

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

*The meeting is scheduled
in the Council room

January 17, 2017
12:00 p.m. - 2:00 p.m.

Agenda

1. Welcome and approval of minutes - Patrick Corum
2. Rules published for public comment - Patrick Corum
3. Logue v. Court of Appeals subcommittee - Patrick Corum
Brent Johnson
4. Continued discussion of pretrial procedure rules - Judge Brendan McCullagh
5. Post-judgment sanctions rule - Judge Brendan McCullagh
6. Rule 24(d) proposal - Patrick Corum
7. Other business
Rule 14 subpoenas, Peremptory challenges
Rules reorganization
8. Adjourn

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 Rule 5 was approved by the Supreme Court to be repealed.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.

Rules of Criminal Procedure – Comment Period Closes January 1, 2017

[URCrP004](#) Amend. This rule was previously published for public comment and the committee made changes in response to the comments. The committee continues to review and refine the processes for filing informations.

[URCrP004a](#) New. The proposed new rule will address the process for prosecutions commenced by indictment.

[URCrP004b](#) New. The proposed new rule will address the process for prosecutions commenced by citation.

[URCrP004, 4a, 4b Committee Note](#) The note explains the changes that are made in response to comments received.

[URCrP006](#) Amend. This rule was previously published for public comment and the committee made changes in response to the comments. The committee continues to review and refine the processes for issuing warrants and summonses.

[URCrP029](#) Amend. The proposed amendment will eliminate the presiding officer of the Judicial Council as a person to whom disqualification affidavits may be referred.

4 thoughts on “Rules of Criminal Procedure – Comment Period Closes January 1, 2017”

- Kristen**
[November 17, 2016 at 8:49 pm](#)

URCrP004b New. The proposed new rule will address the process for prosecutions commenced by citation.

The language in this rule needs to include language that says the Information shall be filed in the existing case number if one exists. Too often, duplicate case #'s are being created by the prosecutor e-filing an Information without specifying the existing case #.

2. **Dean Saunders**

[November 17, 2016 at 9:08 pm](#)

The word indictment in proposed rule 5a should be changed to “information”. The word indictment will confuse the process because one may be charged by indictment through a grand jury but that is a completely different context. The way it reads also conflicts with proposed rule 4b that talks about the filing of an information.

3. **Dean Saunders**

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The word indictment in proposed rule 5a should be changed to “information”. The word indictment will confuse the process because one may be charged by indictment through a grand jury but that is a completely different context. The way it reads also conflicts with proposed rule 4b that talks about the filing of an information.

4. **[david](#)**

[November 17, 2016 at 10:41 pm](#)

I am unable to find the “comment” link in any of the above proposed changes; could someone help me with this? Additionally, I think if the purpose of rule P004b is to make it easier for pro se litigants to successfully navigate the rule, it ought to be re-written in non-lawyerese language with very straightforward, 1, 2, 3 instructions that explain not only time constraints, but also farther forward looking anticipatory items such as what happens when a police officer takes a while to serve someone, what happens when a person calls past the 14th day and is told there is nothing filed yet (my experience is they think it has disappeared, whether or not we can incorporate email addresses and cell phone numbers into the citation so we have less warrants and more actual direct contacts; etc...

1 **Rule 4. Prosecution of public offenses by information.**

2 ~~(a) Unless otherwise provided, all offenses shall be prosecuted by indictment or information~~
3 ~~sworn to by a person having reason to believe the offense has been committed. A prosecution~~
4 ~~may be commenced by filing an information. The information shall be filed in a format required~~
5 ~~by rules of the Judicial Council.~~

6 (b) ~~An indictment or information shall charge the offense for which the defendant is being~~
7 ~~prosecuted by using the name given to the offense by common law or by statute or by stating in~~
8 ~~concise terms the definition of the offense sufficient to give the defendant notice of the charge. If~~
9 ~~issued, the information shall include the citation number. Failure to include the number will not~~
10 ~~affect the court's jurisdiction. An information may contain or be accompanied by a statement of~~
11 ~~facts sufficient to make out probable cause to sustain the offense charged where appropriate.~~
12 ~~Such things as time, place, means, intent, manner, value and ownership need not be alleged~~
13 ~~unless necessary to charge the offense. Such things as money, securities, written instruments,~~
14 ~~pictures, statutes and judgments may be described by any name or description by which they are~~
15 ~~generally known or by which they may be identified without setting forth a copy. However,~~
16 ~~details concerning such things may be obtained through a bill of particulars. Neither~~
17 ~~presumptions of law nor matters of judicial notice need be stated. An information shall contain:~~

