

Utah Supreme Court Rules of Criminal Procedure Committee

Meeting Agenda

Doug Thompspon, Chair

Location: WebEx Meeting: <https://utcourts.webex.com/meet/brysonk>

Date: November 15, 2022

Time: 12:00 p.m. – 2:00 p.m. MST

Action: Welcome and approve June 14 th , 2022 Minutes and September 20 th , 2022 Minutes	Tab 1	Doug Thompson
Discussion: Responses from Future Meetings Poll	Tab 2	Doug Thompson
Discussion: Rule 21 – Inconsistent Verdicts	Tab 3	William Carlson
Discussion: Rule 18 – Report on Joint Sub-committee		David Ferguson
Discussion: Rule 14 – Appeals from 14(b) – Update on Evidence Committee’s Work on Rule 506	Tab 4	Doug Thompson
Discussion: Review of Rule 8 Public Comments	Tab 5	Doug Thompson
Discussion: Review of Rule 12.5 Public Comments	Tab 6	Doug Thompson
Discussion: Review of Rule 42 Public Comments	Tab 7	Doug Thompson
Discussion: Update from Probation Consolidation Sub-committee		Ryan Peters
Discussion: Rule 2 – Time	Tab 8	Doug Thompson
Discussion: Upcoming Rules	N/A	N/A

Meeting Schedule:

TBD

Rule Status:

Rule 8 – Published for Public Comments – Ready for Committee Review

Rule 12.5 – Adopted and Published for Public Comments – Ready for Committee Review

Rule 16 – Published for Public Comments – Comment Period Closes November 27, 2022

Rule 42 – Adopted and Published for Public Comment – Ready for Committee Review

Tab 1

**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.

URCrP Committee Meeting

Sept. 20th, 2022

Present	Not Present
Douglas Thompson	William Carlson
Bryson King	Judge Porter
Meredith Mannebach	Judge Kelly – Schaefer
Atty Craig Johnson	Ryan Peters
David Ferguson	Ryan Stack
Janet Reese	
Judge Hruby-Mills	
Lori Seppi	
Amber Stargell	

Welcome from Doug Thompson. A quorum is not present to approve minutes.

Future Meetings

Discussion ensues about conducting meetings in-person, Webex or hybrid of both. There is a proposal to move meetings to the 3rd Wednesday of the month. Doug states that Matheson courthouse is available for in-person meetings. Doug and Bryson will create a doodle pole to determine availabilities and meeting preferences.

Rule 18 – Attorney-conducted Voir Dire

David initiates Rule 18 discussion. Utah does not offer attorney-conducted voir dire. David's rule proposal would put Utah in a hybrid category for attorney-conducted voir dire – meaning there would be an option for judge and attorney conducted voir dire.

David provides two concerns about the proposed attorney-conduct voir dire: (1) How much time it adds to the process and (2) control. Research show that attorney conducted voir dire has a substantial effect on the fairness of the outcome of the case. Omission of biases are more likely to happen with attorney-conducted voir dire. The Civil Rules of Procedure Committee is considering a similar rule. Attorney-Conduct voir dire must be requested.

David proposes a joint sub-committee for further discussion. Doug agrees with this proposal. Judge Hruby-Mills offered to be a member of the sub-committee. Lori Seppi is interested joining in the sub-committee.

Rule 14 – Appeals from 14(b)

Doug discusses Rule 14(b) and a party's request for medical records of a complaining witness. The rules of evidence committee seeking to restructure Rule 506 in relation to this issue. The committee is provided with Rule 506 proposal. Doug advocates that parties' should have access to the records. The question is how the appellate courts would review the challenge of the district court's in-camera review. David states that the Civil Rules of Procedure has an "attorney-eyes only" in-camera review regarding similar matters, but there is no such option in criminal rules. Discussion ensues about the concerns of victim disclosures in criminal cases.

Update on Rule 21 - Inconsistent verdicts update

Will Carlson was not in attendance to give an update. Update on this matter will be discussed at a later date. Doug states no proposal is ready to date.

Meeting is adjourned.

Tab 2

URCrP Meeting Preferences

Hello everyone! Please take 2 minutes to answer the questions below about meeting preferences. This information will be used to determine how, moving forward, the Committee should hold its meetings to best accommodate Committee members and guests. Thank you in advance for your time and all you do for the Committee.

