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

March 21, 2017
12:00 p.m. - 2:00 p.m.

Agenda

1. Welcome and approval of minutes	-	Patrick Corum
2. Logue subcommittee update	-	Jeff Gray
3. Special circumstances subcommittee update	-	Blake Hills
4. Continued discussion of rules 7-9	-	Judge Brendan McCullagh
5. Rule 24(d) proposal	-	Patrick Corum
6. Rule 36	-	Patrick Corum
7. Post-judgment sanctions rule	-	Judge Brendan McCullagh

8. Other business
   Rule 14 subpoenas, Peremptory challenges
   Rules reorganization

9. Adjourn

Draft

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

January 17, 2017

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

EXCUSED

STAFF
Brent Johnson

I. WELCOME/APPROVAL OF MINUTES

Patrick Corum welcomed the committee members to the meeting. Mr. Corum next discussed the September 20, 2016 minutes.

Cara Tangaro moved to approve the minutes with no corrections. Judge Brendan McCullagh seconded the motion. The motion carried unanimously.

II. RULES 4, 4A, 4B, 6, and 29 PUBLISHED FOR PUBLIC COMMENT

Mr. Corum next discussed the comments received for rules 4, 4A, 4B, 6 and 29. The committee discussed each of the comments received and all of the concerns were addressed. Brent Johnson noted rule 6 was already approved by the Supreme Court subject to the comment period. Jeffrey Gray said he was concerned with rule 6 where it allows a summons to be sent by mail to the defendant's last known address. The committee discussed possibly changing the wording on failures to appear. Mr. Gray said service by mail doesn't seem to be an adequate

manner to notify defendants of their cases. Mr. Gray noted the rule is clearly written for appearance by summons. After brief discussion, the committee made adjustments to rule 6.

Judge McCullagh moved to approve rules 4, 4A, 4B, and 29 to be sent to the Supreme Court for final approval. Craig Johnson seconded the motion. The motion carried unanimously. Judge McCullagh will revise rule 6 and distribute it to the committee.

III. LOGUE V. COURT OF APPEALS SUBCOMMITTEE UPDATE

Brent Johnson addressed this subcommittee. Mr. Johnson said the Supreme Court would like to see this committee provide two members to join the subcommittee. Judge Vernice Trease proposed one prosecutor and one defense attorney. Professor Jensie Anderson said she would volunteer as the defense attorney. Jeffrey Gray volunteered as the prosecutor. Mr. Johnson said someone will contact them to provide details.

IV. PRETRIAL PROCEDURE RULES (RULES 7, 7A, 7B, 7C, 7D, 9, and 9A)

Mr. Corum said the pretrial release committee will be engaged in a pilot pretrial release assessment program in multiple counties. They are requesting release determinations be made within 24 hours of arrest. Mr. Corum noted there is already a rule in place for warrantless arrests. However, there needs to be an amendment to allow for this on arrests pursuant to warrants. Judge McCullagh explained the rules as they should be to meet the Arnold standards. Mr. Corum said this study is taking place in the next few months. It will be based on a non-interview process. There is an OTN created then a score being generated based on data received. Mr. Corum said rule 7 needs to be addressed by this committee fairly quickly, even by email or an added meeting. Judge McCullagh noted the study will be in Davis and Utah counties. Judge Trease asked how this will affect those individuals who are not initially booked. Mr. Corum explained that the rules will help address that. Judge McCullagh said the problem of fail-to-files is mostly in Salt Lake County. Judge McCullagh explained the current process and issues the county is facing. Judge McCullagh noted there will be an Arnold score eventually done in Salt Lake County. However, for now, it will only be in Davis and Utah counties. Douglas Thompson asked if the jail will have any authority to make a determination on the Arnold score. Mr. Corum said they will not have authority. It will remain as a judicial determination.

Mr. Corum asked how this affects Salt Lake County. Judge McCullagh said currently the jail gives a list of individuals who have been arrested. Judge McCullagh noted there is already probable cause but the judge needs to determine release conditions. Judge McCullagh said he would like to see the rule go out for comment but would like to see the effective date of the rule be the same as when the program begins. Mr. Corum said the courts have stated they will be able to link the information with the scores. Judge McCullagh said because the system is not in place yet he did not feel comfortable adding to the rule information consistent with the Arnold score until the system is in place.

Judge McCullagh explained his rule proposals in comparison to Doug Thompson's proposed rule. Mr. Thompson felt like the committee should meet somewhere in the middle between the 24 hour and 96 hour rule. Mr. Thompson believes the majority of the cases can be

filed within that amount of time. Judge McCullagh explained rule 7 governs when a case has been filed, where rule 9 addresses processes for persons who have been arrested prior to filing. There was discussion on how long people have been held. Ms. Tangaro said in Utah County she has seen people held for seven days. She further said that because there is no case number for those individuals she is unable to find information on their status.

