

**Supreme Court's Advisory Committee
on the Rules of Criminal Procedure**

MEETING MINUTES

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
September 17, 2019 – 12:00 p.m. to 2:00 p.m.

APPROVED

MEMBERS:

PRESENT EXCUSED

MEMBERS:	PRESENT	EXCUSED
Douglas Thompson, <i>Chair</i>	•	
Jensie Anderson	•	
Judge Patrick Corum	•	
Jeffrey S. Gray	•	
Judge Elizabeth Hruby-Mills	•	
Blake Hills	•	
Craig Johnson	•	
Joanna Landau	•	
Kelly Sargent	•	
Judge Kelly Schaeffer-Bullock: by phone conference	•	
Ryan Stack	•	
Cara Tangaro	•	

GUESTS:

Neil Hamilton
Steve Burton
Molly Davis

STAFF:

Brent Johnson - excused
Minhvan Brimhall (recording secretary)

1. Welcome and approval of minutes:

Douglas Thompson welcomed the committee members to the meeting. The Committee discussed the May 21, 2019 minutes. There being no changes to the minutes, Judge Corum moved to approve the minutes. Craig Johnson seconded the motion. The motion was unanimously approved.

2. Rule 8(b) and (c):

Neil Hamilton, head of the Aggravated Homicide Trust Fund Board, explained that he approached Jensie Anderson with proposed amendments to rule 8. Mr. Hamilton met with the Supreme Court on May 1 with the proposed amendments and was asked to present the amendments to this committee. Rule 8 does not specify the relevant experience and training that is required to represent an indigent defendant in a capital homicide case. The proposed amendments clarify the requirements and experience needed to appoint defense counsel who have tried at least six felony cases in the past

four years or 25 total felony cases. The proposed amendments also would allow the “experience” requirements to be as counsel at trial or as assistant to counsel at trial. Mr. Hamilton noted that some states have a central public defender’s office and others have a central capital defenders office which provide the funding to try homicide cases. In Utah, Mr. Hamilton’s office funds roughly 95% of aggravated homicide cases throughout the state. When a case is filed, the AOC will provide the judge with the names of 4-5 attorneys qualified to handle those cases. Utah is one of only four states that does not have a centralized office.

Judge Corum noted that additional educational requirements may be needed for one to qualify to defend a capital case. The Supreme Court had rejected this suggestion in the past as defense attorneys did not have the education or experience needed for this higher level of case. Judge Corum notes that defense attorneys may need to have more exposure to capital cases before being able to provide representation.

Following further discussions, and with no additional concerns, Ms. Anderson moved to accept the amended changes as presented by Mr. Hamilton. Judge Corum seconded the motion. The motion was unanimously approved by the committee.

The rule will be presented to the Supreme Court for permission to publish for comment.

3. Rules 16 :

The subcommittee met to discuss rule 16. Ms. Tangaro noted that it was nice to have an appellate attorney in the meeting and provide input. The subcommittee overall had good feedback to many of the proposed amendments and only needed to make minor changes to the rule. Some of the prosecutors on the committee did not like the idea of discovery being turned over prior to the preliminary hearing. The committee agreed that this requirement could potentially cause problems for the defense and removed it from the proposed changes. Pending any changes from this committee, the rule is ready to go out for public comment.

Mr. Thompson noted that removing discovery before a preliminary hearing does not relieve the state from their obligation to provide evidence in a timely manner, and removing the requirement may be a disadvantage to the defendant in having a speedy trial. Mr. Gray noted that the prosecutor is still required to turn over any discovery as soon as they receive it, and the amendment allows for the discovery to be submitted after an arraignment. Mr. Thompson expressed concerns that the current language does not provide a deadline for discovery and would allow defense attorneys ground to request continuances.

The committee recommended additional changes to the proposed amendments. Mr. Thompson moved to amend the rule to include a timeline for discovery prior to the preliminary hearing. Judge Corum seconded the motion. The committee voted with the

majority voting nay. The majority of the committee members do not think the removal of the preliminary hearing deadline would further delay the preliminary hearing.

Mr. Thompson noted that amendments to line (f)(3) involve matters that may need to be in the rule of evidence and should not be included in this rule. Judge Corum noted that the language has always been in the rule. Mr. Thompson expressed concern that the language allows the evidence to be admissible, subject to the court's approval, and that the issue should be addressed under the rules of evidence. Mr. Gray recommended leaving the rule as proposed and ask the Rules of Evidence Committee to determine if the rule should be placed somewhere else.

