

## APPROVED MINUTES

### MINUTES OF SUPREME COURT'S ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE

September 19, 2006

#### Members Present

Michael Wims  
Laura Dupaix  
Hon. Bruce Lubeck  
Patrick Corum  
Vincent Meister  
Julie George  
Erik Luna  
John O'Connell

#### Members Excused/Absent

Brendan McCullagh  
Hon. Sheila McCleve  
Craig Ludwig  
Steven Major

#### Guest

Paul Boyden

#### Staff

Matty Branch

#### **Welcome and approval of Minutes**

Michael Wims welcomed the members to the meeting. The minutes from the June 12, 2006, meeting were approved.

#### **Rule 14 Subcommittee Report**

Laura Dupaix distributed the proposed rule and committee comment. She said the proposed rule aimed at creating a procedure that would keep records confidential and require court involvement in obtaining records pertaining to a victim. The question was raised as to whether the restriction should only be applicable to records of victims rather than to any witness. Consensus of the committee was that "any witness" was too broad and that the restriction should be limited to victims.

Several committee members questioned whether subsection(2)(a) should require that the court find that the "defendant is entitled to production of the records sought under applicable law." Vince Meister stated that he believed there would be situations when the State would legitimately need certain records produced but may not be able to show entitlement under a statute. Laura Dupaix was concerned about eliminating the word "entitled" because case law makes use of that word. Professor Luna questioned whether (2)(a) should be limited to requests

from the defendant only and whether the prosecution could use the rule for harassment or intimidation. Mr. Meister said that extending the requirement to the prosecution would be burdensome because then the prosecution could not get a subpoena without a court hearing.

A motion was made as to leaving the reference to "defendant" in (2) (a) and striking the phrase "and that the records are not sought for the purpose of harassing or intimidating the victim." The motion passed 5 votes in favor, with 2 abstentions.

Julie George questioned whether by expanding the time frame in subsection (2) (c) from 30 to 60 days the rule was putting the defendant in the position of having to waive his or her right to a speedy trial in view of the statute that says defendant can have a trial within 30 days. Prosecutors on the committee argued that by requiring that a victim's records must be requested 60 days before trial served to put the defendant on notice that he needed to get the request made sooner rather than later. Mr. Meister and Ms. Dupaix stated that if a defendant chooses to request the records of a victim, the defendant has in effect waived the right to a speedy trial.

Professor Luna moved to delete the reference to any certain number of days and make the filing deadline based upon the time permitted by the court with the addition of "on good cause shown." The motion passed 4 in favor, 3 opposed. Laura Dupaix asked that the committee reconsider eliminating the reference to any certain number of days. She moved that 30 days be specified as well as leaving in the "on good cause language." The motion passed unanimously.

The motion was then made that Rule 14 in the form proposed by Laura Dupaix and Julie George, subject to the amendments described above, be approved. The vote passed 6 in favor, 1 opposed.

Michael Wims thanked Laura Dupaix and Julie George for their work on the rule.

### **Proposed Rule 40**

Paul Boyden presented the rule agreed to by the subcommittee consisting of himself, Vince Meister, John O'Connell, and Jason Nelson, a law clerk in the Attorney General's office. A number of revisions were suggested by committee members. Mr. Wims asked the committee to vote on whether it approved the overall concept the subcommittee was proposing. The committee voted unanimously in favor of the concept. It was agreed that the subcommittee would meet and incorporate the changes suggested by the full committee, and then provide a revised draft to Brent Johnson for circulation to the full committee and a vote by e-mail. Mr. Wims thanked the subcommittee for its excellent work.

### **Rule 18**

Deferred until the next meeting

**Rule 15.5**

Deferred until the next meeting. Mr. Wims requested the Supreme Court to provide the committee with specific direction as to what matters in Rule 15.5 the committee should consider. Matty Branch said she would advise the Supreme Court of that request.

**Adjourn**

The next committee meeting will be Tuesday, November 14, at 5:15 p.m.