

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

January 17, 2012

ATTENDEES

Judge Michele Christiansen
Judge Brendan McCullagh
Judge Vernice Trease
Craig Barlow
Patrick Corum
Jeremy Delicino
Laura Dupaix
Craig Ludwig
Steven Major
Vincent Meister

EXCUSED

Professor Amos Guiora
Todd Utzinger

STAFF

Diane Abegglen
Brent Johnson

GUEST

Yvette Rodier

I. WELCOME / APPROVAL OF MINUTES

Laura Dupaix welcomed the committee members to the meeting. Judge Vernice Trease moved to approved the minutes from the previous meeting. Craig Ludwig seconded the motion. The motion carried unanimously.

II. RULE 7 AMENDMENT

Yvette Rodier from the Utah Crime Victims Legal Clinic presented a proposed amendment to Rule 7. Ms. Rodier stated that an issue came to their attention when an individual was held in jail on a material witness warrant for two weeks without any opportunity to appear

before the court to request some type of release. Ms. Rodier stated that the proposal will require the court to conduct a hearing within 72 hours after a person has been arrested. Ms. Rodier stated that Reed Richards has talked with several sheriffs and they do not see this as a burden on their offices.

Judge Brendan McCullagh stated that these warrants should be on the statewide warrant system so that when they are served, the courts will receive that information. Judge McCullagh noted that material witnesses may seek habeas corpus relief but that would be more of a hassle for these individuals. Vincent Meister stated that he likes the idea of there being a trigger so that it comes to the attention of the appropriate individuals. Craig Barlow asked what the sanction would be if the jail does not comply. Judge McCullagh stated that there would not be a consequence to the sheriffs, but this would at least create a standard for them to follow. Judge McCullagh stated that when a person is arrested on other types of warrants, the person appears before the judge within a relatively short period of time. Judge McCullagh stated that the fact that these individuals are not appearing before a judge seems to be a bureaucratic snafu. Mr. Meister asked whether there is some way that this information can be sent to the courts. Craig Ludwig stated that the information will be found in the jail booking reports.

Mr. Meister wondered whether the jails could be taken out of the process and the notification be handled a different way. Mr. Meister noted that there is occasionally a concern after a person has testified because individuals are being held for awhile afterwards. Judge McCullagh suggested that the rule not refer to "jails" but to the "arresting authority." Laura Dupaix suggested using the phrase "custodial authority." Mr. Barlow raised the issue of whether a supreme court rule can require counties to perform certain actions. Steven Major noted that some of the rules already require such. Mr. Major stated that Rule 40, on search warrants, also requires sheriffs to perform particular acts. Judge McCullagh noted that, under Title 17, sheriffs have certain obligations to the courts.

Mr. Major stated that there will be an issue with out-of-county arrests. Mr. Major stated that there will be a need for the other county to notify the court and there will be a need for the county in which the court is located to transport the individual. Mr. Meister stated that this may create an issue for conducting hearings within 72 hours. Judge Trease suggested language stating that hearings should be held within a reasonable time. Laura Dupaix asked whether the court in which the arrest occurs should conduct the hearing. Judge Trease stated that it will have to be the issuing court because there will be a need to look at detention issues and the appointment of counsel. Judge McCullagh noted that an individual could be arrested on a new charge and the material witness will not be transported to the out-of-county court until the charges are resolved. Mr. Meister stated that a hearing could still be held if the witness is appointed counsel. Patrick Corum stated that most of the material witnesses are victims in domestic violence cases and that 72 hours seems like a long time for holding those individuals. After additional brief discussion, the committee members agreed that language on holding hearings within a reasonable amount of time should be incorporated into the rule, and references should be to the custodial authority and not the jail.

Judge Trease noted that there is an issue in the rule about witnesses first posting bonds. Judge Trease noted that the rule seems to require the magistrate to order that a bond be posted before the magistrate may issue a warrant. Judge Trease stated that this is not how it occurs and that warrants are issued without a previous bond order. The committee members agreed that this issue should be reviewed, but it will be reviewed separate from the proposal submitted by Ms. Rodier.

Craig Barlow then moved to approve the proposal as amended by the committee. Patrick Corum seconded the motion. The motion carried unanimously.

III. RULE 4

Ms. Dupaix noted that Rule 4 had been published for public comment and the committee had received several comments. Judge McCullagh stated that the comments address issues that have already been discussed or are covered elsewhere. The committee members agreed with this statement. Judge McCullagh then moved to approve Rule 4 as published for public comment. Craig Barlow seconded the motion. The motion carried unanimously.

IV. RULE 29

Staff explained that there continues to be an issue with judges not addressing motions to disqualify unless a request to submit for decision is filed. Staff noted that judges are issuing rulings in cases in which they may ultimately be disqualified and this creates problems. Staff proposed amendments to Rule 29 that clarify that a motion will be resolved without a request to submit for decision, and without a response being filed by any other party. Mr. Delicino questioned the language about a response not being considered. Mr. Delicino stated that this is evident from other parts of the rule. Ms. Dupaix stated that it is redundant, but it is good to emphasize the fact. Steven Major then moved to approve the rule as proposed. Patrick Corum seconded the motion. The motion carried unanimously.

V. OTHER BUSINESS

Judge Trease stated that she will have materials on Rule 14 for the next meeting. Vincent Meister stated that the issue of reorganizing the rules should also be discussed at the next meeting. Judge Michele Christiansen stated that she also has an issue to bring before the committee but needs to make certain that an appellate court opinion on the issue has been released first. The next committee meeting is March 20. The meeting adjourned at 1:15 p.m.