18 ~~(b)(1) If known, the defendant's name, date of birth, and last known address.~~

19 ~~(b)(1)(A) If the name of the defendant is not known, the prosecution shall identify the defendant~~
20 ~~as John or Jane Doe, and shall provide any known identifying information.~~

21 ~~(b)(1)(B) Other identifying information may be provided in accordance with rules of the Judicial~~
22 ~~Council, provided the information does not include non-public records.~~

23 ~~(b)(2) Numbered counts using the name given to the offense by statute or ordinance, or stating in~~
24 ~~concise terms the definition of the offense sufficient to give the defendant notice of the charge.~~

25 ~~(b)(2)(i) The prosecution may allege alternate theories of the same offense in a single count or in~~
26 ~~multiple counts.~~

27 ~~(b)(3) The names of any adult witnesses on whose evidence the information is based.~~

28 ~~(b)(3)(A) Failure to include the names does not render an information invalid.~~

29 ~~(b)(3)(B) Upon request of the defendant the prosecution shall provide the names of witnesses~~
30 ~~that were not included in the information, unless the court finds good cause for relieving the~~
31 ~~prosecution from the obligation.~~

32 (b)(4) Unless otherwise contained in filings accompanying the Information, a booking number if
33 the defendant was arrested and detained on charges related to the information. Any pretrial
34 release conditions shall be included, such as:

35 (b)(4)(A) monetary bail or other pretrial release conditions set by the magistrate when
36 determining probable cause at arrest;

37 (b)(4)(B) whether the defendant was denied pretrial release;

38 (b)(4)(C) whether the defendant was released to a pretrial supervision agency; and

39 (b)(4)(D) whether the defendant is in custody.

40 (c) If a felony or class A violation is alleged, and in all cases requesting a warrant, an
41 information shall:

42 (c)(1) contain or be accompanied by a statement of facts sufficient to support probable cause for
43 the charged offense or offenses. The information need not include facts such as time, place,
44 means, intent, manner, value, and ownership unless necessary to charge the offense. Supporting
45 physical materials such as money, securities, written instruments, pictures, statutes, and
46 judgments may be identified using names or by describing the documents. Neither presumptions
47 of law nor matters of judicial notice need be stated, and

48 (c)(2) be reviewed for sufficiency by a judge of the court in which it is filed. If the judge
49 determines from the information, or from any supporting statements or affidavits, that there is
50 probable cause to believe the offenses have been committed and that the accused committed
51 them, the judge shall proceed under rule 6. If the judge determines there is not probable cause,
52 the judge shall return the information to the prosecutor and dismiss the case without prejudice if
53 a sufficient information is not filed within 28 days.

54 ~~(e)(d) The court may strike any surplus or improper language from an indictment or information.~~

55 ~~(d)(e)~~ (e) The court may permit an information to be amended at any time before trial has
56 commenced so long as the substantial rights of the defendant are not prejudiced. If an additional
57 or different offense is charged, the defendant has the right to a preliminary hearing on that
58 offense as provided under these rules and any continuance as necessary to meet the amendment.

59 The court may permit an indictment or information to be amended after the trial has commenced

60 but before verdict if no additional or different offense is charged and the substantial rights of the
61 defendant are not prejudiced. After verdict, an ~~indictment~~ or information may be amended so as
62 to state the offense with such particularity as to bar a subsequent prosecution for the same
63 offense upon the same set of facts.

64 ~~(e)~~(f) When facts not set out in an information ~~or indictment~~ are required to inform a defendant
65 of the nature and cause of the offense charged, so as to enable him to prepare his defense, the
66 defendant may file a written motion for a bill of particulars. The motion shall be filed at
67 arraignment ~~initial appearance~~ or within 14 ~~10~~ days thereafter, or at such later time as the court
68 may permit. The court may, on its own motion, direct the filing of a bill of particulars. A bill of
69 particulars may be amended or supplemented at any time subject to such conditions as justice
70 may require. The request for and contents of a bill of particulars shall be limited to a statement of
71 factual information needed to set forth the essential elements of the particular offense charged.

72 ~~(f)~~(g) An indictment or information shall not be held is not invalid because any name contained
73 therein may be incorrectly spelled or stated; nor because a disjunctive clause is used instead of
74 the conjunctive. It shall not be necessary to negate any exception, excuse or proviso contained in
75 the statute creating or defining the offense.

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

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

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

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

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

1 **Rule 4A. Prosecution by indictment.**

2 A prosecution may be commenced by the filing of an indictment. The indictment shall be filed
3 in a format and according to the rules of the judicial council.

