

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

Matheson Courthouse  
Café Meeting Room (formerly Executive Dining Room), W18A  
450 South State Street  
Salt Lake City, Utah 84111  
January 21, 2020  
12:00 p.m. - 2:00 p.m.

**Agenda**

1. Welcome and approval of minutes - Doug Thompson
2. Investigative Subpoenas, Utah Code 77-22 - Doug Thompson
3. Rule 4, 6, and 38 - Brent Johnson  
Back from public comment – no comments received
4. Rule 22 - Brent Johnson
5. Other business - Doug Thompson
6. Adjourn

Rules of Criminal Procedure 2020 meeting dates. Meeting times are from 12 – 2 pm, unless otherwise noted:

January 21	July 21
March 17	September 15
May 19	November 17

**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  
November 19, 2019 – 12:00 p.m. to 2:00 p.m.

**DRAFT**

**MEMBERS:**

**PRESENT    EXCUSED**

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

**GUESTS:**

**STAFF:**

Brent Johnson  
Minhvan Brimhall (recording secretary)

**1. Welcome and approval of minutes:**

Douglas Thompson welcomed the committee members to the meeting. The Committee discussed the September 17, 2019 minutes. There being no changes to the minutes, Doug Thompson moved to approve the minutes. Keri Sargent seconded the motion. The motion was unanimously approved.

**2. Report from rules 9 and 9A subcommittee:**

The Supreme Court approved the proposed amendments to rules 9 and 9A on November 18. The rules will be effective as soon as an order is signed by the Chief. The rules require additional public comment. That process will start at the same time as the rules are published as effective.

The subcommittee had previously met to discuss potential changes. Many of the subcommittee's ideas were substantive and may require legislative input. The subcommittee recommended that the Pretrial Release Committee create a

subcommittee that includes legislative participation to further review proposed changes to the rules and potential statutory changes. Mr. Johnson reminded the committee of the task force that was formed to study pretrial issues. There were many legislative proposals that were recommended from that task force that did not pass. Because those proposals did not pass there were difficulties in accomplishing many of the goals of that group. The proposal to the Supreme Court was to reconstitute what happened in the past and study the issues that blocked those proposals. The Supreme Court recommended that the Court and the Judicial Council form a joint committee. This proposal needs to be discussed with the Judicial Council but will likely require representation from a member of the Rules of Criminal Procedure committee. More information will be forthcoming about the creation of the committee.

**3. Rule 14 :**

Rule 14 returned from public comment and received two comments. The Supreme Court has asked that committees review and respond to each comment received. The Supreme Court is interested in knowing why the comments were accepted or rejected by the committees. This process began with the Civil Procedures committee, and the Supreme Court requests that all committees engage in a similar practice. Following this meeting, Mr. Johnson will provide a memorandum to the Supreme Court outlining the reasons for acceptance or rejection of the comments. For future practice, this committee will review received comments prior to the meeting to allow time for discussion.

Mr. Thompson noted that the committee previously discussed case law regarding privileged information. The committee thought that the wording used in the rules was consistent with that case law. The committee felt that the word “non-public” took away from the language in case law and did not relate to anything identifiable. Mr. Thompson’s preference is to use language that is legally defined, as opposed to “non-public.”

Judge Corum noted that “non-public” is a substantive change in the law, but is not a part of case law or a statutory requirement. Many judges use the term “non-public” very broadly because it is not defined in case law.

Mr. Thompson noted that the committee has discussed and debated the proposed changes to the rule extensively. Unless additional amendments are needed, Mr. Thompson recommends proceeding with the proposed changes as currently written. The committee relied on the motion made at the last meeting to send the rule to the court for final review.

**4. Follow-up on probation consolidation rule subcommittee:**

Michael Drechsel spoke to the committee several months ago regarding consolidation of probation cases and the possible formation of a subcommittee with the task of creating such a rule. The proposed rule essentially allow a judge to handle cases previously assigned to other judges. The Judicial Council originally recommended the rule follow

the track of the Code of Judicial Administration, but later felt it may be better suited to the Rules of Criminal Procedure. There is a current proposed rule the subcommittee would review.

