

**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 22, 2004

**ATTENDEES**

Laura Dupaix  
Judge Shauna Graves-Robertson  
Rob Heineman  
Judge Bruce Lubeck  
Professor Erik Luna  
Judge Sheila McCleve  
John O'Connell  
Judge Thomas Willmore  
Michael Wims

**EXCUSED**

Mary Corporon  
Craig Ludwig  
Steven Major  
Vincent Meister

**GUESTS**

Senator David Thomas  
Paul Boyden  
Richard Schwermer

**STAFF**

Brent Johnson

**I. WELCOME AND APPROVAL OF MINUTES**

Mike Wims welcomed the Committee members to the meeting. The minutes from the October meeting were approved.

**II. RULE 40. REMOTELY COMMUNICATED SEARCH WARRANTS**

Mike Wims reminded the Committee members of previous discussions about Rule 40. In response to the Rodriquez decision, legislation was proposed to facilitate electronically communicated search warrants. The Supreme Court had then expressed a preference for dealing with this issue through a rule, rather than through legislation, and Paul Boyden had presented a proposed rule to the Committee.

Paul Boyden reviewed the latest draft. Mr. Boyden stated that the rule will not address who should file the search warrant documents because of pending litigation, and because changing the process right now will require time and money that are not available.

The Committee members reviewed the rule and made several changes related to the language being used. After this discussion, Mike Wims called for a vote on the rule proposal. The rule proposal

passed, with John O'Connell casting a dissenting vote. (Rob Heineman having left the meeting earlier).

Mike Wims also asked the Committee members whether they wished to approve the rule on an emergency basis, to be effective at the same time as concurrent legislation. The members voted for an emergency change, with John O'Connell casting a vote against.

### **III. RULE 12, NOTICES TO SUBMIT**

Judge Lubeck noted that at a recent meeting of the Third District Court Judges, concerns had been expressed about whether the Rule 12 notice to submit process works for criminal proceedings. Judge McCleve noted that Peggy Gentles was writing a letter to the Committee about the issue and therefore the discussion was postponed until January.

### **IV. PROPERTY BONDS**

Staff reported that a judge had questioned whether a rule on property bonds should be put into the Rules of Criminal Procedure. Staff was instructed to put a proposal together for a future Committee meeting.

### **V. FAX-FILINGS**

Mike Wims stated that he had received a letter from the Supreme Court asking all advisory committees to adopt a rule for fax filings. Judge Willmore noted that the Board of District Court Judges had approved a policy. Staff was asked to obtain a copy of the policy and to coordinate with the other advisory committees to see what they are doing and to report back to the Committee.

### **VI. OTHER BUSINESS/ADJOURN**

The Committee scheduled its next meeting for January 10, 2005 at 5:15 p.m. There being no further business, the Committee adjourned at 6:30 p.m.