4 (a) The filing shall include the defendant's name, date of birth, and last known address. Other
5 identifying information may be provided in accordance with rules of the Judicial Council
6 concerning electronic filing, as long as the actual indictment document does not include non-
7 public records. If the name of the defendant is not known, the prosecution shall identify the
8 defendant as John or Jane Doe, and include any identifying information known.

9 (b) An indictment shall charge the offense for which the defendant is being prosecuted by using
10 the name given to the offense by common law or by statute or by stating in concise terms the
11 definition of the offense sufficient to give the defendant notice of the charge.

12 (c) The court may permit an indictment to be amended after the trial has commenced but before
13 verdict if no additional or different offense is charged and the substantial rights of the defendant
14 are not prejudiced. After verdict, an indictment may be amended so as to state the offense with
15 such particularity as to bar a subsequent prosecution for the same offense upon the same set of
16 facts.

17 (d) When facts not set out in the indictment are required to inform a defendant of the nature and
18 cause of the offense charged, so as to enable him to prepare his defense, the defendant may file a
19 written motion for a bill of particulars. The motion shall be filed no later than 14 days after
20 arraignment unless allowed by the court. The court may, on its own motion, direct the filing of a
21 bill of particulars. A bill of particulars may be amended or supplemented at any time subject to
22 such conditions as justice may require. The request for and contents of a bill of particulars shall
23 be limited to a statement of factual information needed to set forth the essential elements of the
24 particular offense charged.

25 (e) Upon the filing of an indictment, the court shall proceed under Rule 6.

1 **Rule 4B. Case Commenced by Citation**

2 (a) If a case commences with the filing of a citation pursuant to 77-7-18, the following
3 procedures apply.

4 (b) If the citation did not specify a time certain for the defendant to appear, the court may
5 schedule a time to appear before the court and provide notice to the defendant by mail, or other
6 means of contact provided with the citation.

7 (c) If the defendant timely appears, the court shall proceed under Rule 7.

8 (d) If the defendant fails to timely appear, as required by the court or the terms of the citation,
9 the court may issue a bench warrant for the defendant's arrest.

10 (e) If the defendant fails to appear upon a citation, the court may instruct the prosecutor to file
11 an information that complies with rule 4. Such information need not contain the statement
12 described in Rule 4(c). It shall however, include the Citation number originally issued to the
13 defendant.

Notes to accompany rules 4, 4A and 4B for public comment 9/30/16.

The committee appreciates the responses provided by the legal community. In our continued attempts to provide the best practices for all courts in criminal procedures, the committee has made changes to the proposed rule 4 and also now publishes proposed rules 4A and 4B.

The committee proposes that the root rule: rule 4, would apply to the usual circumstance where a criminal case is commenced by the filing of an information. Rule 4A would cover the very unusual circumstances where a case is initiated by the filing of an indictment. Rule 4B would govern cases initiated by the filing of a citation.

While this does increase the number of individual rules, it reduces the complexity and verbiage of those rules. The committee feels that this approach provides better guidance to all users, especially self-represented litigants who are far more numerous in cases governed by these rules, as opposed to the civil rules.

The committee received multiple comments reflecting the requirement that an information include the names of witnesses. This requirement exists in the current rule. However, the committee agrees that inclusion on the face of the information is not necessary and therefore the current iteration of the proposed rules do not include that requirement.

The bulk of the comments were directed at what data must be included on cases initiated by information. The committee is mindful of the requirements that this places on the executive branch in preparing filings. As outlined below, the committee has streamlined some of the requirements from the previous proposed rule. However, at the end of the day the prosecution must provide support for a request for a warrant under Rule 6, or subsequent processes. The required information is relevant and useful to the court in making those decisions.

The current iteration of the proposed rules do not require a probable cause statement on cases initiated by citations, or on class B or lower misdemeanors where the prosecutor is not seeking a warrant under Rule 6. Moreover, the arrest related information (booking numbers, incarceration status, etc) are available most readily to the executive branch, i.e., the law enforcement agency initiating the charges, which should then be available to prosecutors.

The Committee recognizes and respects that there are varied processes for screening and presentment of cases to courts. To that end, the Committee has indicated that the required data associated with the information can be included in any other documents (affidavits, separate probable cause statements, etc) that are filed with the information.

The committee appreciates the engagement of practitioners in this process. We hope that you will find that the changes address many of the concerns expressed and look forward to continued participation as we strive to improve and provide consistency for all participants in the criminal courts.

1 **Rule 6. Warrant of arrest or summons.**

2 (a) Upon the ~~return~~ filing of an indictment, ~~the magistrate shall cause to issue either a warrant for~~
3 ~~the arrest or a summons for the appearance of the accused. or upon the acceptance of an~~
4 information by a judge, the court shall set the case for an initial appearance or arraignment, as
5 appropriate. The court shall then issue a summons directing the defendant to appear for that
6 hearing, except as described in subsection (c).

