

**MINUTES**

**APPROVED 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

August 11, 2008 - 5:15 p.m.

**ATTENDEES**

Craig Barlow  
Patrick Corum  
Laura Dupaix  
Julie George  
Samuel Harkness  
Judge Bruce Lubeck  
Craig Ludwig  
Erik Luna  
Steven Major  
Judge Brendan McCullagh  
Vincent Meister

**EXCUSED**

Judge Michele Christiansen

**STAFF**

Brent Johnson

**I. WELCOME AND APPROVAL OF MINUTES**

Laura Dupaix welcomed the committee members to the meeting. The minutes from the last meeting were approved.

**II. RULE 15.5 UPDATE**

Ms. Dupaix provided an update on the Supreme Court's approval of Rule 15.5. The Supreme Court approved the rule as published, except for putting back in the phrase "victim or other witness." The Supreme Court also suggested repealing Utah Code Section 76-5-411.

**III. RULE 8**

Ms. Dupaix stated that the Supreme Court had not adopted Rule 8, but had sent the rule back to the committee to see if the committee can create an exception to allow unqualified attorneys to be appointed in extraordinary circumstances. The Supreme Court gave the example of Alan Sullivan, who was disqualified from a case because he did not meet the Rule 8 qualifications, but, would have done an excellent job. Ms. Dupaix suggested that the exception

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MEMORANDUM FOR THE RECORD

DATE: [illegible]

TO: [illegible]

FROM: [illegible]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

should only apply to appeals and post-conviction cases. Ms. Dupaix suggested forming a subcommittee. The subcommittee is Ms. Dupaix, Patrick Corum, and Vincent Meister.

Mr. Meister asked what would happen if the committee determined that a catch-all is not feasible. Ms. Dupaix stated that might occur, but the committee needs to take a hard look at developing comparable experience exceptions. Ms. Dupaix stated that the Supreme Court determined that the education requirements should remain in place. Professor Erik Luna stated that the ABA has minimum standards and those might be helpful to the subcommittee. Professor Luna also suggested looking at other states, such as Virginia, which might have similar rules. Mr. Meister expressed a concern that judges might not be willing to accept responsibility for appointment when there aren't concrete standards in place. Craig Barlow stated that the committee must be careful about fiscal impacts.

#### **IV. WALLY BUGDEN PROPOSAL - RECORDING INTERROGATIONS**

Wally Bugden had submitted a proposal to adopt a rule requiring interrogations to be recorded. Judge Lubeck suggested that this should not be a rule of criminal procedure because it is a request for a substantive change. Judge McCullagh suggested that this could be a rule of evidence because it is ultimately about whether something can be admitted into evidence. Ms. Dupaix suggested that this could be covered by a jury instruction, if any of the parties want to request such.

Steve Major stated that SWAPLAC is going to run a bill next year to address this issue. Mr. Major suggested that the committee look at that bill. Professor Luna stated that Alaska's Constitution. He also stated that the divide between criminal rules and evidentiary rules is not always clear. Professor Luna stated the committee has adopted search warrant rules that tell officers what to do, so it is possible that a new rule of criminal procedure could do the same.

Judge McCullagh stated that the issue cannot be discussed without getting at the admissibility of the evidence. Judge McCullagh stated that the problem is that the Evidence Committee is usually not concerned with criminal matters and they might not be willing to do anything. Ms. Dupaix asked whether everyone agreed that recording is a good idea in certain circumstances. The committee members agreed that recording is a good idea. Ms. Dupaix stated that the committee should look at the statute and begin with that. Ms. Dupaix suggested forming a subcommittee to look at the SWAPLAC legislation to see if everything would be in place through that legislation. Judge McCullagh suggested having the subcommittee invite Paul Boyden, Creighton Horton, and Paul Cassell to meet with the committee. Mr. Barlow suggested asking either Wally Bugden or Tara Issacson to participate. Mr. Barlow suggested that there be a law enforcement representative, Judge McCullagh suggested Ken Wallentine.

Mr. Major stated that the statute makes a distinction between initial stops and subsequent interrogations and which should be recorded. Mr. Major stated that law enforcement officers seem to be okay with that distinction. Vincent Meister stated that he will obtain a copy of the

proposal and send it to staff, who will distribute it to the full committee. Judge Lubeck suggested that, rather than having a subcommittee, the above individuals should be invited to the next meeting to discuss the statute. Mr. Major suggested that the committee also invite any others that Paul Boyden has worked with on this issue. Laura Dupaix will invite the suggested individuals to the next committee meeting.

## **V. OTHER BUSINESS**

Judge Brendan McCullagh stated that the Criminal Jury Instruction Committee has occasionally come across problems with Rules 17, 18, and 19. Judge McCullagh stated that there are some confusing aspects to the rules and the Criminal Jury Instruction Committee has asked this committee to look at those references. Mr. Barlow agreed that there is confusion. A subcommittee was formed to look at the rules. The subcommittee is Judge McCullagh, Mr. Barlow, and Julie George.

The committee scheduled its next meeting for October 27, 2008. The committee adjourned at 6:05 p.m.