

**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 84114-0241

May 21, 2003 - 5:15 p.m.

**ATTENDEES**

Michael Wims  
Judge Shauna Graves-Robertson  
Mary Corporon  
Robert Heineman  
Judge Sheila McCleve  
Judge Bruce Lubeck  
John O'Connell  
Professor Erik Luna  
Judge Thomas Willmore  
Vincent Meister  
Steven Major  
Laura Dupaix

**EXCUSED**

Craig Ludwig

**STAFF**

Brent Johnson  
Matty Branch

**I. WELCOME AND APPROVAL OF MINUTES**

Michael Wims welcomed the Committee members to the meeting. The minutes from the previous meeting were approved.

**II. SUBCOMMITTEE ON APPEALS FROM JUSTICE COURTS**

Judge Bruce Lubeck provided the report from the committee on justice court appeals. Judge Lubeck stated that the primary issue for the Committee to resolve is what should happen with the justice court judgment and sentence upon the filing of an appeal. Judge Lubeck stated that the subcommittee members had diverse opinions, with the options including an automatic stay of the judgment, an automatic vacation of the judgment, or continuing the requirement that the defendant obtain a certificate of probable cause. Judge Shauna Graves-Robertson stated that, in talking with other justice court judges, there are times when a certificate of probable cause is necessary. She stated that there are times when public safety is an issue and a convicted defendant should be in jail.

Rob Heineman suggested that restoring a person to the same situation that they were in at the beginning of the justice court proceedings should be enough. Mr. Heineman stated that bail can keep a person in jail.

Laura Dupaix asked how often justice court judgments are appealed. Vincent Meister stated that quite a few are appealed, and sometimes the defendants are judge-shopping. Steven Major stated that the major problem with the certificate of probable cause is explaining the requirement to pro se defendants. Mr. Major stated that many of them do not understand that they need to obtain the certificate to obtain a stay of the judgment.

Ms. Dupaix stated that there would be a problem with automatically vacating the justice court judgment. Mr. Meister agreed, stating that if a defendant does not follow through with the case at the district court, the district court must be able to remand to the justice court and have a judgment in place. Mr. Major noted that there may be difficulties in placing a defendant back in the same position at the justice court level, because the bail will be exonerated at the justice court upon completion of the proceedings and therefore there might not be a means of holding the defendant. After brief further discussion, Michael Wims questioned the Committee members on their preference. A straw poll indicated that a majority were in favor of language automatically staying the judgment. The subcommittee was charged with proposing language to that end and looking at the means of promoting the public safety concerns.

### **III. SUBCOMMITTEE ON MOTIONS TO SUPPRESS**

Laura Dupaix stated that the subcommittee had not yet had a chance to meet yet. The discussion was therefore postponed until the next meeting.

### **IV. SUBCOMMITTEE ON REMOVING ATTORNEYS FOR INCOMPETENCE**

Professor Erik Luna stated that the subcommittee had researched rules from other jurisdictions and had not found any rule which addressed the authority of a judge to remove an attorney from an individual case for mental or physical incompetence. Professor Luna stated that the subcommittee agreed, however, that judges already have the tools in place to address these issues and that the creation of a rule is not necessary. Professor Luna stated that he had a student research the inherent authority of a judge to remove an incompetent attorney from a particular case. The research concluded that judges have this inherent authority. Professor Luna also noted that a judge can refer the matter to the state bar, which can suspend an attorney from practice under those circumstances.

Mr. Meister questioned whether judges would like to have this authority clearly spelled-out in a rule, rather than relying on inherent authority. Judge McCleve stated that she would rather rely on the inherent power. Ms. Dupaix noted that it is difficult to craft a rule in this area because a rule would risk omitting circumstances that should otherwise be covered. Mary Corporon moved to specifically state that the Committee should not adopt a rule in this area. The motion carried unanimously.

## **V. H.B. 238 AND THE RULE 11 FORM**

Michael Wims stated that the Legislature had passed a law which changed the procedure for filing a motion to withdraw a guilty plea. The law requires a motion to be filed before sentencing, or in the case of a plea in abeyance, within 30 days after the plea is entered. Mr. Wims stated that the Rule 11 form needs to be amended in light of the changes. The Committee agreed that the language in the form could track the language of the statute. For pleas in abeyance, Ms. Dupaix suggested the form include language stating "for a plea held in abeyance, a motion to withdraw from the plea agreement must be made within 30 days of pleading guilty or no contest." The Committee members agreed with the suggestion.

Vincent Meister suggested that the plea statement should also be changed to refer to "plea agreements" rather than "plea bargains." Ms. Dupaix suggested that the section on appeals should also include a sentence which states "I understand that if I wish to appeal my sentence I must file a notice of appeal within 30 days after my sentence is entered." The Committee members agreed with this proposal. Michael Wims suggested that the references to jury trials should be changed, generally eliminating the reference to juries, because of the availability of bench trials. The Committee members agreed with this suggestion. Mr. Wims then called for a vote on all of the proposed changes. The Committee members agreed unanimously with the changes.

## **VI. OTHER BUSINESS**

Mr. Wims stated that the subcommittee reviewing a proposal for Kastanis hearings had not yet met and the issue will be discussed at the next meeting. Ms. Dupaix stated that the subcommittee addressing the child witness testimony issues would also report at the next meeting.

## **VII. ADJOURN**

The Committee scheduled the next meeting for August 26, 2003 at 5:15 p.m. There being no further business, the Committee adjourned at 6:20 p.m.