

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

November 13, 2007 - 5:15 p.m.

ATTENDING

Craig Barlow
Patrick Corum
Laura Dupaix
Sam Harkness
Judge Bruce Lubeck
Craig Ludwig
Vincent Meister

EXCUSED

Judge Michele Christiansen
Julie George
Erik Luna
Steven Major
Judge Brendan McCullagh

STAFF

Matty Branch
Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Laura Dupaix welcomed the committee members to the meeting and introduced Sam Harkness as the newest member replacing John O'Connell, Sr. Craig Ludwig moved to approve the minutes of the last meeting. Vincent Meister seconded the motion. The motion carried unanimously.

II. RULE 15.5

Judge Brendan McCullagh had previously distributed proposed changes to Rule 15.5. Laura Dupaix explained the history of the proposed changes. Judge McCullagh explained in a memorandum that he made a couple of changes in response to Fred Voros' comments, but nothing substantive. Laura Dupaix stated that the rule needed to be amended in order to comply with the requirements of Crawford v. Washington. Ms. Dupaix stated that the changes fix the rule by stating that a videotape can only be admitted if there has been a prior opportunity to cross examine the child.

Vincent Meister asked whether it would be considered an opportunity to cross examine if a child was on the stand during the preliminary hearing, but the defendant did not cross examine. Patrick Corum stated that this is still an open question and the rule does not and should resolve that issue. Mr. Corum stated that the rule is drafted as well as it can be under the circumstances

and other Crawford issues will have to be resolved through case law. Ms. Dupaix noted that subsection (b) was not changed after it was published for public comment. Ms. Dupaix stated that subsection (b) does not present a Crawford issue, but still could present a face-to-face issue. Sam Harkness then moved to approve the rule and to have it republished for public comment. Patrick Corum seconded the motion. The motion carried unanimously.

III. RULE 8

Patrick Corum distributed two proposed amendments to Rule 8. Mr. Corum stated that the two drafts were essentially the same. Mr. Corum stated that the CLE requirement will be raised to sixteen hours. Mr. Corum stated that in the future it might be wise to increase the requirement to twenty-four hours. Mr. Corum noted that some attorneys are concerned about increasing the number of hours too quickly. Craig Barlow suggested that if the hours are bumped too quickly, it would limit the number of attorneys who are qualified, which may create some issues with pending cases. Vincent Meister noted that there would still be quite a few who would qualify because many attorneys are attending out-of-state capital seminars and those are often three to five day seminars. Mr. Meister noted that many states require forty to sixty hours of CLE.

Laura Dupaix asked about current cases. Mr. Corum stated that his office currently has six death penalty cases. Mr. Meister stated that many attorneys do not want to do these cases anymore and the committee needs to be careful that it does not discourage other attorneys. Ms. Dupaix stated that she is always somewhat leery of minimum qualifications because they disqualify some attorneys that should qualified and qualify some attorneys that should not be qualified. Mr. Corum noted that he tried to get input from outlying counties, but he did not receive any feedback. Judge Bruce Lubeck asked whether there should be a time frame within which an attorney had to have worked on a previous capital case. The committee members agreed that the rule should not have a time limit.

Sam Harkness then moved to approve Rule 8 as amended. Craig Barlow seconded the motion. The motion carried unanimously.

IV. OTHER BUSINESS

Staff noted that Judge Brendan McCullagh wanted to put together a subcommittee to review Rules 4, 5, 6 and 7 for consistency. A subcommittee was formed with Vincent Meister, Julie George, Sam Harkness and Judge McCullagh as chair.

The committee scheduled its next meeting for January 15, 2008 at 5:15 p.m. There being no further business, the committee adjourned at 6:00 p.m.