

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

*** Meeting will be in the Council Room**

January 15, 2013
12:00 p.m. - 2:00 p.m.

Agenda

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| 1. Welcome and Approval of Minutes | - | Laura Dupaix |
| 2. Crime Victims Clinic proposal | - | Heidi Nestel |
| 3. Rule 40 and GPS trackers | - | Vincent Meister |
| 4. Rule 7, posting bonds in material witness situations | - | Laura Dupaix
Brent Johnson |
| 5. Motions to quash bindovers
Judge Lyle Anderson email | - | Laura Dupaix
Brent Johnson |
| 6. Reorganization of rules | - | Judge Brendan McCullagh |
| 7. Rule 29 and venue | - | Judge Brendan McCullagh |
| 8. Other business | | |
| 9. Adjourn | | |

Rule 7. Proceedings before magistrate.

(a) When a summons is issued in lieu of a warrant of arrest, the defendant shall appear before the court as directed in the summons.

(b) When any peace officer or other person makes an arrest with or without a warrant, the person arrested shall be taken to the nearest available magistrate for setting of bail. If an information has not been filed, one shall be filed without delay before the magistrate having jurisdiction over the offense.

(c)(1) In order to detain any person arrested without a warrant, as soon as is reasonably feasible but in no event longer than 48 hours after the arrest, a determination shall be made as to whether there is probable cause to continue to detain the arrestee. The determination may be made by any magistrate, although if the arrestee is charged with a capital offense, the magistrate may not be a justice court judge. The arrestee need not be present at the probable cause determination.

(c)(2) A written probable cause statement shall be presented to the magistrate, although the statement may be verbally communicated by telephone, telefaxed, or otherwise electronically transmitted to the magistrate.

(c)(2)(A) A statement which is verbally communicated by telephone shall be reduced to a sworn written statement prior to submitting the probable cause issue to the magistrate for decision. The person reading the statement to the magistrate shall verify to the magistrate that the person is reading the written statement verbatim, and shall write on the statement that person's name and title, the date and time of the communication with the magistrate, and the determination the magistrate directs to be indicated on the statement.

(c)(2)(B) If a statement is verbally communicated by telephone, telefaxed, or otherwise electronically transmitted, the original statement shall, as soon as practicable, be filed with the court where the case will be filed.

(c)(3) The magistrate shall review the probable cause statement and from it determine whether there is probable cause to continue to detain the arrestee.

(c)(3)(A) If the magistrate finds there is not probable cause to continue to detain the arrestee, the magistrate shall order the immediate release of the arrestee.

(c)(3)(B) If the magistrate finds probable cause to continue to detain the arrestee, the magistrate shall immediately make a bail determination. The bail determination shall coincide with the recommended bail amount in the Uniform Fine/Bail Schedule unless the magistrate finds substantial cause to deviate from the Schedule.

(c)(4) The presiding district court judge shall, in consultation with the Justice Court Administrator, develop a rotation of magistrates which assures availability of magistrates consistent with the need in that particular district. The schedule shall take into account the case load of each of the magistrates, their location and their willingness to serve.

(c)(5) Nothing in this subsection (c) is intended to preclude the accomplishment of other procedural processes at the time of the determination referred to in paragraph (c)(1) above.

(d)(1) If a person is arrested in a county other than where the offense was committed the person arrested shall without unnecessary delay be returned to the county where the crime was committed and shall be taken before the proper magistrate under these rules.

(d)(2) If for any reason the person arrested cannot be promptly returned to the county and the charge against the defendant is a misdemeanor for which a voluntary forfeiture of bail may

be entered as a conviction under Subsection 77-7-21(1), the person arrested may state in writing a desire to forfeit bail, waive trial in the district in which the information is pending, and consent to disposition of the case in the county in which the person was arrested, is held, or is present.

(d)(3) Upon receipt of the defendant's statement, the clerk of the court in which the information is pending shall transmit the papers in the proceeding or copies of them to the clerk of the court for the county in which the defendant is arrested, held, or present. The prosecution shall continue in that county.

(d)(4) Forfeited bail shall be returned to the jurisdiction that issued the warrant.

(d)(5) If the defendant is charged with an offense other than a misdemeanor for which a voluntary forfeiture of bail may be entered as a conviction under Subsection 77-7-21(1), the defendant shall be taken without unnecessary delay before a magistrate within the county of arrest for the determination of bail under Section 77-20-1 and released on bail or held without bail under Section 77-20-1.

