

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

October 26, 2005

ATTENDEES

Laura Dupaix
Julie George
Rob Heineman
Judge Bruce Lubeck
Erik Luna
Steven Major
Judge Sheila McCleve
Judge Brendan McCullagh
John O'Connell
Michael Wims

EXCUSED

Craig Ludwig
Vincent Meister

STAFF

Matty Branch
Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Michael Wims welcomed the Committee members to the meeting. John O'Connell moved to approve the minutes from the last meeting. The motion carried.

II. *MANNING V. STATE*

Mr. Wims noted that the recent case of *Manning v. State* had created a new process for reinstating the time for filing an appeal when a defendant has been unconstitutionally deprived of the right to appeal. The question before the Committee was whether the new procedure should be put into rule and, if so, whether the procedure should be in the rules of criminal procedure or appellate procedure. Staff noted that this issue had been discussed at the recent appellate procedure committee meeting and they had decided to form a subcommittee, with Joan Watt and Laura Dupaix, and that there should be a reference in both sets of rules. The Committee members agreed that this would be a good approach.

III. BAIL BOND FORM

The Bail Bond Licensing Board had submitted a proposal for the Committee to approve a new bail bond form. The Utah Code states that all bail bonds are to be on forms that substantially conform with a form approved by the supreme court. The Bail Bond Board asked the Advisory Committee to recommend adoption of the form by the supreme court. The Committee members reviewed the form and agreed to recommend the form to the supreme court. John O'Connell moved to recommend the form to the court. Judge Bruce Lubeck seconded the motion. The motion carried unanimously.

IV. RULE 14

Julie George stated that she had talked with Judge Cassell about a rule proposal. Judge Cassell wrote a law review article proposing a change to the federal rule. Laura Dupaix noted that the proposal appears to require permission from the court before a subpoena is issued. Ms. Dupaix suggested that the subcommittee review the proposal and make a recommendation before the full committee discusses the issue. The Committee agreed with this suggestion. Professor Luna noted that the federal government has formed a committee to look at this issue and Professor Luna suggested that the subcommittee speak with that committee. Michael Wims suggested that the subcommittee also look at the GRAMA statute that provides for notice when protected information as sought.

RULE 15.5

Judge Brendan McCullagh provided a status on the task force work. Judge McCullagh distributed a proposal that he will be presenting to the task force. The proposal splits out the first portion of Rule 15.5 and places it in the rules of evidence, with some amendments. Judge McCullagh proposes that the remaining portions of Rule 15.5 stay in the rules of criminal procedure. The Committee members agreed that this was a reasonable approach.

Michael Wims asked about the task force's time frame. Judge McCullagh stated that the task force will need legislation to handle this issue and therefore they will try to meet as soon as possible. Mr. Wims suggested that the criminal procedure committee meet on November 29 in order to review any proposals. The Committee members agreed with this suggestion.

John O'Connell suggested that everyone read Crawford before the next meeting.

V. OTHER BUSINESS/ADJOURN

Mr. Wims noted that the search warrant rules subcommittee and the Rule 27 subcommittee did not have reports for this meeting. The Committee adjourned at 5:50 p.m.