

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

May 4, 2010

ATTENDEES

Judge Michele Christiansen
Patrick Corum
Laura Dupaix
Craig Ludwig
Steven Major
Judge Vernice Trease
Todd Utzinger

EXCUSED

Craig Barlow
Judge Brendan McCullagh
Professor Amos Guiora
Vince Meister

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Laura Dupaix welcomed the committee members to the meeting. Judge Michele Christiansen moved to approve the minutes from the last meeting. Steven Major seconded the motion. The motion carried unanimously.

II. Melendez-Diaz Rule

Ms. Dupaix stated that the court had approved the proposed Melendez-Diaz rule with one minor amendment, changing "may" to "shall." Ms. Dupaix stated that the rule had been published for public comment and no comments were received. The rule is in effect.

III. RULE 8 SUBCOMMITTEE UPDATE

Laura Dupaix stated that the work of the Appellate Representation Committee is moving along and they are getting to the point of making recommendations. Ms. Dupaix stated that there may be recommendations for the Criminal Procedure Committee later this year.

IV. RULE 4

Ms. Dupaix stated that her office has become aware of an issue concerning the language in Rule 4 which states that an information may be “amended at any time before a verdict if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced.” Ms. Dupaix stated that they are seeing arguments that an information may not be amended either before or soon after a preliminary hearing. Ms. Dupaix stated that some judges have been dismissing cases with instructions to prosecutors to refile. Ms. Dupaix stated that this doesn’t seem to be the intent of the rule and the members agreed. A subcommittee was formed to review the issue. The members of the subcommittee are Judge Brendan McCullagh, Steven Major, Patrick Corum, and Laura Dupaix.

V. RULE 36

Patrick Corum stated that he has not had a chance to review this issue and propose changes. Mr. Corum stated that there are legitimate reasons why an attorney should be allowed to withdraw, but the reasons need to be addressed in court before the withdrawal is allowed. Mr. Corum stated that there could be some reference to the Rules of Professional Conduct. The rule could also recognize the issue of counsel not getting paid. Steven Major noted that in Davis County some attorneys are withdrawing as soon as their client asks for a jury trial. Judge Vernice Trease stated that the rule should address the prejudice to the defendant, the prejudice to the state, and the prejudice to the court. Todd Utzinger noted that the federal system has a fairly detailed rule governing this process. Mr. Corum stated that this issue never arises with attorneys who have good reputations with respect to both performance and ethical standards. Mr. Corum stated that he will have a proposal for the next meeting.

VI. JUSTICE COURT TRANSFERS

Staff explained HB14, which passed during the recent legislative session. The bill permits a justice court to transfer a case involving a juvenile to the juvenile court if both the justice court and the juvenile court agree to the transfer. Staff stated that the committee has been asked to look at whether a rule should be drafted to address this process. After brief discussion, the committee decided that a rule did not seem necessary, but if problems arise in the future the committee could revisit the issue.

VII. E-FILING CITATIONS

Staff distributed a rule proposal mandating that all citations be e-filed by January

1, 2011. Staff stated that this was a part of a larger package addressing e-filing issues. The committee questioned whether a court rule can mandate law enforcement to e-file all citations. The committee also wondered whether this would be better addressed as a Rule of Judicial Administration as the rule seems more administrative than procedural. The committee tabled the proposal pending more information.

VIII. OTHER BUSINESS

The committee discussed the recent U.S. Supreme Court decision in Padilla. The U.S. Supreme Court held that attorneys are required to advise clients of potential immigration issues arising from a guilty plea. Ms. Dupaix expressed the opinion that the court should also address the issue, and it should be done in the Rule 11 colloquy. Judge Trease stated that sometimes attorneys will advise defendants not to tell them other information about crimes so that the attorneys can make appropriate arguments without knowing other issues. Judge Trease stated that there is a reason not to have this in the colloquy because it might impose a requirement on judges to inquire further as to a defendant's legal status, and the colloquy will occur while a law enforcement officer is present. Ms. Dupaix asked committee members about at least putting a paragraph in the Rule 11 statement. Ms. Dupaix stated that the court would not have to ask about immigration status, but would just have to inform of potential consequences. Ms. Dupaix stated that she would at least like to see something in the court record. Ms. Dupaix stated that she will draft a proposal for the next meeting.

The committee members scheduled their next meeting for June 23, 2010. The meeting adjourned at 6:30 p.m.