

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

September 20, 2007

ATTENDEES

Judge Michele Christiansen
Patrick Corum
Laura Dupaix
Julie George
Judge Bruce Lubeck
Steven Major
Judge Brendan McCullagh

EXCUSED

Craig Barlow
Craig Ludwig
Professor Erik Luna
Vincent Meister

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Laura Dupaix welcomed the committee members to the meeting. Ms. Dupaix welcomed Judge Michele Christiansen as a new member, replacing Judge Sheila McCleve. Julie George moved to approve the minutes from the last meeting. Steven Major seconded the motion. The motion carried unanimously.

II. APPELLATE RULE 24(k)

Ms. Dupaix reminded the committee members that at the last meeting the committee had received a request from the Supreme Court to add a provision to the Rules of Criminal Procedure similar to Rule 24(k) of the Rules of Appellate Procedure, which prohibit scandalous briefs and permits a judge to strike the brief and sanction an attorney for such material. The committee had discussed the issue at the last meeting and determined that striking a pleading in a criminal case might be too severe a sanction. The committee also determined that a judge already has tools to address attorney misconduct. Ms. Dupaix stated that this conclusion was reported to the Supreme Court, but the court stated that it would nevertheless like a provision in the Rules of Criminal Procedure. The court noted that any such rule would be permissive and not mandatory.

The committee then reviewed the proposal that had been received from the Professionalism Committee. Judge Lubeck noted that the rule should allow for the imposition of

“sanctions” and not just “fees.” Judge Lubeck also stated that a judge should have authority to disregard or strike a pleading “in whole or in part.” The committee agreed with these suggestions. Judge Brendan McCullagh stated that the authority to impose sanctions should also be allowed against non-lawyers. The committee agreed with this suggestion. The committee then discussed where the rule should be located, and ultimately agreed that it could go in Rule 33. Steven Major then moved to approve the proposed rule, as amended by the committee. Judge Michele Christiansen seconded the motion. The motion carried unanimously.

III. RULE 15.5

Judge Brendan McCullagh provided the status on Rule 15.5. After brief discussion, Judge McCullagh stated that he will be meeting with Fred Voros soon about another issue and will discuss Mr. Voros’ concerns about the rule. Judge McCullagh will report back at the next meeting.

IV. RULE 8

Patrick Corum provided a report from the Rule 8 Subcommittee. Mr. Corum distributed the latest draft of the rule proposal. Mr. Corum noted that the proposal increases the CLE hours to sixteen and changes the time frame within which the hours must be completed from five to three. The proposal also requires an attorney to have performed substantial work on a capital case. The proposal also requires familiarity and compliance with the ABA standards on capital cases. Mr. Corum stated that he had distributed the proposal to the members of UACDL, but had not received any comments.

Ms. Dupaix expressed concern with requiring attorneys to know and follow the ABA guidelines. Ms. Dupaix also noted that there should be some clarification as to the work that an attorney must perform on a capital case in relation to just appearing on a capital case. The committee members agreed that clarification would be helpful. Mr. Corum stated that he will revise the rule and report back at the next meeting.

V. RULE 22

Staff stated that the Office of Crime Victim Reparations submitted a proposal to amend Rule 22 to require a judge to inform a defendant convicted of a misdemeanor domestic violence of the federal prohibition against possessing, transferring or using weapons. Under recent amendments to the Violence Against Women Act, the federal government requires states to implement such a policy as a condition of obtaining grant funds. Judge Brendan McCullagh noted that this should not just occur at sentencing, but should also occur when a plea is taken because the federal government will consider pleas in abeyance to be convictions for purposes of these prohibitions. Staff was instructed to put the language in Rule 11 and the Rule 11 form. Julie George then moved to approve the amendments to Rule 22 and Rule 11. Steven Major seconded the motion. The motion carried unanimously.

VI. RULE 7

Staff stated that the committee had received a request from a judge to discuss whether Rule 7 should be amended to eliminate the right of cross examination in preliminary hearings. The committee members expressed the opinion that cross examination in preliminary hearings can often serve a useful purpose in determining probable cause. Judge Lubeck noted that there should be a way to limit cross examination without prohibiting it all together. Judge Lubeck stated that cross examination can often extend into a discovery tool and that should not be permitted. Ms. Dupaix stated that cross examination is probably constitutional under the Utah Constitution and therefore the rule should not be changed. The committee agreed that the rule should not change.

VII. S.B.154

The committee then reviewed S.B.154, which permits individuals to submit a written statement in lieu of an affidavit, for whether it impacts the Rules of Criminal Procedure. After a brief discussion, the committee members agreed that the statute did not impact the rules in a significant way.

VIII. OTHER BUSINESS/ADJOURN

The committee scheduled its next meeting for November 13, 2007 at 5:15 p.m. There being no further business, the committee adjourned at 6:40 p.m.