The committee recognized some issues that would need to be addressed by the subcommittee in drafting a rule. The rule would allow a defendant with a criminal history to be seen by the same judge each time a new offense is created. This would reduce caseload for many districts who have defendants being tried in one district, while another case is opened in another district. The committee recommended representation on the committee from someone in Third District who is familiar with caseload history from that district. This would allow a broader perspective of the issues involving larger districts. The committee also discussed including representation from AP&P on the subcommittee. Judge Corum, Judge Hruby-Mills, and Keri Sargent are willing to participate on the subcommittee as representatives from this committee.

Mr. Thompson will arrange a meeting with those invited to join the subcommittee.

**5. Unsworn declarations:**

The Legislature passed a law 2-3 years ago that says any place in the law where an affidavit is required and unsworn declaration may be used instead. The Rules of Civil Procedure committee has gone through their rules and made changes to include unsworn declarations where affidavits are stated. Does this committee want to do the same thing? Mr. Johnson notes that this step is not necessary, as the Legislature has not gone through the codes to make those changes.

No action is needed for this item.

**6. Rule 16 – proposed changes:**

Proposed changes to rule 16 will be going to the Supreme Court for review and then out for public comment. No further action is needed at this time.

**7. Rule 12 – proposed changes:**

Mr. Thompson was contacted by Nancy Sylvester with proposals to rule 12. The amendments would make rule 12 consistent with the rules of Appellate Procedure and the Rules of Civil Procedure in instances where a statute or ordinance is being challenged as unconstitutional. The amendments also include notifying the attorney general's office when state statutes are being challenged and to local officials when city and county ordinances are being challenged. Mr. Thompson proposes alternative amendments to the amendments proposed by the Rule of Civil Procedure Committee. Mr. Thompson proposes placing the burden of giving notice on the prosecutor. Mr. Thompson explains that placing the burden on the prosecutor would be more reliable, and action by the AG's office would be more timely. Mr. Thompson notes that if notice is not given on time it does not mean the defendant could not challenge the case, but

would allow for continuation of the case. Mr. Thompson also notes that “motions to challenge the admissibility of eyewitness identifications” has been added to section c.

The committee discussed the proposed amendments by the Rules of Civil Procedure Committee and Mr. Thompson. The committee believes that the moving party would be the better party to provide notice to the AG’s office as it would require that they take responsibility and ownership in filing the motion to challenge. The committee discussed recommending the inclusion of additional statements detailing the reasons for the motion.

With no further discussions, the committee made two motions.

Ryan Stack moved to change (c)(1)(f) to (c)(1)(F) for consistency with other subsections of the rule. Judge Hruby-Mills seconded the motion. The committee unanimously approved the motion.

Judge Hruby-Mills moved to accept the proposed language from the Rules of Civil Procedure Committee requiring the moving party to provide notice of unconstitutional challenges to the Office of Attorney General. Judge Shaeffer-Bullock seconded the motion. The committee unanimously approved the motion.

**8. Rule 36:**

Cara Tangaro has drafted proposed amendments to rule 36 that would simplify the process to withdraw from a case at sentencing. Ms. Tangaro will discuss the proposal at another meeting.

**9. Other business:**

The national background check system for weapons is requiring that misdemeanor crimes of domestic violence be listed to the database. Because not every domestic violence case falls under that category, it is difficult to include that information in the database. In discussing options, Mr. Johnson notes that some have leaned towards placing the burden on the prosecutor to list somewhere on the case that, if convicted, the domestic violence would constitute a misdemeanor crime of domestic violence. When e-filed the case would be flagged and be reported to the database. Utah is not currently sending the information over and the system is not currently set up to do so.

