

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  
Council room

September 18, 2018  
12:00 p.m. – 2:00 p.m.

**Attendees**

Douglas Thompson, Chair  
Judge Patrick Corum  
Jeffrey S. Gray  
Blake Hills  
Judge Elizabeth Hruby-Mills  
Craig Johnson  
Keri Sargent  
Judge Kelly Schaeffer-Bullock  
Ryan Stack  
Cara Tangaro

**Excused**

Professor Jensie Anderson

**Staff**

Brent Johnson  
Pam Johns – recording secretary

**Guests**

**I. WELCOME/APPROVAL OF MINUTES**

Cara Tangaro welcomed the committee members to the meeting, as Douglas Thompson was running late.

The Committee discussed the May 18, 2018 minutes. There being no changes to the minutes, Blake Hills moved to approve the May 18, 2018 minutes. Judge Patrick Corum seconded the motion. The motion carried unanimously.

**II. RULE 7C – COMMENTS RECEIVED**

Blake Hills addressed the comments received. The proposed changes to rule 7C(a) would require a party to submit an affidavit when requesting a material witness warrant. There was a comment received that showed concern about the additional step of an affidavit if a trial had

already begun. Mr. Hills does not believe this would be a common occurrence because counsel normally knows prior to trial the witnesses that are scheduled to testify.

Mr. Thompson noticed an error in subsection (c), line 19. The word “and” should be deleted.

Mr. Hills moved to approve 7C with the correction in subsection (c) to be sent to the Supreme Court for final approval. Judge Corum seconded the motion. The motion passed unanimously.

### **III. RULE 8 – COMMENTS RECEIVED**

Mr. Thompson said Joanna Landau was concerned that the rule uses the phrase “indigent defendant” because this limits the rule to only defendants, whereas, there may be other people involved, such as indigent witnesses. Ms. Landau preferred the rule be amended to “indigent individual.” Judge Corum felt the rule should be consistent.

Blake Hills moved to approve rule 8 as presented by Ms. Landau, to be sent to the Supreme Court for final approval. Ryan Stack seconded the rule. The motion passed unanimously.

### **IV. RULE 16 SUBCOMMITTEE**

Ms. Tangaro stated the subcommittee consisted of herself, Judge Hogan, Jeff Gray, John Nielson, Ryan Peters, and Tara Issacson. The subcommittee reviewed each state’s comparable rule. And the committee reviewed the proposed rule.

Ms. Tangaro noted Senator Todd Weiler would like to see attorneys reprimanded for noncompliance with the court rules. Judge Corum stated that a violation of the rule will subject the person to contempt, therefore his concern is addressed.

Judge Corum moved to approve rule 16 to go out for public comment. Mr. Stack seconded the motion. The motion passed unanimously.

### **V. RULE 14(b)**

Mr. Thompson said there was a suggestion to remove section (b)(6). Mr. B. Johnson noted rule 4-202.02 describes the rules relating to GRAMA requests.

### **VI. RULE 8**

The committee agreed to delay the implementation of this rule to address new proposed amendments.

### **VII. RULE 9A**

Judge Kelly Schaeffer-Bullock said smaller jurisdictions have difficulty meeting the requirements of this rule because they do not have the staff available to research when a person that has an outstanding warrant has been arrested. Judge Schaeffer-Bullock noted that even if the

jails had the capability to distinguish between multiple warrants, the justice courts are not notified when someone is apprehended on a justice court warrant.

Judge Schaeffer-Bullock said jails have scheduled times for video court appearances. This makes it difficult when a person has multiple warrants through multiple courts. Judge Schaeffer-Bullock recommended amending the rule to allow a judge to handle arrests within 72 hours for all the warrants a person has. Judge Schaeffer-Bullock questioned how bail is determined when there are many warrants with many courts. Mr. Stack said it is important to notify the courts when a person has been arrested on a warrant. Judge Schaeffer-Bullock would like the rule amended to state that within 24 hours a court date is set. It was noted the system would need to be adjusted to allow jails to be able to view all outstanding warrants when a person is arrested.

Judge Schaeffer-Bullock noted none of the comments received addressed multiple warrants. Mr. B. Johnson noted technology has not been created that would allow for the courts to quickly view all warrants issued throughout the state. Mr. Johnson stated rule 9A has been suspended by the Supreme Court for 180 days.

The committee agreed to create a subcommittee to review rule 9A. Mr. B. Johnson will staff the subcommittee.

#### **VIII. STATE V. OGDEN AND NEW RESTITUTION RULE**

Doug Thompson said he and Emily Adams, attorney, created a new restitution rule that will be addressed at the next meeting. Mr. Thompson stated that if anyone has suggestions to please contact him. Ms. Tangaro said there are a couple of restitution cases in the appellate courts awaiting an opinion.

#### **IX. OLD RULE 7(d)**

Ryan Stack said language from old rule 7(d) was not included when the rules were rewritten. Mr. Stack suggested the language contained in the rule could be added to one of the other rules or made a separate rule. The proposal was briefly discussed.

Mr. Stack moved to create a new rule 7D to include language from former rule 7(d). The new rule will include verbatim language from the old rule. Judge Corum seconded the motion. The motion carried unanimously.

#### **X. RULE 14 AND RULE 27**

Mr. Thompson noted Ann Marie Taliaferro recommended amending rule 14 to state service of subpoenas on law enforcement officers can occur by leaving the subpoena with an agent, similar to rules of civil procedure. She also recommended adding a process that would allow for a request to release a defendant after conviction but prior to sentencing.

Mr. Thompson next addressed rule 27. Mr. Thompson recommended subsection (c) be titled “conditions of release” and subsection (d) be titled “amended conditions of release.”

Mr. Thompson moved to approve rules 14 and 27 as amended to include the two suggestions from Ms. Taliaferro and to add the two titles to subsections (c) and (d), to be published for public comment. Judge Corum seconded the motion. The motion carried unanimously.

**XI. RULE 7B MOTIONS TO QUASH BINDOVERS**

Mr. B. Johnson reviewed Judge Lyle Anderson's recommendation to clarify that when a defendant files a motion to quash a bindover, the judge assigned to that case shall rule on the motion.

Judge Corum moved to approve rule 7B as presented, and to send it for public comment. Mr. Hills seconded the motion. The motion carried unanimously.

**XII. OTHER BUSINESS**

Mr. Thompson addressed a letter from the Supreme Court dated June 27, 2018. The Supreme Court recommended committees review language used in their rules to determine if the wording can be simplified for self-represented litigants. The Supreme Court would also like the committees to review their committee advisory notes to ensure they are accurate, provide an explanation of intent, and provide a historical context of the rule. Mr. Thompson will review the rules with comments and send out committee assignments.

**XIII. ADJOURN**

The meeting adjourned at 1:47 p.m.