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

11 (b) ~~If it appears to the magistrate that the accused will appear on a summons and there is no~~
12 ~~substantial danger of a breach of the peace, or injury to persons or property, or danger to the~~
13 ~~community, a summons may issue in lieu of a warrant of arrest to require the appearance of the~~
14 ~~accused. If the defendant is a corporation, a summons shall issue. A warrant of arrest may issue~~
15 ~~in cases where the defendant has failed to appear in response to a summons or citation or~~
16 ~~thereafter when required by the court. When a warrant of arrest is issued, the magistrate shall~~
17 ~~state on the warrant: The summons shall inform the defendant of the date, time and courthouse~~
18 location for the initial appearance or arraignment. The summons may be mailed to the
19 defendant's last known address, or served by anyone authorized to serve a summons in a civil
20 action.

21 ~~(1) the amount of bail; and~~

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

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

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

27 ~~(3) The warrant shall be executed by the arrest of the defendant. The officer need not have the~~
28 ~~warrant in his possession at the time of the arrest, but upon request shall show the warrant to the~~
29 ~~defendant as soon as practicable. If the officer does not have the warrant in his possession at the~~

30 ~~time of the arrest, he shall then inform the defendant of the offense charged and of the fact that~~
31 ~~the warrant has been issued. The summons shall be served as in civil actions, or by mailing it to~~
32 ~~the defendant's last known address.~~

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

36 (c) If the defendant is not a corporation, a judge may issue a warrant of arrest instead of a
37 summons if the court finds from the information and any supporting statements or affidavits that:

38 (c)(1) The defendant's address is unknown or the defendant will not otherwise appear on a
39 summons; or

40 (c)(2) any of the conditions under Utah Code Section 77-20-1(2) are present.

41 (d) A judge shall issue a warrant of arrest in cases where the defendant has failed to appear in
42 response to a summons.

43 (e) When a warrant of arrest is issued, the judge shall state on the warrant:

44 (e)(1) Whether the defendant is denied pretrial release under the authority of Utah Code § 77-20-
45 1, and the alleged facts supporting.

46 (e)(2) The conditions of pretrial release the court requires of the defendant, including monetary
47 bail or release on the defendant's own recognizance.

48 (e)(3)(A) In determining the amount of monetary bail, the judge shall set the lowest amount
49 reasonably calculated to effect the purposes of Utah Code Section 77-20-1(3).

50 (e)(3)(B) The court shall state whether the defendant's personal appearance is required or
51 whether the defendant may remit the monetary bail to satisfy any obligation to the court pursuant
52 to Utah Code § 77-7-21.

53 (e)(4) The geographic area from which the issuing court will guarantee transport pursuant to
54 Utah Code § 77-7-5.

55 (f) The clerk of the court shall enter the warrant into the court information management system.

56 (g) Service, Execution and return of the warrant.

57 (g)(1) The warrant shall be served by a peace officer. The officer may execute the warrant at any
58 place within the state.

59 (g)(2) The warrant shall be executed by the arrest of the defendant. The officer need not possess
60 the warrant at the time of the arrest. Upon request, the officer shall show the warrant to the

61 defendant as soon as practicable. If the officer does not have the warrant in possession at the time
62 of the arrest, the officer shall inform the defendant of the offense charged and of the fact that the
63 warrant has been issued.

64 (g)(3) The person executing a warrant or serving a summons shall make return thereof to the
65 magistrate as soon as practicable.

66 (h) The court may periodically review unexecuted warrants to determine whether they should be
67 recalled.

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

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

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

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

16 (c)(1)(B) The motion shall be filed after commencement of the action, but not later than 21 days
17 after the last of the following:

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

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

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

22 If the last event occurs fewer than 21 days prior to a hearing, the motion shall be filed as soon as
23 practicable.

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

27 (c)(1)(D) The other parties to the action may not file an opposition to the motion and if any
28 response is filed it will not be considered. The moving party need not file a Request to Submit
29 for Decision under Rule 12. The motion will be submitted for decision upon filing,

30 (c)(2) The judge against whom the motion and affidavit are directed shall, without further
31 hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing
32 judge. The judge shall take no further action in the case until the motion is decided. If the judge
33 grants the motion, the order shall direct the presiding judge of the court or, if the court has no
34 presiding judge, the presiding officer of the Judicial Council to assign another judge to the action
35 or hearing. Assignment in justice court cases shall be in accordance with Utah Code Ann. §78A-
36 7-208. The presiding judge of the court, any judge of the district, or any judge of a court of like
37 jurisdiction, ~~or the presiding officer of the Judicial Council~~ may serve as the reviewing judge.

