

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

March 21, 2017

ATTENDEES

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

EXCUSED

Professor Jensie Anderson
Blake Hills

STAFF

Brent Johnson

I. WELCOME/APPROVAL OF MINUTES

Patrick Corum welcomed the committee members to the meeting. Mr. Corum next discussed the January 17, 2017 minutes.

Douglas Thompson moved to approve the minutes with no corrections. Maureen Magagna seconded the motion. The motion carried unanimously.

II. LOGUE SUBCOMMITTEE UPDATE

Mr. Corum stated he spoke with Professor Jensie Anderson, who was unable to attend the meeting. Professor Anderson requested the committee postpone detailed discussion of proposals until she is able to attend. Mr. Corum briefly explained the Logue case. Jeff Gray stated the Logue subcommittee is considering amending the rules to permit a motion for a new trial prior to appellate oral argument if new evidence is discovered. Mr. Johnson noted there is a concern, particularly on the defense side, that if they get new evidence there be a mechanism to file motions within a reasonable time. Mr. Johnson said the proposal would allow for a timely disposition of claims, considering that often there is no trial counsel assigned. Mr. Johnson said

the original proposed time was 30 days, but they are now proposing up to before oral argument. Mr. Corum asked if the appellate rules would be amended as well. Mr. Johnson said the rules will not be amended but appellate counsel may have the burden of filing a motion in the trial court. Mr. Thompson said once a case is assigned to an appellate attorney, it's their case to complete. Mr. Corum asked if appellate attorneys have the resources, such as investigators, to identify new evidence. Mr. Johnson said a motion to stay can be filed, but it's the appellate court's decision. Mr. Johnson believes a stay should be automatic. Mr. Johnson said the purpose of the rule is to keep the case moving, even if an appeal is filed, unless the trial court grants a new trial. Mr. Johnson noted if a motion is filed shortly before oral argument then the case should be stayed. Mr. Thompson said rule 23B has the same issues. Mr. Corum said the committee will not vote on this today but will wait until the subcommittee completes its work.

III. SPECIAL CIRCUMSTANCES SUBCOMMITTEE UPDATE

Mr. Thompson said the subcommittee had cancelled their meeting, therefore there is nothing to update.

IV. RULES 7-9

Judge McCullagh said the Legislature did not do anything to affect the rules of criminal procedure. He will continue to work on rules 7-9 and present them in May.

V. RULE 24(D)

Brent Johnson distributed rule 24 of the rules of civil procedure. Mr. B. Johnson asked whether the provisions on notifying the AG's office should be implemented into the criminal procedure rules. Mr. Thompson said there is concern that if people only look at the rules of criminal procedure then there is a disservice to those individuals because the requirement to notify the AG is found in the civil procedure rules. Mr. C. Johnson said he thinks it's a good idea to add to the rules of criminal procedure, perhaps in rule 12. Cara Tangaro agreed. Mr. Corum said he originally didn't see a natural fit for it but the committee could adopt this language into rule 12. Mr. Corum will work on a proposal. Mr. B. Johnson said there could be a reference to the statute. Mr. Corum said if it's a simple addition to a rule, it can be included in rule 12. Judge Vernice Trease said if there's no time stated for notification, the existing time frames in the rules should be used.

VI. RULE 36

Mr. Corum reviewed a proposal to allow post-conviction withdrawals of counsel to be made in open court. Ms. Tangaro said the requirement to file a motion to withdraw in each case is quite burdensome. Mr. Thompson said the proposal is a good idea. Judge McCullagh agreed. Mr. Corum suggested that the rule allow motions to withdraw either orally or in writing. The committee agreed that the withdrawal should be either certified on the record or in writing. Mr. C. Johnson believes even if the certification is done in writing, it should also be done in open court. Mr. Thompson said if defendants sign something recognizing they were informed that they have a right to appeal it would simplify the process. Ms. Tangaro said that would be much

more work for counsel. Judge Trease said it's common practice for attorneys not to file motions to withdraw and then attorneys realize they are still on the case years later when there is post-judgment activity. Judge McCullagh said he encourages at sentencing certification of the right to appeal and withdrawal of counsel. Mr. Corum will prepare a draft.

VII. POST-JUDGMENT SANCTIONS RULE

Mr. B. Johnson said the agenda is a reminder to address this in the future.

VIII. OTHER BUSINESS

Mr. Corum requested an update on a resolution proposed by Senator Weiler that would have amended the rules of criminal procedure. Judge McCullagh said the resolution did not pass.

Mr. B. Johnson said the issue of preemptory challenges will be discussed during the May committee meeting. The Board of District Court Judges would like the committee to address the issue. Ms. Tangaro said there might also be a new proposal to discuss as a result of the John Swallow case. The issue involves the selection of alternate jurors. Ms. Tangaro said the rule may not be clear on using the allowed preemptory challenges before selecting alternate jurors. Judge Hruby-Mills said her opinion is that the rule is sufficiently clear. Judge Trease said when counsel use the preemptories they end up with jurors with unknown qualities. Judge Trease said the people who are on the jury should only be the ones who are not stricken for cause. Mr. Corum said he doesn't strike jurors very often. Judge Trease suggested the committee consider additional options for counsel to remove jurors for cause. Mr. Corum said in time there would be less reliance on peremptories if counsel knew they were much more limited. Mr. Corum said because of preemptories there isn't much need to look further into the answers given by prospective jurors. Ms. Tangaro said they researched every potential juror in the Swallow trial because there wasn't enough information available from the questionnaire.

IX. ADJOURN

With their being no further issues, the meeting adjourned at 1:30 pm. The next meeting will be held May 16, 2017.