(d)(6) Bail shall be returned to the magistrate having jurisdiction over the offense, with the record made of the proceedings before the magistrate.

(e) The magistrate having jurisdiction over the offense charged shall, upon the defendant's first appearance, inform the defendant:

(e)(1) of the charge in the information or indictment and furnish a copy;

(e)(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(e)(3) of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel;

(e)(4) of rights concerning pretrial release, including bail; and

(e)(5) that the defendant is not required to make any statement, and that the statements the defendant does make may be used against the defendant in a court of law.

(f) The magistrate shall, after providing the information under paragraph (e) and before proceeding further, allow the defendant reasonable time and opportunity to consult counsel and shall allow the defendant to contact any attorney by any reasonable means, without delay and without fee.

(g) If the charge against the defendant is a class B or C misdemeanor, the magistrate shall call upon the defendant to enter a plea.

(g)(1) If the plea is guilty, the defendant shall be sentenced by the magistrate as provided by law.

(g)(2) If the plea is not guilty, a trial date shall be set. The date may not be extended except for good cause shown. Trial shall be held under these rules and law applicable to criminal cases.

(h)(1) If a defendant is charged with a felony or a class A misdemeanor, the defendant shall be advised of the right to a preliminary examination. If the defendant waives the right to a preliminary examination, and the prosecuting attorney consents, the magistrate shall order the defendant bound over to answer in the district court.

(h)(2) If the defendant does not waive a preliminary examination, the magistrate shall schedule the preliminary examination. The examination shall be held within a reasonable time,

but not later than ten days if the defendant is in custody for the offense charged and not later than 30 days if the defendant is not in custody. These time periods may be extended by the magistrate for good cause shown. A preliminary examination may not be held if the defendant is indicted.

(i)(1) Unless otherwise provided, a preliminary examination shall be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and shall proceed first with its case. At the conclusion of the state's case, the defendant may testify under oath, call witnesses, and present evidence. The defendant may also cross-examine adverse witnesses.

(i)(2) If from the evidence a magistrate finds probable cause to believe that the crime charged has been committed and that the defendant has committed it, the magistrate shall order that the defendant be bound over to answer in the district court. The findings of probable cause may be based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary examination.

(i)(3) If the magistrate does not find probable cause to believe that the crime charged has been committed or that the defendant committed it, the magistrate shall dismiss the information and discharge the defendant. The magistrate may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

(j) At a preliminary examination, the magistrate, upon request of either party, may exclude witnesses from the courtroom and may require witnesses not to converse with each other until the preliminary examination is concluded. On the request of either party, the magistrate may order all spectators to be excluded from the courtroom.

(k)(1) If the magistrate orders the defendant bound over to the district court, the magistrate shall execute in writing a bind-over order and shall transmit to the clerk of the district court all pleadings in and records made of the proceedings before the magistrate, including exhibits, recordings, and any typewritten transcript.

(k)(2) When a magistrate commits a defendant to the custody of the sheriff, the magistrate shall execute the appropriate commitment order.

(l)(1) When a magistrate has good cause to believe that any material witness in a pending case will not appear and testify unless bond is required, the magistrate may fix a bond with or without sureties and in a sum considered adequate for the appearance of the witness.

(l)(2) If the witness fails or refuses to post the bond with the clerk of the court, the magistrate may issue a warrant and commit the witness to jail until the witness complies or is otherwise legally discharged. If the witness is arrested on a warrant issued by the magistrate, the custodial authority shall notify the issuing magistrate before the end of the next business day, and the magistrate shall provide a hearing for the witness within seventy-two hours or, upon a showing of good cause, within a reasonable period of time after being notified of the arrest.

(l)(3) If the witness does provide bond when required, the witness may be examined and cross-examined before the magistrate in the presence of the defendant and the testimony shall be recorded. The witness shall then be discharged.

(l)(4) If the witness is unavailable or fails to appear at any subsequent hearing or trial when ordered to do so, the recorded testimony may be used at the hearing or trial in lieu of the personal testimony of the witness.

Advisory Committee Notes

Rule 3. Service and filing of papers.

(a) All written motions, notices and pleadings shall be filed with the court and served on all other parties.