38 (c)(3)(A) If the reviewing judge finds that the motion and affidavit are timely filed, filed in good
39 faith and legally sufficient, the reviewing judge shall assign another judge to the action or
40 hearing or request the presiding judge or if the court has no presiding judge, the presiding officer
41 of the Judicial Council to do so. Assignment in justice court cases shall be in accordance with
42 Utah Code Ann. §78A-7-208.

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

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

47 (d)(1) In the courts of record, if a party believes that a fair and impartial trial cannot be had in
48 the court location or in the county where the action is pending, that party may move to have the
49 trial of the case take place with a jury from another county or the case transferred to a court
50 location in a county where a fair trial may be held. Such motion shall be supported by an
51 affidavit setting forth facts.

52 (d)(2) If the court is satisfied that the representations made in the affidavit required by
53 subsection (1) are true and justify a change of jury pool or location, the court shall enter an order
54 transferring the case, or selecting a jury from a county free from the objection. If the court is not
55 satisfied that the representations justify an alternate jury pool or transfer of the case, the court
56 shall either enter an order denying the motion or order a hearing to receive further evidence with
57 respect to the alleged prejudice and resolve the matter.

58 (d)(3) In the justice courts, if a party believes that a fair and impartial trial cannot be had in the
59 court location or in the county where the action is pending, that party may move to have the trial

60 of the case take place with a jury from another county or in a court location where a fair trial may
61 be held. Such motion shall be supported by an affidavit setting forth facts.

62 (d)(4) If the court is satisfied that the representations made in the affidavit required by
63 subsection (3) are true and justify a change of jury pool or location, the court shall enter an order
64 selecting a jury from a county free from the objection; or directing that trial proceedings be held
65 in a court location free from the objection. If the court is not satisfied that the representations
66 justify an alternate jury pool or relocation of the trial, the court shall either enter an order
67 denying the motion or order a hearing to receive further evidence with respect to the alleged
68 prejudice and resolve the matter.

69 (d)(5) A motion filed pursuant to this subsection (d) shall be filed not later than 14 days after the
70 party learns or with the exercise of reasonable diligence should have learned of the grounds upon
71 which the motion is based.

72 (e) When a change of judge or place of trial is ordered all documents of record concerning the
73 case shall, without delay, be transferred or made available in the new location.

Rule 7. Initial Proceedings for Class A misdemeanors and Felonies.

- (a) At the defendant's first appearance, the court shall inform the defendant:
1. Of the charge in the information or indictment and furnish a copy;
 2. of any affidavit or recorded testimony given in support of the information and how to obtain them;
 3. of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel;
 4. of rights concerning pretrial release, including bail; and
 5. that the defendant is not required to make any statement, and that any statements the defendant does make may be used against the defendant in a court of law.
- (b) If defendant is present at the initial appearance without counsel, then the court shall determine if the defendant is capable of retaining the services of an attorney within a reasonable time. If the court determines the defendant has such resources, then the court shall allow the defendant that reasonable time and opportunity to retain and consult with counsel. If the court determines defendant is indigent, the court shall appoint counsel pursuant to Rule 8, unless defendant knowingly and intelligently such appointment.
- (c) If counsel are present and prepared, the court shall address whether the defendant is entitled to pretrial release pursuant to 77-20-1, and if so, what if any conditions the court will impose to reasonably ensure the continued appearance of the defendant; integrity of the judicial process; and safety of the community. The court shall utilize the least restrictive conditions needed to meet those goals.
- (d) If defense counsel is not present or not yet prepared, the court shall allow up to a 7 day continuance of the hearing to allow for preparation, or more if agreed to by the defendant.
- (e) The determination of pretrial release eligibility and conditions, may be reviewed and modified upon application by either party based on a material change in circumstances, or other good cause.
- (f) The defendant shall be advised of the right to a preliminary examination and the times for holding such hearing. If the defendant waives the right to a preliminary examination, and the prosecuting attorney consents, the court shall order the defendant bound over for trial.
- (g) If the defendant does not waive a preliminary examination, the court shall schedule the preliminary examination. The examination shall be held within a reasonable time, but not later than 14 days if the defendant is in custody for the offense charged and not later than 28 days if the defendant is not in custody. These time periods may be extended by the magistrate for good cause shown. Upon consent of the parties, the court may schedule the case for other proceedings before scheduling a preliminary hearing.
- (h) A preliminary examination may not be held if the defendant is indicted.

