

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

September 19, 2017

ATTENDEES

Patrick Corum - Chair
Professor Jensie Anderson
Jeffrey Gray
Blake Hills
Judge Elizabeth Hruby-Mills
Craig Johnson
Judge Kelly Schaeffer-Bullock
Ryan Stack
Cara Tangaro – by phone
Douglas Thompson

EXCUSED

Maureen Magagna

STAFF

Brent Johnson
Jeni Wood – Recording secretary

GUESTS

I. WELCOME/APPROVAL OF MINUTES

Patrick Corum welcomed the committee members to the meeting. Mr. Corum welcomed Judge Kelly Schaeffer-Bullock to the committee. Mr. Corum noted the terms of Judge Vernice Trease and Judge Brendan McCullagh expired. Mr. Corum said they are still working on replacing the position Judge Trease held. Mr. Corum discussed the May 16, 2017 minutes.

There being no changes, Douglas Thompson moved to approve the minutes. Craig Johnson seconded the motion. The motion carried unanimously.

II. RULES 7-9 PUBLIC COMMENTS RECEIVED

Mr. Corum next addressed the comments that were received. Mr. Corum noted there weren't very many received. Brent Johnson said in 2013 the committee approved changes to rule 7, but at that time the changes were tabled pending the reorganization of the rules. Blake Hills supports the proposed changes. Mr. Hills explained his position on material witness

warrants and that they are typically addressed during a trial. Mr. Johnson noted the change in 2013 eliminated the bond requirement. Judge Hruby-Mills said she is concerned about the current wording in the rule. Mr. Johnson said the reason for the proposed change in 2013 was because bonds weren't being used. Mr. Corum said the intent was also to speed the procedures along so people weren't being held for a long period of time, such as material witnesses being held until a trial that was scheduled months down the road. Mr. Hills suggested the committee look at various procedures used throughout the United States. Mr. Corum said the rules at least need to become effective now so the current issues are covered. Mr. Johnson recommended looking at using the rule as proposed in 2013, without going through public comment first.

Ryan Stack discussed preliminary hearings. Mr. Stack is concerned setting the preliminary hearings too soon might cause many hearings to be rescheduled pending more investigation on the case. Mr. Corum said there is an appeal pending that addresses preliminary hearings.

Mr. Johnson mentioned the Supreme Court wants headings in the sections of the rules. Mr. Johnson may amend the rules then circulate them to the committee.

Patrick Corum moved to take the proposed amendments from 2013 and put them into rule 7C. Craig Johnson seconded the motion. The motion carried unanimously.

Ryan Stack moved to amend rule 7(g), adding language stating the court will schedule a preliminary examination "upon request." Douglas Thompson seconded the motion. The motion carried unanimously.

Patrick Corum moved to send rules 7-9 to the Supreme Court for final approval. Ryan Stack seconded the motion. The motion carried unanimously.

III. RULE 12 – NOTIFYING A.G.

Mr. Corum addressed the proposed changes to this rule. Mr. Thompson said with e-filing, the Attorney General's Office is not receiving notices about constitutional issues. Judge Kelly Schaeffer-Bullock stated many times justice court litigants challenge the constitutionality of statutes. Jeffrey Gray said it might be best to separate district court proceedings from justice court proceedings. Mr. Corum will make changes as proposed, including adding specific addresses and limiting one portion of the rule to courts of record.

Patrick Corum moved to send rule 12, with amendments as discussed, to the Supreme Court for approval for public comment. Blake Hills seconded the motion. The motion carried unanimously.

IV. RULE 22

Mr. Thompson discussed his proposed changes to rule 22. Mr. Thompson noted this change would require the court to address whether a litigant is requesting or is not requesting appointed counsel in appellate cases.

Douglas Thompson moved to amend the rule as proposed. Professor Jensie Anderson seconded the motion. The motion carried unanimously.

V. RULE 36

Kara Tangaro addressed the proposed changes, allowing attorneys to move to withdraw in open court.

Kara Tangaro moved to approve the rule as proposed. Douglas Thompson seconded the motion. The motion carried unanimously.

VI. RULES 14 AND 27

Mr. Corum discussed these proposals. Mr. Corum noted law enforcement agencies will not accept service of subpoenas for officers. Ms. Tangaro asked if law enforcement can establish broader policies as to who can accept service. Mr. Corum explained that it's the agency that will not accept service for a law enforcement officer.

The committee will table rules 14 and 27 until the next meeting.

VII. FOLLOW UP ON SENATOR WEILER'S PROPOSALS TO RULE 16

Mr. Corum discussed Senator Weiler's proposals regarding rule 16. Mr. Corum explained the suggested changes were dramatic. Mr. Corum researched the issue and found Utah's current rule 16 was in line with other states. Mr. Corum said he is concerned the proposal would create a lengthy process. Mr. Corum said the proposal allows defendants to file a cause of action if they believe the prosecutor was unjust. Mr. Corum expressed the belief that such actions would become common. The committee was concerned that this would be time-consuming for counsel.

After brief discussion, Mr. Corum stated he will propose amendments to rule 16 and present them at the next meeting.

VIII. LOGUE SUBCOMMITTEE UPDATE

Mr. Gray said the subcommittee is divided at this point. Professor Jensie Anderson will have a proposed rule by this week to the subcommittee. Professor Anderson said there is concern about what appellate counsel will be required to do. The next subcommittee meeting is

scheduled for October 22. Mr. Corum asked if the subcommittee will be in a position to propose a rule amendment at the next meeting. Professor Anderson stated that was possible.

IX. RULE 25 AND SUBCOMMITTEE REPORTS

Ms. Tangaro said there are cases that do not have statutes of limitations and the cases are dismissed without prejudice, leaving the client with no option to expunge. Ms. Tangaro suggests adding into the rule an option to dismiss with prejudice. Mr. Gray noted he had a case where one prosecutor dismissed the case and then a second prosecutor was assigned and felt they had enough evidence to charge the individual. Judge Schaeffer-Bullock stated this is probably an issue to be addressed in statute. She stated it might be best to allow the rule to remain as is and let the individual attempt to expunge when the time is right, allowing the prosecutor time to decide if they will file charges.

Mr. Hills reported that in accordance with the Supreme Court's request the subcommittee drafted a rule that addresses eyewitnesses. The rule has been reviewed and amended by the Evidence Committee. The Evidence Committee will now send the rule to the Supreme Court for approval. Mr. Hills noted if the rule is adopted by the Supreme Court this committee will need to address potential changes to rule 12.

X. UPDATE ON RULE PROGRESS

Mr. Johnson addressed the table of rules that shows the progress of proposal changes. Mr. Johnson noted this will start going out with each committee packet. Mr. Corum addressed the rules that Judge McCullagh was working on. Mr. Johnson will make contact with Judge McCullagh regarding any outstanding rules.

XI. RULE 18, ALTERNATE JURORS

Mr. Johnson said the Board of District Court Judges requested the committee address this rule in comparison with the civil rule counterpart. Mr. Johnson will work on the language of rule 18.

XII. OTHER BUSINESS: POST-JUDGMENT SANCTIONS RULE

This was not addressed.

XIII. ADJOURN

With there being no further issues, the meeting adjourned at 1:45 pm. The next meeting will be held November 21, 2017.