

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

**MEETING MINUTES**

WebEx Video Conferencing  
March 16, 2021 – 12 p.m. to 2 p.m.

**APPROVED**

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

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

Doug Thompson welcomed committee members to the meeting. The Committee considered the January 19, 2021 minutes. There being no changes to the minutes, Cara Tangaro moved to approve the minutes. Ryan Stack seconded the motion. An objection was not received on the motion. The motion was unanimously approved.

**2. Rule 12:**

The legislature passed joint resolution 7 that included amendments to rule 12. The resolution creates a timing requirement for motions that are filed on self-defense claims or other justification defense presented to the court. The motion is to be filed 28 days prior to a trial date unless good cause is determined. The court's rapid response team presented the solution

that the legislature adopted. The rapid response team will review the resolution and make any changes to rule 12 that may be necessary. No action is needed by the committee at this time.

### **3. Rule 16 update:**

The public comment period for rule 16 closed on March 6, 2021. The rule received five comments. Some of the concerns expressed in the comments have already been addressed by the committee in previous discussions, and taken into consideration in the drafting of the proposed rule. A comment was received by Mr. David Ferguson suggesting expansion of the discovery rule in addressing “expert disclosures, particularly related to the documents that the expert relies on for the basis of their testimony, and restitution.” The committee discussed that if a prosecutor feels that defense counsel has not complied with the rules of discovery it would be up to the judge to decide whether the discovery should be accepted. The committee determined that Mr. Ferguson’s comments, and other comments of similar nature, warrant further discussion at a future meeting for possible amendments to the discovery rule. The committee expressed confidence in the resolution in rule 16 as currently proposed and recommends the rule be forwarded to the Supreme Court for final approval.

With no further discussion, Jeff Gray moved to approve rule 16 as amended to send the Supreme Court for final approval. Mr. Stack seconded the motion. Judge Corum stated that the rule is not great and may still need work, but is better than what has been presented in the past. The committee moved to approve the motion by majority vote, with Judge Corum objecting to the motion. The motion passed. Rule 16 will be forwarded to the Supreme Court for final consideration.

### **4. State v. Billings subcommittee update:**

In *State v. Billings*, Mr. Billings was charged with and entered a plea to aggravated murder. The trial judge entered a restitution order in the amount of \$0, but a stipulated order at the end of the case required Mr. Billings to pay \$428,000, with \$7,000 to the victim for property loss, \$380,000 to joint crime victims as heirs, and the rest to West Valley City and other stipulated parties. Some of the victims filed a civil suit to try and execute the judgment by placing a lien on the home of Mr. Billings’ ex-wife. The defendant filed an interlocutory appeal, which was denied by the Supreme Court. The Court asked the committee to see if a rule is the best way to address the denial, either as a civil rule or a criminal rule.

A subcommittee was formed and charged with the task of addressing the request from the Supreme Court. In the interim, the subcommittee was informed that the legislature had taken up a bill to change restitution. HB 260 passed both House and Senate and is awaiting the governor’s signature. The bill removes the distinction between court ordered restitution and complete restitution, and when restitution is entered in a criminal case, the restitution is considered to be an account receivable in conjunction with a restitution order. The judge can then order monthly payments as a condition of probation or set a payment schedule for the defendant while the case remains open. The Board of Pardons and Parole will work with the

Office of Debt Collection to monitor the defendant's account to ensure proper payment. The criminal account receivable is in place and active while the defendant is in jail or on probation or on parole. The account will close when the case is closed and the remaining restitution amount will transfer to OSDC as a civil judgment.

Due to the passing of HB 260, the committee will recommend to the Supreme Court that a rule is not needed as the statute addresses the issue of restitution. The subcommittee will continue to look at a broader restitution rule to address the need for a fair determination of the ruling in the *Billings case*, but no further action is taken at this time. No vote was taken on this matter. Mr. Thompson will report the committee's determination to the Supreme Court.

#### **5. *Pleasant Grove v. Terry* jury instruction update:**

*Pleasant Grove v. Terry* is a case where the jury came out with two different verdicts. The defendant was acquitted on the charge of domestic violence, but was found guilty on the charge of domestic violence in the presence of a child. The Supreme Court invited committees to consider other inconsistent verdicts and decide if other actions would be appropriate.

