

**Criminal Rules of Procedure Committee
Meeting Minutes for July 19, 2022**

Present	Not Present
Doug Thompson	Janet Reese
Judge Porter	Craig Johnson
Judge Hruby-Mills	
Judge Kelly Schaefer	
Keri Sargent (for Meredith Mannebach)	
Lori Seppi	
Ryan Peters	
Ryan Stack	
William Carlson	
David Ferguson	
Amber Stargell	

Introduction

Doug Thompson updated the Committee on current rules before approved by the Supreme Court and welcomes Lori Seppi as the newest member of our committee.

Ryan Peters moves to adopt the minutes from the Committee’s May 17, 2022 meeting. Ryan Stack seconds. With no objection, the motion passes.

Rule 21 Review

Doug reviews the *Terry* decision that has prompted a review of Rule 21 on inconsistent verdicts. William Carlson volunteers to take on the subcommittee for Rule 21.

Rule 17.5 Amendment

Doug addresses a proposal to amend Rule 17.5 on remote transmission of criminal proceedings. Judge Schaeffer-Bullock addresses considerations for justice court operations in the Rule. Doug asks for a volunteer to chair the Rule 17.5 subcommittee. Judge Porter suggests that we first consider what our goal is for the Rule and consider who to bring on board for the subcommittee next. Keri Sargent explains that the Green Phase Working Group has been discussing remote transmission of proceedings via WebEx. Judge Porter asks whether that group will stop making recommendations to the bench on the issue. Bryson King explains that Ron Gordon, State Court Administrator, directed the Committee to take on the project and that the Green Phase Working Group will piggyback off of the Committee’s work and let us move forward with making recommendations to the bench. Doug requests recommendations non-committee

members who can participate in the subcommittee. Committee members make recommendations. We will try to form a subcommittee of 10-12 members. No chair is appointed for the subcommittee, yet.

Pre Trial-Committee Discussion – Subcommittee for Rules 6, 7, 7A, 7.5, 9

David addresses the purpose of the committee is to harmonize the rules with the statute. David states that these some these changes address timing, new language, temporary pre-trial status orders, and a description on how detention hearings are to be carried out.

i. Rule 6

David addresses Rule 6 changes. David states that some the committee's language changes included:

- (1) a summons may be submitted via email;
- (2) temporary pretrial status orders;
- (3) bail forfeiture rule.

Doug clarifies that the committee's goal is an attempt to implement the statutory changes into the rule.

David Ferguson proposes to recommend Rule 6 to the Court and send out for public comment. William Carlson seconds the motion. No opposition. The motion carries and the Rule will be sent to the Supreme Court to approve for public comment.

ii. Rule 7

Rule 7(a)(6). Consulate Notification. William addresses the background of the Rule 7(a)(6) changes. William states the changes are based on international treaties the U.S. has entered. William states that under Rule 7(a)(6) a prosecutor is to provide notification to a consulate officer at the first appearance. Judge Schaeffer-Bullock asks the group if the amendment adds to the obligations of the court. William Carlson explains that the only new obligation from the court, under this new amendment, is to inform the defendant they have the right to request that a consulate officer is notified and that the rule does not require the court to follow up with the prosecution to ensure that notification was sent. Doug asks does the rule cause a burden for judges by adding more to the initial disclosures. Judge Porter states she does not believe this rule would be unduly burdensome to judges. Judge Hruby-Mills agrees with Judge Porter.

Rule7(c). Pretrial status order (victim notification requirements). David states that the committee added statutory language to the rule. Doug suggests adding language that states "constitutional or statutory" victim notification requirements. David has concerns about the wording of "constitutional" victim notification. William agrees to adding the statutory requirements language to the rule.

D(3)(a). David addresses added language: “the court must consider whether the amount exceeds the defendant’s ability to pay.”

Doug asks the group whether anyone has any suggestions or objections? Judge Schaeffer-Bullock addresses some contradictions in the rule in subsection (b)(1).

William Carlson moves to adopt Rule 7 with the addition of “constitution and statutory” language in Rule 7(c). The motion is seconded. David votes nay for the constitution and statutory language. No one else votes nay. The motion carries and the rule will be sent to the Supreme Court to approve for public comment.

iii. Rule 7(A) – Requirements for Misdemeanor B and C.

Rule 7(A)(a)(6). William Carlson states we can remove the consulate language because under the treaty the prosecutor is only required to notify the consulate for felonies.

Victim Notification Requirements. Doug suggests amendments should include “constitution and statutory” language to the notification requirement.

William Carlson moves to admit Rule 7(A) with the addition of the “constitution and statutory” language. The motion is seconded. No objection. The motion carries and the rule will be sent to the Supreme Court for public comment.

(Doug addresses the Webex disconnect and there are no longer enough voting members on the platform. Doug suggests that the committee address rules 7.5 and 9 and vote via email.)

iv. Rule 7.5 – Pretrial Detention Hearings.

David and William address additional language to deal specifically with Justice Court for defendants who do not comply with the conditions of release. William and David explain the language would not apply to DVs in justice court. William and David further explain the rule is meant to be for the exceptional circumstances when the defendant will not appear for court hearings. There is no official draft language for today’s meeting. The group discussed the following concerns:

1. David - Justice courts not able to see a defendant until a couple of days after arrest. Defendant could sit for lengthy periods of time.
2. Judge Schaeffer-Bullock – judges could use this rule for minor traffic offenses/non qualifying case or overuse of the rule. Possibility of judicial abuse. Additionally, Defendants would not see judge for several days after arrest.
3. William Carlson asks how do we narrow the language?

Doug suggests to cut Rule 7.5 (a)(2) and submit 7.5 and 9 for review and adoption via email. Doug suggests the group to vote on the remaining matters via email.

Meeting adjourned.