Rule 7A. Procedures for Arraignment on Class B or C misdemeanors, or infractions.

(a) The court, at a defendant's initial appearance shall inform the defendant:

1. Of the charge in the information, indictment, or citation and furnish a copy;
2. of any affidavit or recorded testimony given in support of the information and how to obtain them;
3. of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel;
4. of rights concerning pretrial release, including bail; and
5. that the defendant is not required to make any statement, and that any statements the defendant does make may be used against the defendant in a court of law.

(b) If defendant is present at the initial appearance without counsel, then the court shall determine if the defendant is capable of retaining the services of an attorney within a reasonable time. If the court determines the defendant has such resources, then the court shall allow the defendant that reasonable time and opportunity to retain and consult with counsel. If the court determines defendant is indigent, the court shall appoint counsel pursuant to Rule 8, unless defendant knowingly and intelligently waives such appointment.

(i) If counsel are present and prepared, the court shall address whether the defendant is entitled to pretrial release pursuant to 77-20-1, and if so, what if any conditions the court will impose to reasonably ensure the continued appearance of the defendant; integrity of the judicial process; and safety of the community. The court shall utilize the least restrictive conditions needed to meet those goals.

(j) If defense counsel is not present or not yet prepared, the court shall allow up to a 7 day continuance of the hearing to allow for preparation, or more if agreed to by the defendant.

(k) The determination of pretrial release eligibility and conditions, may be reviewed and modified upon application by either party based on a material change in circumstances, or other good cause.

(d) If defendant is prepared with counsel, or if counsel is waived, the court shall call upon a defendant to enter a plea.

1. If the plea is guilty, the defendant shall be sentenced by the court as provided by law.
2. If the plea is not guilty, the court shall set the matter for trial or a pretrial conference within a reasonable time. Such time should be no longer than ___ days if defendant is in custody, or ___ if defendant is not in custody.

3. If the court has appointed counsel; defendant does not desire to enter a plea, or for other good cause, the court may administratively enter a not guilty plea for the defendant. The court shall then schedule a pretrial conference.

RULE 7B. Preliminary Hearings

a. 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.

b. If from the evidence the 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 for trial. 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.

c. 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.

d. 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 conclude. If the magistrate orders the defendant bound over for trial, the magistrate shall execute a bind-over order and shall include any written findings in the case record.

RULE 7C. Material Witnesses- Procedure for Bond or Warrants

a. 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.

b. 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 three days or, upon a showing of good cause, within a reasonable period of time after being notified of the arrest.

c. 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.

d. 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.

RULE 7D Magistrate Availability

The presiding district court judge shall, in consultation with the Justice Court Administrator, develop a rotation of magistrates that 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.

RULE 9. Proceedings for persons arrested on suspicion of a crime (without warrant).

- (a) A person arrested and delivered to a correctional facility for an offense ~~other than a misdemeanor for which a voluntary remittance of fine may be entered as a conviction under Subsection 77-7-21(1)~~, shall be presented without unnecessary delay before a magistrate for the determination of probable cause and the denial of pretrial release, or the setting of pretrial release conditions under Section 77-20-1.
- (b) When a person is arrested without a warrant, the arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which defendant was arrested shall, as soon as reasonably feasible but in no event longer than 24 hours after the arrest present to a magistrate a sworn statement that contains:
1. the facts known to support probable cause to believe the defendant has committed a crime.
 2. The statement shall also contain any facts known to the affiant that are relevant to determining, the appropriateness of precharge release, or the conditions thereof.
 3. If available, the magistrate should also be presented the results of a validated pretrial risk assessment tool.
- (c) The information required in subsection (a) may be:
1. Presented to any magistrate, although if the judicial district has adopted a magistrate rotation pursuant to rule 7D, the presentment should be in accord with that schedule or rotation. However, if the arrestee is charged with a capital offense, the magistrate may not be a justice court judge.
 2. Verbally communicated by telephone, or electronically transmitted to the magistrate.
 - A. A statement which is verbally communicated by telephone shall be reduced to a sworn written statement prior to presentment to the magistrate.
 - B. The statement shall be retained by the submitting authority and a copy shall, as soon as practicable, be delivered to the magistrate who made the determination.
- (d) The arrestee need not be present at the probable cause determination.
- (e) The magistrate shall review the information provided and determine:
1. If probable cause exists to believe the defendant committed the offense or offenses described.
 2. If the magistrate finds there is probable cause, then the magistrate shall also determine if the person is eligible for pretrial release pursuant to 77-20-1, and what if any conditions on that release are reasonably necessary to:
 - A. ensure the appearance of the accused at future court proceedings;
 - B. ensure the integrity of the judicial process, including preventing direct or indirect contact with witnesses or victims by the accused, if appropriate; and
 - C. ensuring the safety of the public and the community.

