

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

MEETING MINUTES

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

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Douglas Thompson, <i>Chair</i>	•		Judge Matthew Bates
Judge Elizabeth Hruby-Mills	•		
Craig Johnson	•		
Ryan Stack	•		
Judge Kelly Schaeffer-Bullock		•	
David Ferguson	•		
William Carlson	•		STAFF:
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 Amber Stargell as a new member of the committee. The Committee considered the September 21, 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. Rule 42 - Expungement Sub-Committee Update:

Doug explained the discussion he had with the Supreme Court about the expungement rules. Doug furthered that Justice Himonas raised concerns about the lack of a clear rule which allows prosecutors to respond in a timely fashion. The Court is concerned about a backlog without a proper timeframe. Gage Hansen stated that Jacob sent a proposed change. Gage will send the proposed change. Doug suggests a sub-committee meeting, now that a proposal is submitted.

3. Forensic Toxicologist (Rule 17.5) update:

Tyson Skeen (sp?) brought this proposal to the committee. Supreme Court did not accept the proposal. The Supreme Court was concerned about singling out one specific witness in DUI matters. William spoke with Tyson who will speak with Senator Wilson. Doug suggests taking this off our schedule for the time being.

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

Doug asks for specific inclinations with the bill. David may have suggestions later for the committee to consider regarding rule amendments that would supplement procedure. David will send an email to the committee with proposal edits around mid-December. These rules will be on our agenda for the foreseeable future.

5. Preliminary Hearing Waiver – Rule 7

Doug asked the committee about their thoughts on Judge Bates suggested amendments to Rule 7. Craig favored the amendment that states “prosecutors need not consent” to the waiver of preliminary hearing. He explained that prosecutors tend refuse consent of waiver, to delay the process in other courts, including federal courts. Ryan stated his concerns about the amendment. For example, in DV cases, a defendant could want to waive their preliminary hearing without the prosecutor’s consent when there are victim testimony issues. This, in turn, could preclude a victim’s statement to be on record. Preliminary hearings preserve those testimonies. Judge Porter raised concerns about removing the prosecutorial consent and whether this is an “either-or” (in writing) scenario and the effect it will have on Misdemeanor A preliminary hearings and plea negotiations. Issue: is this an either-or scenario? Specifically regarding Class A misdemeanors. Judge Porter suggest changing the Class A misdemeanor forms to reflect the amendment.

Doug proposed to end the last sentence of Judge Bate’s amendment at the word “statement.” William believes this edit would resolve the issues raised today. Doug suggested including a clause that requires that prosecution to give a good-faith reason for the lack of consent. Judge Porter suggested William should meet with Judge Bates to discuss these edits. Doug also suggests that the subcommittee on Rule 7 can decide whether the consent issue needs to be further addressed. Hansen suggested for William to ask Judge Bates about the case law in reference to Rule 7.

Judge Bates enters the meeting. Historically, the Supreme Court noted that it is not proper for a defendant to take a guilty plea prior to the defendant being bound over. Judge Bates furthered that we have several constitutional rights in writing within plea waiver forms, this includes the right to a jury trial, the right to call witnesses, except the waiver of a preliminary hearing. Judge Bates suggestion is to have the plea agreement state that the prosecutor consents to the waiver of preliminary hearing. Judge Porter moves to remove the language after the word “statement.” This is 2nd by William. And unanimously agreed on.

6. Proposed Changes to Pleas (rule 11):

Gage introduced the public comments. Doug introduced a concern that a person raised to him outside of public comments. The private commenter said they were concerned about placing the judge into the negotiations. David explained to the committee that he sees the concern raised by Doug's commenter occur in PIA agreements. Doug commented about how the difference in the proposal seems to be that the Judge in Rule 11 has already entered the negotiation by changing the terms the judge previously agreed upon. Judge Porter moved to approve the rule. The motion was seconded by #, and approval was unanimous. The rule will go back to the SC for final approval.

7. Rule 14 update:

Doug gave a brief description of the issues of appealing decisions of in camera review. Doug explained to the committee that the Rules of Evidence committee is dealing with psychotherapy records. David Ferguson mentioned that there are some concerns that it is easier to get those documents in a civil context, but doesn't know if this is the best way to address that issue. Doug explained that he is keeping updated about what the Evidence Committee is doing, but doesn't think that the Evidence Committee is close to a making a rule.

8. Adjourn:

With no other business, the meeting adjourned without a motion. The meeting adjourned at 1:24 pm. Next meeting is January 18, 2022 at 12 p.m. via Webex.