

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

November 21, 2017
12:00 p.m. – 2:00 p.m.

Attendees

Patrick Corum - Chair
Douglas Thompson
Judge Kelly Schaeffer-Bullock
Professor Jensie Anderson
Jeffrey S. Gray
Blake Hills
Craig Johnson
Cara Tangaro

Excused

Ryan Stack
Maureen Magagna
Judge Elizabeth Hruby-Mills

Staff

Brent Johnson
Carol Sheets – Recording secretary

Guests

Heidi Nestel

I. WELCOME/APPROVAL OF MINUTES

Patrick Corum welcomed the committee members to the meeting. The Committee discussed the September 19, 2017 minutes. There being no changes to the minutes, Doug Thompson moved to approve the minutes. Blake Hills seconded the motion. The motion carried unanimously.

Mr. Corum noted this will be his last meeting as Chair. Mr. Corum said he has always felt this was a good group because of the various roles each of them plays in the justice system.

II. RULE 16

Mr. Corum said last year Senator Weiler passed a joint resolution in the Senate to amend rule 16. The biggest proposed change to rule 16 was creating a separate cause of action for discovery violations. There were many concerns from prosecutors about the practicality of the change. Senator Weiler continues to pursue legislative changes in the rules of criminal procedure. Mr. Corum edited Senator Weiler's proposed changes to rule 16, which may preclude the need for any legislative changes.

Mr. Corum said the district courts require defendants to enter a plea at arraignment. There is concern with having defendants enter a plea so quickly at arraignment, a hearing that many prosecutors do not attend. Judge Kelly Schaeffer-Bullock noted only a small number of cases in justice courts have a bench trial. For non-traffic citations, a prosecutor must file an information. Filing an information may solve many problems.

Mr. Thompson questioned if there was any reason to distinguish between types of cases. There was discussion as to whether to title people as “accused” or “defendants.” The committee felt using the word “accused” might be better. Mr. Corum prefers the term “defendant” to help designate the appropriate party. A proposal was made to amend this rule into multiple sentences with smaller, separate paragraphs. Additionally, it was suggested that a statement such as “available as discovery” be included. Mr. Hills objected to the proposal. If the rule is amended with this verbiage it may fall within work product.

Mr. Corum will redraft the rule. Whatever happens with Mr. Corum’s committee position, someone should probably do something in January to facilitate the proposal.

III. RULE 8

The proposed rule amendment changing “substantial probability of jail time” to “any possibility of jail time,” came from Joanna Landau. The Commission on Indigent Defense’s perception is that some courts are applying the incorrect standard. Brent Johnson said this may be different from the standard established by caselaw. After further discussion, Mr. Corum recommended researching the Shelton line of cases.

IV. DRAFT RECOMMENDATION OF LOGUE SUBCOMMITTEE

There was brief discussion on this issue. The committee decided the situation from Logue is very rare and no action should be taken.

Jeffrey Gray moved to take no action at this time. Professor Jensie Anderson seconded the motion. The motion carried unanimously.

V. RULE 14(b)

Mr. Thompson presented his proposed amendment to rule 14. This amendment is an extension of the requirements for non-public records. Mr. Corum believes the whole subsection should be amended.

Mr. Thompson will review the rule and present an amendment to the committee at a later time.

Heidi Nestel attended the meeting to discuss her opposition to the proposed amendments to rule 14(b), specifically the proposal to remove non-public records. Mr. Corum said this has been problematic. Mr. Hills noted he asks victims to sign a release of information, which normally the victims agree to. Mr. Corum said it’s important to protect a victim’s privacy.

Mr. Thompson moved to amend the language to strike “the defendant” and add “any party” in both instances where “defendant” is used. Mr. Hills would like to receive more input on this before making a motion. He would like to give it more consideration. Mr. Hills will do further research and readdress this with the committee at a later time.

VI. RULE 18

Mr. Johnson said with this proposal he hopes that there are never more than four alternate jurors in order to accommodate peremptory challenges. Mr. Corum agreed with having few alternate jurors.

Mr. Hills moved to approve rule 18 to be sent to the Supreme Court for approval to be published for 45-day public comment. Mr. Gray seconded the motion. The motion carried unanimously.

VII. RULES 11 and 22

Rule 11 was amended to add information from a newly passed state law. Rule 22’s technical changes were briefly addressed and approved.

Mr. Gray moved to approve rule 11 to be sent to the Supreme Court for approval. Mr. Thompson seconded the motion for rule 11. The motion carried unanimously.

VIII. RULE 12

Mr. Johnson addressed rule 12. Mr. Johnson noted Senator Weiler recommended clarification on the numbering and lettering of this rule.

Mr. Grey moved to approve rule 12 to be sent to the Supreme Court for approval. Ms. Tangaro seconded the motion. The motion carried unanimously. Because these are technical amendments public comment may not be necessary.

IX. RULE 27

This issue was tabled.

X. OTHER BUSINESS

There was no other business discussed.

XI. ADJOURN

The meeting adjourned at 1:38 p.m. The next meeting will be held February 20, 2018.