

**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 84111

May 17, 2016

**ATTENDEES**

Patrick Corum- Chair  
Judge Brendan McCullagh  
Judge Elizabeth Hruby-Mills  
Judge Vernice Trease  
Professor Jensie Anderson  
Jeffrey Gray  
Blake Hills  
Craig Johnson  
Ryan Stack  
Cara Tangaro  
Douglas Thompson

**EXCUSED**

Tessa Hansen

**STAFF**

Brent Johnson

**I. WELCOME / APPROVAL OF MINUTES**

Patrick Corum welcomed the Committee members to the meeting. Judge Vernice Trease moved to approve the minutes from the March 16, 2016 meeting. Jeffrey Gray seconded the motion. The motion carried unanimously.

**II. RULES PUBLISHED FOR PUBLIC COMMENT: RULE 18 AND RULE 38**

Mr. Corum first discussed rule 18. He noted that Judge James Blanch's comment was well-taken regarding additional peremptory challenges. Mr. Corum suggested the Committee reinsert the peremptory challenge language. Brent Johnson stated this addition would not require the rule to again be published for public comment. The Committee briefly discussed the issue of

jury deliberations. The Committee discussed Judge Derek Pullan's comment regarding deliberations and whether they must or should "begin anew." The Committee believes that even by telling a jury to begin anew, it's human nature to remember what has already been seen and heard. It was stated that the federal rules have a provision in place where the alternate jurors are not released during deliberations. The Committee agreed that having the term "may" inserted into the rule would give judges the discretion to replace a juror, rather than using the term "shall." Rule 18 was tabled for further research and discussion.

The Committee next discussed rule 38. The committee discussed the comments that were received. It was questioned whether there was caselaw to support the amendment regarding appeals. Judge Vernice Trease stated there was recent caselaw supporting this. Judge Trease believes it is not necessary to list the caselaw in a committee note. The Committee noted there was some merit to the comment from Brian Haws regarding sections (e)(6) and (f)(6). Mr. Johnson stated the case referenced by Mr. Haws was lost by the defense. He further stated the appellate courts agreed that someone is not allowed to withdraw an appeal after a guilty plea or verdict. The Committee decided to add the language "prior to plea or trial" and remove the word "judgment" and publish the rule for comment. Ryan Stack moved to approve changing the language in section (f)(6) as stated above. Judge Brendan McCullagh seconded the motion. The motion carried unanimously.

It was noted the other issues need not be discussed further. Judge McCullagh then moved to approve rule 38 with a recommendation to the Supreme Court that they adopt the draft of rule 38 that went out for public comment. Mr. Stack seconded the motion. The motion carried unanimously.

### **III. HB 381**

Mr. Johnson stated H.B. 381 (Standards for Issuance of Summons) was being presented to the Committee so they could ensure that the rules follow the statute because the bill is now in effect. Mr. Johnson noted that this should be addressed immediately. After brief discussion, it was decided the standards should be included in the new rules. The Committee discussed bail issues, including the higher amounts being set for defendants who don't have the funds to cover it, essentially giving the defendant no bail. The Committee felt it was best to include this new language into rule 6(b) or rule 6(c). The Committee discussed, in depth, various ways to word the language regarding service of a summons.

Judge Brendan McCullagh recommended to send the revised rule 6 to the Supreme Court with a recommendation that they adopt the rule on an emergency rule-making basis subject to public comment and review after the public comment period. Douglas Thompson seconded the motion. The motion carried unanimously.

### **IV. UPDATE ON RULE 22**

Mr. Johnson stated rule 22 was published for public comment. After that the Supreme Court asked the Committee to research and see if there is a way to refine the standards of

“ambiguous or internally contradictory” and see if other states have defined these terms. The Supreme Court also wanted research from other states on time-limits. Mr. Johnson noted this is still in the pipeline and is waiting for the Supreme Court to consider potential changes. Mr. Johnson stated the federal system has time-limits.

## **V. PRETRIAL RELEASE COMMITTEE RULE CHANGES**

Judge McCullagh stated he is waiting on all of the pretrial rule changes. There are also JRI issues that he is waiting on.

Judge McCullagh received a couple of comments on rule 7. Judge McCullagh stated the rule 7 changes are still in line with Title 77, Chapter 20. He noted rule 7 tightens time-lines a bit, but these are mostly procedural. Judge McCullagh stated once due process is initially satisfied, release conditions may only be modified if there has been a material change in circumstances, as per Title 77, Chapter 20. Judge McCullagh stated the Board of District Court Judges unanimously recommended a single, uniform practice throughout the state. This recommendation was also adopted by the Judicial Council. Judge McCullagh has been trying to incorporate this practice into the rule.

Judge McCullagh then discussed rule 4. He stated the justice courts are going to electronic filing soon. The Committee noted that the process of using either a warrant or a summons varies throughout the state with the Third District issuing more warrants than summonses. The Committee discussed rule 4(i). Judge McCullagh said that prior to electronic filing if an information was received by the court and there was an error, the court would return the information for correction. However, with electronic filing that doesn't happen because once an information is filed a case number is assigned. With electronic filing, if an information is identified for correction then a tracking number is assigned. If within two weeks the amended information hasn't been refiled the case would be dismissed. The Committee discussed the various ways throughout the state that criminal cases are filed. Most include PC statements. It was noted that last year there were 12,693 cases filed in Salt Lake County. Of those cases 1,015 requested a summons, 6,516 requested a warrant. That leaves just over 5,000 cases unaccounted for. These would include persons in custody when the case is filed. When a warrant is issued, however, it is served immediately upon the inmate. In Summit County last year, 411 criminal cases were filed, 97 of those with a summons and 80 with a warrant.

The Committee then readdressed rule 4(c). Judge McCullagh stated that most cases filed in the West Valley Justice Court are by citation. Judge McCullagh stated he would like to see paragraph (i) left as is and instead change paragraph (c) from “may contain” to “shall contain” so that when a judge reviews what has been presented he or she will have a better understanding of what the case is about and therefore will be able to make a more educated decision moving forward.

Judge McCullagh explained his idea on revising rule 9 to state that if an information is not filed within 96 hours a person who has not posted bail will automatically be released on their own recognizance.

Judge McCullagh motioned to send rules 4, 4a, and 4b out for public comment with a repeal of rule 5. Jeffrey Gray seconded the motion. The motion carried unanimously. Judge McCullagh will work on amending rules 7 and 9 for the next meeting.

**VII. OTHER BUSINESS/ADJOURN**

The Committee scheduled its next meeting for July 19. The meeting adjourned at 2:00 p.m.