How should Committee meetings be held? *

- ☐ Always virtual
- ☐ Always in person
- ☐ Always in person with an option to attend virtually
- ☒ Sometimes in person and sometimes virtual

If you selected "Sometimes in person and sometimes virtual," how often should the Committee meet in person? *

Every third or fourth meeting (2-3 times a year)

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If you selected "Sometimes in person and sometimes virtual," how often should the Committee meet in person? *

2 times a year in person--when the weather is good for travel

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If you selected "Sometimes in person and sometimes virtual," how often should the Committee meet in person? *

My preference would actually be in person if there is a significant agenda item (which there often is but not always), with an option for virtual attendance. Sometimes there are issues that I've got a lot of input on, and others where I have little to-no-input on, and it would be nice to be virtual if I see the agenda and don't think that I'll have a lot to say. So a kind of hybrid between option 3 and 4 seems ideal.

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If you selected "Sometimes in person and sometimes virtual," how often should the Committee meet in person? *

N/A

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Always

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If you selected "Sometimes in person and sometimes virtual," how often should the Committee meet in person? *

I think we should conduct at least every other meeting in person.

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NA

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- ☐ Always virtual
- ☐ Always in person
- ☐ Always in person with an option to attend virtually
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If you selected "Sometimes in person and sometimes virtual," how often should the Committee meet in person? *

a couple times a year

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If you selected "Sometimes in person and sometimes virtual," how often should the Committee meet in person? *

I do think it is beneficial to meet in person, but I also can see the benefit of virtual meetings. Maybe every other meeting is in person, or just two times a year, with the rest virtual. We meet 6 times per year?

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N/A

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If you selected "Sometimes in person and sometimes virtual," how often should the Committee meet in person? *

Very infrequently and only if necessary

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Tab 3

1 (a)(1) Verdict options.

2 ~~(1) For crimes committed on or after May 6, 2002, t~~The verdict of the jury shall be
3 either "guilty" or "not guilty," "not guilty by reason of insanity," "guilty and
4 mentally ill at the time of the offense," or "not guilty of the crime charged but
5 guilty of a lesser included offense," or "not guilty of the crime charged but guilty
6 of a lesser included offense and mentally ill at the time of the offense," provided
7 that when the defense of mental illness has been asserted and the defendant is
8 acquitted on the ground that the defendant was insane at the time of the
9 commission of the offense charged, the verdict shall be "not guilty by reason of
10 insanity."

11 ~~(a)~~(2) For crimes committed before May 6, 2002, the defendant may also elect to
12 proceed under subsection (a)(1) or under (a)(3).

13 ~~(a)~~(3) For crimes committed before May 6, 2002, unless the defendant elects to
14 proceed under subsection (a)(1), the verdict of the jury shall be either "guilty," "not
15 guilty," "not guilty by reason of insanity," "guilty and mentally ill," "not guilty of
16 the crime charged but guilty of a lesser included offense," or "not guilty of the
17 crime charged but guilty of a lesser included offense and mentally ill" provided
18 that when the defense of mental illness has been asserted and the defendant is
19 acquitted on the ground that the defendant was insane at the time of the
20 commission of the offense charged, the verdict shall be "not guilty by reason of
21 insanity."

(b) **Unanimity.** The verdict shall be unanimous. It shall be returned by the jury to the judge in open court and in the presence of the defendant and counsel. If the defendant is voluntarily absent, the verdict may be received in the defendant's absence.

(c) **Multiple defendants.** If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to any defendant as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(d) **Multiple offenses.** When the defendant may be convicted of more than one offense charged, each offense of which the defendant is convicted shall be stated separately in the verdict.

(e) **Offenses included in charged offense.** The jury may return a verdict of guilty to the offense charged or to any offense necessarily included in the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

(f) **Polling the jury.** When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or may be polled at the court's own instance. If, upon the poll, there is no unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged. If the verdict is unanimous, it shall be recorded.

(g) ~~Acquittal.~~ Custody. If judgment of acquittal is given on a verdict or the case is dismissed and the defendant is not detained for any other legal cause, the defendant shall be discharged as soon as the judgment is given. If a verdict of guilty is returned, the court

may order the defendant to be taken into custody to await judgment on the verdict or may permit the defendant to remain on bail.

(h) Inconsistent verdicts. The court must, upon its own motion or upon the motion of any party, enter an acquittal for a legally impossible guilty verdict.

(1) Legally impossible verdicts include conviction for a compound offense and acquittal for a predicate offense. A compound offense is an offense composed of one or more separate offenses. A predicate offense is a crime that is composed of some, but not all, of the elements of the compound offense and that is necessarily committed in carrying out the compound offense. After considering the elements of the crimes, the jury verdicts, and the jury instructions, if the court finds that the conviction for the compound offense is impossible in the face of an acquittal for a predicate offense the verdict is impossible and must be vacated.

