

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re: Proposed Amendment to  
Rule 53 of the Utah Rules of  
Juvenile Procedure

No. 20050018-SC

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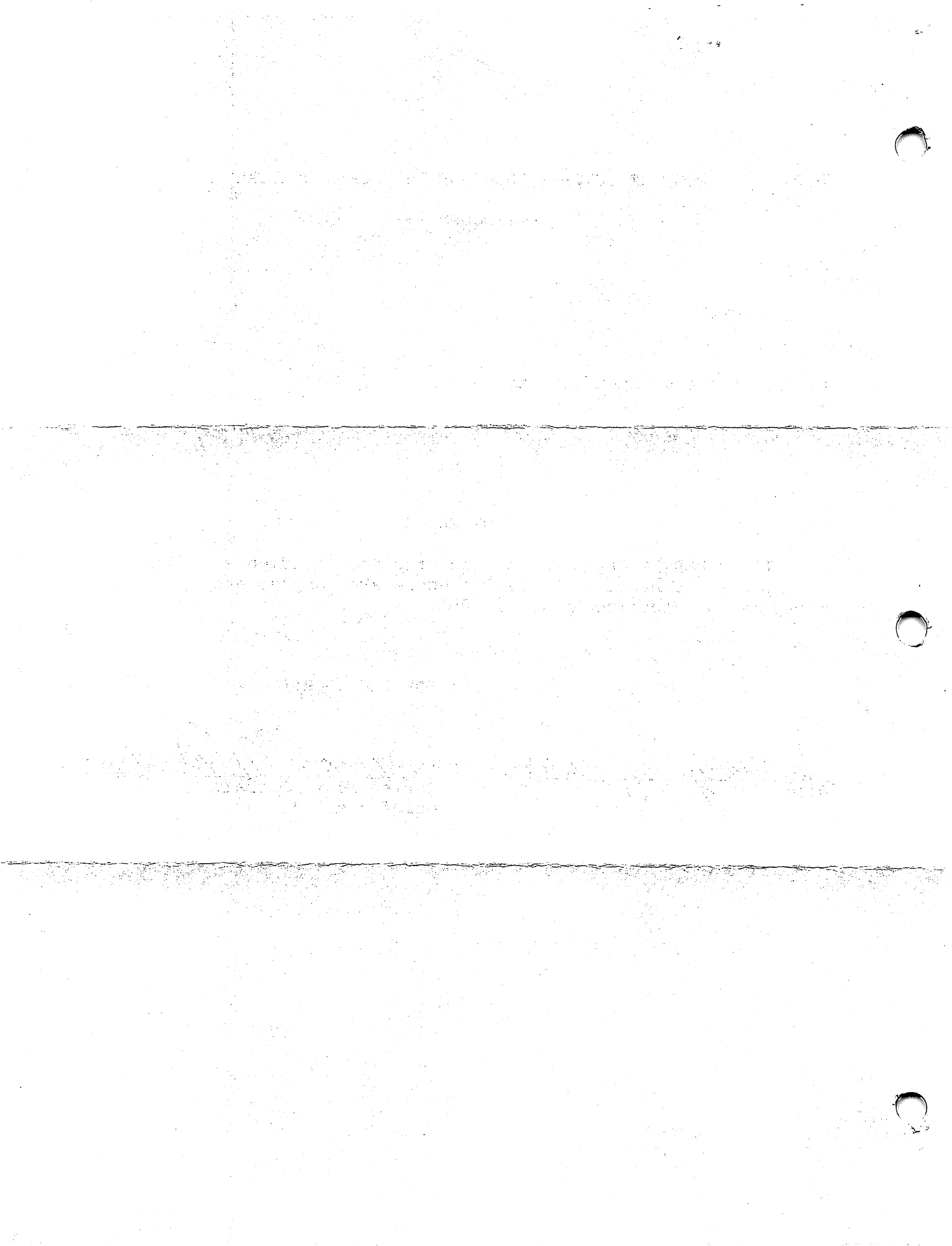
ORDER

IT IS HEREBY ORDERED that the proposed amendments to Rule 53 of the Utah Rules of Juvenile Procedure are adopted and promulgated effective April 1, 2005.