The committee discussed that the process may need to be reviewed as part of rule 11 and a process needs to be outlined. A judge would need to notify defendants that convictions of certain domestic violence cases would be sent to a federal database. It would be up to a federal judge to determine if the offense would be applicable in determining a person’s ability to pass a weapons background check. The pressure for states to report misdemeanor domestic violence cases is coming from the federal government. The feds are threatening to remove federal funding for non-compliance.

**10. Adjourn:**

With no other business, Craig Johnson moved to adjourn the meeting. Judge Hruby-Mills seconded the motion. The committee voted to adjourn. The meeting adjourned at 1:20 pm. The next meeting is scheduled for January 21 at 12 pm (noon) in the Café Meeting room (formerly Executive Dining Room).



Minhvan Brimhall <minhvanb@utcourts.gov>

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## Fwd: Committee on R. Crim. Pro. - Investigative Subpoenas

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Douglas Thompson <dougt@utcpd.com>

Tue, Dec 10, 2019 at 9:16 AM

To: Brent Johnson <brentj@utcourts.gov>, Minhvan Brimhall <minhvanb@utcourts.gov>

Can we put this on the next agenda?  
Thanks

Begin forwarded message:

**From:** "Mike Brown" <mikeb@utcpd.com>  
**Subject:** Committee on R. Crim. Pro. - Investigative Subpoenas  
**Date:** December 9, 2019 at 11:43:56 AM MST  
**To:** "Douglas Thompson" <dougt@utcpd.com>

Doug,

I'd like to suggest to the committee to enact a procedural mechanism for Utah Code section 77-22: Subpoena Powers for Aid of Criminal Investigation and Grants of Immunity. The Statute is silent regarding where the application for the investigative subpoena should be submitted. I think as a matter of good practice – and at least to avoid the perception of impropriety, like forum shopping – there should be a procedural rule requiring prosecutors to submit the investigative subpoena to the judge when that judge has jurisdiction over other pending cases related to a specific defendant. I know of at least 2 instances when either investigative subpoenas or warrants (R. 40) have NOT been submitted to the judge with jurisdiction over a case where the subpoena/warrant asks for material related to the defendant and/or pending charges or the same victim. Obviously, submitting a warrant/subpoena to one of the judges on rotation seems problematic when there are potential issues related to that warrant/subpoena to pending matters.

Procedurally I am not sure how you'd create the rule, perhaps a new subsection under Rule 14 Subpoenas. Some language I'd suggest would be:

*Any applications for an investigative subpoena, as defined in Utah Code 77-22, must be submitted to the same magistrate/district court judge who has jurisdiction over a pending case and the facts in the application for the investigative subpoena are reasonably related to the same defendant which has a pending criminal case or the information is related to the defendant and the same victim or victims in a pending criminal case, or is part of a "single criminal episode" as defined in Utah Code 76-1-401.*

I am not totally convinced what should trigger the requirement for a prosecutor to submit the application to a particular judge rather than the rotation judge. Maybe something as simple as if a criminal defendant has a pending matter before a district court, a prosecutor must submit the application for an investigative subpoena to the same magistrate/district court judge which has jurisdiction over the defendant's pending criminal matter.

Thanks for your good work!

Mike Brown  
Utah County Public Defender Association  
51 South University Ave., Suite 206  
Provo, UT 84601  
Phone: 801-852-1070

1 **Rule 4. Prosecution by information.**

2  
3 (a) **Commencing a prosecution.** A prosecution may be commenced by filing an information.  
4 The information shall be filed in a format required by rules of the Judicial Council.

5  
6 (b) **Contents of information.** An information shall contain:

7  
8 (b)(1) If known, the defendant's name, date of birth, and last known address.

9  
10 (b)(1)(A) If the name of the defendant is not known, the prosecution shall identify the defendant  
11 as John or Jane Doe, and shall provide any known identifying information.

12  
13 (b)(1)(B) Other identifying information may be provided in accordance with rules of the Judicial  
14 Council, provided the information does not include non-public records.