3.

A. If the magistrate finds the statement does not support probable cause to support the charges filed, the magistrate may determine what if any charges are supported, and proceed under subsection (2).

B. If no probable cause is articulated for any charge, the magistrate shall return the statement to the submitting authority indicating such.

C. Unless the time is extended under subsection (D), at 24 hours after booking, if no probable cause determination and order setting bail have been received by the custodial authority, the defendant shall be released on the arrested charges on recognizance.

D. During the 24 hours after arrest, for good cause shown an arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which defendant was arrested may request an additional 24 hours to hold a defendant to prepare the probable cause statement or request for release conditions.

(e) Nothing in this rule is intended to preclude the accomplishment of other procedural processes at the time of the determination referred to in subsection (b).

(f) If a person is arrested in a county other than where the offense was alleged to have been committed, the arresting authority may present the person to a magistrate in the location arrested, or in the county where the crime was committed.

(g)

(1) If after 24 hours, the suspect remains in custody, an information shall be filed without delay charging the suspect with offenses from the incident leading to the arrest.

(2) If no information has been filed by 5:00pm on the 4th calendar day after the defendant was booked, the release conditions set under subsection (e)(2) shall revert to recognizance release.

(A) The four day period in this subsection (g)(2) may be extended upon application of the prosecutor for a period of three more days, for good cause shown.

(B) If the time periods in this subsection (g) expire on a weekend or legal holiday, the period shall expire at 5:00pm on the next business day.

Rule 9A Procedures for persons arrested pursuant to warrant

(a) for purposes of this rule, the following terms are defined:

(1) Arrest Warrant means a warrant issued by a judge pursuant to Rule 6(c), or after a defendant's failure to appear at an initial appearance or arraignment after having been summoned.

(2) Bench warrant means a warrant issued by a judge in a criminal case for failing to appear for court or other reasons, than those described in subsection (a)(1).

(b) When a peace officer or other person arrests a defendant pursuant to an arrest warrant and the arrested person cannot provide any condition or security required by the judge or magistrate issuing the warrant, the person arrested shall be presented to a magistrate within 24 hours after arrest. The information provided to the magistrate shall include the case number, and results of any pre-trial screening tool.

(c) with the results of the pre-trial screening tool, and having considered the factors that caused the court to issue a warrant in the first place, the court may modify its warrant conditions.

(d) any defendant arrested pursuant to an arrest warrant who remains in custody after the magistrate assessment in subsection (b), and any person arrested on a bench warrant shall be presented to the court issuing the warrant no later than the third day after the arrest.

(e) If the arrested person meets the conditions, or provides the necessary security required by the warrant, the person shall be released and instructed to appear as required in the issuing court.

(f) Any posted security shall be forwarded to the court issuing the warrant.

Rule 7. Initial Proceedings for Class A misdemeanors and Felonies.

(a) An initial appearance shall be held within 96 hours of the time of arrest.

(b) At the defendant's initial appearance, the court shall inform the defendant:

1. Of the charge in the information or indictment and furnish a copy;
2. of any affidavit or recorded testimony given in support of the information and how to obtain them;
3. of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel;
4. of rights concerning pretrial release, including bail; and
5. that the defendant is not required to make any statement, and that any statements the defendant does make may be used against the defendant in a court of law.

(c) At the initial appearance, if an information has not been filed:

- a. and the arrested person is in custody, the court shall order the arrested person released without condition unless the prosecution is allowed additional time to prepare an information. The court shall consider a request for additional time to prepare an information if presented in writing at or before the initial appearance. The request for additional time will describe the reasons why an information has not been filed and describe in detail the amount of time needed to file an information. The court should grant a request for additional time only upon a showing of good cause. The additional time granted should be narrowly tailored to the justification provided by the prosecutor in the request. If the court grants the request for additional time it should reschedule the initial appearance at the soonest possible date consistent with the additional time. Subsequent requests for additional time shall not be entertained;
- b. and the person is released on bail and/or other pretrial conditions, the bail shall be exonerated and any conditions of release removed unless the prosecution is allowed additional time, pursuant to subsection (a) above;
- c. and the prosecution does not request additional time; or a request for additional time has been denied; or a request for additional time has been granted but the prosecution has not filed an information by the subsequent hearing, the case shall be closed without prejudice.