(b) Whenever service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney, unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) The party preparing an order shall, upon execution by the court, mail to each party a copy thereof and certify to the court such mailing.

Rule 4. Prosecution of public offenses.

(a) Unless otherwise provided, all offenses shall be prosecuted by indictment or information sworn to by a person having reason to believe the offense has been committed.

(b) An indictment or information shall charge the offense for which the defendant is being prosecuted by using the name given to the offense by common law or by statute or by stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge. An information may contain or be accompanied by a statement of facts sufficient to make out probable cause to sustain the offense charged where appropriate. Such things as time, place, means, intent, manner, value and ownership need not be alleged unless necessary to charge the offense. Such things as money, securities, written instruments, pictures, statutes and judgments may be described by any name or description by which they are generally known or by which they may be identified without setting forth a copy. However, details concerning such things may be obtained through a bill of particulars. Neither presumptions of law nor matters of judicial notice need be stated.

(c) The court may strike any surplus or improper language from an indictment or information.

(d) The court may permit an information to be amended at any time before trial has commenced so long as the substantial rights of the defendant are not prejudiced. If an additional or different offense is charged, the defendant has the right to a preliminary hearing on that offense as provided under these rules and any continuance as necessary to meet the amendment. The court may permit an indictment or information to be amended after the trial has commenced but before verdict if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced. After verdict, an indictment or information may be amended so as to state the offense with such particularity as to bar a subsequent prosecution for the same offense upon the same set of facts.

(e) When facts not set out in an information or indictment are required to inform a defendant of the nature and cause of the offense charged, so as to enable ~~him~~ the defendant to prepare ~~his~~ a defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed at arraignment or within ten days thereafter, or at such later time as the court may permit. The court may, on its own motion, direct the filing of a bill of particulars. A bill of particulars may be amended or supplemented at any time subject to such conditions as justice may require. The request for and contents of a bill of particulars shall be limited to a statement of factual information needed to set forth the essential elements of the particular offense charged.

(f) An indictment or information shall not be held invalid because any name contained therein may be incorrectly spelled or stated.

(g) It shall not be necessary to negate any exception, excuse or proviso contained in the statute creating or defining the offense.

(h) Words and phrases used are to be construed according to their usual meaning unless they are otherwise defined by law or have acquired a legal meaning.

(i) Use of the disjunctive rather than the conjunctive shall not invalidate the indictment or information.

(j) The names of witnesses on whose evidence an indictment or information was based shall be endorsed thereon before it is filed. Failure to endorse shall not affect the validity but endorsement shall be ordered by the court on application of the defendant. Upon request the prosecuting attorney shall, except upon a showing of good cause, furnish the names of other witnesses ~~he~~ the prosecuting attorney proposes to call whose names are not so endorsed.

(k) If the defendant is a corporation, a summons shall issue directing it to appear before the magistrate. Appearance may be by an officer or counsel. Proceedings against a corporation shall be the same as against a natural person.

Rule 6. Warrant of arrest or summons.

(a) Upon the return of an indictment the magistrate shall cause to issue either a warrant for the arrest or a summons for the appearance of the accused.

Upon the filing of an information, if it appears from the information, or from any affidavit filed with the information, that there is probable cause to believe that an offense has been committed and that the accused has committed it, the magistrate shall cause to issue either a warrant for the arrest or a summons for the appearance of the accused.

(b) If it appears to the magistrate that the accused will appear on a summons and there is no substantial danger of a breach of the peace, or injury to persons or property, or danger to the community, a summons may issue in lieu of a warrant of arrest to require the appearance of the accused. If the defendant is a corporation, a summons shall issue. A warrant of arrest may issue in cases where the defendant has failed to appear in response to a summons or citation or thereafter when required by the court. When a warrant of arrest is issued, the magistrate shall state on the warrant:

(1) the amount of bail; and

(2) if the magistrate determines that the accused must appear in court, the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.

(c) (1) The warrant shall be executed by a peace officer. The summons may be served by a peace officer or any person authorized to serve a summons in a civil action.

(2) The warrant may be executed or the summons may be served at any place within the state.

(3) The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request shall show the warrant to the defendant as soon as practicable. If the officer does not ~~have~~ possess the warrant ~~in his possession~~ at the time of the arrest, ~~he~~ the officer shall then inform the defendant of the offense charged and of the fact that the warrant has been issued. The summons shall be served as in civil actions, or by mailing it to the defendant's last known address.

