

APPROVED MINUTES

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

March 11, 2003

ATTENDEES

Michael Wims
Judge Shauna Graves *Robertson*
Laura Dupaix
Robert Heineman
Craig Ludwig
Judge Sheila McCleve
Judge Bruce Lubeck
John O'Connell
Professor Erik Luna
Steven Major
Matty Branch

EXCUSED

Vincent Meister
Judge Thomas Wilmore
Mary Corporon

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Michael Wims welcomed the Committee members to the meeting. Mr. Wims noted one change in the minutes from the November meeting. With that change, the Committee members unanimously approved the minutes.

II. INCORPORATION OF RULES OF JUDICIAL ADMINISTRATION

Laura Dupaix had previously distributed a proposed set of rules incorporating certain rules from the Code of Judicial Administration. Ms. Dupaix explained each incorporation proposal.

RULE 4-102

Ms. Dupaix recommended that Rule 4-102, on law and motion calendars, not be adopted into the Rules of Criminal Procedure because the procedure seems obvious. The Committee agreed with this suggestion.

APPROVED MINUTES

[Faint, illegible text covering the majority of the page, likely representing the minutes of a meeting.]

RULE 3-105

Laura Dupaix suggested incorporating Rule 3-105. Judge Sheila McCleve made a motion to not adopt any portion of Rule 3-105. John O'Connell seconded the motion. Ms. Dupaix stated that the victims' rights provisions should be incorporated because it will remind judges and others that they need to consider victim's rights. Others suggested that the provisions are already covered by statute. Professor Luna stated that the provisions appear to be legislative and not procedural. Michael Wims called for a vote on the motion. The motion carried, with Laura Dupaix casting the only dissenting vote.

RULE 4-107

Laura Dupaix noted that the Civil Procedure Committee had amended the rule and she suggested incorporating the rule as Civil Procedure has written it. The Committee agreed with this suggestion.

RULE ⁴3-207

Ms. Dupaix stated that Tim Shea had suggested eliminating the form requirement because he was not certain if are forms or whether any forms should be mandated. Staff noted that the other provisions of the rule mirrored language in the statute. A motion was made to not adopt this rule because it was already covered by statute. The motion stated that the form provisions could be left in the Code of Judicial Administration. The motion carried unanimously.

RULES 4-501 AND 4-603

Ms. Dupaix noted that these rules deal with motion practice. She therefore suggested that the provisions be incorporated into Rule 12. John O'Connell stated that the current practice is for attorneys to just "wing it" and that this works fine. Steve Major noted that in some cases the parties need a hearing to determine the issues before a memorandum can be prepared. Mr. O'Connell also noted that, in civil practice, the parties move the calendar and therefore the rule might fit with civil practice, but not with criminal practice. Professor Erik Luna questioned the impetus for the change and wondered whether the Committee was changing more than should be considered through this exercise.

Judge Bruce Lubeck stated that the notice to submit and hearing provisions would be helpful, because some motions are never noticed-up by the parties. Ms. Dupaix also suggested adding a provision that the court could request memoranda, instead of making it mandatory. The Committee ultimately agreed to keep the notice to submit and hearing provisions, and making memoranda discretionary.

Ms. Dupaix noticed that the proposal also included incorporation of the provisions on a motion to reduce a criminal offense pursuant to § 76-3-402. Robert Heineman suggested changing the language to "motions to be heard at sentencing" instead of motions for reduction of criminal offense. The Committee agreed with this proposal.

Ms. Dupaix stated that she had also proposed a new separate provision on motions to suppress. Ms. Dupaix stated that the proposal is modeled after the federal local rule. Steven Major stated that he would like to see other motions added. Michael Wims suggested deferring this proposal until the next meeting. A subcommittee was established to review the proposal. The subcommittee is Steve Major, Laura Dupaix, John O'Connell and Judge Sheila McCleve.

RULE 4-504

Ms. Dupaix noted that this would also be a new procedure governing written orders, judgments and decrees. Robert Heineman suggested deleting the portion that would require dismissals to be reduced in writing. The Committee agreed to incorporate the rule with Mr. Heineman's this suggestion.