(d) If defendant is present at the initial appearance without counsel, then the court shall determine if the defendant is capable of retaining the services of an attorney within a reasonable time. If the court determines the defendant has such resources, then the court shall allow the defendant that reasonable time and opportunity to retain and consult with counsel. If the court determines defendant is indigent, the court shall appoint counsel pursuant to Rule 8, unless defendant knowingly and intelligently waives such appointment.

(e) If counsel are present and prepared, the court shall address whether the defendant is entitled to pretrial release pursuant to 77-20-1, and if so, what if any conditions the court will impose to reasonably ensure the continued appearance of the defendant; integrity of the judicial

process; and safety of the community. The court shall utilize the least restrictive conditions needed to meet those goals.

- (f) If defense counsel is not present or not yet prepared, the court shall allow up to a 7 day continuance of the hearing to allow for preparation, or more if agreed to by the defendant.
- (g) The determination of pretrial release eligibility and conditions, may be reviewed and modified upon application by either party based on a material change in circumstances, or other good cause.
- (h) The defendant shall be advised of the right to a preliminary examination and the times for holding such hearing. If the defendant waives the right to a preliminary examination, and the prosecuting attorney consents, the court shall order the defendant bound over for trial.
- (i) If the defendant does not waive a preliminary examination, the court shall schedule the preliminary examination. The examination shall be held within a reasonable time, but not later than 14 days if the defendant is in custody for the offense charged and not later than 28 days if the defendant is not in custody. These time periods may be extended by the magistrate for good cause shown. Upon consent of the parties, the court may schedule the case for other proceedings before scheduling a preliminary hearing.
- (j) A preliminary examination may not be held if the defendant is indicted.

Rule 7A. Procedures for Arraignment on Class B or C misdemeanors, or infractions.

(a) An initial appearance shall be held within 96 hours of the time of arrest.

(b) The court, at a defendant's initial appearance shall inform the defendant:

1. Of the charge in the information or indictment and furnish a copy;
2. of any affidavit or recorded testimony given in support of the information and how to obtain them;
3. of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel;
4. of rights concerning pretrial release, including bail; and
5. that the defendant is not required to make any statement, and that any statements the defendant does make may be used against the defendant in a court of law.

(c) At the initial appearance, if an information has not been filed:

- a. and the arrested person is in custody, the court shall order the arrested person released without condition unless the prosecution is allowed additional time to prepare an information. The court shall consider a request for additional time to prepare an information if presented in writing at or before the initial appearance. The request for additional time will describe the reasons why an information has not been filed and describe in detail the amount of time needed to file an information. The court should grant a request for additional time only upon a showing of good cause. The additional time granted should be narrowly tailored to the justification provided by the prosecutor in the request. If the court grants the request for additional time it should reschedule the initial appearance at the soonest possible date consistent with the additional time. Subsequent requests for additional time shall not be entertained;
- b. and the person is released on bail and/or other pretrial conditions, the bail shall be exonerated and any conditions of release removed unless the prosecution is allowed additional time, pursuant to subsection (a) above;
- c. and the prosecution does not request additional time; or a request for additional time has been denied; or a request for additional time has been granted but the prosecution has not filed an information by the subsequent hearing, the case shall be closed without prejudice.

(d) If defendant is present at the initial appearance without counsel, then the court shall determine if the defendant is capable of retaining the services of an attorney within a reasonable time. If the court determines the defendant has such resources, then the court shall allow the defendant that reasonable time and opportunity to retain and consult with counsel. If the court determines defendant is indigent, the court shall appoint counsel pursuant to Rule 8, unless defendant knowingly and intelligently waives such appointment.

(e) If counsel are present and prepared, the court shall address whether the defendant is entitled to pretrial release pursuant to 77-20-1, and if so, what if any conditions the court will impose to reasonably ensure the continued appearance of the defendant; integrity of the judicial process; and

safety of the community. The court shall utilize the least restrictive conditions needed to meet those goals.

(f) If defense counsel is not present or not yet prepared, the court shall allow up to a 7 day continuance of the hearing to allow for preparation, or more if agreed to by the defendant.

(g) The determination of pretrial release eligibility and conditions, may be reviewed and modified upon application by either party based on a material change in circumstances, or other good cause.

(h) If defendant is prepared with counsel, or if counsel is waived, the court shall call upon a defendant to enter a plea.

1. If the plea is guilty, the defendant shall be sentenced by the court as provided by law.

2. If the plea is not guilty, the court shall set the matter for trial or a pretrial conference within a reasonable time. Such time shall be no longer than ___days if defendant is in custody, or ___if defendant is not in custody.

3. If the court has appointed counsel; defendant does not desire to enter a plea, or for other good cause, the court may administratively enter a not guilty plea for the defendant. The court shall then schedule a pretrial conference.