Tab 4

1 (b) Subpoenas for the production of records of victim.

2 (1) No subpoena or court order compelling the production of medical, mental health,
3 school, or other privileged records pertaining to a victim shall be issued by or at the
4 request of any party unless the court finds after a hearing, upon notice as provided below,
5 that the ~~records are material and the~~ party is entitled to production of the records sought
6 under applicable rules of privilege, and state and federal law.

7 (2) The request for the subpoena or court order shall identify the records sought with
8 particularity and be reasonably limited as to subject matter.

9 (3) The request for the subpoena or court order shall be filed with the court as soon as
10 practicable, but no later than 28 days before trial, or by such other time as permitted by
11 the court. The request and notice of any hearing shall be served on counsel for the victim
12 or victim's representative and on the opposing party. Service on an unrepresented victim
13 must be facilitated through the prosecutor. The prosecutor must make reasonable efforts
14 to provide a copy of the request for the subpoena to the victim or victim's representative
15 within 14 days of receiving it.

16 (4) If the court makes the required findings under subsection (b)(1), it must issue a
17 subpoena or order requiring the production of the records to the court. The court will then
18 conduct an in camera review of the records and disclose to the defense and prosecution
19 only those portions that the requesting party has demonstrated a right to inspect. Any
20 portions not disclosed must be retained by the court and placed under seal in the court
21 record. If a party appeals, the sealed records must be provided to the appellate court
22 which will control access to the records pursuant to the Code of Judicial Administration.

23 (5) Any party issuing a subpoena for non-privileged records, papers or other objects
24 pertaining to a victim must serve a copy of the subpoena upon the victim or victim's
25 representative. Service on an unrepresented victim must be facilitated through the
26 prosecutor. The prosecutor must make reasonable efforts to provide a copy of the
27 subpoena to the victim within 14 days of receiving it. The subpoena may not require
28 compliance in less than 14 days after service on the prosecutor or victim's representative.

29 (b)(6) The court may, in its discretion or upon motion of either party or the victim or the
30 victim's representative, issue any reasonable order to protect the privacy of the victim or
31 to limit dissemination of disclosed records.

32 (b)(7) For purposes of this rule, "victim" and "victim's representative" are used as defined
33 in Utah Code § 77-38-2.

34 (b)(8) Nothing in this rule alters or supersedes other rules, privileges, statutes or caselaw
35 pertaining to the release or admissibility of an individual's medical, psychological, school
36 or other records.

Commented [DT1]: This is in preparation for the Evidence Committee's proposed change to Rule 506. <https://www.utcourts.gov/utc/rules-evidence/wp-content/uploads/sites/43/2022/06/6-14-2022-Meeting-Agenda-and-Materials.pdf>

The current proposal includes a lot of "procedure" and the burden of proof. Rather than repeat all of it here, I think the existing reference to "applicable rules of privilege" etc. still works best.

Commented [DT2]: The first sentence might be obvious but there have been several instances where the undisclosed records were returned to the victim or medical provider, or where the trial court kept them but did not enter them into the record.

The second sentence is my attempt not to step on the appellate courts' toes. They have not decided what this looks like yet (it is pending before the Supreme Court right now).

Tab 5

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on “Continue Reading.” To submit a comment, scroll down to the “Leave a Reply” section, and type your comment in the “Comment” field. Type your name and email address in the designated fields and click “Post Comment.”

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

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Posted: July 14, 2022

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Rules of Criminal Procedure – Comment Period Closed August 28, 2022

URCrP008. Appointment of counsel. (AMEND). The language of this rule has been amended to clarify when the right to counsel applies to defendants charged with a criminal offense. The rule also includes a new subsection to explain the right to self-representation and how a defendant may waive the right to counsel. The colloquy courts should engage with defendants seeking to waive the right is provided in this addition. Finally, the rule clarifies the prerequisite qualifications for attorneys appointed to represent defendants charged in capital cases.

