

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 29, 2005

**ATTENDEES**

Laura Dupaix  
Rob Heineman  
Craig Ludwig  
Erik Luna  
Judge Brendan McCullagh  
Vincent Meister  
John O'Connell  
Michael Wims

**EXCUSED**

Julie George  
Judge Bruce Lubeck  
Steven Major  
Judge Sheila McCleve

**STAFF**

Matty Branch  
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.

**II. RULE 15.5**

Judge Brendan McCullagh distributed the most recent proposal for Rule 15.5. Judge McCullagh explained that the proposal moves provisions of Rule 15.5 into the Rules of Evidence. The proposal clarifies that the rule applies to criminal cases when children are witnesses. The proposal also states that it could apply to either party. Judge McCullagh noted that the rule is not used very often, but there are occasions when the rule is helpful.

Laura Dupaix noted that the only substantive change appeared to be the language that a child must be available for cross examination. John O'Connell requested clarification as to whether a child must be in the presence of the defendant. Judge McCullagh stated that rule would retain provisions allowing a child to be outside of the presence. John O'Connell stated that he reads Crawford as requiring face-to-face examination. Laura Dupaix stated that she read Crawford as requiring cross examination but not necessarily face-to-face cross examination.

Mike Wims then questioned the Committee members on whether they favored recommending this proposal to the Evidence Committee and then to the Legislature for a repeal of the appropriate statute. Judge McCullagh clarified that the statute will need to be repealed because the statute violates Crawford. Michael Wims noted that the Committee's approval of the rules at this stage is simply to send the proposal to the Evidence Committee. The substantive changes are dependant on the approval of others, and therefore the substance may again be discussed at a later date. All of the members voted in favor of sending the proposal, except John O'Connell. Rob Heineman explained that he is in favor of the process, but does not believe that either of the rules should be adopted. Mr. Heineman stated that there are hearsay rules which can allow a child testimony to be admitted and that the courts should rely on those. Mr. Heineman voted in favor of sending the proposals, as the appropriate procedure for discussion. Judge McCullagh will contact the Evidence Committee to have the proposal reviewed.

### **III. SUBCOMMITTEE REPORTS**

Laura Dupaix provided a report on the Rule 14 Subcommittee. Ms. Dupaix stated that the recent case of State v. Gonzales held that the Rules of Civil Procedure apply to the criminal subpoena process and a victim is entitled to notice of a subpoena. Ms. Dupaix stated that the Committee will need to address whether a process should be put in the criminal rules. Ms. Dupaix stated that the subcommittee will also address whether an individual should first be required to go to the court before subpoenaing information.

Jude McCullagh stated that the Rule 27 Subcommittee has not recently met, but he has been obtaining feedback on his proposals. The subcommittee will hopefully be ready at the next meeting.

Vincent Meister provided the report on the Search Warrant Subcommittee. Mr. Meister stated that they have been working on implementation of Rule 40 and therefore other changes have been tabled for the time being. Mr. Meister stated that there have been technology problems with the implementation of Rule 40, but those are being worked on. Mr. Meister stated that the subcommittee should have something to report at the next meeting.

Laura Dupaix stated that the State v. Manning Subcommittee has not yet met, but will have a report for the next meeting.

### **IV. OTHER BUSINESS/ADJOURN**

The Committee members did not have any other business. The next meeting was scheduled for January 31, 2006 at 5:15 p.m. The meeting adjourned at 6:00 p.m.