15  
16 (b)(2) Numbered counts using the name given to the offense by statute or ordinance, or stating in  
17 concise terms the definition of the offense sufficient to give the defendant notice of the charge.

18  
19 (b)(2)(A) The prosecution may allege alternate theories of the same offense in a single count or  
20 in multiple counts.

21  
22 (b)(3) Unless otherwise contained in filings accompanying the information, a booking number if  
23 the defendant was arrested and detained on charges related to the information. Any pretrial  
24 release conditions shall be included, such as:

25  
26 (b)(3)(A) monetary bail or other pretrial release conditions set by the magistrate when  
27 determining probable cause at arrest;

28  
29 (b)(3)(B) whether the defendant was denied pretrial release;

30  
31 (b)(3)(C) whether the defendant was released to a pretrial supervision agency; and

32  
33 (b)(3)(D) whether the defendant is in custody.

34  
35 (c) **Felonies and class A misdemeanors.** If a felony or class A violation is alleged, and in all  
36 cases requesting a warrant, an information shall:

37  
38 (c)(1) contain or be accompanied by a statement of facts sufficient to support probable cause for  
39 the charged offense or offenses. The information need not include facts such as time, place,  
40 means, intent, manner, value, and ownership unless necessary to charge the offense. Supporting  
41 physical materials such as money, securities, written instruments, pictures, statutes, and  
42 judgments may be identified using names or by describing the documents. Neither presumptions  
43 of law nor matters of judicial notice need be stated, and  
44

45 (c)(2) be reviewed for sufficiency by a judge of the court in which it is filed. If the judge  
46 determines from the information, or from any supporting statements or affidavits, that there is  
47 probable cause to believe the offenses have been committed and that the accused committed  
48 them, the judge shall proceed under rule 6. If the judge determines there is not probable cause,  
49 the judge shall return the information to the prosecutor and dismiss the case without prejudice if  
50 a sufficient information is not filed within 28 days.

51  
52 **(d) Domestic violence cases.** If an information includes any charge involving domestic violence,  
53 the prosecutor must describe the relationship between the defendant and victim that qualifies the  
54 defendant and victim as cohabitants under state law or intimate partners under federal law, or is  
55 type of relationship under the federal definition of a misdemeanor crime of domestic violence.

56  
57 **(d e) Amending the information.** The court may permit an information to be amended at any  
58 time before trial has commenced so long as the substantial rights of the defendant are not  
59 prejudiced. If an additional or different offense is charged, the defendant has the right to a  
60 preliminary hearing on that offense as provided under these rules and any continuance as  
61 necessary to meet the amendment. The court may permit an information to be amended after the  
62 trial has commenced but before verdict if no additional or different offense is charged and the  
63 substantial rights of the defendant are not prejudiced. After verdict, an information may be  
64 amended so as to state the offense with such particularity as to bar a subsequent prosecution for  
65 the same offense upon the same set of facts.

66  
67 **(e f) Bill of particulars.** When facts not set out in an information are required to inform a  
68 defendant of the nature and cause of the offense charged, so as to enable the defendant to prepare  
69 a defense, the defendant may file a written motion for a bill of particulars. The motion shall be  
70 filed at arraignment or within 14 days thereafter, or at such later time as the court may permit.  
71 The court may, on its own motion, direct the filing of a bill of particulars. A bill of  
72 particulars may be amended or supplemented at any time subject to such conditions as justice  
73 may require. The request for and contents of a bill of particulars shall be limited to a statement  
74 of factual information needed to set forth the essential elements of the particular offense charged.

75  
76 Effective May 1, 2017

1 **Rule 6. Warrant of arrest or summons.**

2

3 (a) Upon the filing of an indictment, or upon the acceptance of an information by a judge, the  
4 court ~~shall~~ must set the case for an initial appearance or arraignment, as appropriate. The court  
5 ~~shall~~ must then issue a summons directing the defendant to appear for that hearing, except as  
6 described in subsection (c).

