

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

November 14, 2006

ATTENDEES

Patrick Corum
Laura Dupaix
Julie George
Judge Bruce Lubeck
Craig Ludwig
Professor Erik Luna
Steven Major
Judge Sheila McCleve
Judge Brendan McCullagh
Vincent Meister
John O'Connell
Michael Wims

GUEST

Paul Boyden

Staff

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Michael Wims welcomed the committee members to the meeting. The minutes from the last meeting were approved.

II. RULE 40

Paul Boyden distributed the latest version of Rule 40. Mr. Boyden noted that members of the Board of District Court Judges had submitted comments and questions. The first question was whether lines 26 through 33 on taking property in the possession of a non-party were constitutional. The committee members agreed that the provisions are constitutional and are necessary to protect third parties. The committee members then discussed whether the return needed to be given to the magistrate who issued the warrant. The committee members agreed that the return could be given to any magistrate of the issuing court.

The committee members also discussed whether the return needed to be verified by the magistrate. Vincent Meister stated that he did not recall any case in which the verification was

an issue. The committee members agreed that the return need only be signed by the officer, and not the magistrate.

John O'Connell questioned the language which permits a nighttime warrant when the officer "states a reason to believe a search is necessary in the night." Mr. O'Connell stated that this decision should not be left to the officer, who could obtain a nighttime warrant simply by stating a reason. The committee members agreed that the language should be changed to require "sufficient grounds" to believe a search is necessary in the night.

The committee members then discussed whether all warrants should be sent to the district court. The issue arose because justice court magistrates often do not know what the charges are and whether they need to send the warrant documents to the district court. The committee members discussed the pros and cons of a central repository and ultimately decided not to address the issue in rule. The committee members agreed that the language requiring a justice court judge to send warrants to the district court could be eliminated. The courts could then administratively decide whether each court should keep its warrants or create a central repository.

The committee members then voted unanimously to approve the rule for public comment.

III. RULE 15.5

Matty Branch had distributed a memo from the Supreme Court in which the court asked the committee to again address changes to Rule 15.5. Mike Wims stated that the committee will form a joint subcommittee with the Evidence Advisory Committee to address appropriate changes. The representatives from the Criminal Procedure Committee will be Judge Brendan McCullagh and Patrick Corum.

IV. OTHER BUSINESS

Staff raised the question of whether recent amendments to Rule 12 adequately reflected the intentions of the committee. The original rule proposal by Rob Heineman did not contain references to subparagraphs from § 76-3-402. The committee added subsections after public comment. Adding subsections limits post-sentencing 402 motions to a very small set of cases. The committee members decided to think about this question and address it at the next meeting. The next meeting was scheduled for January 23, 2007. There being no further business, the committee adjourned at 6:45 p.m.