

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 28, 2005 - 5:15 p.m.

ATTENDEES

Laura Dupaix
Julie George
Rob Heineman
Judge Bruce Lubeck
Professor Erik Luna
Steven Major
Vincent Meister
John O'Connell
Judge Shauna Graves-Robertson
Michael Wims

EXCUSED

Judge Sheila McCleve
Judge Thomas Willmore

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Michael Wims welcomed the Committee members to the meeting. The minutes from the previous meeting were approved. Mr. Wims introduced the newest member of the Committee, Julie George. Each Committee member then provided a brief introduction.

II. SEARCH WARRANT RULES

Mr. Wims reminded the Committee of its task to review the search warrant statutes and incorporate the procedures into the rules. A subcommittee was created to review the statutes and rules. The subcommittee members are John O'Connell and Vincent Meister. The subcommittee will also invite Paul Boyden to assist with the effort.

III. RULE 38

Judge Bruce Lubeck reminded the Committee members that it had tabled the revision of Rule 38 pending the Utah Supreme Court's decision in Bernat v. Allphin. Judge Lubeck stated that the court had issued its decision upholding the constitutionality of former Rule 4-608, which had become Rule 38. John O'Connell noted that the Supreme Court's decision does not change the Committee's

intended course of action and that the rule could still be sent to the Supreme Court for approval. Rob Heineman then moved to approve the rule. Vincent Meister and Laura Dupaix then questioned whether the revisions effectively address situations in which a litigant abandons or voluntarily withdraws an appeal. Rob Heineman suggested that it is still appropriate to treat the case as if originally filed in the district court.

Michael Wims reminded the Committee members that the Board of District Court Judges and Board of Justice Court Judges had opposed the rule. Mr. Wims suggested that it may be best to invite the chair of the Board of Justice Court Judges to the next meeting to discuss the rule and better understand the opposition to the rule. The Committee members agreed that the chair should be invited to the next meeting. Rob Heineman withdrew his motion pending further discussion.

III. FAX FILINGS

Staff had distributed a proposal to incorporate fax filing procedures into Rule 3. Staff then informed the Committee that the Civil Procedure Committee had decided against creating a rule. The Civil Procedure Committee's position is that each court site should continue to adopt their own policies for fax filings. Professor Erik Luna moved to table the fax filing rule until and unless the other rule committees adopt fax procedural rules. John O'Connell seconded the motion. The motion carried unanimously.

IV. RULE 15.5 SUBCOMMITTEE

Rob Heineman provided the report of the subcommittee. Mr. Heineman stated that the subcommittee has met but is clearly divided along prosecution and defense lines. The prosecution side wants to amend the rule while the defense side believes that the criminal procedure rule is the wrong place to deal with this issue. The defense side's position is that the rule creates a potential conflict between the Rules of Criminal Procedure and the Rules of Evidence. Professor Luna suggested that Crawford did not just create a hearsay rule and that legislation may ultimately be required to deal with this case. After brief discussion, the Committee members agreed that both the prosecution and defense sides should submit specific proposals to the Committee. Laura Dupaix will present a rule proposal which incorporates the requirements of Crawford. Rob Heineman will create a memorandum explaining the reasons why the defense side believes that the rule should be repealed.

V. OTHER BUSINESS/ADJOURN

The Committee scheduled its next meeting for April 18, 2005. The Committee adjourned at 6:26 p.m.