

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

MEETING MINUTES

Café Meeting Room (W18A), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
March 17, 2020 – 12:00 p.m. to 2:00 p.m.

APPROVED

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Douglas Thompson, <i>Chair</i>	•		Steve Burton
Judge Patrick Corum	•		
Jeffrey S. Gray	•		STAFF:
Judge Elizabeth Hruby-Mills	•		Brent Johnson - excused
Blake Hills	•		Minhvan Brimhall (recording secretary)
Craig Johnson	•		
Joanna Landau	•		
Keri Sargent		•	
Judge Kelly Schaeffer-Bullock	•		
Ryan Stack	•		
Cara Tangaro	•		
Matthew Tokson	•		

- 1. Welcome and approval of minutes:**
Douglas Thompson welcomed the committee members to the meeting. The Committee discussed the January 21, 2020 minutes. There being no changes to the minutes, Judge Corum moved to approve the minutes. Cara Tangaro seconded the motion. The motion was unanimously approved.

- 2. Update on restitution rule:**
Brent Johnson was asked to attend another meeting. Mr. Johnson will draft proposed language for the rule and will provide an update on this item at a future meeting.

- 3. Update on probation consolidation:**
Following the last subcommittee meeting, Mr. Thompson noted that the rule was drafted prior to JRI and some mandatory timing deadline for probation. The rule as written is not catered to the reality of the current probation process. The goal of

probation consolidation is that older probation cases would be dropped off and would be heard in a jurisdiction or by a judge who no longer had any involvement with the case. Currently, newer cases are being dropped off due to date changes made by the legislative and the older cases are being held on for longer periods. Mr. Thompson notes that additional discussion and thought is necessary in drafting proposed changes to the rule and plans to sit down with Judge Taylor to further discuss possible ideas. Judge Hruby-Mills emailed Mr. Thompson with concerns regarding the rule and suggested a possible test roll out of a probation consolidation plan.

With no further discussion, Mr. Thompson will meet with Judge Taylor to discuss the concerns of this committee and his review of the rule. Mr. Thompson will provide an update at a future meeting.

4. URCrP 16:

The subcommittee meet to review comments that was received on rule 16 and made additional proposed language changes based on the comments received. The Supreme Court had several questions and comments regarding the proposed language changes to the rule. Mr. Thompson distributed the Court's comments to the committee for review and discussion via email prior to this meeting.

Jeff Gray sent the committee proposed language changes he drafted for review at this meeting. The committee reviewed and discussed the changes as proposed by Mr. Gray. The committee accepted and made additional minor language changes to Mr. Gray's proposal. Mr. Thompson thanked Mr. Gray for the proposed changes he submitted to the committee for review.

Mr. Thompson further discussed concerns regarding the process of discovery within the rule as a bill had been drafted by the legislature that would change the timing of discovery and possibly avoid having a rule of procedure. The bill would suggest that a criminal discovery would look more like a civil discovery. Mr. Thompson has invited Steve Burton to speak on the proposed bill. Mr. Burton is working with the legislature on the draft bill.

Mr. Burton explained that a grant was given to provide more defense perspective in the law making process. The bill came about in part due to discussions about improvements that can be made towards reliable and timeliness in preparation for trial. The committee spoke with the district attorney's office for feedback on what they would like to see change. The DA's office expressed frustration in timeliness of discovery from law enforcement agencies. A proposed draft of the bill to presented to Senator Cullimore. The Senator was unable to draft a proposed bill prior to the end of the session. Because of heightened interest in the bill, there is a high likelihood the bill will be presented at next year's session. Mr. Burton is looking for feedback from the Rules of Criminal Procedure committee for any problems in the proposed language and to see if there is

interest in incorporating the language into rule as a joint effort between the Court and the Legislature.

The committee discussed that more specificity to the rule and adding similar practices to rule 26 into rule 16 would be a good practice. The committee discussed moving forward with a version of what is currently written and not focus too much on incorporating language from a bill that is not yet written. Rule 16 has been in discussion for several years and the current version is better than was previously drafted. The committee believes that the current proposal is very close to what all parties can agree on and the committee would accept recommendations to enhance the rule. The committee also believes that rule changes regarding law enforcement involvement in discovery is better suited to be addressed by legislation. The committee recommends including language that addresses a 10-day hold on discovery before a preliminary hearing.

The committee discussed language that had previously been removed from the proposed amended rule. Mr. Thompson noted that following his meeting with the Supreme Court, and through a number of emails received expressing concerns of the proposed language at the time, Mr. Thompson attempted to make a case to include the preliminary language inclusion into the rule. The language was again rejected. Mr. Thompson had planned present that language at today's meeting but after receiving Mr. Burton's language on the bill he felt it was impractical to include language that did not include a deadline for discovery. Mr. Thompson will propose that the preliminary hearing language be included in the rule as an attempt to persuade legislatures not to impose the 10-day deadline. The 10-day is very impracticable and evidence the prosecution presents at the hearing is more practicable. The committee discussed including "presently and reasonably available" to line (a)(2) of Mr. Gray's proposed language.

Following further discussions, Mr. Thompson motioned to amend language from Mr. Gray's proposed draft to include "presently and reasonably available" as line (a)(2). Mr. Thompson also motioned to adopt the proposal to send to the Supreme Court as amendment to rule 16. Mr. Gray seconded the motion. The committee majority voted to adopt the proposed language for presentation to the Supreme Court. Judge Hruby-Mills opposes the motion.

Mr. Thompson will draft a memorandum to the Supreme Court for approval to send proposed language of rule 16 for public comment. Mr. Thompson will send an email to the committee asking committee members to provide additional feedback to Mr. Burton regarding proposed language in the bill.

5. Legislative update:

A legislative task force has been created by the Utah Supreme Court to address body cam legislation. A subcommittee from the task force has met with those who are drafting the legislation to discuss whether the proposed rule was appropriate, as there are concerns of implications within the language of the rule. The legislation allows a

district court judge to instruct a jury on an adverse inference on an officer's testimony if they failed to record interaction during an investigation. There were concerns in the proposed legislation that was expressed by the subcommittee to the parties involved. The subcommittee kept majority of the proposed language, making only minor recommended changes. The subcommittee met with Supreme Court and proposed that Rule 19 be modified to allow judges to instruct a jury on adverse inferences. The Court wanted a more precise description and understood that legislation would move forward without the Courts input. Legislation passed with the proposed language and the Court decided not to amend rule 19. The legislation refers to rule 19 without a corresponding rule change. This is something the task force will need to address. Rule 19 will need to be discussed at some point to ensure it is line with the statute. Mr. Thompson has spoken briefly with Mr. Johnson regarding the legislation. Mr. Johnson will talk to the court again. Rule 19 may be up for discussion at the next meeting. Mr. Thompson will send the committee a link of the legislation for review.

6. Follow-up on URCrP 9 and 9A:

Mr. Johnson is currently working on additional language changes to rules 9 and 9A. Once Mr. Johnson is able to distribute the proposed amendments, Mr. Thompson recommends that the committee continue discussion of these changes via email. The committee may vote to accept the proposed changes through email or wait to further discuss at the May meeting.

7. Other business:

None

8. Adjourn:

With no other business, the meeting adjourned without a motion. The meeting adjourned at 1:10 pm. The next meeting is scheduled for May 19 at 12 pm (noon) in the Café Meeting room. Due to social distancing guidelines in light of the Coronavirus Pandemic, the May meeting may be held via video conferencing.