(4) The person executing a warrant or serving a summons shall make return thereof to the magistrate as soon as practicable. At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the magistrate for cancellation.

Rule 10. Arraignment.

(a) Upon the return of an indictment or upon receipt of the records from the magistrate following a bind-over, the defendant shall forthwith be arraigned in the district court. Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or ~~stating to him~~ reciting the substance of the charge and calling on ~~him~~ the defendant to plead thereto. ~~He~~ The defendant shall be given a copy of the indictment or information before ~~he is~~ being called upon to plead.

(b) If upon arraignment the defendant requests additional time in which to plead or otherwise respond, a reasonable time may be granted.

(c) Any defect or irregularity in or want or absence of any proceeding provided for by statute or these rules prior to arraignment shall be specifically and expressly objected to before a plea of guilty is entered or the same is waived.

(d) If a defendant has been released on bail, or on ~~his~~ the defendant's own recognizance, prior to arraignment and thereafter fails to appear for arraignment or trial when required to do so, a warrant of arrest may issue and bail may be forfeited.

Rule 13. Pretrial conference.

(a) The trial court, in its discretion, may hold a pretrial conference, with trial counsel present, to consider such matters as will promote a fair and expeditious trial. The accused shall be present unless ~~he~~ the accused waives ~~his~~ the right to appear.

(b) At the conclusion of the conference, a pretrial order shall set out the matters ruled upon. Any stipulations made shall be signed by counsel, approved by the court and filed, and shall be binding upon the parties at trial, on appeal, and in postconviction proceedings unless set aside or modified by the court.

Rule 15.5. Out of court statement and testimony of child victims or child witnesses of sexual or physical abuse - Conditions of admissibility.

(a) In any case concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or other witness younger than 14 years of age which was recorded prior to the filing of an information or indictment is, upon motion and for good cause shown, admissible as evidence in any court proceeding regarding the offense if all of the following conditions are met:

(a)(1) the child is available to testify and to be cross-examined at trial, either in person or as provided by law, or the child is unavailable to testify at trial, but the defendant had a previous opportunity to cross-examine the child concerning the recorded statement, such that the defendant's rights of confrontation are not violated;

(a)(2) no attorney for either party is in the child's presence when the statement is recorded;

(a)(3) the recording is visual and aural and is recorded on film, videotape or other electronic means;

(a)(4) the recording is accurate and has not been altered;

(a)(5) each voice in the recording is identified;

(a)(6) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(a)(7) the defendant and his the defendant's attorney are provided an opportunity to view the recording before it is shown to the court or jury; and

(a)(8) the court views the recording before it is shown to the jury and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence.

(b) In a criminal case concerning a charge of child abuse or of a sexual offense against a child, the court, upon motion of a party and for good cause shown, may order that the testimony of any victim or other witness younger than 14 years of age be taken in a room other than the court room, and be televised by closed circuit equipment to be viewed by the jury in the court room. All of the following conditions shall be observed:

(b)(1) Only the judge, attorneys for each party and the testifying child (if any), persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be in the room during the child's testimony. A defendant who consents to be hidden from the child's view may also be present unless the court determines that the child will suffer serious emotional or mental strain if required to testify in the defendant's presence, or that the child's testimony will be inherently unreliable if required to testify in the defendant's presence. If the court makes that determination, or if the defendant consents:

(b)(1)(A) the defendant may not be present during the child's testimony;

(b)(1)(B) the court shall ensure that the child cannot hear or see the defendant;

(b)(1)(C) the court shall advise the child prior to his the child's testimony that the defendant is present at the trial and may listen to the child's testimony;

(b)(1)(D) the defendant shall be permitted to observe and hear the child's testimony, and the court shall ensure that the defendant has a means of two-way telephonic communication with his attorney defense counsel during the child's testimony; and

(b)(1)(E) the conditions of a normal court proceeding shall be approximated as nearly as possible.

(b)(2) Only the judge and an attorney for each party may question the child.

(b)(3) As much as possible, persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(b)(4) If the defendant is present with the child during the child's testimony, the court may order that persons operating the closed circuit equipment film both the child and the defendant during the child's testimony, so that the jury may view both the child and the defendant, if that may be arranged without violating other requirements of Subsection (b)(1).

