

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

**MEETING MINUTES**

WebEx Video Conferencing  
September 21, 2021 – 12 p.m. to 2 p.m.

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Douglas Thompson, <i>Chair</i>	•		Jacqueline Carlton
Judge Elizabeth Hruby-Mills	•		
Craig Johnson		•	
Ryan Stack	•		
Judge Kelly Schaeffer-Bullock	•		
David Ferguson	•		
William Carlson	•		<b>STAFF:</b>
Ryan Peters	•		Gage Hansen
Matthew Tokson		•	
Janet Reese		•	
Judge Denise Porter	•		

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

Doug Thompson welcomed the committee members to the meeting. Doug introduced Judge Denise Porter a new member of the committee. The Committee considered the July 20, 2021 minutes. There being no changes to the minutes, Doug moved to approve the minutes. Ryan Stack seconded the motion. An objection was not received on the motion. The motion was unanimously approved.

**2. Expungement Sub-Committee Update:**

Doug explained to the committee the basics of the discussion he had with the Supreme Court about the rules. Doug gave a loose framework of the sub-committee’s progress so far. Judge Schaeffer-Bullock spoke on the subcommittee for expungement discussions about the timing issues. Judge Porter raised the issue of the pardon rule’s reliance on expungement procedures. The subcommittee’s next meeting is scheduled for September 28, 2021. Mr. Thompson will follow-up with Judge Schaeffer-Bullock and Ms. Sargent prior to the next committee meeting.

**3. Forensic Toxicologist (Rule 17.5) update:**

Doug updated the committee on the Supreme Court's denial of Rule 17.5 amendment to authorize the court to accept remote testimony from forensic toxicologists. David Ferguson asked the committee to discuss alternatives. David Ferguson will talk to Tyson Skeen.

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

David Ferguson updated the committee on the sub-committee's progress. The sub-committee asked for a judge to join the sub-committee. Judge Porter offered to join the sub-committee. Judge Porter brought up an issue with the differing resources of the various judicial districts. The sub-committee will schedule a new meeting via email.

**5. 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. Doug explained that he will likely have a draft for feedback about a draft of the rule for the next meeting. This item will likely be reviewed at the meeting.

**6. Rule 14 update:**

Doug gave a brief description of the issues of appealing decisions of in camera review. David Ferguson asked about the different kinds of in camera review, and whether the differences could be contributing to the confusion with the rule. Doug doesn't have a current proposal, and will keep this issue on the back burner.

**8. Sentencing (rule 22) 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.

**9. Proposed Changes to Pleas (rule 11) :**

Will Carlson introduced an issue with rule 11 where a disparity between the parties that restricted the prosecution's ability to withdraw from negotiated plea agreements. Doug raised questions about whether current case law would permit the prosecutor to withdraw. Judge Porter commented about the equity of the contract, and that the Judge is the one breaking the agreement, not the prosecutor. David Ferguson commented about Defendants possibly still getting the benefit of the negotiation, and supported the change.

Will moved to adopt the proposal with language changes made during the discussion. The Motion passed unanimously. The Rule will go out for public comment.

**10. Probation consolidation update - tentative:**

Doug provided a brief update to the probation consolidation rule to minimize multiple jurisdictions when a defendant has several cases in multiple jurisdictions. Mr. Thompson asked if any members of the committee would like to act on this rule. Judge Porter asked the committee to make sure that the rule cannot affect parole. Will Carlson asked if a prosecutor from one Jurisdiction would have any authority to proceed on cases arising out of a different jurisdiction. Doug acknowledged that there are many practical and legal issues that probation consolidation, including complying with 17-18A-401, but will continue with the language. David Ferguson volunteered to look at the rule.

**11. Adjourn:**

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