

**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

November 13, 2012

**ATTENDEES**

Laura Dupaix - Chair  
Judge Michele Christiansen  
Judge Brendan McCullagh  
Judge Vernice Trease  
Craig Barlow  
Patrick Corum  
Steven Major  
Vincent Meister  
Todd Utzinger

**EXCUSED**

Diane Abbeglen  
Jeremy Delicino  
Craig Ludwig

**STAFF**

Brent Johnson

**I. WELCOME / APPROVAL OF MINUTES**

Laura Dupaix welcomed the committee members to the meeting. Todd Utzinger moved to approve the minutes from the previous meeting. Craig Barlow seconded the motion. The motion carried unanimously.

**II. CRIME VICTIMS PROPOSAL**

Ms. Dupaix noted that Heidi Nestel was not able to attend the meeting and therefore this issue will be discussed at the next meeting. Patrick Corum asked whether Ms. Nestel has a specific proposal. Ms. Dupaix stated that she understands that Ms. Nestel has a proposal that she will bring to the meeting.

### III. RULE 40

Staff distributed the latest proposed amendments to rule 40. Staff noted that the primary change from the last meeting is to allow for multiple extensions of the sealing period. Vincent Meister stated that he discussed various issues with others in his office and the attorneys expressed concerns about becoming involved in the investigation at the sixth month stage in order to request extensions of the sealing period. Mr. Meister stated that their main concern is that this is an investigatory function and therefore sealing should remain the province of law enforcement. Mr. Meister also noted that the different counties have different practices on prosecutor involvement. Mr. Barlow asked whether this is an issue of law enforcement involvement or prosecutorial discretion. Mr. Meister stated that it is both. Mr. Barlow stated that there could be an issue about prosecutors losing their immunity. Judge Brendan McCullagh noted that law enforcement often does not know which prosecutor might be handling a case resulting from an investigation. Mr. Corum moved to approve the rule with an amendment to allow for law enforcement officers to seek extensions of the sealing period. Judge McCullagh seconded the motion. The motion carried unanimously. Ms. Dupaix requested that staff inform media representatives of the proposed changes.

### IV. GPS TRACKERS

Mr. Meister stated that he has had conversations with district court judges about rule 40 and GPS trackers, and the judges were in agreement that rule 40 does not adequately accommodate GPS trackers. Mr. Meister also noted that the UCJIS template does not work for GPS trackers. Therefore, GPS warrants are currently done through hard copies and in person. Mr. Meister stated that judges prefer to have these warrants done electronically and therefore a template is being developed. Mr. Meister noted that they are also working on other templates such as one for investigative subpoenas. Ms. Dupaix noted that the investigative subpoena process is in statute and suggested that GPS tracker provisions should also be in statute. Mr. Meister noted that they had previously been governed by statute, but the statute was repealed and part of the reason was apparently to have the process governed by rule.

Judge McCullagh noted that Paul Boyden and Brent Platt had proposed the current version of rule 40 and if there is an issue they should present a proposal for the committee. Judge Vernice Trease noted that different judges are doing different things. Judge Trease noted that the wire-tap process remains in statute and it makes sense to have all of the processes in one area. Mr. Barlow noted that a statutory change would take up to two years and the legislature may look at any proposed statute with suspicion because it would be an intrusion on personal rights. Mr. Meister noted that rule 40 has been working, but there is a need to accommodate GPS trackers. Mr. Major stated that a provision could be added to the rule that, for good cause, the court can order that it is not necessary to have a warrant served on the person. Mr. Meister stated that GPS tracker warrants would never be served and therefore there would always be good cause and such an amendment would not be necessary. Ms. Dupaix suggested that someone propose language and bring it to the committee.

## **V. MATERIAL WITNESS WARRANTS**

Staff distributed a proposed amendment to the material witness warrant provisions to more adequately reflect existing practices. Staff proposed two separate processes. Staff then left to briefly attend another meeting and the committee discussed the proposals. The committee ultimately expressed a preference for the proposal that allowed for immediate issuance of a warrant.

Committee members also discussed the process for how testimony should be obtained. Ms. Dupaix noted that the rule provided for a transcript to be prepared and testimony taken when there is no reason to believe that the person might subsequently refuse to appear. Ms. Dupaix noted that the only time that this process would be used is when a prosecutor is not certain that the witness will return for trial. Mr. Major stated that if a material witness posts bond then the attorneys would come back to the court and request a hearing and if a material witness does not show then the court would issue a warrant. Ms. Dupaix stated that this issue should be discussed at the next meeting.

## **VI. REORGANIZATION OF RULES**

Judge McCullagh stated that the Judicial Council had recently held its annual strategic planning session. Judge McCullagh stated that the Judicial Council had discussed the idea that the rules of procedure should reflect the reality that more and more pro se individuals are appearing in cases. Judge McCullagh also noted that the rules need to focus on procedure and some provisions might be substantive and therefore it may be more appropriate to put these in statute. Judge McCullagh stated that there would conversely be a need to get procedures out of statute and placed into the rules. Ms. Dupaix stated that the committee should divide the rules into groups and have the various members work on different pieces.

## **VII. RULE 29**

Judge McCullagh stated that a rule change is warranted in light of *Falkner v. Lindberg*. There needs to be a process for district courts to revisit dismissals based on an appeal being abandoned.

There being no further business, the committee adjourned at 1:40 p.m.