This entry was posted in [-Rules of Criminal Procedure, URCrP008.](#)

« [Code of Judicial Administration – Comment Period Closed September 2, 2022](#)

[Rules of Criminal Procedure – Comment Period Closed August 28, 2022](#) »

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- [-Alternate Dispute Resolution](#)
- [-Code of Judicial Administration](#)
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- [-Fourth District Court Local Rules](#)
- [-Licensed Paralegal Practitioners Rules of Professional Conduct](#)
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UTAH COURTS

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One thought on “Rules of Criminal Procedure – Comment Period Closed August 28, 2022”

Claudia Laycock
July 14, 2022 at 5:30 pm

(b)(1)(A) “Prior to accepting a waiver of the right to counsel, the court will engage in a colloquy with the defendant to ensure that such waiver is knowing, intelligent, and voluntary. The colloquy must inform the defendant of the dangers, disadvantages, and consequences of self-representation, including the applicability of legal defenses which may be available.”

The last phrase of this subsection is of great concern. What does “including the applicability of legal defenses which may be available” mean? Won’t this require the court to give legal advice about possible defenses to a defendant? How would a judge have enough knowledge about a case to give such advice to a defendant, anyway, unless a preliminary hearing had already occurred? Even then, that takes us back to my question about legal advice. How can the court warn the defendant about the risks of self-representation—including the fact that the court cannot help the defendant with his/her case—and then immediately offer advice regarding the applicability of legal defenses which may be available? This phrase is a call for legal advice from the bench.

- [-Rules of Appellate Procedure](#)
- [-Rules of Civil Procedure](#)
- [-Rules of Criminal Procedure](#)
- [-Rules of Evidence](#)
- [-Rules of Juvenile Procedure](#)
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- [Appendix B](#)
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Tab 6

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Posted: July 20, 2022

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Rules of Criminal Procedure – Comment Period Closed September 3, 2022

URCrP012.5. Notice of transfer Domestic Violence case from Justice Court to District Court: (NEW). On July 1, 2022, H.B. 196 went into effect, modifying Section 78A-7-106 of the Utah Code. The statute now includes a provision whereby a domestic violence case set for trial in a justice court may be transferred to a district court after the prosecuting attorney or defendant files a notice of transfer. Rule 12.5 proposes procedure justice courts and district courts should follow to effectuate this transfer.

Pursuant to U.C.J.A. Rule 11-105, the Utah Supreme Court has approved new Rule 12.5 of the Utah Rules of Criminal Procedure for expedited adoption and a 45-day comment period.

This entry was posted in [-Rules of Criminal Procedure, URCrP012.5.](#)

« [Code of Judicial Administration – Comment](#)

[Code of Judicial Administration – Comment](#)

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

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[Period Closed October 7, 2022](#)

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UTAH COURTS

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One thought on “Rules of Criminal Procedure – Comment Period Closed September 3, 2022”

Brent Blanchard
July 21, 2022 at 4:30 pm

The Rule puts the statute into effect. Looks clear enough. No objection.

- [-Rules of Appellate Procedure](#)
- [-Rules of Civil Procedure](#)
- [-Rules of Criminal Procedure](#)
- [-Rules of Evidence](#)
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Tab 7

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

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Posted: July 14, 2022

Utah Courts

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Rules of Criminal Procedure – Comment Period Closed August 28, 2022

URCrP042. Expungement. (NEW). Pursuant to U.C.J.A. Rule 11-105, the Utah Supreme Court has approved Rule 42 of the Utah Rules of Criminal Procedure for expedited adoption and another round of public comment. This version of the Rule includes technical and substantive corrections to match procedures for automatic expungement provided by Utah Code Ann. 77-40a-201. The Rule further contemplates protocol that the Administrative Office of the Courts will follow to create lists of expungement-eligible cases and identify and remove from those lists cases that do not meet eligibility criteria or are objected to by victims or prosecutors.

This entry was posted in [-Rules of Criminal Procedure, URCrP042.](#)

« [Rules of Criminal Procedure – Comment Period Closed August 28, 2022](#)

[Rules of Appellate Procedure – Comment Period Closed August 28, 2022](#) »

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

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- [-Alternate Dispute Resolution](#)
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- [-Fourth District Court Local Rules](#)
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UTAH COURTS

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3 thoughts on “Rules of Criminal Procedure – Comment Period Closed August 28, 2022”

Dain Smoland
July 14, 2022 at 11:52 am

It’s potentially problematic that the procedure for automatic expungements under (b)(4)(B) requires the AOC to provide the expungement order to the BCI, but the regular petition procedure simply directs the Court to provide the petitioner certified copies upon request under (c)(8) (presumably leaving it up to the petitioner to get a copy to the BCI).

