

## 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

February 25, 2002 - 5:15 p.m.

#### ATTENDEES

Michael Wims  
Laura Dupaix  
Professor Eric Luna  
Steven Major  
John O'Connell  
Craig Ludwig  
Judge Bruce Lubeck  
Robert Heineman

#### STAFF

Brent Johnson  
Matty Branch

#### ABSENT

Judge Sheila McCleve  
Vincent Meister  
Judge Thomas Wilmore  
Judge Shauna Graves-Robertson  
Mary Corporon

#### GUESTS

Tim Shea  
Alicia Davis

### 1. WELCOME AND APPROVAL OF MINUTES

Michael Wims welcomed the Committee members to the meeting. The Committee members reviewed and approved the minutes from the November 26, 2001 meeting.

The Committee welcomed Steven Major, Davis County attorney, as the newest member of the Committee.

### II. PROPOSED AMENDMENTS TO RULE 17

Michael Wims welcomed Tim Shea to the meeting. Mr. Shea distributed a proposed rule change. Mr. Shea explained that he had previously served as staff to the Jury Reform Committee. The Jury Reform Committee met for approximately three years, ultimately issuing a report with recommendations. Mr. Shea stated that a successor group is now overseeing the implementation process.

Mr. Shea stated that an area that has received a lot of attention involves jurors being able to ask questions during a trial. Mr. Shea stated that the process is becoming accepted in many states. Mr.

Shea stated that a decades-old Utah Supreme Court case has recognized the ability of jurors to engage in this process in Utah. Mr. Shea stated that the Jury Implementation Committee has proposed amendments to Rule 17 to ensure that, if and when the practice is followed, the procedure is uniform. Mr. Shea stated that the proposal is being submitted to this Committee to be approved for public comment.

Mr. Wims stated that he has background in the military courts, as an advocate and a judge, and that system allows written questions from jurors. Mr. Wims stated that the Rule 17 proposal generally follows the procedure in the military courts. Mr. Wims stated that he has found the practice to be beneficial.

Professor Luna asked Mr. Wims whether a side-bar was required in all circumstances in which a juror proposed a question. Mr. Wims stated that, at the very least, both sides were given a chance to object to the question.

Judge Lubeck stated that the procedure would allow jury members to participate more in the process, but questioned how a judge would deal with "silly" questions without demeaning the juror. Mr. Wims stated that the military court judges were always able to give a neutral answer such as "the Rules of Evidence do not allow this question to be asked."

Steven Major stated that, in Davis County, the side bar process does not work because a jury must be excused every time a side-bar is held. The video-taping system is not conducive to side-bars. Mr. Major stated that this would add to trial time. Mr. Major stated that the practice of allowing jurors to ask questions is opposed by his office and the public defenders in Davis County. The attorneys have concerns that if a judge is required to reword a question, then it becomes the judge's question. Mr. Shea noted that the state is beyond the question of whether the practice should be allowed, but is to the point of establishing the appropriate process. Mr. Shea also distributed a sample explanation of the questioning process that is used by Judge McIff in the Sixth District. Mr. Shea stated that Judge McIff emphasizes to the jurors that the lawyers are trained to ask the right questions and to illicit relevant evidence, but jurors may nevertheless ask questions.

Professor Luna suggested that, if a question is asked despite an objection by one of the sides, that the objection should be recorded outside the presence of the jury. Mr. Wims stated that the objection could be noted on the question itself.

After brief further discussion, Professor Eric Luna moved to approve the rule for public comment. Laura Dupaix seconded the motion. The motion carried unanimously.

### **III. REORGANIZATION OF THE CODE OF JUDICIAL ADMINISTRATION**

Michael Wims welcomed Alicia Davis to the meeting. Ms. Davis explained that the Judicial Council is currently revising the Code of Judicial Administration. The goal is to reorganize the Code to make it more accessible and to move some of the procedural rules to other sets of rules. Ms. Davis

explained that the options for the Judicial Council include to creating a new set of rules on practice or to move existing rules to areas such as the Rules of Criminal Procedure, Rules of Civil Procedure, Rules of Appellate Procedure, etc.

Mr. Wims stated that he had recently received a letter from Chief Justice Howe explaining that the Judicial Council would be establishing an ad hoc committee to study the issue of the Chief Justice asked for a representative from each of the advisory committees to serve on the ad hoc committee. Laura Dupaix volunteered to serve on the committee. Mr. Wims asked Ms. Davis how long the process would take. Ms. Davis stated that it was difficult to say, but would certainly take several monthly meetings.

#### **IV. OTHER BUSINESS**

Laura Dupaix stated that she will be proposing a rule change addressing parties who attempt to subpoena confidential information. Ms. Dupaix stated that there have been problems when confidential information has been subpoenaed and the information has been released without giving the subject of the information an opportunity to object. Ms. Dupaix stated that there should be something in rule which allows a victim notice and a right to be heard.

John O'Connell noted that there are already laws in place protecting this information and the best result would be to educate entities that they are not to release confidential information. Ms. Dupaix stated that this may well be, but her rule proposal would not involve a significant change or a cumbersome process. Ms. Dupaix stated that the proposal would simply require that the prosecuting attorney receive notice of the subpoena and the prosecuting attorney would then provide notice to the victim. Ms. Dupaix stated that she will present a proposal at the next meeting.

Professor Eric Luna noted the passing of Professor Lionel Frankel. Professor Luna stated that Professor Frankel had been an amazing man and will be sorely missed.

#### **V. ADJOURN**

The Committee did not schedule another meeting at this time, because there is no pending business. The meeting adjourned at 6:00 p.m.