RULE 4-601

Ms. Dupaix stated that this proposal requires the prosecutor to submit written verification to the court that the victims have been provided certain notices. The Committee suggested that the rule conform with the statute and then the Committee approved the rule.

RULE 4-604

Laura Dupaix explained that this rule will govern the procedure for attorney withdrawals. John O'Connell suggested that court approval should not be needed for substituting of counsel. Laura Dupaix believed that substitution would be a different situation and would not be under the rule. The Committee agreed with the rule proposal.

RULE 4-605

Ms. Dupaix explained that *Grand County v. Rogers* stated that attorneys can cite to unpublished opinions as long as a copy is attached. This rule proposal incorporates that holding. John O'Connell suggested that attorneys also be allowed to cite to other district court decisions. Mike Wims stated that the rule proposal does not prohibit attorneys from referring to district court decisions.

RULE 4-203, RULE 4-607 AND RULE 6-302

Ms. Dupaix explained that this rule incorporates provisions on restitution and pre-sentence investigation reports. The Committee members agreed that the restitution language should be incorporated into the criminal rules, as well as the provisions on completing and disclosing the pre-sentence report. However, the Committee agreed that other provisions were not necessary.

RULE 4-608

Ms. Dupaix stated that some Committee members have expressed concern with the provisions in Rule 4-608, which govern appeals of justice court proceedings. Ms. Dupaix suggested incorporating the

rule at this time and the substantive provisions can be addressed later. The Committee agreed with this suggestion. A subcommittee was formed to present proposed changes. The subcommittee is Bruce Lubeck, Robert Heineman, Judge Shauna Graves-Robertson and Steve Major. This proposal will be discussed at the next meeting.

RULE 4-611 - not done

Laura Dupaix suggested incorporating the provisions of this rule into Rule 7 as subsection (c) and renumbering the subsequent subsections. Mr. Wims noted that the rule does not address a kastanis hearing and that should be considered. Ms. Dupaix suggested proposing something separate at the next meeting. Mr. Wims stated that he and Mr. Heineman will look at this issue and present a proposal at the next meeting.

RULE 4-612 - not done

Ms. Dupaix stated that the Civil Procedure Committee had adopted this rule and suggested that the Criminal Procedure Committee simply refer to the Civil Procedure rule. The Committee agreed with the suggestion.

RULE 4-703

Laura Dupaix stated that Rule 4-703 deals with outstanding citations and warrants. Staff noted that the rule was primarily a housekeeping rule for the courts and therefore could be left in the Code of Judicial Administration. The Committee agreed with the suggestion.

RULE 4-901

Ms. Dupaix stated that Rule 4-901 requires parties to notify the court of pending juvenile court proceedings. The Committee agreed that this rule could be incorporated into the Rules of Criminal Procedure.

The Committee members commended Ms. Dupaix for her excellent work on the rule proposals. The proposed changes will be made and the rules will be sent out for public comment.

III. UNIFORM CHILD WITNESS TESTIMONY

Mr. Wims noted that the Committee had received a request from the Chief Justice to review a uniform act on child witness testimony. Laura Dupaix suggested that the Committee might not need to incorporate the act because Rule 15.5 already covers most of the provisions. Mr. Wims suggested forming a subcommittee to review the existing rule and the uniform proposal. The subcommittee is Laura Dupaix, Vincent Meister and Robert Heineman. The Committee will present a proposal in several months.

IV. RULE 7(j)

Staff stated that the office had received a request to eliminate the requirement that bindover orders be in writing. The Committee members agreed with this suggestion and the proposed change will be published for public comment.

V. OTHER BUSINESS

The subcommittee which is reviewing other states rules on removing attorneys for mental incompetence reported that they do not yet have a final recommendation and will report at the next Committee meeting. The next Committee meeting was set for May 21, 2003 at 5:15 p.m. The Committee adjourned at 7:00 p.m.