For incarcerations of 30 days or more, the rule proposes a process with time lines. Judge McCullagh also proposed a provision that would allow the court to deny the request based on the appeal being untimely. The court will also consider safety factors in determining whether to grant the certificate of probable cause.

After some discussion, Laura Dupaix suggested that committee members review the rules and submit any comments to Judge McCullagh in advance of the next meeting. Comments should be submitted by February 15 so that Judge McCullagh can make any changes and distribute the rules prior to the next meeting. The committee scheduled its next meeting for March 11, 2008 at 5:15 p.m. The committee members thanked Judge McCullagh for his work on the rules. The meeting adjourned at 7:00 p.m.