

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 26, 2001 - 5:15 p.m.

ATTENDEES

Michael Wims
Rob Heineman
Judge Sheila McCleve
Vincent Meister
Judge Thomas Willmore
Judge Bruce Lubeck
Craig Ludwig
Laura Dupaix
Judge Shauna Graves-Robertson

EXCUSED

Professor Lionel Frankel
Professor Erik Luna
John O'Connell
Mary Corporon

STAFF

Matty Branch
Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Michael Wims welcomed the Committee members to the meeting. Rob Heineman moved to approve the minutes of the October 15, 2001, meeting. The motion was seconded. The motion carried unanimously.

II. APPELLATE QUALIFICATIONS

Staff gave a brief summary of the research into other state statutes and rules on appellate qualifications. Staff explained that very few states have appellate qualifications set forth in statute or rule. Many states have public or private appellate defender offices in which qualifications are set internally. Other states do not set qualifications, but provide resources to assigned counsel. Some states have set bare minimum qualifications such as admission to the bar and/or a minimum number of years of practice.

Michael Wims stated that he had talked with Joan Watt and she had agreed with the statement that standards would probably do little to improve the appellate practice. Money and education would be the most helpful.

Laura Dupaix stated that the one thing she had seen from other states that might be helpful is mandatory training. Vincent Meister questioned whether the training would be required of both private counsel and public defenders. Mr. Wims stated that this would involve a philosophical issue as to whether a person is required to hire an attorney with certain qualifications.

Ms. Dupaix stated that in addition to a training qualification, the Committee should adopt a rule requiring the assignment of different counsel if an ineffective assistance of counsel claim is raised. After brief discussion, the Committee members agreed with the suggestion. Rob Heineman suggested allowing the trial court some discretion by including the language "unless the court orders otherwise for good cause shown."

Michael Wims questioned whether there should be a CLE requirement for appellate attorneys. Judge Willmore suggested a requirement that appellate attorneys complete a course approved by the Supreme Court. Mr. Wims questioned who would prepare and offer such a course.

Matty Branch stated that the court is looking more at recommendations related to number of education hours, etc. Laura Dupaix stated that there should be a course on appellate procedure followed by a course on appellate advocacy, including written and oral advocacy. Ms. Dupaix stated that there are plenty of resources in the community, such as from her office and LDA to provide training. Craig Ludwig stated that ultimately the appellate courts need to step-up because, from his experience, no matter the amount of training, some people simply do not learn. Judge Lubeck expressed the opinion that the Supreme Court has the wrong committee for this proposal. He suggested that the Appellate Rules Committee deal with this issue, or that the court deal with the problem internally. The Committee agreed with Judge Lubeck that the issues should be referred to the Appellate Rules Committee. Judge Lubeck provided the example of the Tenth Circuit Court, which has a system in place in which it gives demerits to attorneys which could eventually result in an attorney being disbarred from practice before the Tenth Circuit.

After brief discussion, Michael Wims suggested that staff draft a rule on the ineffective assistance of counsel claims requiring new counsel. Mr. Wims suggested that staff also draft a rule dealing with a training requirement and that a proposal also be drafted encouraging the appellate courts to create internal enforcement mechanisms. All of the Committee members agreed with this suggestion. Mr. Wims stated that the suggestions would be circulated by fax or e-mail for vote.

III. RULE 29

Staff explained that the current Rule 29 on judicial disqualification did not work well in justice courts, because there was not an adequate provision for assigning a new judge in the event of disqualification. Staff noted that Utah Code Ann. § 78-5-138 requires the city or county "appointing authority" to appoint a temporary justice court judge in the event of judicial disqualification. Laura Dupaix suggested that Rule 29 contain a cross reference to the statute. The Committee members were unanimously in favor of this suggestion.

IV. OTHER BUSINESS/ADJOURN

Mr. Wims asked Committee members whether there was any additional business. Because there is no additional, pending business, a future meeting date was not set by the Committee. There being no further business, the meeting adjourned at 6:10 p.m.