FOR THE COURT:

January 31, 2005  
Date

Christine M. Durham  
Christine M. Durham,  
Chief Justice



**Draft: June 29, 2004**

**Rule 53. Appearance and withdrawal of counsel.**

(a) **Appearance.** An attorney shall appear in proceedings by filing a written notice of appearance with the court or by appearing personally at a court hearing and advising the court that he is representing a party. Once an attorney has entered an appearance in a proceeding, the attorney shall receive copies of all notices served on the parties.

(b) **Withdrawal.**

(b)(1) **Retained Counsel.** Consistent with the Rules of Professional Conduct, a retained attorney may withdraw as counsel of record unless withdrawal may result in a delay of trial or unless a final appealable order has been entered. In such circumstances, a retained attorney may not withdraw except upon written motion and approval of the court.

(b)(2) **Court-appointed counsel.** Court-appointed counsel may not withdraw as counsel of record except upon motion and signed order of the court. If the court grants appointed counsel's motion to withdraw, the court shall promptly appoint new counsel.

(b)(3) If a motion to withdraw is filed after entry by the court of a final appealable judgment, order, or decree, the motion may not be granted unless counsel, whether retained or court-appointed, certifies in a written statement:

(b)(3)(A) that the represented party has been advised of the right to appeal and that, if appropriate, a Notice of Appeal and a Request for Transcript have been filed; and

(b)(3)(B) that the represented party in a delinquency proceeding has been advised of the availability of a motion for new trial or motion for stay pending appeal and that, if appropriate, the same has been filed.

(b)(4) When an attorney withdraws as counsel of record, written notice of the withdrawal must be served upon the client of the withdrawing attorney by first class mail, to his or her last known address and upon all other parties not in default and a certificate of service must be filed with the court. If a trial date has been set, the notice of withdrawal served upon the client shall include a notification of the trial date.

(b)(5) A guardian ad litem may not withdraw except upon approval of the court.

(c) Parties must submit a written Motion for Substitution of Counsel setting forth in detail the need for new counsel at least ten days prior to the next scheduled hearing date unless otherwise allowed by the court.

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



MARK L. SHURTLEFF  
ATTORNEY GENERAL

RAYMOND A. HINTZE  
Chief Deputy

KIRK TORGENSEN  
Chief Deputy

January 5, 2005

Chief Justice Christine M. Durham  
Utah Supreme Court  
450 S. State Street  
PO Box 140210  
Salt Lake City, UT 84111-0210

Re: Proposed Amendments to URJP 53

Dear Chief Justice Durham:

On behalf of the Utah Rules of Juvenile Procedure Committee, I am enclosing the revised version of URJP 53, which is now before the Court for your review and final action. The Committee revised Rule 53 to reduce trial delays caused by parties requesting new counsel on the day of trial. The Committee added section (c), which requires parties to submit written motions for substitution of counsel at least ten days prior to the next scheduled hearing, unless otherwise allowed by the court.

Also enclosed are two comments received during the comment period. The Committee chose to further amend the rule based upon the first comment received. Accordingly, the clause in the rule was changed from "unless otherwise allowed by the judge" to "unless otherwise allowed by the court." The committee discussed, but took no action on the second comment.

Please feel free to contact me if you have any questions or concerns regarding URJP 53 or the work of the Utah Rules of Juvenile Procedure Committee.

Sincerely,

*Carol L. C. Verdoia*  
Carol L. C. Verdoia  
URJP Committee Chair

cc: Matty Branch  
Katie Gregory

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## Revisions to Utah Rule of Juvenile Procedure 53.

### The URJP Committee Received and Considered the Following Two Comments:

1. To maintain consistency in language choice, replace unless otherwise allowed by the judge with "unless otherwise allowed by the court."

Posted by Brent Newton October 1, 2004 12:53 PM

2. The proposed rule is fine so far as it goes. It does not deal with a problem that should be dealt with if the rule is going to be revisited and revised. Over the years counsel of record have been presented with the difficult choice of either remaining on a case where they should (for any of a variety of reasons) withdraw or presenting their reasons for withdrawal both in writing as a part of a Motion supported by a Memorandum and supplemented by such argument as the Court may wish to hear or just remain as counsel. Many times lawyers have chosen to remain as counsel in a bad situation rather than disclosing to opposing counsel and their parties the reasons for withdrawal which would tend to disclose a roadmap for those counsel and parties to win the case. A lawyer should not have to make the best of two bad choices.

