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

WebEx Video Conferencing
May 19, 2019
12:00 p.m. - 2:00 p.m.

Agenda

1.	Welcome and approval of minutes	-	Doug Thompson
2.	Rule 6	-	Judge Corum
3.	Rule 22 - final approval	-	Doug Thompson
4.	Rule 8 - final approval	-	Doug Thompson
5.	Rule 16 update	-	Doug Thompson
6.	Rule 19	-	Doug Thompson
7.	Rules 9 and 9A	-	Brent Johnson
8.	Rule 17	-	Brent Johnson
9.	Expungement rule	-	Brent Johnson
10.	Update on restitution rule	-	Doug Thompson
11.	Update on probation consolidation	-	Doug Thompson
12.	Adjourn		

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.

DRAFT

MEMBERS:	**PRESENT**	**EXCUSED**
Douglas Thompson, *Chair*	•	
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	•	
Matthew Tokson	•	

GUESTS:

Steve Burton

STAFF:

Brent Johnson - excused
Minhvan Brimhall (recording secretary)

1. **Welcome ad 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 prospective 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.

Rule 22. Sentence, judgment and commitment.

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

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

(c) **Sentencing advisories**.

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

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

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

(e) **Correcting a sentence**.

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

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

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

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

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

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

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

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

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

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

Effective July 1, 2019

Committee Note

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

Rule 8. Appointment of counsel.

(a) **Right to counsel.** A defendant charged with a public offense has the right to self-representation, and if indigent, has the right to court-appointed counsel if the defendant faces any possibility of the deprivation of liberty.

(b) **Capital case qualifications.** In all cases in which counsel is appointed to represent an indigent defendant who is charged with an offense for which the punishment may be death, the court shall appoint two or more attorneys to represent such defendant and shall make a finding on the record based on the requirements set forth below that appointed counsel is competent in the trial of capital cases. In making its determination, the court shall ensure that the experience of counsel who are under consideration for appointment have met the following minimum requirements:

(b)(1) at least one of the appointed attorneys must have tried to verdict six felony cases as defense counsel within the past four years or twenty-five felony cases total, with at least six of the twenty-five felony cases being as defense counsel;

(b)(2) at least one of the appointed attorneys must have appeared as counsel or co-counsel in a capital or a felony homicide case, representing a defendant, which was tried to a jury and which went to final verdict;

(b)(3) at least one of the appointed attorneys must have completed, in person, or taught within the past five years an approved continuing legal education course or courses at least eight hours of which deal, in substantial part, with the ~~trial of~~ representation of defendants in death penalty cases; and

(b)(4) the experience of one of the appointed attorneys must total not less than five years in the active practice of law.

(c) **Capital case appointment considerations.** In making its selection of attorneys for a appointment in a capital case, the court should also consider at least the following factors:

(c)(1) whether one or more of the attorneys under consideration have previously appeared as counsel or co-counsel in a capital case, representing a defendant;

(c)(2) the extent to which the attorneys under consideration have sufficient time and support and can dedicate those resources to the representation of the defendant in the capital case now pending before the court with undivided loyalty to the defendant;

(c)(3) the extent to which the attorneys under consideration have engaged in the active practice of criminal law in the past five years;

(c)(4) the diligence, competency, the total workload, and ability of the attorneys being considered; and

(c)(5) any other factor which may be relevant to a determination that counsel to be appointed will fairly, efficiently and effectively provide representation to the defendant.

(d) **Capital case appeals.** In all cases where an indigent defendant is sentenced to death, the court shall appoint one or more attorneys to represent such defendant on appeal and shall make a finding that counsel is competent in the appeal of capital cases. To be found competent to represent on appeal persons sentenced to death, the combined experience of the appointed attorneys must meet the following requirements:

(d)(1) at least one attorney must have served as counsel in at least three felony appeals; and

(d)(2) at least one attorney must have attended and completed within the past five years an approved continuing legal education course which deals, in substantial part, with the trial or appeal of death penalty cases.

(e) **Post-conviction cases.** In all cases in which counsel is appointed to represent an indigent petitioner pursuant to Utah Code § 78B-9-202(2)(a), the court shall appoint one or more attorneys to represent such petitioner at post-conviction trial and on post-conviction appeal and shall make a finding that counsel is qualified to represent persons sentenced to death in post-conviction cases. To be found qualified, the combined experience of the appointed attorneys must meet the following requirements:

(e)(1) at least one of the appointed attorneys must have served as counsel in at least three felony or post-conviction appeals;

(e)(2) at least one of the appointed attorneys must have appeared as counsel or co-counsel in a post-conviction case at the evidentiary hearing, on appeal, or otherwise demonstrated proficiency in the area of post-conviction litigation;

(e)(3) at least one of the appointed attorneys must have attended and completed or taught within the past five years an approved continuing legal education course which dealt, in substantial part, with the trial and appeal of death penalty cases or with the prosecution or defense of post-conviction proceedings in death penalty cases;

(e)(4) at least one of the appointed attorneys must have tried to judgment or verdict three civil jury or felony cases within the past four years or ten cases total; and

(e)(5) the experience of at least one of the appointed attorneys must total not less than five years in the active practice of law.

