

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

APPROVED MINUTES

October 21, 2003

ATTENDEES

Michael Wims
Craig Ludwig
Steven Major
Professor Erik Luna
John O'Connell
Laura Dupaix
Robert Heineman
Vincent Meister
Mary Corporon

EXCUSED

Judge Shauna Graves-Robertson
Judge Bruce Lubeck
Judge Thomas Willmore
Judge Sheila McCleve

STAFF

Matty Branch
Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

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

II. MOTIONS TO SUPPRESS SUBCOMMITTEE

Laura Dupaix gave the subcommittee report. The subcommittee proposed an addition to Rule 12, which addition would govern motions to suppress. The addition would require a motion to suppress to include a description of the evidence sought to be suppressed, the standing of the movant, and the grounds for the motion. John O'Connell questioned the need for such a rule because practitioners were doing fine without a rule. Robert Heineman questioned whether it was appropriate to require a showing of standing. Professor Luna stated that, because standing is a constitutional issue and not a jurisdictional issue, the legal grounds should be sufficient to explain the movant's standing. Laura Dupaix stated that standing should be included because it is a threshold issue and the defendant is in the best position to address the issue initially.

Professor Luna asked whether there are many Utah cases in which a defendant does not have standing. Ms. Dupaix responded that there have been a lot lately. Vincent Meister stated that it

should not be a big issue for a defendant to state standing. John O'Connell stated that there probably is no harm with the requirement. After brief discussion, Rob Heineman moved to eliminate the requirement that the movant show standing. Professor Luna seconded the motion. The motion failed, with 5 members voting against the motion and 2 voting for.

Rob Heineman then expressed the opinion that the rule is not necessary. The current practice is free-flowing, but Mr. Heineman expressed the opinion that the practice works. Mr. Meister stated that a rule is necessary because often new and/or private attorneys are not efficient at preparing these motions, and prosecutors are often at a disadvantage in knowing how to respond. John O'Connell provided an example of a motion to suppress that he would file: "The defendant moves to suppress drugs found in the defendant's car in violation of the Fourth Amendment." The Committee members agreed that the motion would be sufficient because it describes the evidence to be suppressed, the standing of the defendant, and the legal grounds for the motion.

After brief discussion, Mr. Wims called for a motion and vote on the proposed rule. The proposed amendment passed, with 6 Committee members voting for the rule and 1 Committee member voting against.

III. RULE MAKING PROCESS

Staff distributed a memo from Tim Shea describing a proposed new rule amendment process. Instead of sending out all proposed rule amendments twice a year, rule amendments would be distributed to members of the Bar upon approval by the Committee. The Committee members could then act on the rule after the 45 day comment period. The question for the Committee was whether the new rules should be effective on set dates every year or as they are approved by the Supreme Court. The Committee members stated that the rules should be effective on set dates during the year.

IV. JUSTICE COURT APPEALS

John O'Connell suggested postponing the discussion on justice court appeals until the next meeting, so that Judge Bruce Lubeck could attend the meeting. The Committee members agreed with the suggestion.

V. RECORD OF NOTICE OF ENHANCED PENALTIES

Staff distributed a memorandum from the Board of District Court Judges in which they requested an amendment to Rule 11, which would require the court, upon accepting a guilty plea, to include a record of potential enhanced penalties. The Committee members questioned the genesis for the proposal and what it intended to accomplish. The Committee members noted that the justice courts have had this requirement for many years, but wondered why the requirement should now be extended to the district courts. Staff was instructed to elicit additional information from the Board of District Court Judges as to why the Board thinks that the amendment is necessary.

Craig Ludwig also noted that the proposed amendment to Rule 22 would require the court to deliver fingerprints to the Utah Bureau of Criminal Identification. Mr. Ludwig stated that this proposal should be eliminated, because the court typically does not have defendants' fingerprints.

VI. OTHER BUSINESS AND ADJOURN

The Committee scheduled its next meeting for December 1, 2003. There being no further business, the Committee adjourned at 6:45 p.m.