

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

MEETING MINUTES

WebEx Video Conferencing
September 15, 2020 – 12 p.m. to 2 p.m.

APPROVED

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

1. **Welcome and approval of minutes:**
Brent Johnson welcomed committee members to the meeting. The Committee considered the July 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. **Rule 17.5:**
Judge Hruby-Mills expressed concerns regarding limiting the number of hearings that can be held when a defendant is not available to participate in person. Does this also apply to bench trials on infraction matters? Are there hearings where safeguards can be identified? There is a need to address procedures for remote hearings because they are likely to occur even after the pandemic ends.

Mr. Johnson noted Judge Vernice Trease had drafted proposed amendments to address some of the concerns raised by Judge Hruby-Mills and those are apparently being circulated within the Third District. Judge Todd Shaughnessy also submitted proposed changes to rule 17.5 that are in the packet for the committee's review. In light of the questions raised by Judge Hruby-Mills and the proposed amendments from Judge Trease and Judge Shaughnessy, Mr. Johnson recommends a small workgroup be formed to further discuss the issues raised and propose amendments to rule 17.5 to be brought to the district court judges and this committee for review. Ms. Tangaro recommended the workgroup review how the federal courts are handling these types of hearings to see if the state courts could implement those same processes. The committee members volunteering to participate in the workgroup are Judge Hruby-Mills, Judge Schaeffer-Bullock, Professor Tokson, and Mr. Hills. Doug Thompson will spearhead the workgroup. Mr. Johnson will discuss the workgroup's charge with Mr. Thompson. The workgroup will provide an update of their discussions and proposals at a future meeting.

3. Discussion from criminal rules subcommittee:

The criminal rules subcommittee met on several occasions to discuss proposed amendments to several criminal procedure rules. Many of the proposed amendments clarify language and align the rules with the statutory requirements of HB 206 that go into effect October 1, 2020. Keisa Williams discussed proposed changes to the following rules:

- 4 – proposed amendments to (b)(1) clarify that the information must include a defendant's current address as provided by law enforcement or corrections officers. Proposed changes were also made to (b)(2) to require the state identification number (SID) if the defendant was arrested and detained on charges related to the arrest.
- 6 - brings the rule in line with statutory requirements of HB 206.
- 7 – moves right to counsel provisions to rule 8, and provides language clarifying related to the new definition of bail in 77-20-1(1)(c).
- 7A – same proposals as those of rule 7.
- 8 – provisions moved from rule 7. Proposed amendments clarify the right to counsel and ensure waivers are knowing and intelligent.
- 9 – brings the rule in line with statutory requirements of HB 206.
- 9A – proposed language clarifies the arrested person is to be seen by a magistrate within 48 hours of arrest when unable to meet release conditions of the arrest warrant.
- 10 - brings the rule in line with statutory requirements of HB 206.
- 27 – brings (b)(1)(B)(ii) in line with statutory requirements of HB 206.
- 27A – includes new definitions of "bail" and "monetary bail."
- 28 - brings the rule in line with statutory requirements of HB 206 and matches language in 77-20-10.
- 38 – includes new definitions of "bail" and "monetary bail."

Ms. Williams also proposed a new rule 41 which addresses unsecured bonds. Judges may now issue unsecured bonds under Utah Code 77-20-4(1)((b)(iii). The rule includes processes such as forfeiture hearings not being scheduled earlier than 30 days from date notice was sent to the defendant.

Following further discussions, the committee did not have additional recommendations on the proposed amendments. Ms. Tangaro moved to approve the amendments as proposed. Ms. Landau seconded the motion. The committee unanimously approved the motion.

Mr. Thompson, Mr. Johnson, and Ms. Williams will take the rules before the Supreme Court in the next week to ask for approval on an expedited basis, subject to a public comment period. The committee will address any issues or concerns received following the comment period.

4. Rule 16 public comment:

The public comment period for rule 16 closed on September 5, 2020. Thirty comments were received for the rule. Due to the volume of received comments, Mr. Johnson recommended the subcommittee on rule 16 convene to review the comments and make recommendations for any new changes to the rule. Ms. Tangaro previously participated on the subcommittee and agreed to spearhead gathering the members together to review the comments. Mr. Tangaro invites any committee members who would like to provide input, or have recommendations for the subcommittee to consider, to please email her with their comments. The subcommittee may provide an update at the November meeting.

5. Expungement rule:

This item will be held over for discussion at a future meeting.

6. Update on probation consolidation:

This item will be held over for discussion at a future meeting.

7. Other business:

No additional items to discuss.

8. Adjourn:

With no other business, the meeting adjourned without a motion. The meeting adjourned at 12:48 p.m. Next meeting is November 17 at 12 p.m. via Webex.