The relevant statute implies (but does not say explicitly) that the Court shall provide the BCI a copy of the expungement order in all cases. See Utah Code 77-40a-401(1)(a) (“the bureau, upon receiving notice from the Court, shall notify all criminal justice agencies...”). In our experience with the law so far, it seems that most Courts do interpret the law as requiring them to notify the BCI, and they do so by emailing a copy of the order, which seems to work fine. Further, my office has corresponded with the BCI, and this seems to be their understanding as well. But there are some Courts that maintain that it’s the petitioner’s responsibility to get the certified orders to the BCI.

It seems cleaner and easier if the Courts provide direct notice to the BCI in all cases, upon issuing the order.

Dain Smoland
July 15, 2022 at 11:06 am

Replying to myself because I misread section (c)(8), or rather didn’t see the second half of it. The redline additions to the rule do clearly direct the Court to notify the BCI of the order on regular petition-based expungements as well. This addresses the statutory ambiguity I was referencing.

- [-Rules of Appellate Procedure](#)
- [-Rules of Civil Procedure](#)
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A smaller concern: as a practical matter, courts differ significantly on how many orders are provided to the petitioner automatically (if any) and whether they are included with the filing fee, and how long the petitioner (or counsel) has to request extra copies before a motion to unseal is required. Having this in the rule would help standardize that part of it.

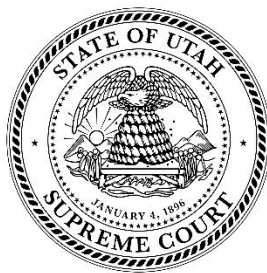
Mike Taylor

August 9, 2022 at 3:15 pm

There is an issue with the courts not giving copies of the “order to expunge” to the petitioner being followed by not receiving the “final letter” of expungement from BCI. When the applicant contacts BCI to inform BCI they never received the final letter of expungement, BCI states they can no longer print the final letter and send it once it’s been expunged. They are told they have to get a court order to unseal the case to issue the final letter of expungement and reseal the case. This is going to be very problematic for the petitioner who was granted expungement of a case. This goes along with Mr. Smoland’s comment when it comes to informing agencies on that case. If the courts don’t, or it falls between the cracks with BCI, it will ultimately hurt the petitioner by having to pay fees when they shouldn’t have to.

- CJA03-0111.02
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Tab 8



**Utah Supreme Court's
Advisory Committees on the Rules of Civil, Criminal,
Appellate, and Juvenile Procedure**

Lauren DiFrancesco, Chair, Civil Rules
Douglas Thompson, Chair, Appellate Rules
Christopher D. Ballard, Chair, Appellate Rules
David W. Fureigh, Chair, Juvenile Rules

November ??, 2022

Chief Justice Matthew B. Durrant
Utah Supreme Court
450 South State Street
Salt Lake City, UT 84114-0210

Re: Juneteenth holiday

Dear Chief Justice Durrant:

The recent recognition of Juneteenth as an official state and federal holiday requires the Court to review and amend its computation-of-time rules because there is a discrepancy between the federal and state observances of the holiday. The federal government observes the holiday on June 19th. *See* 5 U.S.C.A. § 6103(a). Utah has chosen to observe the holiday always on a Monday (either the second or third Monday in June). *See* Utah Code §§ 63G-1-301(1)(a)(vi), (1)(f). The federal and state observances coincided this year, and will again in 2023, but will diverge in 2024 and subsequent years.

In Utah, the holiday is observed on June 19, if that day is a Monday. *See id.* §63G-1-301(1)(f)(i). If June 19 is a Tuesday, Wednesday, Thursday, or Friday, the holiday is observed “on the immediately preceding Monday.” *Id.* § 63G-1-

301(1)(f)(ii). If June 19 is a Saturday or Sunday, the holiday is observed “on the immediately following Monday.” *Id.* § 63G-1-301(1)(f)(iii).

The discrepancy between the federal and state observances of the holiday has created inconsistencies in the Court’s computation-of-time rules: Civil Rule 6; Criminal Rule 2; Appellate Rule 22; and Juvenile Rule 4. No rule explicitly recognizes the Juneteenth holiday. And the appellate rules define “legal holiday” differently than the civil and criminal rules.

Both the civil and criminal rules currently define “Legal holiday” by listing the traditional holidays (but without Juneteenth) and including “any day designated *by the Governor or Legislature* as a state holiday.” Utah R. Civ. P. 6(a)(6) (emphasis added); Utah R. Crim. P. 2(a)(6) (emphasis added). In contrast, the appellate rules define “legal holiday” as “days designated as holidays *by the state or federal governments,*” without a list of specific holidays. Utah R. App. P. 22(a) (emphasis added). The juvenile rules do not define “legal holiday.” Utah R. Juv. P. 4.