Judge McCullagh said the rule addresses court procedures, not procedures for magistrates. Judge McCullagh said when individuals are detained when no information has been filed then technically there is no court yet. Judge McCullagh said rule 7 will apply to cases already filed and rule 9 will apply to individuals who have been arrested prior to filing. Judge McCullagh believes the 24-hour rule should apply to both. He further believes the 24-hour clock should run concurrently with the four-day clock. Therefore, if an information has not been filed within four days, the individual should be released. The committee agreed to changes to rule 9. The committee amended the rule to accommodate for the current practices in both Salt Lake and Utah Counties. Maureen Magagna noted Weber County is following the same processes as Utah County. Ms. Magagna said the numbers are fairly low for failure-to-file cases. Ms. Tangaro noted Weber County follows the bail schedule.

Mr. Thompson said Utah County created their own rule for 4 days, not counting the day a person was booked before the first appearance. Judge McCullagh said they are not trying to prohibit any current practices, but instead, they are seeking to address individuals who have been in jail for a considerable amount of time. The committee questioned how the jails would know when an information is filed. Judge McCullagh said the courts send the warrant over to the jail. Ms. Tangaro suggested the committee research what is happening and what the judges would like to see happen. Ms. Tangaro said Joanna Landau is researching indigent defense procedures.

Judge McCullagh will revise rule 9 and email it to the committee this week. Mr. Thompson will assist Judge McCullagh with proposed amendments. Judge McCullagh will not make changes to 7A, 7B, 7C, or 7D according to discussions. Judge McCullagh said rule 9A will also remain as is.

V. POST-JUDGMENT SANCTIONS RULE

Judge McCullagh stated he would like to discuss this at a later time, after rules 7 and 9 are complete.

VI. RULE 24(d)

Mr. Johnson said this rule will be discussed at a later time.

VII. OTHER BUSINESS/ADJOURN

Mr. Thompson noted he along with other committee members are on a special circumstance instructions subcommittee for the rules of evidence. Blake Hills said the Supreme Court gave direction for this subcommittee. The Supreme Court asked them to write rules related to special circumstances, such as preconceived notions of jurors. Professor Anderson

noted the NED just released a report on this. Craig Johnson said they would review that information. Professor Anderson said this is being addressed all over the nation. Specifically Salt Lake City police have adopted the best practices report. Mr. Thompson said Linda Jones is the person to contact if anyone wants more information on the subcommittee.

With their being no further issues, the meeting adjourned at 1:30 pm. The next meeting will be held March 21, 2017.

Brent Johnson <brentj@utcourts.gov>

challenging the constitutionality of a law

1 message

Tim Shea <tims@utcourts.gov> Thu, Jun 2, 2016 at 3:11 PM
To: Patrick Corum <pcorum@sllda.com>, Carol Verdoia <cverdoia@utah.gov>
Cc: Brent Johnson <brentj@utcourts.gov>, Katie Gregory <katieg@utcourts.gov>

Carol and Patrick,

The appellate rules committee has just approved for comment a draft rule that would require all parties to serve their briefs on the AG when any party challenges the constitutionality of a statute. There will be a parallel provision for serving the county or municipal attorney when challenging the constitutionality of a local ordinance. The procedures are different, but the concepts are the same as those in URCP 24(d).

During the committee's discussions, several people raised the circumstance in which a criminal or juvenile case was delayed or parties suffered adverse consequences because a party had not followed URCP 24(d). Since there is no counterpart in the rules of criminal or juvenile procedure, URCP 24(d) applies, but frequently even experienced criminal and juvenile practitioners are not aware of it.

The appellate rules committee recommends that your respective committees consider drafting a rule similar to Rule 24(d) so parties might more reasonably be expected to timely notify the AG or county or municipal attorney when challenging the constitutionality of a law.

Thank you,
Tim

URAP025A.pdf
18K

1 **Rule 25A. Challenging the constitutionality of a statute or ordinance.**
2 **(a) Notice to the Attorney General or the county or municipal attorney; penalty for failure to**
3 **give notice.**
4 (a)(1) When a party challenges the constitutionality of a statute in an appeal or petition for review
5 in which the Attorney General has not appeared, every party must serve its principal brief and any
6 subsequent brief on the Attorney General on or before the date the brief is filed.
7 (a)(2) When a party challenges the constitutionality of a county or municipal ordinance in an
8 appeal or petition for review in which the responsible county or municipal attorney has not appeared,
9 every party must serve its principal brief and any subsequent brief on the county or municipal attorney
10 on or before the date the brief is filed.
11 (a)(3) If an appellee or cross-appellant is the first party to challenge the constitutionality of a
12 statute or ordinance, the appellant must serve its principal brief on the Attorney General or the county
13 or municipal attorney no more than 7 days after receiving the appellee's or the cross-appellant's brief
14 and must serve its reply brief on or before the date it is filed.
15 (a)(4) Every party must serve its brief on the Attorney General by email or mail at the following
16 address and must file proof of service with the court.

