

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 12, 2008 - 5:15 p.m.

ATTENDEES

Judge Michelle Christiansen
Patrick Corum
Laura Dupaix
Judge Bruce Lubeck
Craig Ludwig
Professor Erik Luna
Steven Major
Judge Brendan McCullagh

EXCUSED

Craig Barlow
Julie George
Samuel Harkness
Vincent Meister

STAFF

Matty Branch
Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

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

II. RULE 8

The committee reviewed the comments that it received on the proposed amendments to Rule 8. Some of the commentators had suggested that sixteen hours of CLE credit is not reasonable and will unnecessarily shrink the pool of qualified applicants. Patrick Corum noted that the pool may very well shrink, but there are seminars available throughout the country and sixteen hours is feasible. Professor Luna stated that many defense attorneys will say that sixteen hours is not enough, while many prosecutors will say that sixteen hours is not necessary. Professor Luna stated that the key question is how many hours should be required to qualify an attorney when someone's life is on the line. Professor Luna stated that he believes eight hours seems ridiculously low, but does not know the right number of hours otherwise. Judge McCullagh stated that this issue is perhaps better addressed in the practice of law arena, rather than

a rule of procedure. After brief additional discussion, Laura Dupaix called for a vote on the proposed amendments. The committee unanimously approved the proposed amendments as they had been published for public comment.

III. RULE 15.5

Laura Dupaix stated that the committee had received a proposed change from Fred Voros. After brief discussion, Professor Erik Luna moved to adopt Fred Voros' proposed change. Judge Brendan McCullagh seconded the motion. The motion carried unanimously.

Laura Dupaix questioned whether the reference to "witnesses" in section (a) should be eliminated as proposed. Ms. Dupaix stated that the principle of the rule should apply to both victims and witnesses. Judge McCullagh stated that the reason he proposed eliminating the word witnesses is because the statute applies only to victims. Judge McCullagh noted that the other provisions of Rule 15.5 will apply to both victims and witnesses. Ms. Dupaix stated that the policy considerations should apply to both throughout the rule. After brief discussion, Ms. Dupaix called for a vote on her proposal to reinsert the word witnesses back into section (a). The motion failed with Laura Dupaix and Craig Ludwig voting in favor of reinstating the word, and the rest of the committee members voting against. The committee then approved the rule for submission to the supreme court.

IV. RULE 33

Laura Dupaix noted that the committee had received one comment, questioning what is meant by the word "uncivil." Patrick Corum noted that the rule contains other terms which are subject to interpretation and courts will have to deal with this on a case-by-case basis. After brief discussion, the committee unanimously agreed to send the rule to the court for final approval.

V. RULE 27

Ms. Dupaix stated that she prefers the language of the previous rule because it more clearly conveys that the defendant has the burden. Judge McCullagh stated that he had changed the language, but believed he had not changed the substance on the burden and presumptions. Ms. Dupaix stated that the statute controls in these situations and would prefer that the rule mirror the statute. Patrick Corum stated that he prefers Judge McCullagh's proposal. Mr. Corum stated that he believes that the language changes the tone, but does not change the substance of the rule. After brief discussion, the committee agreed to leave the language as Judge McCullagh had presented it. Judge McCullagh then moved to approve Rules 27, 27a and 38 for public comment. Patrick Corum seconded the motion. The motion carried unanimously.

VI. OTHER BUSINESS

Judge McCullagh stated that, at the next meeting, he will have a proposal to move Rule 9-301 of the Rules of Judicial Administration into Rule 11 of the Rules of Criminal Procedure. Judge McCullagh stated that Rule 9-301 requires justice court judges to document a discussion on enhanceable offenses. Judge McCullagh noted that case law does not require this type of discussion and therefore he will propose to have Rule 11 amended to ensure that Rule 11 requirements are in writing in justice courts, but there will no longer be a need to discuss enhancements. Judge McCullagh stated that he will also have a proposal to modify Form 1 to address justice court appeals. Ms. Dupaix stated that Form 1 should also be reviewed to determine whether the recent amendment on firearms should be incorporated into the form.

The committee scheduled its next meeting for August 4, 2008 at 5:15 p.m. There being no further business, the committee adjourned at 6:30 p.m.