Having considered this issue, the chairs of these various rules committees propose that (1) the Court adopt a uniform definition of “legal holiday” for use throughout its rules; and (2) that definition include Juneteenth as recognized by Utah statute.

The Appellate Rules Committee proposes the following language:

“Legal holiday” is any holiday that is recognized and observed by the State of Utah, as specified here: <https://www.utcourts.gov/lawlibrary/holidays.html>.

The Appellate Rules Committee debated whether it would be best to include a list of legal holidays, rather than providing only a link to the Court’s online list of holidays. The Committee settled on providing only a link to the Court’s list because that would allow the Court to modify the name or observance of any holiday should it become necessary to do so without requiring a rule amendment.

Of course, the definition could provide both the website link and a list of holidays, or merely the list of holidays in the civil and criminal rules, with the addition of Juneteenth:

“Legal holiday” means the day for observing:

- (A) New Year’s Day;
- (B) Dr. Martin Luther King, Jr. Day;
- (C) Washington and Lincoln Day;
- (D) Memorial Day;
- (E) Juneteenth National Freedom Day as recognized and observed in Utah;
- (F) Independence Day;
- (G) Pioneer Day;
- (H) Labor Day;
- (I) Columbus Day;
- (J) Veterans’ Day;
- (K) Thanksgiving Day;
- (L) Christmas; and
- (M) any day designated by the Governor or Legislature as a state holiday.

Some members of the Civil Rules Committee felt that the actual day of June 19th may be significant to some, and therefore those individuals would likely prefer not to have to meet a court deadline that falls on that day. But recognizing two different observances of the holiday would likely create confusion and potentially open the door to issues about whether the Court should recognize additional holidays that have personal significance to some, like Jewish holidays.

We look forward to discussing this issue with the Court at its earliest convenience.

Rule 2. Time.

(a) **Computing time.** The following rules apply in computing any time period specified in these rules, any local rule or court order, or in any statute that does not specify a method of computing time.

~~(a)~~(1) When the period is stated in days or a longer unit of time:

~~(a)~~(1)(A) exclude the day of the event that triggers the period;

~~(a)~~(1)(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

~~(a)~~(1)(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

~~(a)~~(2) When the period is stated in hours:

~~(a)~~(2)(A) begin counting immediately on the occurrence of the event that triggers the period; and

~~(a)~~(2)(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays.

~~(a)~~(3) Unless the court orders otherwise, if the clerk's office is inaccessible:

~~(a)~~(3)(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday; or

~~(a)~~(3)(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

~~(a)~~(4) Unless a different time is set by a statute or court order, filing on the last day means:

~~(a)~~(4)(A) for electronic filing, at midnight; and

~~(a)~~(4)(B) for filing by other means, the filing must be made before the clerk's office is scheduled to close.

~~(a)~~(5) The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

~~(a)~~(6) “Legal holiday” ~~means the day for observing;~~ is any day designated by the State of Utah in statute as a legal holiday, including those found at <https://www.utcourts.gov/lawlibrary/holidays.html>

~~(a)(6)(A) New Year’s Day;~~

~~(a)(6)(B) Dr. Martin Luther King, Jr. Day;~~

~~(a)(6)(C) Washington and Lincoln Day;~~

~~(a)(6)(D) Memorial Day;~~

~~(a)(6)(E) Independence Day;~~

~~(a)(6)(F) Pioneer Day;~~

~~(a)(6)(G) Labor Day;~~

~~(a)(6)(H) Columbus Day;~~

~~(a)(6)(I) Veterans’ Day;~~

~~(a)(6)(J) Thanksgiving Day;~~

~~(a)(6)(K) Christmas; and~~

~~(a)(6)(L) and any designated by the Governor or Legislature as a state holiday.~~

(b) Extending time.

~~(b)~~(1) When an act may or must be done within a specified time, the court may, for good cause, extend the time:

~~(b)(1)~~(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

~~(b)(1)~~(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

55 ~~(b)~~(2) A court must not extend the time for taking any action under the
56 rules applying to a judgment of acquittal, new trial, arrest of judgment and
57 appeal, unless otherwise provided in these rules.

58 (c) **Additional time after service by mail.** When a party may or must act within a
59 specified time after service and service is made by mail, three days are added after
60 the period would otherwise expire under paragraph (a).