APPROVED MINUTES

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

December 1, 2003 - 5:15 p.m.

ATTENDEES
Michael Wims
Robert Heineman
Laura Dupaix
John O'Connell
Judge Bruce Lubeck
Craig Ludwig
Steven Major
Judge Shauna Graves-Robertson
Judge Thomas Willmore
Professor Erik Luna
Vincent Meister

EXCUSED
Mary Corporon
Judge Sheila McCleve

STAFF
Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Michael Wims welcomed the Committee members to the meeting. The minutes from the October 21, 2003 meeting were approved.

II. SUBCOMMITTEE ON APPEALS FROM JUSTICE COURTS

The subcommittee had previously distributed its proposed amendment to the rule on appeals from justice courts. Judge Bruce Lubeck explained the philosophy of the subcommittee. Judge Lubeck stated that the Legislature has created a two tier system for justice court cases. The philosophy of the subcommittee was to maintain the spirit of a two tier system by getting rid of the certificate of probable cause and automatically vacating the justice court judgment. Rob Heineman suggested a couple of additions to the subcommittee's work. Mr. Heineman proposed clarifying the first section, on trials de novo, adding language describing the specific appeals under the section. The Committee members agreed with Mr. Heineman's suggestion.

Judge Shauna Graves-Robertson asked about the process when defendants are ordered to jail forthwith. Judge Lubeck stated that, upon the filing of the notice of appeal, the defendant would be

restored to the same conditions as before the conviction. Judge Graves-Robertson asked about the situation in which a defendant spends fifteen days in jail before a notice of appeal is filed. John O'Connell suggested that the defendant could receive credit for time served in the event of a subsequent conviction. Mr. O'Connell agreed with Judge Graves-Robertson that there should be a process to notify the jail that the judgment had been vacated. Judge Lubeck questioned whether there needed to be language in the rule specifically discussing the notification process. After brief discussion, the Committee agreed that there should be language in the rule stating that "any commitment should be recalled."

Mr. Heineman proposed an addition to the section on hearings de novo, specifically describing the types of orders that could be appealed. The Committee agreed with this proposal.

Mr. Heineman also proposed language that would give the justice court the ability to modify the bail or conditions of release. Judge Lubeck stated that the subcommittee had considered this, but concluded that giving the justice court this ability would defeat the purpose of a true two tier system. Judge Graves-Robertson stated that this authority would be helpful because the justice court judge may feel that a defendant is truly a danger and the bail should reflect that danger. Laura Dupaix stated that such a provision would work both ways, allowing the justice court to reduce bail for a defendant. Judge Lubeck stated that if justice courts are given this authority, it will be difficult to determine when the justice court loses jurisdiction.

Steven Major stated that there may be situations when a defendant knows he or she will lose on appeal but appeals in order to get out jail and to then leave the area. The prosecution may want to seek higher bail to keep the defendant in the state. Judge Graves-Robertson stated that although these circumstances would not occur very often, the authority would be helpful. Laura Dupaix suggested a specific time frame during which the justice court could act, such as 48 hours from the time that the notice of appeal is filed. Vincent Meister stated that he agreed with Judge Lubeck that the filing of the notice of appeal divests the justice court of jurisdiction. Mr. Meister stated that the prosecution should file any motion to increase bail before the notice of appeal is filed.

Rob Heineman suggested simply deleting the word "district" from "district court", which would allow litigants to raise the issue in either court. The Committee agreed, by a seven to three vote, that the word "district" should be deleted.

Mr. O'Connell questioned whether there should also be language in the section on hearings de novo allowing the court to change conditions of release for good cause. The Committee members agreed with the proposal. Mr. O'Connell also questioned whether there should be language in the provision on hearing de novo clarifying the process for notifying the justice court when the case is dismissed. Laura Dupaix proposed specific language to address the matter and the Committee agreed with the proposal.

Mr. Wims then questioned the Committee how they would like to proceed on the proposal. After brief discussion, Professor Erik Luna moved to have the Committee send the proposal to the Board

of District Court Judges and the Board of Justice Court Judges for their input. After the Boards' input, the Committee would then publish the rule for public comment. Laura Dupaix seconded the motion. The motion carried unanimously. The Committee agreed that the Boards should respond to the proposals by the February meeting. The next meeting was scheduled for February 23, 2004. Professor Luna also suggested sending Judge Lubeck's memorandum explaining the changes to the respective Boards.

III. OTHER BUSINESS/ADJOURN

The Committee had no additional items of business for this meeting. At the February meeting, the Committee will discuss the response from the Boards and the Committee will also discuss the record of enhancements, which was discussed at the last meeting. There being no further business, the meeting adjourned at 6:30 p.m.