7

8 (b) The summons ~~shall~~ must inform the defendant of the date, time and courthouse location for  
9 the initial appearance or arraignment. The summons may be mailed to the defendant's last known  
10 address, or served by anyone authorized to serve a summons in a civil action.

11

12 (c) If the defendant is not a corporation, a judge may issue a warrant of arrest instead of a  
13 summons if the court finds from the information and any supporting statements or affidavits that:

14

15 (c)(1) The defendant's address is unknown or the defendant will not otherwise appear on a  
16 summons; or

17

18 (c)(2) there is substantial danger of a breach of the peace, injury to persons or property, or danger  
19 to the community.

20

21 (d) A judge ~~shall~~ may issue a warrant of arrest in cases where the defendant has failed to appear  
22 in response to a summons.

23

24 (e) Prior to issuing a warrant the judge must review the information for sufficiency. If the judge  
25 determines from the information, or from any supporting statements or affidavits, that there is  
26 probable cause to believe the offenses have been committed and that the accused committed  
27 them, the judge may issue the warrant. If the judge determines there is not probable cause the  
28 judge must notify the prosecutor. If the prosecutor does not file a sufficient information within  
29 28 days the judge must dismiss the case.

30

31 (e)(1) When a warrant of arrest is issued, the judge ~~shall~~ must state on the warrant:

32

33 (e)(4~~2~~) Whether the defendant is denied pretrial release under the authority of Utah Code § 77-  
34 20-1, and the alleged facts supporting.

35

36 (e)(2~~3~~) The conditions of pretrial release the court requires of the defendant, including monetary  
37 bail.

38

39 (e)(3)(A) In determining the amount of monetary bail, the judge ~~shall~~ must set the lowest amount  
40 reasonably calculated to ensure the defendant's appearance at court.

41

42 (e)(3)(B) The court ~~shall~~ must state whether the defendant's personal appearance is required or  
43 whether the defendant may remit the monetary bail to satisfy any obligation to the court pursuant  
44 to Utah Code § 77-7-21.

45

46 (e)(4) The geographic area from which the issuing court will guarantee transport pursuant to  
47 Utah Code § 77-7-5.

48

49 (f) The clerk of the court ~~shall~~ must enter the warrant into the court information management  
50 system.

51

52 (g) Service, Execution and return of the warrant.

53

54 (g)(1) The warrant ~~shall~~ must be served by a peace officer. The officer may execute the warrant  
55 at any place within the state.

56

57 (g)(2) The warrant ~~shall~~ must be executed by the arrest of the defendant. The officer need not  
58 possess the warrant at the time of the arrest. Upon request, the officer ~~shall~~ must show the  
59 warrant to the defendant as soon as practicable. If the officer does not have the warrant in  
60 possession at the time of the arrest, the officer ~~shall~~ must inform the defendant of the offense  
61 charged and of the fact that the warrant has been issued.

62

63 (g)(3) The person executing a warrant or serving a summons ~~shall~~ must make return thereof to  
64 the magistrate as soon as practicable.

65

66 (h) The court may periodically review unexecuted warrants to determine whether they should be  
67 recalled.

68

69 Effective ~~July 1, 2016~~

1 **Rule 38. Appeals from justice court to district court.**  
2

3 (a) **Appeal of a judgment or order of the justice court is as provided in Utah Code § 78A-7-**  
4 **118.** A case appealed from a justice court ~~shall~~ must be heard in a district courthouse located in  
5 the same county as the justice court from which the case is appealed. In counties with multiple  
6 district courthouse locations, the presiding judge of the district court ~~shall~~ will determine the  
7 appropriate location for the hearing of appeals.  
8

9 (b) **The notice of appeal.**

10  
11 (b)(1) A notice of appeal from an order or judgment must be filed within 28 days of the entry of  
12 that order or judgment.  
13