(f) **Appointing from appellate roster.** When appointing counsel for an indigent defendant on appeal from a court of record, the court must select an attorney from the appellate roster

maintained by the Board of Appellate Judges under rule 11-401 of the Utah Rules of Judicial Administration, subject to any exemptions established by that rule.

(g) **Noncompliance.** Mere noncompliance with this rule or failure to follow the guidelines set forth in this rule shall not of itself be grounds for establishing that appointed counsel ineffectively represented the defendant at trial or on appeal.

(h)(1) Cost and attorneys' fees for appointed counsel shall be paid as described in Chapter 22 of Title 78B.

(h)(2) Costs and attorneys fees for post-conviction counsel shall be paid pursuant to Utah Code § 78B-9-202(2)(a).

Effective December 19, 2018

Comment for URCrP 8 – comment period closed February 3, 2020

Scott Garrett
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As a former prosecutor, I was directly responsible for prosecuting 3 Aggravated Murder cases to verdict. In so doing, I gained valuable experience and perspective that would benefit any person charged with this offense. It makes no sense that you can have substantial experience in deciding what qualifies as a capital offense, prosecuting these cases, but not being able to defend someone who has been so charged. I think the amendment unfairly disqualifies individuals that have the ability and know how to handle these types of cases. If it is experience that we are after, the amendment should not apply a blanket disqualification just because you sat on the other side of the table.

Rule 9. **Proceedings for persons arrested without a warrant on suspicion of a crime.**

(a)(1) Probable cause determination. A magistrate must determine whether there was probable cause for an arrest without a warrant within 24 hours after the arrest. A person arrested and delivered to a correctional facility without a warrant for an offense must be presented without unnecessary delay before a magistrate for the determination of probable cause and whether the suspect qualifies for pretrial release under Utah Code § 77-20-1, and if so, what if any conditions of release are warranted. The arrestee need not be present at the probable cause determination.

(a)(2)(A) The arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which defendant was arrested must, as soon as reasonably feasible but in no event longer than ~~24~~ 23 hours after the arrest, present to ~~a~~ the magistrate a sworn statement that contains the facts known to support probable cause to believe the defendant has committed a crime. The statement must contain any facts known to the affiant that are relevant to determining the appropriateness of precharge release and the conditions thereof.

(a)(2)(B) If available, the magistrate should also be presented the results of a validated pretrial risk assessment tool.

(a)(2)(C) The magistrate must review the information provided and determine if probable cause exists to believe the defendant committed the offense or offenses described. If the magistrate finds there is probable cause, the magistrate must determine if the person is eligible for pretrial release pursuant to Utah Code § 77-20-1, and what if any conditions on that release are reasonably necessary to:

(a)(2)(C)(i) ensure the appearance of the accused at future court proceedings;

(a)(2)(C)(ii) ensure the integrity of the judicial process;

(a)(2)(C)(iii) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and

(a)(2)(C)(iv) ensure the safety of the public and the community.

(a)(2)(D) If the magistrate finds the statement does not support probable cause to support the charges filed, the magistrate may determine what if any charges are supported, and proceed under subsection (a)(2)(C).

(a)(2)(E) If probable cause is not articulated for any charge, the magistrate must return the statement to the submitting authority indicating such.

(a)(3) A statement that is verbally communicated by telephone must be reduced to a sworn written statement prior to presentment to the magistrate. The statement must be

retained by the submitting authority and as soon as practicable, a copy shall be delivered to the magistrate who made the determination.

(a)(4) The arrestee need not be present at the probable cause determination.

(b) Magistrate availability.

(b)(1) The information required in subsection (a)(2) may be presented to any magistrate, although if the judicial district has adopted a magistrate rotation, the presentment should be in accord with that schedule or rotation. If the arrestee is charged with a capital offense, the magistrate may not be a justice court judge.

(b)(2) If a person is arrested in a county other than where the offense was alleged to have been committed, the arresting authority may present the person to a magistrate in the location arrested, or in the county where the crime was committed.

(c) Time for review.

