

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 10, 2005 - 5:15 p.m.

ATTENDEES

Laura Dupaix
Judge Shauna Graves-Robertson
Robert Heineman
Judge Bruce Lubeck
Craig Ludwig
Professor Erik Luna
Vincent Meister
John O'Connell
Michael Wims

ABSENT

Steven Major
Judge Sheila McCleve
Judge Thomas Willmore

GUEST

Judge David Mower (via telephone)

STAFF

Matty Branch
Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Michael Wims welcomed the Committee members to the meeting. The Committee members reviewed and approved the minutes from the November, 2004 meeting.

II. RULES PUBLISHED FOR PUBLIC COMMENT

The Committee members had previously received copies of the rules that had been published for public comment and the comments received on those rules. The only negative comments were directed toward the proposed amendments to Rule 12. The commentators had suggested a time limit on post-sentencing motions, or at least clarification of the motions to which the rule applies. In response to the comments, the Committee members agreed to add the statute paragraph references to the rule. The Committee members felt that judges would otherwise resolve which motions had merit, and which did not. The Committee members then unanimously approved Rule 12.

John O'Connell then asked to revisit the proposed amendments to Rule 11(k). Mr. O'Connell reiterated his objection to the last sentence in the proposed amendment. Mr. O'Connell felt that the proposed language was either redundant or significantly limited collateral attacks. Mr. O'Connell stated that the language would require something besides a violation of the rule. After some

discussion, Michael Wims suggested amending the last sentence to allow attacks that “affect a substantial right.” The Committee members agreed with the suggestion. The Committee members then voted on and passed Rules 7 and 11.

III. RULES 12

The Committee members had two proposals dealing with the motion process in Rule 12. Judge Bruce Lubeck had prepared language to address the Third District Court judges’ concerns that the notice to submit process is not very workable in the criminal court. The proposed language would give litigants the opportunity to file a written notice to submit or to otherwise bring a motion to the attention of the court, such as by requesting a hearing. Judge David Mower had also presented a proposal to deal with the fact that the rule does not create time frames for when a notice to submit should be filed. Judge Mower stated that the goal was to try and find a way to begin the clock. Judge Mower stated that the rule proposal is designed to give the burden to counsel to move a motion along, and to not require courts to watch over files. Judge Mower stated that the rule proposal might contain too much language, but that the Committee should consider the principles and concept involved.

After brief discussion, Professor Erik Luna moved to approve the rule proposal presented by Judge Lubeck. John O’Connell seconded the motion. The motion carried unanimously.

The Committee members decided to postpone further discussion on Judge Mower’s proposal until the next meeting. Judge Shauna Graves-Robertson noted that specific time frames may be helpful, but John O’Connell noted that it is hard to set fixed time frames in criminal cases.

IV. RULE 29A

Rob Heineman stated that he and Vince Meister had met to discuss a proposed amendment to Rule 29A to change the time frames. Mr. Heineman proposed the following language: “the notice shall be filed by the later of 30 days after bind over to the assigned judge, or 10 days after rejection of a proposed disposition by the assigned judge.” Professor Erik Luna moved to approve the language. The motion was seconded and the motion carried unanimously.

V. FAX FILINGS

Staff distributed a copy of the fax filing rule that was being considered by the Criminal Procedure Advisory Committee. The Committee initially discussed whether the Rules of Criminal Procedure should simply defer to the Civil Procedure rule. Laura Dupaix suggested that it is helpful for practitioners to find all of the relevant rules within the Rules of Criminal Procedure and Staff was therefore instructed to incorporate language into existing rules and present a proposal.

VI. OTHER BUSINESS

Michael Wims suggested a proposed amendment to the Rule 11 statement, in the section on jury trials. The proposed amendment read as follows: "I also understand that if I ask to have the judge decide the case instead of a jury, if the prosecution and a judge agree to that, then my case would be decided by an impartial judge. I will be giving up the right to trial by either judge or jury by pleading guilty." Rob Heineman expressed his opinion that this language was not needed. A vote was held on the amendment, and the amendment passed with Rob Heineman voting against.

The Committee scheduled its next meeting for February 28, 2005. The Committee adjourned at 6:50 p.m.