14 (b)(2) Contents of the notice. The notice required by this rule ~~shall~~ must be in the form of, or  
15 substantially similar to, that provided in the appendix of this rule. At a minimum the notice ~~shall~~  
16 must contain:  
17

18 (b)(2)(A) a statement of the order or judgment being appealed and the date of entry of that order  
19 or judgment;  
20

21 (b)(2)(B) the current address at which the appealing party may receive notices concerning the  
22 appeal;  
23

24 (b)(2)(C) a statement as to whether the defendant is in custody because of the order or judgment  
25 appealed; and  
26

27 (b)(2)(D) a statement that the notice has been served on the opposing party and the method of  
28 that service.  
29

30 (b)(3) Deficiencies in the form of the filing ~~shall~~ will not cause the court to reject the filing. They  
31 may, however, impact the efficient processing of the appeal.  
32

33 (c) **Motion to reinstate period for filing appeal.**  
34

35 (c)(1) Upon a showing that a defendant was deprived of the right to appeal, the justice court ~~shall~~  
36 must reinstate the ~~thirty-day~~ 28-day period for filing an appeal. A defendant seeking such  
37 reinstatement ~~shall~~ must file a written motion in the justice court and serve the prosecuting  
38 entity. The court ~~shall~~ must appoint counsel if the defendant qualifies for court-appointed  
39 counsel. The prosecutor ~~shall~~ must have 21 days after service of the motion to file a written  
40 response. If the prosecutor opposes the motion, the justice court ~~shall~~ must set a hearing at which  
41 the parties may present evidence. If the justice court finds by a preponderance of the evidence  
42 that the defendant has demonstrated that the defendant was deprived of the right to appeal, it  
43 ~~shall~~ must enter an order reinstating the time for appeal. The defendant's notice of appeal must be  
44 filed with the clerk of the justice court within ~~30~~ 28 days after the date of entry of the order.  
45

46 (c)(2) Absent a showing of excusable neglect, a motion to reinstate may be filed no later than six  
47 months after the original time for appeal has expired.

48  
49 (d)(1) **Duties of the justice court.** Within 7 days of receiving the notice of appeal, the justice  
50 court ~~shall~~ must transmit to the appropriate district court an appeal packet containing:

51  
52 (d)(1)(A) the notice of appeal;

53  
54 (d)(2)(B) the docket;

55  
56 (d)(3)(C) the information or citation; and

57  
58 (d)(4)(D) the judgment and sentence, if any; and.

59  
60 (d)(5) Upon request from the district court the justice court must transmit to the district court  
61 any other orders and papers filed in the case.

62  
63 (e) **Duties of the district court.**

64  
65 (e)(1) Upon receipt of the appeal packet from the justice court, the district court ~~shall~~ must hold a  
66 scheduling conference to determine what issues must be resolved by the appeal. The district  
67 court ~~shall~~ must send notices to the appellant at the address provided on the notice of appeal.  
68 Notices to the other party ~~shall~~ must be served to the address provided in the justice court docket  
69 for that party.

70  
71 (e)(2) If the defendant is in custody because of the matter appealed, the district court ~~shall~~ must  
72 hold the conference within 7 days of the receipt of the appeals packet. If the defendant is not in  
73 custody because of the matter appealed, the court ~~shall~~ must hold the conference within 28 days  
74 of receipt of the appeals packet.

75  
76 (f) **District court procedures for trials de novo.** An appeal by a defendant pursuant to Utah  
77 Code § 78A-7-118(1) shall be accomplished by the following procedures:

78  
79 (f)(1) If the defendant elects to go to trial, the district court will determine what number and level  
80 of offenses the defendant is facing.

81  
82 (f)(2) Discovery, the trial, and any pre-trial evidentiary matters the court deems necessary, ~~shall~~  
83 will be held in accordance with these rules.