(c)(1) Unless the time is extended at 24 hours after ~~booking~~ arrest, if no probable cause determination and order setting bail have been received by the custodial authority, the defendant must be released on the arrested charges on recognizance.

(c)(2) During the 24 hours after arrest, for good cause shown an arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which defendant was arrested may request an additional 24 hours to hold a defendant and prepare the probable cause statement or request for release conditions.

(c)(3) If after 24 hours, the suspect remains in custody, an information must be filed without delay charging the suspect with offenses from the incident leading to the arrest.

(c)(4)(A) If no information has been filed by 3:00~~pm~~ p.m. on the fourth calendar day after the defendant was ~~booked~~ arrested, the release conditions set under subsection (a)(2)(B) shall revert to recognizance release.

(c)(4)(B) The four day period in this subsection may be extended upon application of the prosecutor for a period of three more days, for good cause shown.

(c)(4)(C) If the time periods in this subsection (c)(4) expire on a weekend or legal holiday, the period expires at 3:00~~pm~~ p.m. on the next business day.

(d) Other processes. Nothing in this rule is intended to preclude the accomplishment of other procedural processes at the time of the determination referred to in subsection (a)(2).

Effective November 18, 2019

Rule 9A **Procedures for persons arrested pursuant to an arrest warrant.**

(a)(1) For purposes of this rule an "arrest warrant" means a warrant issued by a judge pursuant to Rule 6(c), or after a defendant's failure to appear at an initial appearance or arraignment after having been summoned.

(a)(2) An "arrest warrant" does not include a warrant issued for failing to appear for a subsequent court proceeding or for reasons other than those described in subsection (a)(1).

(b)(1) When a peace officer or other person arrests a defendant pursuant to an arrest warrant and the arrested person cannot provide any condition or security required by the judge or magistrate issuing the arrest warrant, ~~the person arrested must be presented to a magistrate~~ within ~~24~~ 48 hours after arrest the court issuing the arrest warrant must review the pretrial release conditions. The information provided to the ~~magistrate~~ court must include the case number, and the results of any validated pretrial risk assessment.

(~~c~~ b)(2) With the results of ~~the~~ a pretrial risk assessment, and having considered the factors that caused the court to issue an arrest warrant in the first place, the ~~magistrate~~ court may modify the release conditions.

(b)(~~2~~3) If the time periods in this subsection (b) expire on a weekend or legal holiday, the period expires at 5:00p.m. on the next business day.

(~~d~~c) Any defendant who remains in custody after the review process must be seen by the court issuing the arrest warrant no later than the third day after the arrest.

(~~e~~d) If the arrested person meets the conditions, or provides the security required by the arrest warrant, the person must be released and instructed to appear as required in the issuing court.

(~~f~~e) Any posted security must be forwarded to the court issuing the arrest warrant.

(~~g~~f)(1) If the charge against the defendant is a misdemeanor for which a voluntary forfeiture of bail may be entered as a conviction under Utah Code 77-7-21(1), the person

arrested may state in writing a desire to forfeit bail, waive trial in the district in which the case is pending, and consent to disposition of the case.

(~~g~~f)(2) Upon receipt of the defendant's consent, the court in which the case is pending may enter the conviction and forfeit bail in accordance with Section 77-7-21.

Rule 17. The trial.

(a) **Defendant's presence.** In all cases the defendant shall have the right to appear and defend in person and by counsel. The defendant shall be personally present at the trial with the following exceptions:

(a)(1) In prosecutions of misdemeanors and infractions, the defendant may consent in writing to trial in the defendant's absence;

(a)(2) In prosecutions for offenses not punishable by death, the defendant's voluntary absence from the trial after notice to defendant of the time for trial shall not prevent the case from being tried and a verdict or judgment entered therein shall have the same effect as if defendant had been present; and

(a)(3) The court may exclude or excuse a defendant from trial for good cause shown which may include tumultuous, riotous, or obstreperous conduct.

Upon application of the prosecution, the court may require the personal attendance of the defendant at the trial.

(b) **Calendar priorities.** Cases shall be set on the trial calendar to be tried in the following order:

(b)(1) misdemeanor cases when defendant is in custody;

(b)(2) felony cases when defendant is in custody;

(b)(3) felony cases when defendant is on bail or recognizance; and

(b)(4) misdemeanor cases when defendant is on bail or recognizance.

(c) **Jury trial in felony cases.** All felony cases shall be tried by jury unless the defendant waives a jury in open court with the approval of the court ~~and the consent of the prosecution~~.

(d) **Jury trial in other cases.** All other cases shall be tried without a jury unless the defendant makes written demand at least 14 days prior to trial, or the court orders otherwise. No jury shall be allowed in the trial of an infraction.