(c) In any criminal case concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of a party and for good cause shown, that the testimony of any victim or other witness younger than 14 years of age be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the charges if the provisions of Subsection (b) are observed, in addition to the following provisions:

(c)(1) the recording is visual and aural and recorded on film, videotape or by other electronic means;

(c)(2) the recording is accurate and is not altered;

(c)(3) each voice on the recording is identified; and

(c)(4) each party is given an opportunity to view the recording before it is shown in the courtroom.

(d) If the court orders that the testimony of a child be taken under Subsection (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

Rule 15. Expert witnesses and interpreters.

(a) The court may appoint any expert witness agreed upon by the parties or of its own selection. An expert so appointed shall be informed of ~~his~~ the expert's duties by the court in writing, a copy of which shall be filed. An expert so appointed shall advise the court and the parties of ~~his~~ the expert's findings and may thereafter be called to testify by the court or by any party. ~~He~~ The expert shall be subject to cross-examination by each party. The court shall determine the reasonable compensation of the expert and direct payment thereof. The parties may call expert witnesses of their own at their own expense. Upon showing that a defendant is financially unable to pay the fees of an expert whose services are necessary for adequate defense, the witness fee shall be paid as if ~~he~~ the expert were called on behalf of the prosecution.

(b) The court may appoint an interpreter of its own selection and shall determine reasonable compensation and direct payment thereof. The court may allow counsel to question the interpreter before ~~he is~~ the interpreter is sworn to discharge the duties of an interpreter.

Rule 16. Discovery.

(a) Except as otherwise provided, the prosecutor shall disclose to the defense upon request the following material or information of ~~which he has knowledge~~ which the prosecutor has knowledge:

- (1) relevant written or recorded statements of the defendant or codefendants;
- (2) the criminal record of the defendant;
- (3) physical evidence seized from the defendant or codefendant;
- (4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and
- (5) any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare ~~his~~ a defense.

(b) The prosecutor shall make all disclosures as soon as practicable following the filing of charges and before the defendant is required to plead. The prosecutor has a continuing duty to make disclosure.

(c) Except as otherwise provided or as privileged, the defense shall disclose to the prosecutor such information as required by statute relating to alibi or insanity and any other item of evidence which the court determines on good cause shown should be made available to the prosecutor in order for the prosecutor to adequately prepare ~~his~~ the case.

(d) Unless otherwise provided, the defense attorney shall make all disclosures at least ten days before trial or as soon as practicable. ~~He~~ The defense attorney has a continuing duty to make disclosure.

(e) When convenience reasonably requires, the prosecutor or defense may make disclosure by notifying the opposing party that material and information may be inspected, tested or copied at specified reasonable times and places. The prosecutor or defense may impose reasonable limitations on the further dissemination of sensitive information otherwise subject to discovery to prevent improper use of the information or to protect victims and witnesses from harassment, abuse, or undue invasion of privacy, including limitations on the further dissemination of videotaped interviews, photographs, or psychological or medical reports.

(f) Upon a sufficient showing the court may at any time order that discovery or inspection be denied, restricted, or deferred, that limitations on the further dissemination of discovery be modified or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(g) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

(h) Subject to constitutional limitations, the accused may be required to:

- (1) appear in a lineup;
 - (2) speak for identification;
 - (3) submit to fingerprinting or the making of other bodily impressions;
 - (4) pose for photographs not involving reenactment of the crime;
 - (5) try on articles of clothing or other items of disguise;
 - (6) permit the taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be obtained without unreasonable intrusion;
 - (7) provide specimens of handwriting;
 - (8) submit to a reasonable physical or medical inspection ~~of his body~~; and
 - (9) cut hair or allow hair to grow to approximate appearance at the time of the alleged offense.
- Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given to the accused and ~~his~~ defense counsel. Failure of the accused to appear or to comply with the requirements of this rule, unless relieved by order of the court, without reasonable excuse shall be grounds for revocation of pre-trial release, may be offered as evidence in the prosecutor's case in chief for consideration along with other evidence concerning the guilt of the accused and shall be subject to such further sanctions as the court should deem appropriate.

Rule 17. The trial.

