

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

September 17, 2013

ATTENDEES

Patrick Corum- Chair
Judge Brendan McCullagh
Craig Barlow
Laura Dupaix
Jeffrey Gray
Craig Ludwig
Vincent Meister
Cara Tangaro
Douglas Thompson

EXCUSED

Judge Michele Christiansen
Judge Vernice Trease
Professor Jensie Anderson
Diane Abbeglen
Steven Major
Todd Utzinger

STAFF

Brent Johnson

GUESTS (by phone)

James Schoppman
Scott Swapp

I. WELCOME / APPROVAL OF MINUTES

Patrick Corum welcomed the committee members to the meeting. Mr. Corum stated that the Supreme Court had appointed him as Chair of the committee. Laura Dupaix attended the meeting and was thanked for her work on the committee and was presented a plaque in honor of her excellent service to the courts.

Mr. Corum introduced the new members of the committee: Jeffrey Gray, Cara Tangaro, and Douglas Thompson. Craig Ludwig then moved to approve the minutes from the last meeting. Vincent Meister seconded the motion. The motion carried unanimously.

II. RULE 7, PROBABLE CAUSE REVIEWS-PUBLIC COMMENT

For the benefit of the new members, Mr. Corum provided the background on the rule change proposal. Mr. Corum then reviewed the comments that had been received on the rule. The lengthiest comment was from the Board of District Court Judges. Mr. Corum stated that the Board's position wasn't necessarily opposition, but was instead a caution to ensure that an adequate system is in place before change is implemented. Mr. Corum recognized that this

involves law enforcement and therefore coordination will need to occur with law enforcement agencies.

Judge Brendan McCullagh stated that the Board of Justice Court Judges also discussed the issue. Judge McCullagh stated that the Board does not oppose the change, but suggests that implementation be delayed so that each geographical area can ensure that the technology and communication plans are in place. Craig Barlow asked how long the Board thinks is an appropriate delay. Judge McCullagh stated that the Board did not give a specific time-frame, but he said that he personally believes six months is plenty of time. Mr. Barlow stated that philosophically he is not opposed to the change, but in light of the fact that the judges are voicing caution, he is in favor of delayed implementation. Cara Tangaro stated that the e-warrant system is evidence that the appropriate mechanisms can be put into place for 24-hour reviews. Doug Thompson agreed, stating that most areas seem to be already doing these within 24 hours.

Judge McCullagh stated that the Judicial Council is working on changes to Utah Code § 77-7-23, which will help ensure that the statute and rule are not in conflict. James Schoppman stated that a delayed effective date is acceptable provided that there is a firm date in place. Mr. Thompson stated that in the Fourth District when judges find that there wasn't probable cause for an arrest, the jails will sometimes keep the prisoners an additional 24 hours so that they can amend the PC statement in an attempt to correct deficiencies. Mr. Thompson stated that the rule is thus being stretched in certain areas.

Craig Barlow moved to adopt the rule with an effective date to coincide with the changes to § 77-7-23. Cara Tangaro seconded the motion. The motion carried unanimously.

III. RULE 40-SEALING SEARCH WARRANTS

Mr. Corum stated that he had again researched what other states are doing on search warrants and every state is doing things differently. Mr. Corum stated that most states have some form of our process. Staff reminded the committee that the issue before them is whether law enforcement should have the opportunity to request an indefinite sealing after a certain period has passed, such as three years. Mr. Corum stated that the practices throughout the states are again, widely divergent. Mr. Corum stated that some states have indefinite sealing periods and others require proponents to return to court periodically to have the sealing periods renewed. Mr. Corum stated that it is a good compromise to initially require repeated requests, but to then allow for indefinite sealings after a certain period has passed. Judge McCullagh stated that even after three years, a judge could deny such a motion and still require the proponent to make regular requests. Mr. Thompson asked whether the sealing criteria would be different for a motion to seal indefinitely. Mr. Meister stated that the existing criteria would also be used to support motions for the indefinite sealing. Staff volunteered to draft a proposal and present it at the next meeting.

IV. MATERIAL WITNESS WARRANTS

Staff stated that the Supreme Court had rejected the proposed amendments to rule 7 that

would have conformed the rule to the existing practice on material witness warrants. Staff stated that the Supreme Court expressed concerns about the current practice and protecting the rights of material witnesses. The Supreme Court instructed the committee to review what other states are doing and to see if there are better ways to protect the rights of those witnesses. Staff will present a proposal at the next meeting.

V. RULE 40 AND GPS WARRANTS

Mr. Meister stated that Paul Boyden and Paul Platt are drafting a proposal to address the unique circumstances of GPS warrants. They are considering amendments to rule 40 or a separate rule specifically for those types of warrants. An update will be provided at the next meeting.

VI. RULE 14

Patrick Corum stated that he will have a proposal at the next meeting.

VII. REORGANIZATION OF RULES

Judge McCullagh distributed an outline of his proposal to reorganize the Rules of Criminal Procedure. Judge McCullagh stated that the rules would be divided into seven categories, such as the pretrial rules, the trial rules, the post-sentence rules, etc. Judge McCullagh posed the question of whether the Rules of Criminal Procedure should defer more to the Rules of Civil Procedure and thereby eliminate rules such as 2 and 3, which essentially mirror rules of civil procedure. Ms. Tangaro stated that it is much easier for new attorneys if they are able to find all the rules in one place. Ms. Tangaro suggested that the rules not only keep the provisions in rules 2 and 3 but also directly incorporate other provisions from the Rules of Civil Procedure to help practitioners find all the necessary rules in one place. Mr. Thompson agreed, stating that this will also help eliminate the practice of parties referring to the Rules of Civil Procedure for provisions that they might like better than those in the Rules of Criminal Procedure.

Mr. Barlow stated that he is in favor of reorganizing the rules and asked whether this would simply be a matter of eliminating duplications or whether there would be a lot of rewriting. Judge McCullagh stated that there would be a lot of rewriting, but very little of it would be substantive. Judge McCullagh stated that much of the language needs to be improved and that will be a focus. Mr. Meister suggested that it may be important to keep the same rule numbers. Judge McCullagh stated that the same rule numbers will be kept where possible, but it is also not unusual to change rule or statute numbers and that will happen in this circumstance. Laura Dupaix suggested that the key will be to ensure that an adequate record and reference is kept in the rule to ensure that practitioners can trace the amendments.

Judge McCullagh suggested that the process involve each category in turn. Judge McCullagh anticipates that this will be a two-to three-year process. Judge McCullagh suggested that subcommittees usually are not efficient and it would be better to have individuals do the

work and bring proposals back to the committee. Judge McCullagh stated that by the next meeting he will have a draft of the first two categories. Committee members expressed appreciation for Judge McCullagh's willingness to undertake this endeavor.

VII. BINDOVERS

Staff stated that he will have a proposal on bindovers at the next meeting. Laura Dupaix stated that her office recently had an interlocutory appeal granted on the issue of the same judge conducting the preliminary examination and then deciding the motion to quash.

IX. OTHER BUSINESS / ADJOURN

Mr. Corum asked the committee members if they had any other business. Members did not have any other business and therefore the meeting adjourned at 1:35 p.m. The next meeting is scheduled for November 19 at noon.