Mr. Thompson met with several attorneys and gathered feedback on how the inconsistent verdicts affect the defendant's ability to receive a fair trial. Mr. Thompson drafted proposed language to rule 12 that provides for simpler and straightforward instructions to the jury. Mr. Thompson proposed adding subparagraph (h) to read as "Legally impossible verdict. A verdict is legally impossible if a defendant is acquitted on a predicate offense but convicted on the compound offense. If a verdict is legally impossible, the court must, upon its own motion or the motion of a party, enter an acquittal on the compound offense." Mr. Gray noted that Mr. Thompson's language may be better suited in rule 23 by making the existing paragraph as paragraph (A) and Mr. Thompson's language in a new paragraph (B). Mr. Thompson's language would provide jury instruction under this rule. The committee discussed concerns with the word "acquittal" in rule 23 as it may confuse the jury in understanding the context of the rule, and their role.

Following further discussion, the committee agreed that Mr. Thompson's language is appropriate but could not agree if it should be placed in rule 12 or rule 23. The committee also considered the possibility of asking the MUJI Committee to look at Mr. Thompson's proposed language and whether it belongs in rule 12 or rule 23. Mr. Thompson will review rule 23 to see if another option is more appropriate and will return to the committee with another draft proposal.

#### **6. Rules 7 and 7A:**

House 220 passed the legislature this year. The bill was changed from last year's bill and repeals certain aspects of pretrial proceedings. The Pretrial and Release Committee has drafted amendments to rules 7 and 7A and the Utah Supreme Court has approved the changes to the code. A court is required to consider a person's ability to pay under case law, and the Pretrial

Committee has no plans to return to the previous bail schedule. The Pretrial Committee has proposed amendments that clear up the language from the code into rules 7 and 7a. The proposals are ready for the committee's consideration.

Mr. Thompson noted that HB 220 is not very clear on the required changes and recommends the subcommittee meet to discuss the new language and ensure that language in the rule is clear and concise. Ms. Williams, Mr. Stack, Ms. Tangaro, and Judge Corum will participate in the subcommittee along with Mr. Thompson. The subcommittee will meet and report back the committee at another meeting.

Judge Corum shared proposed amended language to rule 7 regarding a defendant's right to preliminary examination. The proposal comes from Judge Bates. The proposed language informs the defendant if they decide to waive their rights to a preliminary hearing at the time a guilty plea is entered, they must do so in writing and the prosecutor's consent is not needed. Judge Corum noted that the proposed language makes it clearer to a defendant that a written waiver is required. The committee did not express any concerns with the proposed language. The subcommittee will address Judge Bates' proposed language during their meeting.

**7. Rule 9:**

This item is tabled for another meeting.

**8. Rule 8:**

This item is tabled and will be first on the agenda at the next meeting.

**9. Other business:**

\* Restitution rule reminder – this item will be discussed at a future meeting.

\* URCrP 22 –

There are concerns surrounding statutory changes on the time frame for judges to impose sentencing. The concerns were raised by Judge Trease. Many years ago, the statute allowed 30 days for the court to impose sentence when a plea or verdict of guilty or plea of no contest is entered. The statute was later changed to 45 days, but now the specific time frame in statute has been eliminated. The language in the new statute says a judge can set a reasonable time frame for preparation of the PSI before sentencing.

The committee discussed concerns of not having a hard and fast deadline for AP&P to file their sentencing recommendations. The committee also noted that defendants rely on the specific time frame as a reference for when their case will be heard. Ms. Tangaro noted that most public defenders would appreciate a longer time frame to prepare before the sentencing hearing but also noted that most defendants would prefer to have their cases decided sooner than later. The committee discussed several options as to how a time frame could be met by AP&P to allow judges time to meet the sentencing

requirements. Due to the lack of quorum, Mr. Thompson recommended holding this item over to the next meeting for discussion by the full quorum. No motion was taken on this item.

\* Remarks by Brady Eames, guest:

Mr. Eames was invited to speak to the committee and his statement is attached to the minutes.

**10. Adjourn:**

With no other business, the meeting adjourned without a motion. The meeting adjourned at 1:15 pm. Next meeting is May 18, 2021 at 12 p.m. via Webex.