(a) In all cases the defendant shall have the right to appear and defend in person and by counsel. The defendant shall be personally present at the trial with the following exceptions:

(1) In prosecutions of misdemeanors and infractions, defendant may consent in writing to trial in his the defendant's absence;

(2) In prosecutions for offenses not punishable by death, the defendant's voluntary absence from the trial after notice to defendant of the time for trial shall not prevent the case from being tried and a verdict or judgment entered therein shall have the same effect as if defendant had been present; and

(3) The court may exclude or excuse a defendant from trial for good cause shown which may include tumultuous, riotous, or obstreperous conduct.

Upon application of the prosecution, the court may require the personal attendance of the defendant at the trial.

(b) Cases shall be set on the trial calendar to be tried in the following order:

(1) misdemeanor cases when defendant is in custody;

(2) felony cases when defendant is in custody;

(3) felony cases when defendant is on bail or recognizance; and

(4) misdemeanor cases when defendant is on bail or recognizance.

(c) All felony cases shall be tried by jury unless the defendant waives a jury in open court with the approval of the court and the consent of the prosecution.

(d) All other cases shall be tried without a jury unless the defendant makes written demand at least ten days prior to trial, or the court orders otherwise. No jury shall be allowed in the trial of an infraction.

(e) In all cases, the number of members of a trial jury shall be as specified in Section 78-46-5, U.C.A. 1953.

(f) In all cases the prosecution and defense may, with the consent of the accused and the approval of the court, by stipulation in writing or made orally in open court, proceed to trial or complete a trial then in progress with any number of jurors less than otherwise required.

(g) After the jury has been impaneled and sworn, the trial shall proceed in the following order:

(1) The charge shall be read and the plea of the defendant stated;

(2) The prosecuting attorney may make an opening statement and the defense may make an opening statement or reserve it until the prosecution has rested;

(3) The prosecution shall offer evidence in support of the charge;

(4) When the prosecution has rested, the defense may present its case;

(5) Thereafter, the parties may offer only rebutting evidence unless the court, for good cause, otherwise permits;

(6) When the evidence is concluded and at any other appropriate time, the court shall instruct the jury; and

(7) Unless the cause is submitted to the jury on either side or on both sides without argument, the prosecution shall open the argument, the defense shall follow and the prosecution may close by responding to the defense argument. The court may set reasonable limits upon the argument of counsel for each party and the time to be allowed for argument.

(h) If a juror becomes ill, disabled or disqualified during trial and an alternate juror has been selected, the case shall proceed using the alternate juror. If no alternate has been selected, the parties may stipulate to proceed with the number of jurors remaining. Otherwise, the jury shall be discharged and a new trial ordered.

(i) Questions by jurors. A judge may invite jurors to submit written questions to a witness as provided in this section.

(1) If the judge permits jurors to submit questions, the judge shall control the process to ensure the jury maintains its role as the impartial finder of fact and does not become an investigative body. The judge may disallow any question from a juror and may discontinue questions from jurors at any time.

(2) If the judge permits jurors to submit questions, the judge should advise the jurors that they may write the question as it occurs to them and submit the question to the bailiff for transmittal to the judge. The judge should advise the jurors that some questions might not be allowed.

(3) The judge shall review the question with counsel and unrepresented parties and rule upon any objection to the question. The judge may disallow a question even though no objection is made. The judge shall preserve the written question in the court file. If the question is allowed, the judge shall ask the question or permit counsel or an unrepresented party to ask it. The question may be rephrased into proper form. The judge shall allow counsel and unrepresented parties to examine the witness after the juror's question.

(j) When in the opinion of the court it is proper for the jury to view the place in which the offense is alleged to have been committed, or in which any other material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. The officer shall be sworn that while the jury are thus conducted, he the officer will not speak to the jury nor suffer ~~no~~ any person other than the person so appointed to speak to them ~~nor to do so himself~~ on any subject connected with the trial and to return them into court without unnecessary delay or at a specified time.

(k) At each recess of the court, whether the jurors are permitted to separate or are sequestered, they shall be admonished by the court that it is their duty not to converse among themselves or to converse with, or suffer themselves to be addressed by, any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

(l) Upon retiring for deliberation, the jury may take with them the instructions of the court and all exhibits which have been received as evidence, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.

