

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 22, 2007 - 5:15 p.m.

**ATTENDEES**

Craig Barlow  
Patrick Corum  
Laura Dupaix  
Julie George  
Judge Bruce Lubeck  
Steven Major  
Vincent Meister  
Judge Sheila McCleve  
John O'Connell

**EXCUSED**

Craig Ludwig  
Erik Luna  
Judge Brendan McCullagh

**STAFF**

Matty Branch  
Brent Johnson

**I. WELCOME AND APPROVAL OF MINUTES**

Laura Dupaix welcomed the committee members to the meeting. Ms. Dupaix introduced Craig Barlow as the newest member of the committee. The minutes from the previous meeting were approved.

**II. RULE 15.5**

Ms. Dupaix reported that the Evidence Advisory Committee is not willing to visit the Rule 15.5 issue. The Supreme Court recognizes the Evidence Advisory Committee's reluctance to pursue the issue and the court will not press the Evidence Advisory Committee. Ms. Dupaix noted that the Criminal Procedure Committee still had proposed amendments to Rule 15.5 which could be resubmitted to the Supreme Court. The Rule 15.5 subcommittee will review the rule and the comments and report back to the committee. The Rule 15.5 subcommittee members are Judge Brendan McCullagh, Patrick Corum, and Craig Barlow.

**III. PETERS V. PINE MEADOW RANCH**

Ms. Dupaix stated that the committee had received a letter from the Supreme Court

asking the committee to consider adding a provision to the rules similar to Rule 24(k) of the Rules of Appellate Procedure. Rule 24(k) requires briefs to be “free from burdensome, irrelevant, immaterial or scandalous matters.” The rule permits an appellate court to disregard or strike briefs which are not in compliance with the rule. The appellate court may also assess attorney fees against an offending lawyer.

Craig Barlow suggested that civil cases are different from criminal cases with regard to sanctions that should be imposed. Mr. Barlow stated that it is one thing to strike a pleading in a civil case and another thing to strike a pleading in a criminal case in which liberty interests are at stake. Ms. Dupaix noted, however, that there may be ineffective assistance of counsel issues and it might be better to deal with those sooner rather than later. Mr. Barlow suggested that a rule change might invite ineffective assistance of counsel claims.

Judge McCleve noted that there have been some problems with scandalous pleadings, but the trial court judges usually ignore those problems. Judge McCleve questioned whether it might be useful to assess fees against an offending attorney. Judge McCleve wondered whether the rule could be drafted in a way that does not punish the client. Judge Lubeck noted that trial court judges have inherent authority to address these types of issues. The committee members agreed that judges have this inherent authority and the committee voted to not incorporate the suggested provisions into the Rules of Criminal Procedure.

#### **IV. RULE 40 COMMENTS**

Staff distributed comments that had been received on the proposed amendments to Rule 40. The committee members reviewed the comments and decided to change the heading in one section. The committee members determined that other amendments were not necessary. Julie George then moved to approve Rule 40 as published for public comment and amended. Judge Sheila McCleve seconded the motion. The motion carried unanimously.

#### **V. RULE 18**

Ms. Dupaix noted that the recent case of State v. Valdez had held that Batson challenges must be raised before the jury is sworn. Ms. Dupaix noted that Judge Brendan McCullagh had suggested that the committee review Rule 18 to address the Valdez issue as well as the timing of jury instructions. Ms. Dupaix suggested that perhaps a subcommittee be formed to review these issues. Patrick Corum stated that the Valdez case spells out the issue fairly clearly, and a rule amendment may not be necessary. The committee members agreed that a subcommittee was not needed, but Judge McCullagh could submit proposed amendments to the committee.

#### **VI. RULE 8 SUBCOMMITTEE REPORT**

Mr. Corum distributed proposed amendments to Rule 8. The amendments increase the number of required hours of continuing legal education on death penalty cases. The amendments

also state that one of the attorneys appointed in a capital case must have had some participation on a death penalty case. Mr. Corum noted that the proposal has been distributed to members of UACDL for comment.

Laura Dupaix suggested that the rule be amended to shorten the time frames within which the CLE requirement must be met. Ms. Dupaix suggested going from five years to three years. Vincent Meister suggested that the period be shortened to two years. Mr. Meister noted that the feedback from attorneys is that capital attorneys need to be better trained, because there are not many opportunities to participate on capital cases, given the few cases that are tried to verdict. Mr. Corum noted that they will continue to receive input on the rule and the rule will be discussed at future meetings.

## **VII. RULES 14 AND 18**

The committee took final votes on Rule 14 and Rule 18, which had been published for public comment. The committee did not receive any comments on the rules. The committee voted to approve Rule 14 with Patrick Corum abstaining, and John O'Connell voting against the amendment. The committee approved Rule 18 with a unanimous vote.

## **VIII. OTHER BUSINESS/ADJOURN**

The committee scheduled its next meeting for September 18, 2007 at 5:15 p.m. The committee adjourned at 6:30 p.m.