

**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

October 5, 2004 - 5:15 p.m.

**ATTENDEES**

Laura Dupaix  
Rob Heineman  
Craig Ludwig  
Judge Bruce Lubeck  
Professor Erik Luna  
Steven Major  
Vince Meister  
Judge Sheila McCleve  
Judge Shauna Graves Robertson  
Michael Wims

**EXCUSED**

Mary Corporon  
John O'Connell  
Judge Thomas Willmore

**GUESTS**

Senator Dave Thomas  
Paul Boyden  
Rick Schwermer

**STAFF**

Matty Branch  
Brent Johnson

**I. WELCOME AND APPROVAL OF MINUTES**

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

**II. TELEPHONIC WARRANTS**

Paul Boyden explained proposed legislation that would change the process for telephonic and other electronically communicated search warrants. Mr. Boyden stated that the legislation is in response to the recent Rodriguez case in which the Court of Appeals rejected a per se exception to the warrant requirement for taking blood in a DUI case. Mr. Boyden stated that the current telephonic warrant process is burdensome. The proposed legislation would allow communication by phone, fax and e-mail. Mr. Boyden stated that the main issue for the Committee is whether this should be done by rule or by legislation. Rick Schwermer explained that the Supreme Court is interested in having this process addressed by rule, because it appears to be procedural. Senator Dave Thomas stated that, at the very least, there needs to be discussion and agreement about whether this should be in statute or rule.

Judge Bruce Lubeck stated that the proposed amendments seem procedural and should therefore be in the rules. Michael Wims questioned whether the procedure fits with existing rules, because the current rules apply after cases have been filed. Professor Luna asked whether the Committee wanted to look at other federal and state rules to see how they have treated this issue. Laura Dupaix stated that it would be easier to leave the procedure in statutes. Mr. Schwermer stated the Supreme Court wants to ensure that it is upholding its constitutional responsibility to enact procedural rules. After further discussion, the Committee agreed that representatives of the Committee should meet with representatives of the Supreme Court to get a feel for what the court would like. Several Committee members volunteered to meet with the Chief Justice about this issue.

### **III. RULE 12**

Michael Wims proposed an additional amendment to Rule 12 which would state that motions challenging jurisdiction must be raised at least five days prior to trial, “unless good cause is shown.” The Committee members agreed that the escape clause was a good change. The Committee voted unanimously in favor of the rule.

### **IV. RULE 29A**

Rob Heineman explained his belief that the seven day requirement in Rule 29A, within which the parties must submit agreement on a judge change, is too short of a time-frame. The Committee agreed that the time-frame may be too short. The Committee members discussed alternatives and the members discussed the various procedures that exist in the court and the problems that arise from tying a time-frame to the different procedures that are used. After brief discussion, a subcommittee of Rob Heineman and Vince Meister was formed to propose specific wording for the next meeting.

### **V. RULE 11(g)(1)**

Rob Heineman explained that the rule should be clarified that the court has authority to approve “or reject” a plea. The Committee members agreed with this suggestion and the rule amendment passed unanimously.

### **VI. RULE 27(c)**

John O’Connell had presented a proposed amendment to Rule 27(c) to clarify that a decision should be appealed to the court to which the notice of appeal has been transmitted, and not filed. The Committee members agreed with this proposal.

### **VII. RULE 24**

Laura Dupaix presented a proposal to clarify the deadlines for filing a motion for a new trial. Ms. Dupaix explained that the current language creates problems for the unwary. The Committee members suggested that Ms. Dupaix’s proposal be amended as follows: “a motion for a new trial

shall be made not later than ten days after imposition of sentence, or within such further time as the court may fix before the expiration of the time for filing a motion for new trial.” The Committee members unanimously approved the suggestion.

#### **VIII. OTHER BUSINESS**

Rob Heineman stated that Rule 15.5 needs to be reevaluated in light of Crawford v. Washington. The Committee formed a subcommittee of Rob Heineman, Laura Dupaix and Steven Major to review the rule.

There being no further business the Committee adjourned at 6:30 p.m.