The rule should provide that the Judge has authority to conduct an in camera interview with the counsel who seeks to withdraw. The Judge could then rule as to whether or not the stated reasons justifies the withdrawal without risking significant damage to the cause of the party whose counsel seeks to withdraw.

Posted by Craig G. Adamson September 29, 2004 11:11 AM

# Supreme Court of Utah

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Justice

Ronald E. Nehring  
Justice

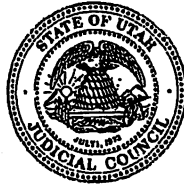
## MEMORANDUM

TO: Tim Shea  
FROM: Matty Branch MB  
DATE: November 10, 2004  
RE: Fax Filing Rule Amendment

The Supreme Court considered your memo of November 3, 2004, concerning a fax filing rule amendment at its court conference today. The court agrees that a uniform fax filing policy should be incorporated into the procedural rules but believes that the rule should not only be located in the civil rules but also in the criminal, juvenile, and appellate rules, and possibly the rules of small claims procedure, if appropriate. Several of the justices feel that the rule needs to clarify whether the time for date-stamping of fax filed documents is limited to regular business hours (8:00 a.m. to 5:00 p.m., weekdays). For example, will a fax bearing a filing time of 11:45 p.m. be stamped as received on the next business day?

By copy of this memo sent to the chairs of the four advisory procedural rule committees, the court is requesting that each of these committees review the proposed amendment and provide input to you as to suggested changes or additions. In connection with this review, the court asks that you schedule presentations with each of these committees at one of their upcoming meetings. Thank you for your assistance.

cc w/attached amendment: Fran Wikstrom, Carol Verdoia, Todd Utzinger, Michael Wims,  
Brent Johnson, ~~Riek Schwermer~~, and Katie Gregory



## Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

### MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

To: Supreme Court  
From: Tim Shea *TS*  
Date: November 3, 2004  
Re: Fax filing

The Judicial Council recommends a rule amendment to regulate filing documents by fax. All or nearly all of the courts accept faxed documents. Indeed, the genesis of this draft is a written policy proposed by the Fifth District Court. The Judicial Council recommends a statewide policy.

Since the amendment will affect how parties and lawyers process their cases, The Council recommends using the Rules of Procedure, rather than the Code of Judicial Administration as the vehicle for the change. This change to URCP 5 should be sufficient to include criminal and juvenile cases. URCP 81(e); URJP 2. If you agree that a statewide policy is sound, but conclude that the criminal and juvenile rules should contain an express provision, I can prepare similar amendments to the other rules.

This proposal has circulated among the Board of District Court Judges, Trial Court Executives and Clerks of Court, as well as the Policy and Planning Committee of the Judicial Council and the Council itself. It has not been reviewed by your advisory committees, nor has it been published for comment.

I will be happy to meet with the Court or to present this proposal to your advisory committees.

Encl. URCP 5

The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.



1 Rule 5. Service and filing of pleadings and other papers.

2 (a) Service: When required.

3 (a)(1) Except as otherwise provided in these rules or as otherwise directed by the court, every  
4 judgment, every order required by its terms to be served, every pleading subsequent to the  
5 original complaint, every paper relating to discovery, every written motion other than one heard  
6 ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper  
7 shall be served upon each of the parties.

8 (a)(2) No service need be made on parties in default for failure to appear except as provided  
9 in Rule 55(a)(2)(default proceedings). Pleadings asserting new or additional claims for relief  
10 against a party in default shall be served in the manner provided for service of summons in Rule  
11 4.

12 (a)(3) In an action begun by seizure of property, whether through arrest, attachment,  
13 garnishment or similar process, in which no person need be or is named as defendant, any service  
14 required to be made prior to the filing of an answer, claim or appearance shall be made upon the  
15 person having custody or possession of the property at the time of its seizure.

16 (b) Service: How made and by whom.

17 (b)(1) Whenever under these rules service is required or permitted to be made upon a party  
18 represented by an attorney, the service shall be made upon the attorney unless service upon the  
19 party is ordered by the court. Service upon the attorney or upon a party shall be made by  
20 delivering a copy or by mailing a copy to the last known address or, if no address is known, by  
21 leaving it with the clerk of the court.

22 (b)(1)(A) Delivery of a copy within this rule means: Handing it to the attorney or to the  
23 party; or leaving it at the person's office with a clerk or person in charge thereof; or, if there is no  
24 one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to  
25 be served has no office, leaving it at the person's dwelling house or usual place of abode with  
26 some person of suitable age and discretion then residing therein; or, if consented to in writing by  
27 the person to be served, delivering a copy by electronic or other means.

