

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

MEETING MINUTES

WebEx Video Conferencing
July 20, 2021 – 12 p.m. to 2 p.m.

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Douglas Thompson, <i>Chair</i>	•		Brady Eames
William Carlson	•		Tyson Skeen
David Ferguson	•		Jacqueline Carlton
Judge Elizabeth Hruby-Mills		•	Brady Eames
Craig Johnson		•	Michael Dreschel
Ryan Peters	•		
Keri Sargent	•		STAFF:
Judge Kelly Schaeffer-Bullock	•		Gage Hansen
Ryan Stack		•	Keisa Williams
Matthew Tokson	•		Minhvan Brimhall

1. Welcome and approval of minutes:

Doug Thompson welcomed the committee members to the meeting. William Carlson, David Ferguson, and Ryan Peters were introduced as new members of the committee. The Committee considered the May 18, 2021 minutes. There being no changes to the minutes, Judge Schaeffer-Bullock moved to approve the minutes. Keri Sargent seconded the motion. An objection was not received on the motion. The motion was unanimously approved.

2. Mr. Brady Eames Petition/Rule 22:

The committee discussed and reviewed Brady Eames' petition to amend rule 22(e)(2) as it pertains to death sentence cases. The committee did not vote on Mr. Eames's petition at the last meeting. Mr. Eames joins this meeting to further discuss his requests for the amendments to rule 22(e).

Mr. Eames spoke about the case that inspired his petition. Mr. Eames spoke about his opposition to 22(e)(2) and his allegation that the rule was passed unlawfully. Mr. Thompson asked Mr. Eames to clarify his claims, but explained that the Committee's duty was limited to recommendations on the petition and was not the place to raise those specific concerns.

Following further discussions, Mr. Thompson moved to approve amendments to rule 22(e)(2) as proposed by Mr. Eames. The committee voted with one vote in favor, Three votes against, and one abstained. The motion did not pass. (In addition to the three votes against, Professor Tokson also voted against, but that vote could not be counted. Prof. Tokson's term as a replacement for Professor Anderson expired on 7/1 and Prof. Tokson was not appointed to the Committee in his own right until 7/22.)

Mr. Thompson will draft a memorandum to the Supreme Court with a recommendation not to approve Mr. Eames' proposal to rule 22. Mr. Thompson will contact Mr. Eames prior to submitting the memorandum to the Supreme Court. Mr. Thompson will provide an update at a future committee meeting.

3. Expungement discussion (Criminal Rule 3, Civil Rule 5):

Judge Schaeffer-Bullock and Keri Sargent are on the subcommittee for expungement discussions. Ms. Sargent provided an update. The subcommittee met with the Salt Lake County expungement navigator but things are on hold for the time being as a new AOC staff is process of being identified to staff the Civil Rules Committee. The subcommittee's next meeting is scheduled for September 2021. Mr. Thompson will follow-up with Judge Schaeffer-Bullock and Ms. Sargent prior to the next committee meeting.

4. Rule 42 update:

The committee discussed proposed amendments to rule 42 at May 18 meeting and voted in favor of adopting the proposals as drafted by Brent Johnson. Mr. Johnson prepared a memorandum that will go to the Supreme Court for discussion at their next conference. Mr. Thompson will provide the committee an update at a future meeting. No further action is needed at this time.

5. Rule 17.5 update:

Rule 17.5 was amended to authorize the court to accept remote testimony from forensic toxicologists. The committee discussed proposed language during the May 18 meeting and voted to approve the amendments. Mr. Thompson will draft a memorandum to go to the Supreme Court with the committee's recommendations and send the memo to Mr. Hansen for consideration. Mr. Thompson will provide the committee an update at a future meeting.

6. Rule 12 update:

Rule 12 amendments, which include joint resolutions to HB 206, is completed and went into effect May 1, 2021. No other action is needed at this time.

7. Rules from the pretrial subcommittee (6, 7, 7A, 7.5, 9) update:

Rule 9 and 7.5 draft amended update provided by Michael Dreschel.

Mr. Dreschel explained the pre-trial events occurring in the legislature focusing on rule 9. Legislatures had a concern that “least restrictive reasonably available conditions” was removed from statute, and asked why it hadn’t been changed. Mr. Dreschel explained that it is partially a waiting game to see if the legislature changes it again, and presented a proposed a possible bill that could release that language in the statute next legislative session. Mr. Dreschel also explained that the courts do not see the language as inconsistent with the amended statute or the existing caselaw.

Mr. Thompson asked if the committee should expect legislative changes. Mr. Dreschel confirmed that the taskforce is certain there will be.

Mr. Dreschel raised the issue of (c)(4) asserting substantive policy by releasing people on recognizance. There are no answers regarding (c)(4), but Mr. Dreschel wanted to make sure the committee is aware of these issues. Mr. Dreschel asked whether the committee needed to address the shelf-life of pre-trial conditions if charges are never filed. Mr. Dreschel explained that legislature is currently out of session and will be for another month, and recommended that providing movement on the rule may show the legislature that the courts are addressing these issues and any other the legislature might think about bringing up.

Mr. Thompson called for people who would want to participate in the rapid response team. Mr. Ferguson and Mr. Carlson will join the subcommittee. Mr. Dreschel asked that a judge be included on the team. Mr. Thompson said there are Judges and is certain someone will pitch in, but will email them about interest in the team.

Mr. Dreschel raised the possibility of rule 7.5 to dovetail rules committee activity with the legislature. Mr. Ferguson spoke about the possibility of reinstating a bail schedule. Mr. Dreschel said that he believed that would be a Judicial Counsel issue, and discussed what sort of objective tool jails could use to establish bail and what other ways that issues is being addressed.

Ms. Williams explained that there is dispute among the courts about whether there is a constitutional issue on ability to pay reviews. The Committee agreed to wait for an update.

8. Rule 8 update:

Mr. Thompson called rule 8, but noted that Joana Landau had been running point on the rule but was not present and is no longer on the Committee. This item will be reviewed at another meeting.

9. Rule 14:

The committee discussed proposed language to amend rule 14 a few years back, however, has not been able to return to complete the work. Due to more recent statutory changes, the proposed languages are no longer appropriate for rule 14. Mr. Thompson will look at the current statutory language and incorporate any changes to a new draft proposal of rule 14. Mr. Thompson will provide the committee an update at the next meeting.

11. Restitution rule update - tentative:

There is no update to the restitution rule at this time as no work is currently in progress. If any members of the committee would like to take action on this rule, please contact Mr. Thompson.

12. Probation consolidation update - tentative:

There is no update to the probation consolidation rule at this time as no work is currently in progress. When last discussed, the committee was in favor of a rule to minimize multiple jurisdictions when a defendant has several cases in multiple jurisdictions. Mr. Dreschel noted that the Department of Corrections continues to express interest in the rule. Mr. Thompson asked if any members of the committee would like to take action on this rule to please him.

13. Adjourn:

With no other business, the meeting adjourned without a motion. The meeting adjourned at 1:40 pm. Next meeting is September 21, 2021 at 12 p.m. via Webex.