

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

November 20, 2018
12:00 p.m. – 2:00 p.m.

Attendees

Douglas Thompson, Chair
Judge Patrick Corum
Jeffrey S. Gray
Blake Hills
Craig Johnson
Keri Sargent
Ryan Stack
Cara Tangaro

Excused

Professor Jensie Anderson
Judge Elizabeth Hruby-Mills
Brent Johnson
Joanna Landau
Judge Kelly Schaeffer-Bullock

Staff

Jeni Wood – recording secretary

Guests

Heidi Nestel
Patricia Owen

I. WELCOME/APPROVAL OF MINUTES

Douglas Thompson welcomed the committee members to the meeting. Mr. Thompson noted Joanna Landau was approved by the Supreme Court to fill a defense attorney position on the committee. Craig Johnson introduced Heidi Nestel from the Utah Victims Crime Division.

The Committee discussed the September 18, 2018 minutes. There being no changes to the minutes, Judge Patrick Corum moved to approve the September 18, 2018 minutes. Craig Johnson seconded the motion. The motion carried unanimously.

II. RULE 14(b)

Ryan Stack presented amendments to rule 14 clarifying who is entitled to compel records. An addition explains that the provisions in the rule do not alter or supersede other rules, privileges, or statute. Mr. Thompson searched nationally for similarities to rule 14. Judge Corum stated the phrase “non-public” is problematic. Mr. Stack said the goal in changing “non-public” to “privileged” information was to narrow the scope of records.

Ms. Nestel would like the committee to review all types of victim's records and noted school records are not privileged. Jeffrey Gray said the rule amendments will allow victim's the chance to know what records have been requested. Mr. Thompson said one possibility would be to require the party requesting the records to serve the subject of the records. Cara Tangaro said it would be difficult for defense counsel to locate victims' contact information.

Blake Hills recommended tabling this rule until further research can be conducted on what records are considered privileged, protected or non-public and whether they are covered by statute or caselaw.

III. RULE 7B

Craig Johnson reviewed the proposed amendment to rule 7B. Ms. Nestel noted with regards to victims testifying the goal is to limit the amount of times they are required to testify. Mr. Gray recommended waiting to make a decision on this rule because there are active cases that may change the course of the rule.

The committee agreed to table the rule. Mr. Thompson requested updates on the current cases.

IV. URE RULE 804

Mr. Thompson said this rule proposal is from the Rules of Evidence Committee (URE). Mr. Hills said the URE Committee tabled the rule and requested input from this Committee. After brief discussion, Mr. Hills volunteered to contact the Committee to notify them that this Committee will not take a position on the rule.

V. COMMITTEE NOTE REVIEW

Rule 11 – Mr. C. Johnson would like to amend the comment to change 11(f) to 11(b)(3).

Mr. Thompson moved to approve the recommended change to rule 11 committee note. Mr. Gray seconded the motion. The motion carried unanimously.

Rule 14 – Mr. Stack recommended removing language in the committee note that was already referenced in the rule. A motion was not made.

Rule 16 – There is no committee note.

Rule 17 – Ms. Tangaro recommended removing the entire committee note. The first sentence is already in the rule and the remaining sentences only provide a history.

Mr. Thompson moved to approve the recommended change to rule 17 committee note. Mr. C. Johnson seconded the motion. The motion carried unanimously.

Rule 18 – Mr. Gray felt the note may be useful, however, he would like additional time for research.

Rule 40 – Mr. Thompson stated Judge Elizabeth Hruby-Mills noted the committee note in rule 40 has a primary purpose to cite former statutes. Judge Hruby-Mills stated the rule may benefit from further context and examples. The Committee agreed not to change the note.

VI. RULE 9A SUBCOMMITTEE REPORT

Mr. Thompson said the subcommittee has not been formed yet.

VII. STATE V. OGDEN AND NEW RESTITUTION RULE

Mr. Thompson would like more time on this issue. Ms. Tangaro said there are cases that are waiting for rules on restitution.

VIII. RULE 22

This item was tabled. Mr. Thompson would like further explanation from Ms. Landau. Mr. Gray noted Ms. Landau recommended forming a subcommittee. Mr. Gray suggested inviting Drew Peterson to the subcommittee.

IX. RULE 7D

This item was tabled.

X. OTHER BUSINESS

There was no additional business discussed.

XI. ADJOURN

The meeting adjourned at 1:34 p.m.