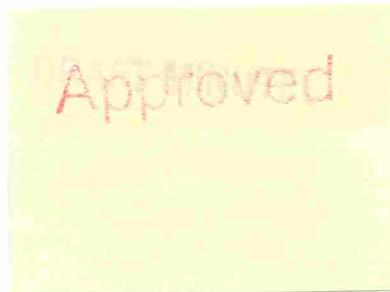


## MINUTES

### 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

June 3, 2009 - 5:15p.m.



#### ATTENDEES

Craig Barlow  
Laura Dupaix  
Samuel Harkness  
Steven Major  
Judge Brendan McCullagh  
Vincent Meister

#### EXCUSED

Judge Michele Christiansen  
Patrick Corum  
Julie George  
Judge Bruce Lubeck  
Craig Ludwig

#### STAFF

Brent Johnson

### I. WELCOME AND APPROVAL OF MINUTES

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

### II. STATE V. BOYLES

Ms. Dupaix explained that this case involved a defendant who wanted a jury trial. The defendant did not appear on the day of the trial. The district court judge found that the defendant had voluntarily absented himself from the trial. The court determined that the defendant had therefore also waived the jury trial. The court excused the jury and conducted a bench trial. The defendant was charged with a felony and several misdemeanors. The state conceded error on the felony because the rule requires a jury trial on felonies. The state argued, however, that the misdemeanor convictions should stand. Ms. Dupaix stated that a proposal had been submitted to amend the rule to permit a judge to declare that the defendant has waived a jury trial by absenting him or herself from the trial.

Mr. Meister stated that he had previously tried a case in which the judge did not excuse the jury. Steven Major stated that he has also tried cases before a jury in these circumstances. Mr. Meister stated that trying a case before a jury is the safest course to ensure that a conviction is upheld on appeal. Craig Barlow agreed with this position, but stated that the judge and jury might be in difficult situations. Mr. Barlow stated that defense counsel might lose interest in the

DRAFT MINUTES

MEMORANDUM

TO: [Illegible]

FROM: [Illegible]

SUBJECT: [Illegible]

DATE: [Illegible]

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case and fail to object to inadmissible evidence. In a bench trial, the judge would be able to appropriately evaluate the evidence, but the jury would not have the same background. Sam Harkness agreed, stating that juries might also assume that a defendant is guilty because the defendant did not take the time to show for the trial.

Judge McCullagh referenced a case in which a defendant had agreed to waive a jury trial, but the prosecution objected to the waiver. Judge McCullagh stated that, by rule, the prosecution is involved in this decision and apparently has the ability to force a trial, but the district court judge went ahead and granted the defendant the jury waiver. Judge McCullagh stated that this rule also needs to be addressed. The committee decided that Judge McCullagh's subcommittee on Rules 17, 18, and 19 would review these issues and make a recommendation.

### **III. HJR 27**

Laura Dupaix stated that there had been a House Joint Resolution proposing an amendment to the Rules of Criminal Procedure which would have stated that, if a defendant requests a jury trial, the prosecutor may not amend the information to reduce the charge to an infraction in order to avoid a jury trial. Ms. Dupaix stated that this is a study item for the Legislature and the question is whether the committee wants to provide any input at this time. Judge McCullagh stated that he did not believe that this is a rule issue, but is substantive and therefore for the Legislature. Judge McCullagh stated that the committee should not take a position at this point. Craig Barlow agreed, stating that Paul Boyden is working with the Legislature on this issue and it is hoped that they will come up with an appropriate resolution. The issue was tabled to wait and see what happens.

### **IV. RULE 8 SUBCOMMITTEE**

Laura Dupaix stated that the subcommittee has not done anything yet. Ms. Dupaix stated that her committee will work over the Summer to make a recommendation. Ms. Dupaix stated that the subcommittee will only be looking at post-conviction counsel. Mr. Meister stated that it is important that judges have objective criteria to evaluate.

### **V. RULES 17, 18, AND 19 SUBCOMMITTEE**

Judge McCullagh stated that his subcommittee has not done anything yet, but noted that now they have some additional issues to review. Judge McCullagh stated that he will be getting the subcommittee together to make recommendations.

### **VI. RULE 9-301**

Judge McCullagh stated that Rule 9-301 requires justice courts to notify defendants of enhancements. Judge McCullagh stated that the requirements of Rule 9-301 should be in the Rules of Criminal Procedure, but the enhancement aspect of it does not make sense, because

enhancements are collateral consequences. Judge McCullagh stated that there had been a Court of Appeals' case stating that failure to comply with Rule 9-301 has no effect on the conviction or subsequent enhancements, because enhancements are collateral and are constantly changing. Judge McCullagh stated that he will be working on this issue and will present a proposal at the next meeting.

## **VII. OTHER BUSINESS**

Laura Dupaix asked whether the committee needed to discuss Rule 40 to ensure that the rule reflects current practice. Judge McCullagh stated that the rule needs to be changed to allow contemporaneous recording by law enforcement dispatch and to allow the tape to be returned to the magistrate at a later time. Judge McCullagh stated that the law should not require the magistrate to make the recording. Mr. Meister stated that the rule will need to be expanded a bit. A subcommittee was formed of Vincent Meister and Steven Major to present a recommendation. Mr. Meister also noted that there is an administrative issue because the clerks are sometimes releasing warrants to the public prior to the time that they can be released.

The committee did not schedule a meeting at this time. Staff was instructed to try to schedule a meeting for September. There being no further business, the meeting adjourned at 6:30 p.m.