(e)(1) **Number of jurors.** In all cases, the number of members of a trial jury shall be as specified in Utah Code § 78B-1-104.

(e)(2) In all cases the prosecution and defense may, with the consent of the accused and the approval of the court, by stipulation in writing or made orally in open court, proceed to trial or complete a trial then in progress with any number of jurors less than otherwise required.

(f) **Trial process.** After the jury has been impaneled and sworn, the trial shall proceed in the following order:

(f)(1) The charge shall be read and the plea of the defendant stated;

(f)(2) The prosecuting attorney may make an opening statement and the defense may make an opening statement or reserve it until the prosecution has rested;

(f)(3) The prosecution shall offer evidence in support of the charge;

(f)(4) When the prosecution has rested, the defense may present its case;

(f)(5) Thereafter, the parties may offer only rebutting evidence unless the court, for good cause, otherwise permits;

(f)(6) When the evidence is concluded and at any other appropriate time, the court shall instruct the jury; and

(f)(7) Unless the cause is submitted to the jury on either side or on both sides without argument, the prosecution shall open the argument, the defense shall follow and the prosecution may close by responding to the defense argument. The court may set reasonable limits upon the argument of counsel for each party and the time to be allowed for argument.

(g) **Alternate jurors.** If a juror becomes ill, disabled or disqualified during trial and an alternate juror has been selected, the case shall proceed using the alternate juror. If no alternate has been selected, the parties may stipulate to proceed with the number of jurors remaining. Otherwise, the jury shall be discharged and a new trial ordered.

(h) **Questions by jurors.** A judge may invite jurors to submit written questions to a witness as provided in this section.

(h)(1) If the judge permits jurors to submit questions, the judge shall control the process to ensure the jury maintains its role as the impartial finder of fact and does not become an investigative body. The judge may disallow any question from a juror and may discontinue questions from jurors at any time.

(h)(2) If the judge permits jurors to submit questions, the judge should advise the jurors that they may write the question as it occurs to them and submit the question to the bailiff for transmittal to the judge. The judge should advise the jurors that some questions might not be allowed.

(h)(3) The judge shall review the question with counsel and unrepresented parties and rule upon any objection to the question. The judge may disallow a question even though no objection is made. The judge shall preserve the written question in the court file. If the question is allowed, the judge shall ask the question or permit counsel or an unrepresented party to ask it. The

question may be rephrased into proper form. The judge shall allow counsel and unrepresented parties to examine the witness after the juror's question.

(i) **Juries visiting off-site places.** When in the opinion of the court it is proper for the jury to view the place in which the offense is alleged to have been committed, or in which any other material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. The officer shall be sworn that while the jury are thus conducted, the officer will suffer no person other than the person so appointed to speak to them nor shall the officer speak to the jury on any subject connected with the trial and to return them into court without unnecessary delay or at a specified time.

(j) **Admonition prior to recess.** At each recess of the court, whether the jurors are permitted to separate or are sequestered, they shall be admonished by the court that it is their duty not to converse among themselves or to converse with, or suffer themselves to be addressed by, any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

(k) **Deliberations.** Upon retiring for deliberation, the jury may take with them the instructions of the court and all exhibits which have been received as evidence, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.

(l) **Jury under officer's charge.** When the case is finally submitted to the jury, they shall be kept together in some convenient place under charge of an officer until they agree upon a verdict or are discharged, unless otherwise ordered by the court. Except by order of the court, the officer having them under the officer's charge shall not allow any communication to be made to them, nor shall the officer speak to the jury except to ask them if they have agreed upon their verdict, and the officer shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

(m) **Juror questions during deliberations.** After the jury has retired for deliberation, if they desire to be informed on any point of law arising in the cause, they shall inform the officer in charge of them, who shall communicate such request to the court. The court may then direct that the jury be brought before the court where, in the presence of the defendant and both counsel, the court shall respond to the inquiry or advise the jury that no further instructions shall be given. Such response shall be recorded. The court may in its discretion respond to the inquiry in writing without having the jury brought before the court, in which case the inquiry and the response thereto shall be entered in the record.

(n) **Incorrect verdict.** If the verdict rendered by a jury is incorrect on its face, it may be corrected by the jury under the advice of the court, or the jury may be sent out again.

(o) **Directed verdict.** At the conclusion of the evidence by the prosecution, or at the conclusion of all the evidence, the court may issue an order dismissing any information or indictment, or any count thereof, upon the ground that the evidence is not legally sufficient to establish the offense charged therein or any lesser included offense.

Effective ~~May 1, 2019~~