

Present	Not Present
Douglas Thompson	Meredith Mannebach
Bryson King	Matthew Tokson
William Carlson	Judge Kelly – Schaefer
Judge Denise Porter	Atty Craig Johnson
David Ferguson	Janet Reese
Amber Stargell	
Judge Hruby-Mills	
Lori Seppi	
Ryan Peters – logged of at 12:55	
Ryan Stack	

Action: Welcome and approval of July 19 and September 20, 2022 minutes. Will moves to approve both meeting minutes. David Ferguson seconds Will motion. No objections. Minutes are approved.

Future Meetings

In a recent poll, most committee members voted in favor of an “in-person and virtual” mix approach to meetings. David suggests that the committee holds three in-person meetings and three virtual meetings in 2023. Conversation ensues about the courthouse parking garage construction. The parking lot construction may make it difficult for members to park. Bryson is unsure if construction will be completed by the January meeting. Doug proposes a virtual meeting in January, and in-person meeting in March. No objections.

Rule 21 – Inconsistent Verdicts

Will leads the conversation on inconsistent verdicts. Legally impossible verdicts need to be reverse. The subcommittee made technical changes on lines 11 and 13. The changes to Line 39 is specifically to the section title/label as “Acquittal.” Will states that the committee agreed that this section is truly about “custody.”

Will discusses why the subcommittee made the most substantive changes to section (h) of Rule 21. According to Will, the language in the proposed section is broader than the language in the Terry case. Will states that the broader language is to reach beyond “compound verdicts”. Doug also adds that the principal in *Terry* is the same in the rule. However, there are several ways an impossible verdicts could arise.

Ryan Peters asks why would the judge consider jury instructions? Doug states that the elements of the crime are defined in the jury instructions and the jury is instructed to base their verdict on the language used in the jury instructions.

Ryan Stack asks if the ruling can be appealed? Doug says that an inconsistent verdict ruling is technically a verdict, but it could be subject to appeal because it is a motion from the court. Doug adds that the Supreme Court has not made a ruling on this matter. Discussion ensues. Ryan

suggests that it might be better to put this proposed language in Rule 23, with the motion to arrest judgment. Doug suggests the subcommittee discuss this matter further at the next subcommittee meeting. No objection. The committee holds the voting on Rule 21 for additional discussions.

Rule 18 – Voir Dire

David states that the new voir dire proposal is on hold. David suggests we have a joint committee with the Civil Rules of Procedure Committee. However, the Civil Rules of Procedure Committee is still in the process of forming a committee. Doug suggests placing this matter on hold until there is further movement from the Civil Rules of Procedure Committee. No objection.

Rule 14(b) and Evidence Rule 506

The Evidence Rules Committee met in October. The committee sent the proposed language to the Supreme Court in August. The Court sent notes back to the subcommittee. The Evidence Rules Committee decided to hold on the Rule 506 changes until after the Appellate Rules Committee makes additional decisions related to how the sealed records are handled on appeal. Doug suggests the Criminal Rules of Procedure Committee should hold any changes to Rule 14(b) until there is further movement on Rule 506. No objection.

Green-phase Taskforce and Rule 17.5

Bryson states that the Judicial Council has decided to give the trial level courts discretion to determine whether hearings will continue in person or virtual. Bryson states that the Judicial Council will provide a suggested template for Rule 17.5.

Rule 8

The Committee sent Rule 8 out for public comment. We received one comment from Judge Laycock. Doug proposes that Judge Laycock attends the next subcommittee meeting to address her concerns about the language regarding legal defenses. Judge Porter understands Judge Laycock concerns, but she reads the language differently. Judge Porter believes that the rule is clear regarding the instruction. Doug suggests the Rule 8 subcommittee meet on a later date to discuss this matter further. No objection.

Rule 12.5

The Committee sent Rule 12.5 for public comment. We received one public comment. It was a positive comment. Doug proposes we submit a memo to the Court stating that we received one positive comment. No objection.

Rule 42

The Committee sent Rule 42 for public comment. We received three comments from two commenters. The first commenter submitted two comments – the second comment essentially corrected their misunderstanding in the first comment. The second commenter expressed concern that the BCI does not receive the final letters of expungement. Doug does not see how we can

change the rule to specifically address the commenters concerns. Doug proposes we send a memo to the court describing the comments we received. No objections.

Update on from the Probation Consolidation Subcommittee

Ryan Peters is the head of this committee. Ryan logged off at 12:55. We will discuss this matter at the next meeting.

Rule 2 – Juneteenth and Computing Court Time

The State of Utah does not recognize Juneteenth the same way as the Federal Government. The Federal Government celebrates Juneteenth on June 19. Utah celebrates Juneteenth the preceding Monday if the holiday falls on a Tuesday through Sunday. The new proposal provides two options. One is to add a website link in Rule 2 with a list of the “legal holidays.” The alternative would include listing Juneteenth within the rule with a caption that states “date as statutorily recognized to celebrate Juneteenth.” We do not have a full committee to vote on any amendments on the rule today. Amber and Doug discuss concerns about website accessibility and ability to update the website. Will Carlson states that either using the same language the statute does or just referencing the "date statutorily recognized to celebrate Juneteenth" would work. Doug agrees.

David Ferguson makes the motion to adopt changes to Rule 2. The redline for Rule 2 will be submitted via email.