(m) When the case is finally submitted to the jury, they shall be kept together in some convenient place under charge of an officer until they agree upon a verdict or are discharged, unless otherwise ordered by the court. Except by order of the court, the officer ~~having them under his charge shall not neither communicate with nor~~ allow any communication to be made to ~~them, or make any himself, the jury~~ except to ask them if they have agreed upon their verdict, and ~~he the officer~~ shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

(n) After the jury has retired for deliberation, if they desire to be informed on any point of law arising in the cause, they shall inform the officer in charge of them, who shall communicate such request to the court. The court may then direct that the jury be brought before the court where, in the presence of the defendant and both counsel, the court shall respond to the inquiry or advise the jury that no further instructions shall be given. Such response shall be recorded. The court may in its discretion respond to the inquiry in writing without having the jury brought before the court, in which case the inquiry and the response thereto shall be entered in the record.

(o) If the verdict rendered by a jury is incorrect on its face, it may be corrected by the jury under the advice of the court, or the jury may be sent out again.

(p) At the conclusion of the evidence by the prosecution, or at the conclusion of all the evidence, the court may issue an order dismissing any information or indictment, or any count thereof, upon the ground that the evidence is not legally sufficient to establish the offense charged therein or any lesser included offense.

Rule 20. Exceptions unnecessary.

Exceptions to rulings or orders of the court are unnecessary. It is sufficient that a party ~~state his~~ objections to the actions of the court and the reasons therefor. If a party has no opportunity to object to a ruling or order, the absence of an objection shall not thereafter prejudice the party ~~him~~.

Rule 21. Verdict.

(a)(1) For crimes committed on or after May 6, 2002, the verdict of the jury shall be either "guilty" or "not guilty," "not guilty by reason of insanity," "guilty and mentally ill at the time of the offense," or "not guilty of the crime charged but guilty of a lesser included offense," or "not guilty of the crime charged but guilty of a lesser included offense and mentally ill at the time of the offense," provided that when the defense of mental illness has been asserted and the defendant is acquitted on the ground that ~~he~~ the defendant was insane at the time of the commission of the offense charged, the verdict shall be "not guilty by reason of insanity."

(a)(2) For crimes committed before May 6, 2002, the defendant may elect to proceed under subsection (a)(1) or under (a)(3).

(a)(3) For crimes committed before May 6, 2002, unless the defendant elects to proceed under subsection (a)(1), the verdict of the jury shall be either "guilty," "not guilty," "not guilty by reason of insanity," "guilty and mentally ill," "not guilty of the crime charged but guilty of a lesser included offense," or "not guilty of the crime charged but guilty of a lesser included offense and mentally ill" provided that when the defense of mental illness has been asserted and the defendant is acquitted on the ground that ~~he~~ the defendant was insane at the time of the commission of the offense charged, the verdict shall be "not guilty by reason of insanity."

(b) The verdict shall be unanimous. It shall be returned by the jury to the judge in open court and in the presence of the defendant and counsel. If the defendant is voluntarily absents ~~himself~~, the verdict may be received in his absence.

(c) If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to any defendant as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(d) When the defendant may be convicted of more than one offense charged, each offense of which the defendant is convicted shall be stated separately in the verdict.

(e) The jury may return a verdict of guilty to the offense charged or to any offense necessarily included in the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

(f) When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or may be polled at the court's own instance. If, upon the poll, there is no unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged. If the verdict is unanimous, it shall be recorded.

(g) If judgment of acquittal is given on a verdict or the case is dismissed and the defendant is not detained for any other legal cause, ~~he~~ the defendant shall be discharged as soon as the judgment is given. If a verdict of guilty is returned, the court may order the defendant to be taken into custody to await judgment on the verdict or may permit the defendant to remain on bail.

Rule 25. Dismissal without trial.

(a) In its discretion, for substantial cause and in furtherance of justice, the court may, either on its own initiative or upon application of either party, order an information or indictment dismissed.

(b) The court shall dismiss the information or indictment when:

(1) There is unreasonable or unconstitutional delay in bringing defendant to trial;

(2) The allegations of the information or indictment, together with any bill of particulars furnished in support thereof, do not constitute the offense intended to be charged in the pleading so filed;

(3) It appears that there was a substantial and prejudicial defect in the impaneling or in the proceedings relating to the grand jury;

(4) The court is without jurisdiction; or

(5) The prosecution is barred by the statute of limitations.