84  
85 (f)(3) After the trial, the district court ~~shall~~ must, if appropriate, sentence the defendant and enter  
86 judgment in the case as provided in these rules and otherwise by law.

87  
88 (f)(4) When entered, the judgment of conviction or order of dismissal serves to vacate the  
89 judgment or orders of the justice court and becomes the judgment of the case.

90

91 (f)(5) A defendant may resolve an appeal by waiving trial and compromising the case by any  
92 process authorized by law to resolve a criminal case.

93  
94 (f)(5)(A) Any plea ~~shall~~ must be taken in accordance with these rules.

95  
96 (f)(5)(B) The court ~~shall~~ must proceed to sentence the defendant or enter such other orders  
97 required by the particular plea or disposition.

98  
99 (f)(5)(C) When entered, the district court's judgment or other orders vacate the orders or  
100 judgment of the justice court and become the order or judgment of the case.

101  
102 (f)(5)(D) A defendant who moves to withdraw a plea entered pursuant to this section may only  
103 seek to withdraw it pursuant to the provisions of Utah Code § 77-13-6.

104  
105 (f)(6) Other dispositions. A defendant, at a point prior to entering a plea admitting guilt or a no  
106 contest plea, or prior to commencement of trial, may choose to withdraw the appeal and have  
107 the case remanded to the justice court. Within 14 days of the defendant notifying the court of  
108 such an election, the district court shall remand the case to the justice court.

109  
110 (g) **District court procedures for hearings de novo.** If the appeal seeks a de novo hearing  
111 pursuant to Utah Code § 78A-7-118(3) or (4); ~~and~~

112  
113 (g)(1) the court ~~shall~~ must conduct such hearing and make the appropriate findings or orders, and

114  
115 (g)(2) within 14 days of entering its findings or orders, the district court ~~shall~~ must remand the  
116 case to the justice court, unless the case is disposed of by the findings or orders, or the district  
117 court retains jurisdiction pursuant to § 78A-7-118(6).

118  
119 (h) **Retained jurisdiction.** In cases where the district court retains jurisdiction after disposing of  
120 the matters on appeal, the court ~~shall~~ must order the justice court to forward all cash bail, other  
121 security, or revenues received by the justice court to the district court for disposition. The justice  
122 court ~~shall~~ must transmit such monies or securities within 21 days of receiving the order.

123  
124 (i) **Other bases for remand.** The district court may also dismiss the appeal and remand ~~a~~ the  
125 case to the justice court if it finds that the defendant has abandoned the appeal.

126  
127 (j) **Justice court procedures on remand.** Upon receiving a remanded case, the justice court  
128 ~~shall~~ must set a review conference to determine what, if any proceedings need be taken. If the  
129 defendant is in custody because of the case being considered, such hearing ~~shall~~ must be had  
130 within five days of receipt of the order of remand. Otherwise, the review conference should be  
131 had within 28 days. The court ~~shall~~ must send notice of the review conference to the parties at  
132 the addresses contained in the notice of appeal, unless those have been updated by the district  
133 court.

134  
135 (k) During the pendency of the appeal, and until a judgment, order of dismissal, or other final  
136 order is entered in the district court, the justice court ~~shall~~ will retain jurisdiction to monitor

137 terms of probation or other consequences of the plea or judgment, unless those orders or terms  
138 are stayed pursuant to Rule 27A.

139

140 **(l) Reinstatement of dismissed appeal.**

141

142 (l)(1) An appeal dismissed pursuant to subsection ~~(h)~~(i) may be reinstated by the district court  
143 upon motion of the defendant for:

144

145 (l)(1)(A) mistake, inadvertence, surprise, excusable neglect; or

146

147 (l)(1)(B) fraud, misrepresentation, or misconduct of an adverse party.

148

149 (l)(2) The motion ~~shall~~ must be made within a reasonable time after entry of the order of  
150 dismissal or remand.