Mr. Gray moved to include "subject to the Rules of Evidence" to the rule. Judge Corum seconded the motion. The committee unanimously passed the motion.

Mr. Thompson discussed the language under "Disclosure by defense." Mr. Thompson noted that a concern for work product protection in a civil case is the same as in a criminal case. A defendant's right to counsel should not interfere with good cause and the need for the state to compel disclosure of the evidence, due to the relationship between the client and defense counsel. Mr. Thompson moved to strike (b)(4)(B). No one seconded the motion. The motion does not pass.

Following further discussion, review, and language change recommendations, Mr. Gray moved to adopt the proposed rule as amended and to send the rule out for public comment. Ryan Stack seconded the motion. The motion passed with Mr. Thompson voting against the motion. The rule will go out for public comment.

4. Eyewitness identification – rule 12 and 617:

The Rules of Evidence Committee asked that a provision be added to rule 12, along with the list of items to file a motion. Rule 617 went out for public comment and changes were made by the committee but has not gone up to the Supreme Court for final approval.

Mr. Hill recommended tabling these rules to another meeting for final review, pending review by the Supreme Court.

No motion was made for this item.

5. Rule 24:

State v. De La Rosa, 2019 UT App 110. A district court judge granted a motion for a new trial but did not put justification for his findings in the records. The State appealed the granting of the motion for a new trial. The appellate court could not review the issue because the records did not include an explanation. Mr. Thompson proposed language to rule 24 that would require explanation of the decision in order to identify the grounds

for an appellate review. Judge Corum recommended striking language regarding appellate review and simply having the word review. Mr. Thompson seconded Judge Corum's recommendation. The committee voted in favor of the recommendation.

With no further discussion, Mr. Thompson moved to accept the amendments to rule 24. Ms. Tangaro seconded the motion. The committee unanimously moved to approve the motion.

6. Rule 4 and 6 – proposed changes:

Mr. Johnson met with the Board of District Court Judges. The Board recommended accepting the proposed language as amended. This committee recommended changing all language from "shall" to "may" in rule 6. No recommendations were made to rule 4.

With no further discussion, Mr. Thompson moved to adopt the proposed changes to rule 4, and to adopt the changes to rule 6 as amended. Judge Corum seconded the motion. The motion was unanimously approved.

7. Rule 9 and 9A:

Mr. Johnson proposed creation of a subcommittee to address changes to rules 9 and 9A. The rules have been a topic of discussion between previous and current membership of the Board of District Court Judges as to purpose of the rules. The subcommittee would consist of a representative from the Board, a member from the Pretrial Release Committee, three members from this committee, and Judge Pullan who was the previous chair of the Board. Judge Corum, Craig Johnson, and Doug Thompson will represent this committee. Judge Kendall will represent the pretrial committee. Judge Chiara will represent the Board of District Court Judges. Judge McIff will represent Justice Court Judges. Keri Sargent also accepted representation from a district court clerk perspective.

Ms. Tangaro moved to set up a subcommittee as outlined by Mr. Johnson. Mr. Hills seconded the motion. The committee unanimously approved the motion.

8. Rule 14 – back from public comment:

The comment period for rule 14 ended. The committee determined that the comments did not have merit. The committee was satisfied with the amendments as proposed.

With no further discussion, Mr. Thompson moved to adopt the amendments as proposed. Judge Corum seconded the motion. The committee unanimously approved the motion. The rule will move to the Supreme Court for final approval.

9. Rule 38 – proposed changes:

Rule 38 has been reviewed several times by this committee. The proposal will eliminate the requirement that the justice court send the entire file to the district court. It was once approved by this committee but then pulled back for additional review. The rule is ready to go out for public comment.

With no further discussions, Mr. Stack moved to adopt the proposed amendments and send out for public comment. Mr. Hill seconded the motion. The committee unanimously approved the motion.

Rule 38 will go to the Supreme Court for approval to post for public comment.

10. Other business:

Ms. Tangaro would like to review and make amendments to the rule regarding withdrawal of counsel. Ms. Tangaro will put a proposal together for this committee to review at another date.

11. Adjourn:

With no other business, the meeting adjourned at 1:33 pm without a motion. The next meeting is scheduled for November 19 at 12 pm (noon) in the Judicial Council room.