(c) The reasons for any such dismissal shall be set forth in an order and entered in the minutes.

(d) If the dismissal is based upon the grounds that there was unreasonable delay, or the court is without jurisdiction, or the offense was not properly alleged in the information or indictment, or there was a defect in the impaneling or of the proceedings relating to the grand jury, further prosecution for the offense shall not be barred and the court may make such orders with respect to the custody of the defendant pending the filing of new charges as the interest of justice may require. Otherwise the defendant shall be discharged and bail exonerated.

An order of dismissal based upon unconstitutional delay in bringing the defendant to trial or based upon the statute of limitations, shall be a bar to any other prosecution for the offense charged.

(e) In misdemeanor cases, upon motion of the prosecutor, the court may dismiss the case if it is compromised by the defendant and the injured party. The injured party shall first acknowledge the compromise before the court or in writing. The reasons for the order shall be set forth therein and entered in the minutes. The order shall be a bar to another prosecution for the same offense; provided however, that dismissal by compromise shall not be granted when the misdemeanor is committed by or upon a peace officer while in the performance of the officer's his duties, or riotously, or with an intent to commit a felony.

Rule 29. Disability and disqualification of a judge or change of venue.

(a) If, by reason of death, sickness, or other disability, the judge before whom a trial has begun is unable to continue with the trial, any other judge of that court or any judge assigned by the presiding officer of the Judicial Council, upon certifying that the judge is familiar with the record of the trial, may, unless otherwise disqualified, proceed with and finish the trial, but if the assigned judge is satisfied that neither ~~he~~ the assigned judge nor another substitute judge can proceed with the trial, the judge may, in ~~his~~ the judge's discretion, grant a new trial.

(b) If, by reason of death, sickness, or other disability, the judge before whom a defendant has been tried is unable to perform the duties required of the court after a verdict of guilty, any other judge of that court or any judge assigned by the presiding officer of the Judicial Council may perform those duties.

(c)(1)(A) A party to any action or the party's attorney may file a motion to disqualify a judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and shall be supported by an affidavit stating facts sufficient to show bias or prejudice, or conflict of interest.

(c)(1)(B) The motion shall be filed after commencement of the action, but not later than 20 days after the last of the following:

(c)(1)(B)(i) assignment of the action or hearing to the judge;

(c)(1)(B)(ii) appearance of the party or the party's attorney; or

(c)(1)(B)(iii) the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

If the last event occurs fewer than 20 days prior to a hearing, the motion shall be filed as soon as practicable.

(c)(1)(C) Signing the motion or affidavit constitutes a certificate under Rule 11, Utah Rules of Civil Procedure and subjects the party or attorney to the procedures and sanctions of Rule 11. No party may file more than one motion to disqualify in an action.

(c)(2) The judge against whom the motion and affidavit are directed shall, without further hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing judge. The judge shall take no further action in the case until the motion is decided. If the judge grants the motion, the order shall direct the presiding judge of the court or, if the court has no presiding judge, the presiding officer of the Judicial Council to assign another judge to the action or hearing. Assignment in justice court cases shall be in accordance with Utah Code Ann. §78-5-138. The presiding judge of the court, any judge of the district, any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge.

(c)(3)(A) If the reviewing judge finds that the motion and affidavit are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge or the presiding officer of the Judicial Council to do so. Assignment in justice court cases shall be in accordance with Utah Code Ann. §78-5-138.

(c)(3)(B) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.

(c)(3)(C) The reviewing judge may deny a motion not filed in a timely manner.

(d)(1) If the prosecution or a defendant in a criminal action believes that a fair and impartial trial cannot be had in the jurisdiction where the action is pending, either may, by motion, supported by an affidavit setting forth facts, ask to have the trial of the case transferred to another jurisdiction.

(d)(2) If the court is satisfied that the representations made in the affidavit are true and justify transfer of the case, the court shall enter an order for the removal of the case to the court of another jurisdiction free from the objection and all records pertaining to the case shall be transferred forthwith to the court in the other county. If the court is not satisfied that the representations so made justify transfer of the case, the court shall either enter an order denying the transfer or order a formal hearing in court to resolve the matter and receive further evidence with respect to the alleged prejudice.

(e) When a change of judge or place of trial is ordered all documents of record concerning the case shall be transferred without delay to the judge who shall hear the case.