

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 11, 2011

ATTENDEES

Laura Dupaix
Judge Michele Christiansen
Judge Brendan McCullagh
Judge Vernice Trease
Craig Barlow
Patrick Corum
Steven Major

EXCUSED

Professor Amos Guiora
Craig Ludwig
Vincent Meister
Todd Utzinger

STAFF

Diane Abegglen
Brent Johnson

I. WELCOME / APPROVAL OF MINUTES

Laura Dupaix welcomed the committee members to the meeting. Judge Brendan McCullagh moved to approve the minutes from the last meeting. Craig Barlow seconded the motion. The motion carried unanimously.

II. RULE 13

The committee discussed the public comments that were received on Rule 13. Judge Vernice Trease stated that she was surprised at the comments because the proposal doesn't significantly change court practices. Judge Trease stated that the purpose of the proposal is simply to make certain that attorneys ask the court whether defendants need to be present. Mr. Barlow expressed a concern that some judges may want defendants there all the time, and the judges would never approve any waivers. Mr. Barlow noted that the rule already requires the defendant to be present unless the defendant waives that requirement, so the defendant would have to be present to make the waiver. Patrick Corum stated that a judge should always have the

discretion to require a defendant to be present. Mr. Corum stated that perhaps the rule could state that the defendant must make the waiver in open court.

Ms. Dupaix noted that the comments expressed the concern that defendants would need to be at the court for every hearing. Judge McCullagh stated that there may be a need to better define what is meant by the pre-trial conference. Mr. Barlow stated that sometimes a pre-trial conference will morph and other issues will be discussed, and sometimes the defendant will have waived the right to attend. Judge McCullagh suggested a "good cause" standard, such that judges could not reject the waiver except for good cause. Judge Trease stated that the proposal that is written will save money because it will cut down on the number of hearings and will help make certain that the defendants are present for trials, resulting in less continuances. Ms. Dupaix stated that, even without the proposed change, the court can require a defendant's presence at any conference. Judge Trease agreed, but stated that it will be helpful to have the provision in the rule. Judge Trease expressed a preference for presenting the rule to the Supreme Court as proposed. Judge Brendan McCullagh then moved to approve the rule as published for public comment. Craig Barlow seconded the motion. The motion carried unanimously.

III. STATE V. HERNANDEZ

Judge Michele Christiansen questioned whether any rule changes are necessary in light of the Supreme Court's decision that courts must conduct preliminary examinations in class A misdemeanor cases. Ms. Dupaix stated that Rule 7(h)(1) should be amended to state "felony or class A misdemeanor." Mr. Corum agreed with that change and noted that Hernandez has not had much of an effect on practice. Mr. Corum stated that there has been an initial scheduling issue, but that will clear out as time passes. Mr. Corum noted that there is a reference in Rule 7 (g) that should also be changed. Mr. Barlow suggested that someone review the rules and present a proposal at the next meeting to make certain that the committee addresses every area where a change is necessary or warranted. The committee agreed with this suggestion. Judge Michele Christiansen will present a proposal.

IV. RULE 36

Patrick Corum distributed the latest proposal to amend Rule 36. Mr. Corum stated that the proposal had not changed much from the last proposal. Mr. Corum stated that there is a need for the court to determine whether withdrawals are consistent with the Rules of Professional Conduct. Judge Trease suggested that attorneys certify whether their withdrawal is consistent with the Rules. Ms. Dupaix agreed, stating that this would put the onus on the attorney, but the court would still be able to review the certification. Mr. Corum stated that this change would be a good idea and that there simply needs to be some review by the court as to why an attorney is withdrawing. Mr. Corum will rewrite the proposal according to Judge Trease's suggestion and present it at the next meeting.

V. RULE 27A

Mr. Corum stated that he believes the legislature will be working on a fix for stays in justice court appeal cases. Mr. Corum stated that some judges have been holding on to requests for stays to make certain that a defendant completes some portion of his or her sentence. Mr. Corum stated that there is no need for this proposal to continue on the committee's agenda.

VI. REORGANIZATION OF RULES

Judge McCullagh stated that he has completed a good portion of his proposal and he will present it at the next meeting.

VII. RULE 14

Vincent Meister was unable to attend the meeting to discuss this issue. The committee decided to table this issue until Mr. Meister is ready to propose something to the committee.

VIII. RULE 29

Staff stated that he prepared two separate proposals to amend Rule 29 and those will be presented at the next meeting.

X. OTHER BUSINESS/ADJOURN

The committee scheduled its next meeting for August 24, 2011 at 5:15 p.m. There being no further business the committee adjourned at 6:00 p.m.