151

152 Effective ~~May 1, 2017~~

1 **Rule 22. Sentence, judgment and commitment.**

2 (a) **Time for sentencing.** Upon the entry of a plea or verdict of guilty or plea of no contest, the  
3 court must set a time for imposing sentence which may be not less than two nor more than 45  
4 days after the verdict or plea, unless the court, with the concurrence of the defendant, otherwise  
5 orders. Pending sentence, the court may commit the defendant or may continue or alter bail or  
6 recognizance. Before imposing sentence the court must afford the defendant an opportunity to  
7 make a statement and to present any information in mitigation of punishment, or to show any  
8 legal cause why sentence should not be imposed. The prosecuting attorney must also be given an  
9 opportunity to present any information material to the imposition of sentence.

10 (b) **Defendant's absence.** On the same grounds that a defendant may be tried in defendant's  
11 absence, defendant may likewise be sentenced in defendant's absence. If a defendant fails to  
12 appear for sentence, a warrant for defendant's arrest may be issued by the court.

13 (c) **Sentencing advisories.**

14 (c)(1) Upon a verdict or plea of guilty or plea of no contest, the court must impose sentence and  
15 must enter a judgment of conviction which must include the plea or the verdict, if any, and the  
16 sentence. Following imposition of sentence, the court must advise the defendant of defendant's  
17 right to appeal, the time within which any appeal must be filed and the right to retain counsel or  
18 have counsel appointed by the court if indigent.

19 (c)(2) If the defendant is convicted of a misdemeanor crime of domestic violence, as defined in  
20 Utah Code § 77-36-1, the court must advise the defendant orally or in writing that, if the case  
21 meets the criteria of 18 U.S.C. § 921(a)(33) or Utah Code § 76-10-503, then pursuant to federal  
22 law or state law it is unlawful for the defendant to possess, receive or transport any firearm or  
23 ammunition. The failure to advise does not render the plea invalid or form the basis for  
24 withdrawal of the plea.

25 (d) **Commitment.** When a jail or prison sentence is imposed, the court must issue its  
26 commitment setting forth the sentence. ~~The officer delivering the defendant to the jail or prison~~  
27 court must deliver send a true copy of the commitment to the jail or prison ~~and must make the~~  
28 ~~officer's return on the commitment and file it with the court.~~

29 (e) **Correcting a sentence.**

30 (e)(1) *Types of sentences.* The court must correct a sentence when the sentenced imposed:

31 (e)(1)(A) exceeds the statutorily authorized maximums;

32 (e)(1)(B) is less than statutorily required minimums;

33 (e)(1)(C) violates Double Jeopardy;

34 (e)(1)(D) is ambiguous as to the time and manner in which it is to be served;

35 (e)(1)(E) is internally contradictory; or

36 (e)(1)(F) omits a condition required by statute or includes a condition prohibited by statute.

37 (e)(2) *Post-sentence appellate decisions*. The court must correct the sentence of a defendant who  
38 can prove that the sentence is unconstitutional under a rule established or ruling issued by the  
39 United States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after  
40 sentence was imposed, and the rule or ruling was not dictated by precedent existing at the time  
41 the defendant's conviction or sentence became final.

42 (e)(3) *Time for filing*. A motion under (e)(1)(C), (e)(1)(D), or (e)(1)(E) must be filed no later  
43 than one year from the date the facts supporting the claim could have been discovered through  
44 the exercise of due diligence. A motion under the other provisions may be filed at any time.

45 (f) **Sentencing and mentally ill offenders**. Upon a verdict or plea of guilty and mentally ill, the  
46 court must impose sentence in accordance with Title 77, Chapter 16a, Utah Code. If the court  
47 retains jurisdiction over a mentally ill offender committed to the Department of Human Services  
48 as provided by Utah Code § 77-16a-202(1)(b), the court must so specify in the sentencing order.

49 Effective July 1, 2019

50 Committee Note

51 A defendant may rely on subparagraph (e)(2) only when the rule or ruling is to be applied  
52 retroactively.