28 (b)(1)(B) Service by mail is complete upon mailing. If the paper served is notice of a hearing  
29 and if the hearing is scheduled 5 days or less from the date of service, service shall be by  
30 delivery or other method of actual notice. Service by electronic means is complete on

31 transmission if transmission is completed during normal business hours at the place receiving the  
32 service; otherwise, service is complete on the next business day.

33 (b)(2) Unless otherwise directed by the court:

34 (b)(2)(A) an order signed by the court and required by its terms to be served or a judgment  
35 signed by the court shall be served by the party preparing it;

36 (b)(2)(B) every other pleading or paper required by this rule to be served shall be served by  
37 the party preparing it; and

38 (b)(2)(C) an order or judgment prepared by the court shall be served by the court.

39 (c) Service: Numerous defendants. In any action in which there is an unusually large number  
40 of defendants, the court, upon motion or of its own initiative, may order that service of the  
41 pleadings of the defendants and replies thereto need not be made as between the defendants and  
42 that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense  
43 contained therein shall be deemed to be denied or avoided by all other parties and that the filing  
44 of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the  
45 parties. A copy of every such order shall be served upon the parties in such manner and form as  
46 the court directs.

47 (d) Filing. All papers after the complaint required to be served upon a party shall be filed  
48 with the court either before or within a reasonable time after service. The papers shall be  
49 accompanied by a certificate of service showing the date and manner of service completed by the  
50 person effecting service. Rule 26(i) governs the filing of papers related to discovery.

51 (e) Filing with the court defined.

52 (e)(1) The filing of pleadings and other papers with the court as required by these rules shall  
53 be made by filing them with the clerk of the court, except that the judge may accept the papers,  
54 note thereon the filing date and forthwith transmit them to the office of the clerk.

55 (e)(2) A party may transmit by fax a pleading or other paper intended for filing. Fax  
56 transmissions are limited to 10 pages, excluding the cover page, unless otherwise permitted by  
57 the clerk of the court. A document transmitted by fax is the equivalent of the original document,  
58 including a signed original, for all purposes under these rules. Courtesy copies may not be  
59 transmitted by fax unless permitted by the judge. Transmitting a document by fax is not filing;  
60 filing is complete upon acceptance by the clerk of the court. If the clerk determines that there has  
61 been an error in transmission or failure to comply with this rule or that the fax is of poor quality.

62 the clerk shall notify the sender of the error as soon as practical. The clerk shall issue a receipt  
63 for fees paid, but is not required to notify a party of receipt of a fax or acceptance for filing. A  
64 party transmitting a document by fax:

65 (e)(2)(A) shall keep the original document safe, in good condition and available for  
66 production until completion of all appeals or until the time to appeal has expired:

67 (e)(2)(B) shall send the document to the fax number designated by the clerk of the court:

68 (e)(2)(C) shall include on a fax cover page the information required by Rule 10(a), the  
69 sender's fax number, the credit card number to be billed if there is a fee for filing the pleading or  
70 other paper, and the number of pages being faxed; and

71 (e)(2)(D) assumes all risk of failure of the transmission.

72 (e)(3) The clerk shall destroy the fax cover page after charging the fees and recording the  
73 transaction.

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**MEMORANDUM**

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**TO:** TIM SHEA  
**FROM:** KATIE GREGORY  
**SUBJECT:** URJP COMMITTEE REQUESTS  
**DATE:** 12/15/2004

The Utah Rules of Juvenile Procedure committee met on December 3, 2004. The URJP Committee requested that I contact you regarding an additional rule revision they would like you to present to the publishers for the next appropriate publication date.

I. Advisory Committee Note to URJP 29A

The Committee moved to delete the entire Advisory Committee note to rule 29A, which reads, "*This rule is based upon provisions governing admissibility of out-of-court statements of child victims of sexual abuse in adult criminal proceedings. This rule is intended to be interpreted using the case law developed under Utah Code Section 76-5-411 and Rule of Criminal Procedure 15.5.*" The motion was based on committee concerns that the recent Supreme Court decision in *Crawford* overrules *Ohio v. Roberts* on which the Committee Note was based. The Committee will continue studying this issue at future meetings.