Email	Mail
notices@agutah.gov	Office of the Utah Attorney General Attn: Utah Solicitor General 320 Utah State Capitol P.O. Box 142320 Salt Lake City, Utah 84114-2320

17 (a)(5) If a party does not serve a brief as required by this rule and supplemental briefing is
18 ordered as a result of that failure, a court may order that party to pay the costs, expenses, and
19 attorney fees of any other party affected by that failure.
20 **(b) Notice by the Attorney General or county or municipal attorney; amicus brief.**
21 (b)(1) Within 14 days after service of the brief that presents a constitutional challenge the
22 Attorney General or other government attorney will notify the appellate court whether it intends to file
23 an amicus brief. The Attorney General or other government attorney may seek up to an additional 7
24 days' extension of time from the court. Should the Attorney General or other government attorney
25 decline to file an amicus brief, that entity should plainly state the reasons therefor.
26 (b)(2) If the Attorney General or other government attorney declines to file an amicus brief, the
27 briefing schedule is not affected.
28 (b)(3) If the Attorney General or other government attorney intends to file an amicus brief, that
29 brief will come due 30 days after the notice of intent is filed. Each governmental entity may file a
30 motion to extend that time as provided under Rule 22. On a governmental entity filing a notice of a

31 intent, the briefing schedule established under Rule 13 is vacated, and the next brief of a party will
32 come due 30 days after the amicus brief is filed.
33 **(c) Call for the views of the Attorney General or county or municipal attorney.** Any time a party
34 challenges the constitutionality of a statute or ordinance, the appellate court may call for the views of the
35 Attorney General or of the county or municipal attorney and set a schedule for filing an amicus brief and
36 supplemental briefs by the parties, if any.
37

Utah State Courts

Jeni Wood <jeniw@utcourts.gov>

Fwd: Query on amending URCrimP 36

1 message

Patrick Corum <PCorum@sllda.com> Mon, Jan 30, 2017 at 1:01 PM
To: "Brent Johnson (General Counsel)" <brentj@utcourts.gov>, Jeni Wood <jeniw@utcourts.gov>

Jeni,

Can we put this on the agenda for the the next meeting?

Patrick

Sent from my iPhone

Begin forwarded message:

From: "J. Robert Latham" <jrobertlesq@gmail.com>
Date: January 30, 2017 at 12:55:26 PM MST
To: tangarolaw@gmail.com, PCorum@sllda.com
Subject: Query on amending URCrimP 36

Hi Patrick and Cara,

I'm writing to inquire whether the committee you're both on (see list below) can consider an amendment to URCrimP 36 to to allow for an in-court, in-person withdrawal after entry of judgment, just as subsection (a)(2) provides.

It seems like a post entry of judgment withdrawal of counsel could happen on the record with an inquiry as to whether counsel has advised the defendant of the right to file a motion for a new trial, etc., just as in the case of the inquiry pre-entry of judgment that the withdrawal meets the requirements of the Rules of Professional Conduct in URCrimP 36(a)(2).

(Or, if there's a reason for not doing that, what's the reason?)

Thank you,

Rob Latham

https://www.utcourts.gov/committees/index.asp?comm=19

Supreme Court's Advisory Committee on the Rules of Criminal Procedure

Patrick W. Corum Chair, SLLDA
Professor Jensie L. Anderson University of Utah
Jeffrey S. Gray AG's Office
Blake Hills SL Co DA's Office
Judge Elizabeth Hruby-Mills Third District Court
Craig Johnson Utah Co Attorney's Office
Maureen Magagna Clerk of Court, Second District Court
Judge Brendan P. McCullagh West Valley Justice Court
Ryan Stack Summit Co Attorney's Office
Cara M. Tangaro Attorney
Douglas Thompson Utah Co Public Defender's

Judge Vernice S. Trease Third District Court
Brent Johnson Staff, Administrative Office of the Courts

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Rule 36. Withdrawal of counsel.

(a) Withdrawal of counsel prior to entry of judgment.

(a)(1) Consistent with the Rules of Professional Conduct, an attorney may not withdraw as counsel of record in criminal cases without the approval of the court.

(a)(2) A motion to withdraw as an attorney in a criminal case shall be made in open court with the defendant present unless otherwise ordered by the court. Counsel must certify that the withdrawal meets the requirements of the Rules of Professional Conduct.

(b) Withdrawal of counsel after entry of judgment. Prior to permitting withdrawal of trial counsel, the trial court shall require counsel to file a written statement certifying:

(b)(1) That the defendant has been advised of the right to file a motion for new trial or to seek a certificate of probable cause, and if in counsel's opinion such action is appropriate, that the same has been filed.

(b)(2) That the defendant has been advised of the right to appeal and if in counsel's opinion such action is appropriate, that a Notice of Appeal, a Request for Transcript, and in appropriate cases, an Affidavit of Impecuniosity and an Order requiring the appropriate county to bear the costs of preparing the transcript have been filed.