

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 18, 2012

ATTENDEES

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

EXCUSED

Craig Ludwig

STAFF

Diane Abegglen
Brent Johnson

I. WELCOME / APPROVAL OF MINUTES

Laura Dupaix welcomed the committee members to the meeting. Vincent Meister moved to approve the minutes from the previous meeting. Patrick Corum seconded the motion. The motion carried unanimously.

II. CRIME VICTIMS ISSUE

Ms. Dupaix stated that Heidi Nestel would like to present an issue and a proposal to the Rules of Criminal Procedure Committee on a colloquy addressing victims' rights. Ms. Nestel could not attend this meeting but will attend the next meeting.

III. SEARCH WARRANTS

The committee continued its discussion on access to search warrants. Staff had prepared and distributed an amendment to Rule 40. The amendment will make all sealed search warrants public after six months, although the prosecutor may request a six month extension. Mr. Meister asked whether additional six month extensions could be requested. Mr. Meister noted that they have had cases in which sealing has been necessary for many years in order to preserve the integrity of the investigation. The committee members agreed that there should be a provision to request additional periods during which the warrant documents would remain sealed.

Mr. Meister also suggested allowing peace officers to request extensions inasmuch as peace officer are the ones requesting sealing in the first place. Craig Barlow expressed opposition to this suggestion, stating that it does not seem appropriate to grant peace officers that type of legal status at that point in the proceedings. Todd Utzinger agreed, stating that the prosecutor needs to be involved at some point to conduct a review and determine whether sealing continues to be justified. Mr. Utzinger stated that the six month point would be a good opportunity for that to occur. Mr. Corum agreed, stating that, because these warrants would be presumptively public after six months, the decision on whether to request additional extensions should be with the prosecutor and not with a law enforcement officer. Staff was instructed to work on the language and present a new proposal at the next meeting.

IV. RULE 14

Judge Trease stated that there may not be an issue here and therefore additional discussion is not necessary.

V. RULE 40 and GPS TRACKERS

Mr. Meister stated that a group is reviewing rule 40 to make it more user-friendly for officers and to create provisions to deal with GPS trackers. Mr. Meister stated that the provisions of rule 40 do not work well in GPS situations because the rule requires, for example, that the officer leave a copy of the warrant at the place to be searched. Mr. Meister stated that proposals will be presented at a future meeting. Judge McCullagh stated that perhaps there could be a separate rule for GPS trackers. Judge McCullagh also stated that there needs to be a template for unattended death situations.

VI. RULE 7

Staff reminded committee members that at a previous meeting the committee was going to revisit the language on judges setting bonds before issuing material witness warrants. Ms. Dupaix asked whether the language in the rule tracks existing practices. Committee members generally agreed that the language of the rule tracks the practice. Judge McCullagh suggested, however, that the language needs to be clarified to state that, instead of a judge fixing bond, the judge is actually fixing bail, which may be satisfied by the posting of a bond. Staff was instructed to review the language and present a proposal at the next meeting.

VII. MOTIONS TO QUASH BINDOVERS

Ms. Dupaix reminded committee members that Judge Lyle Anderson had submitted a request that the rules be amended to state that a motion to quash bindover should be heard by the judge who presided over the preliminary hearing. Ms. Dupaix stated that Judge Anderson had noted that having a different judge hear the motion was in essence an appeal, and an appeal should go to the appellate court. Ms. Dupaix noted that some districts have a different judge review a motion to quash while other districts have the same judge review such a motion. Judge McCullagh suggested that it might make more sense to have the ability to seek an interlocutory appeal on a bindover order, rather than someone filing a motion to quash the bindover and then seeking interlocutory appeal on the decision on the motion. Ms. Dupaix noted that appellate courts rarely grant requests to review bindover decisions. Judge Trease asked whether taking away the right to file a motion to quash would take away a defendant's rights. Ms. Dupaix stated that, because the defendant will be able to immediately seek an appeal, this may actually expedite and enhance a defendant's rights.

Mr. Corum stated that he has had quite a few motions to quash granted, because the judge presiding over the preliminary hearing did not pay close enough attention to the details. Mr. Corum stated that building more levels of oversight will help everyone create a more efficient process. Jeremy Delicino noted that there are circumstances in which the defendant did not have opportunities to raise legal issues during the preliminary hearing and therefore should be allowed to raise those issues through a motion to quash. Ms. Dupaix suggested that the committee appears to be split on whether it is a good idea to allow motions to quash. Ms. Dupaix asked whether a motion should be heard by the same judge. Judge McCullagh noted that it might be easier to convince the judge that heard the preliminary hearing that an error occurred, rather than convincing another judge to reverse a colleague. Mr. Barlow agreed that more oversight in the process is usually good, but he is concerned about a defendant having multiple chances to raise the same issues. Judge Trease suggested that this is perhaps more akin to a motion to reconsider, because a defendant is permitted to submit new law or to cast the case in a new light. Mr. Barlow suggested that staff review laws from other states to see how they handle this issue. Staff will report back at the next meeting.

VIII. REORGANIZATION OF RULES

Mr. Meister stated that this particular topic began with a suggestion to reorganize the subpoena rule to ensure that all of the relevant provisions are in one rule. Mr. Meister noted that Judge McCullagh had then suggested reviewing all of the rules to create stand-alone provisions, without the need to refer to the Rules of Civil Procedure. Judge McCullagh stated that there have been so many ad hoc changes that there may be a need to combine provisions on similar topics into one rule. Judge McCullagh noted, however, that practitioners are familiar with the content of specific rule numbers and changing the numbers may create difficulties. Judge McCullagh stated that the rules could be organized into three sections: pretrial rules, trial rules, and post-trial rules. Ms. Dupaix asked Judge McCullagh to present an outline at the next meeting.

IX. OTHER BUSINESS / ADJOURN

Judge McCullagh stated that he will be proposing changes to Rule 29 to address venue. Judge McCullagh noted that there is an issue in justice courts when venue is changed, but the original court must still retain jurisdiction. The committee will discuss this issue at the next meeting.

The committee scheduled its next meeting for November 13, 2012. The meeting adjourned at 1:30 p.m.