

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 20, 2002 - 5:15 p.m.

ATTENDEES

Michael Wims
Judge Thomas Wilmore
Judge Shauna Graves-Robertson
Laura Dupaix
Judge Bruce Lubeck
Craig Ludwig
Robert Heineman
Professor Erik Luna
Mary Corporon

EXCUSED

Judge Sheila McCleve
Steve Major
John O'Connell
Vincent Meister

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Michael Wims welcomed the Committee members to the meeting. A motion was made to approve the minutes from the February 2, 2002 meeting. The motion carried unanimously.

II. RULE 21 AMENDMENT

Michael Wims stated that recent legislation changing "guilty and mentally ill" to "guilty and mentally ill at the time of the offense," required a similar change to rule 21. Mr. Wims also noted that, because the legislation was only a procedural change, the change should only apply to individuals after May 6, 2002. Professor Luna questioned whether it was still necessary to include "not guilty of the crime charged but guilty of a lesser offense." Mr. Wims stated that the rule conforms with the statute and therefore the language should remain.

A motion was made to approve rule 21 as proposed. The motion carried unanimously.

III. INCORPORATION OF RULES OF JUDICIAL ADMINISTRATION

Laura Dupaix explained that the committee on incorporating the rules of judicial administration had presented rule proposals to each of the committees. Ms. Dupaix stated that she recommends the adoption of a separate "rules of practice" section in which judicial administration rules would be adopted. The only exception would be incorporating rule 4-611 into rule 7.

Ms. Dupaix noted that, in addition to incorporating the rules of judicial administration, she is also proposing new language in proposed rule 201 to accommodate the recent Casey decision. The language would require the prosecutor to inform the court if the victim or victim's guardian has informed the prosecutor that the victim wishes to address the court at a change of plea or sentencing hearing. Ms. Dupaix also proposed incorporating only two paragraphs from rules 4-203 and 4-607 and leaving the remaining provisions in the Code of Judicial Administration.

Mr. Wims asked what the next step is for the Committee. Ms. Dupaix stated that her committee meets on February 19, 2003 and therefore the Criminal Procedure Advisory Committee needed to approve the rules by then. Based on this deadline, the Committee agreed to meet on February 5, 2003 at 5:15 p.m. The Committee members should review the proposals prior to the February meeting. Mr. Wims thanked Ms. Dupaix for all of her work. Ms. Dupaix stated that kudos should also be directed to Alicia Davis who had done a excellent job for the Committee.

IV. FORMATTING OF COURT RULES

Staff explained that the advisory committees have been receiving complaints about the numbering and lettering of court rules. Attorneys have complained that it is sometimes difficult to determine the appropriate citation because the numbering and lettering can be confusing. It has therefore been proposed that the appropriate numbering and lettering of each paragraph and subparagraph precede the text of each paragraph and subparagraph. The Committee agreed with the proposal.

V. OTHER BUSINESS

Michael Wims stated that the Committee had received a suggestion from Judge Lyle Anderson that the Committee adopt a rule allowing a judge to address the mental incompetence of attorney practicing before the court. A subcommittee of Professor Luna, Judge Wilmore and Brent Johnson was established to look at whether other states have addressed the issue and to provide recommendations.

Mr. Wims stated that the Committee had also received a proposal from Mark Field, the capital law clerk at the Administrative Office of the Courts, that rule 17 be amended to state that a person may appear and defend "in person or by counsel," instead of "in person and by counsel." Mr. Field had noted that the Utah Code states that a person may defend in person or by counsel, but the Utah Constitution stated that a person may appear in person and by counsel. Rob Heineman stated that judges will do whatever is necessary no matter what the rule states and his preference would be to keep the language consistent with the Constitution. After brief discussion, the Committee agreed with

Mr. Heineman and Mr. Fields' proposal died for lack of a motion. Mr. Wims suggested bringing the issue to the attention of legislative counsel so that they could take whatever action is appropriate.

VI. ADJOURN

There being no further business, the Committee adjourned at 6:00 p.m.