

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

September 20, 2016

ATTENDEES

Patrick Corum - Chair
Judge Elizabeth Hruby-Mills
Judge Vernice Trease
Blake Hills
Craig Johnson
Maureen Magagna
Judge Brendan McCullagh
Ryan Stack
Cara Tangaro
Douglas Thompson

EXCUSED

Professor Jensie Anderson
Jeffrey Gray
Brent Johnson
Tessa Hansen - Recording Secretary

STAFF

Keisa Williams

I. WELCOME/APPROVAL OF MINUTES

Patrick Corum welcomed the committee members to the meeting. Mr. Corum welcomed Keisa Williams to the committee. Mr. Corum next discussed the July 19, 2016 minutes.

Craig Johnson moved to approve the minutes with the following corrections: 1) Utah County does use PC statements; and 2) Summit County's use of PC statements are not required unless a warrant is issued. Douglas Thompson seconded the motion. The motion carried unanimously.

II. RULE 22 PUBLISHED FOR PUBLIC COMMENT

Mr. Corum stated the changes to rule 22 was the directive of the Supreme Court. Judge Brendan McCullagh further explained the changes to the rule. Mr. Thompson had concerns about taking out illegal manner. Mr. Corum discussed the comments that were received. The committee changed "shall" to "may" as recommended in the comments section.

Judge McCullagh moved to approve rule 22, with the one change, to go to the Supreme Court for final approval. Mr. Johnson seconded the motion. Mr. Thompson opposed. The motion carried.

III. RULES 4 AND 6 PUBLISHED FOR PUBLIC COMMENT

Mr. Corum discussed rules 4 and 6 and the comments received. Rule 5 was approved by the Supreme Court to be repealed. Judge McCullagh stated the prosecutors who handle misdemeanors are concerned because they misunderstand the changes to rule 4. Ryan Stack discussed the disproportioned benefit to prosecutors' workload. Judge McCullagh stated in justice courts when a case initiated by an information they are almost always mailed. However, when a defendant fails to appear, a warrant will be issued. This is a prime example of when a judge would like to see a PC statement because basically a judge is issuing a warrant to a defendant that was mailed the information. There is no way to guarantee the defendant actually received the information in the first place. Blake Hills noted that based on the comments received, felonies deserve PC statements. Judge McCullagh stated that makes sense for felonies and class A misdemeanors to receive PC statements. Mr. Corum said it's important for the justice courts to have PC statements especially since they see more pro se litigants. Judge Vernice Trease stated even if the PC statements are completed by staff instead of attorneys, it's still an attorney who signs it, therefore taking responsibility.

The committee next discussed affidavits. The committee agreed Utah County and Weber County prosecutors complete affidavits with detailed information. Their affidavits are separate from the PC statements. Judge Trease asked if this would cause more delay in the filing of informations and in turn would cause more extension requests. Judge Trease said adding to complications is when, at the time a defendant is allowed to bail out of jail, the information has not been filed, therefore leaving the judge with little information to base their decision on.

The committee discussed section (g) in rule 4. The committee's consensus was that they didn't mind deleting section (g). Judge Elizabeth Hruby-Mills asked if a judge rejected an information would the prosecuting office be notified. Judge McCullagh noted with electronic filing, everyone will get notified. Judge McCullagh said if there isn't a warrant and the information was rejected by the courts, then the case would be in suspension for 14 days. If nothing happens in 14 days, the case would go inactive but still be open until the statute of limitations expires. Judge Trease asked who in the prosecutor's office gets the notice of a rejection. Mr. Hills wasn't sure who actually receives the notice. Mr. Hills will follow up with his office on this issue. As a follow up, Mr. Hills sent an email to the committee stating: "(he) just talked to Rob Neill and Pam Stam who run our screening division about how they find out that a judge has rejected an Information. They stated that they find out when one of the court clerks calls or sends an email. If notice is being sent from an automated system, it is not reaching anyone connected with screening."

After considerable discussion and changes to rule 4, Ms. Tangaro moved to approve the amended rule to go out for public comment with a detailed committee note. Judge McCullagh

stated that he will create the committee note and circulate it within the next week. Mr. Johnson seconded the motion. The motion carried unanimously.

The committee discussed rule 6. Mr. Corum noted Mr. Johnson's proposed changes to rule 6. Mr. Johnson explained the comments received and their suggested changes. The committee reviewed the suggested changes.

Mr. Johnson moved to approve rule 6 with changes to go to the Supreme Court for approval on an emergency basis, subject to public comment. Judge Hruby-Mills seconded the motion. The motion carried unanimously.

IV. RULE 38 PUBLISHED FOR PUBLIC COMMENT

The committee briefly discussed the comments received on rule 38. The committee decided to leave the rule as is and move forward.

Mr. Johnson moved to approve rule 38, with no further changes, to go to the Supreme Court for final approval. Ms. Tangaro seconded the motion. The motion carried unanimously.

V. RULE 18 BEGINNING DELIBERATIONS ANEW

The committee briefly discussed rule 18.

Mr. Johnson moved to approve rule 18 with no further changes. Mr. Hills seconded the motion. Judge Hruby-Mills and Mr. Thompson opposed. The motion carried.

VII. RULE 24(d)

This is a new rule proposal. Judge McCullagh explained the rule proposal. Ms. Tangaro stated she doesn't feel as though this rule is needed. The committee discussed the rule in depth. The committee decided to table this rule until Jeffrey Gray is able to attend.

VIII. OTHER BUSINESS/ADJOURN

With their being no further issues, the meeting adjourned at 1:25 pm. The next meeting will be held November 15, 2016.