

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

October 15, 2001 - 5:15 p.m.

ATTENDEES

Michael Wims
Judge Bruce Lubeck
John O'Connell
Judge Thomas Willmore
Rob Heineman
Laura Dupaix
Judge Shauna Graves-Robertson
Judge Sheila McCleve
Craig Ludwig
Mary Corporon
Professor Erik Luna
Vince Meister

ABSENT

Professor Lionel Frankel

STAFF

Brent Johnson
Matty Branch

I. WELCOME AND INTRODUCTION OF MEMBERS

Michael Wims welcomed the Committee members to the meeting. All of the Committee members introduced themselves.

II. APPELLATE COUNSEL QUALIFICATIONS

Michael Wims introduced a letter from Chief Justice Richard Howe asking the Committee to review qualifications for counsel in criminal cases, particularly in appeals. The letter from Chief Justice Howe stated that the Committee should consider the advisability of minimum qualifications, what those qualifications should be, and the cases to which those qualifications should apply. After introducing the letter, Mr. Wims opened the issue for discussion.

Laura Dupaix stated that she has definitely seen problems in appellate cases, but expressed the opinion that minimum qualifications would not address the problems. Ms. Dupaix stated that minimum qualifications may exclude some very competent attorneys, while also retaining counsel who

APPROVED MINUTES

Meeting of the Board of Directors
held on the 15th day of June 1954
at the office of the Secretary
of the Board of Directors
of the [Company Name]

Present: [List of names]

Present: [List of names]

Called to order by the President
at 8:00 A.M.
The minutes of the meeting
held on the 15th day of June 1953
were read and approved.

Report of the Treasurer
was read and approved.

Report of the Secretary
was read and approved.

Report of the [Committee Name]
was read and approved.

Resolved that the [Resolution]
be adopted.



have previously performed below expectations. Rob Heineman expressed the opinion that if the bar is raised too high, outlying counties may not have access to adequate counsel. Mr. Wims added that, if the bar is too high, qualified counsel will be primarily in Salt Lake County, and appellate defense will become much more expensive for counties.

Ms. Dupaix expressed the opinion that the only way to improve the adequacy of appellate counsel is for the appellate courts to put pressure on attorneys who are not doing a good job. Ms. Dupaix stated that she has seen instances, particularly in outlying counties, where counsel missed deadlines or otherwise produced inadequate briefs, and the appellate courts did not hold the attorneys accountable.

Mr. Wims asked whether a CLE requirement would help with a competency requirement. Professor Erik Luna suggested a system similar to California's, which uses the local bar to qualify attorneys for death penalty cases. Laura Dupaix stated that there is no problem with capital cases in Utah, it is with other felony cases.

Mr. Wims asked the Committee about the suggestion that appellate counsel be different from trial counsel. Ms. Dupaix agreed with this suggestion. Vince Meister stated that different counsel should not be automatic, but should be tied to the type of issues raised. He stated, for instance, that ineffective assistance of counsel claims should have new counsel. Judge Thomas Willmore stated that in Cache County they only have one attorney, who handles both trial and appellate work, and a different role would cause a burden for the county. Mr. Heineman expressed the opinion that a trial attorney should be able to raise his or her own ineffective assistance claim and that the appellate courts should listen to such claims. Mr. Heineman stated that the Rules of Professional Conduct adequately address situations in which there is an actual conflict of interest and the appellate courts should enforce those provisions.

Mr. Wims suggested having staff research what other states do on this issue and then inviting other individuals who may be interested in this topic to provide comment at the next meeting. The Committee agreed with this suggestion.

III. RULE 11 AND VICTIM NOTIFICATION

Mr. Wims noted that the Committee had received a rule change proposal from Professor Paul Cassell. The proposal would add language to Rule 11 requiring the judge to ask whether a victim is present and wants to be heard before the court accepts a plea. Laura Dupaix noted that this issue may be affected by the case pending before the Supreme Court, State v. Casey, and the Committee should defer discussion and decision until the Supreme Court issues its decision. The Committee agreed with this suggestion.

IV. OTHER BUSINESS/ADJOURN

Staff noted that Rule 29 on disqualification needs to be modified to address situations in justice court. A proposal will be presented at the next meeting. The Committee scheduled its next meeting for November 26, 2001, at 5:15 p.m. at the Administrative Office of the Courts. There being no further business, the meeting adjourned at 6:15 p.m.