

<b>Present</b>	<b>Not Present</b>
Douglas Thompson	Matthew Tokson
Bryson King	William Carlson
Judge Schaeffer-Bullock	Judge Hruby-Mills
Judge Denise Porter	David Ferguson
Craig Johnson	Amber Stargell
Janet Reese	
Meredith Mannebach	
Lori Seppi	
Ryan Peters	
Ryan Stack	

Action: Welcome and approval of November 15th, 2022 minutes. The Committee votes unanimously to approve the minutes.

### **Rule 8 – Self-representation and capital appointments**

Doug leads a discussion on Rule 8 and addresses Judge Laycock’s comment concerning the nature of the colloquy for a pro se litigant. Based on that comment, Doug incorporated a change to subsection (b)(1)(B)(iii) and discussed those changes with the Committee. Doug also informed the Committee that he made attempts to contact Judge Laycock to discuss her comment and his recommended changes, and she did reply through email generally approving of the proposed language, but they did not meet to discuss it in detail. Judge Porter moved to accept the changes to Rule 8, Ryan Stack seconded the motion, and the Committee voted unanimously to approve the amendments.

### **Rule 2 – Computing time for holidays**

Doug next addresses Rule 2 which, in conjunction with the Civil Rules and Rules of Appellate Procedure, is being amended as a joint recommendation to incorporate Juneteenth as a state holiday in how time is computed under the rules. Doug asks Bryson King what the status of the rule is before the Court, and he responds that he will follow up with the Court to confirm whether they’ve approved the amendment.

### **Legislative Rapid Response Subcommittee**

Doug discusses the rapid response subcommittee’s formation and purpose during the legislative session and addresses the legislature’s bills affecting Rules 7B, 14 and 16. He then explains that members of the Committee may be needed to respond to the legislature’s bills this session. Bryson King addresses the Committee to discuss how and when the rapid response sub-

committee will be activated and explains that he will work with Michael Drechsel to decide when the rapid response committee will be involved. Doug Thompson then asks if any committee members would be interested in assisting with the rapid response subcommittee, and suggests that David Ferguson (who is absent) would likely be interested in being involved as well. Lori Seppi volunteers. Doug offers to send out the bills proposing amendments to the Rules of Criminal Procedure. Judge Porter addresses some limitations the judges on the Committee may have regarding contributing to the rapid response subcommittee, but volunteers to participate within the limitations set.

### **Rule 16 – Format of audio-visual evidence provided to defense counsel from prosecutors**

Doug then addresses a request from Joshua Esplin regarding a proposed amendment to Rule 16. The request is to require that discovery packages sent to defense counsel include audio-visual evidence in a uniform format to avoid defense attorneys being required to download various software to view/hear evidence. Craig Johnson offers his thoughts that as both a former prosecutor and now defense attorney how difficult it is to view/hear evidence when law enforcement controls the kind of software they use to record this evidence and distribute it to prosecuting offices. Craig offers support for efforts to bring uniformity into the types of software being used to disseminate this evidence to prosecutors and defense counsel. Judge Schaeffer-Bullock discusses the limitations imposed on prosecutors if the Committee amends the rule, but the prosecutors don't have control over law enforcement agency action regarding software use. She explains this may create a violation of the rule when prosecutors are not actually responsible for the violation because they can't choose what law enforcement agencies choose to use for audio-visual evidence recording, storage, and dissemination. She also discusses funding a state, county, and municipal levels that influences what options are available to law enforcement agencies and prosecuting offices on software choice. Craig Johnson agrees with Judge Schaeffer-Bullock that the legislature should resolve the problem, not the Committee. Judge Porter agrees and adds that if the statewide association of prosecutors (SWAP) is discussing the same issue, they may be involved in other associations or councils to come up with a collective solution. Ryan Stack adds his agreement to the comments and discussion. He offers that standardizing this process involves security issues, from both public and private entities, beyond the control of the Committee. Doug asks the Committee to recommend suggestions for responding to Josh Esplin's request. Ryan Stack believes the request is outside of the Committee's ability, and Craig Johnson believes the Committee should reach out to SWAP, the league of cities and towns, and UACDL to request feedback from these organizations about how to address the concerns. Judge Porter asks if the Committee could request feedback from the Supreme Court. Doug explains the rule may require that we forward the request to the Supreme Court, even if the Committee does not take action. Doug suggests we will request feedback from other organizations first and then take the recommendations to the Supreme Court.

### **Report from Probation Consolidation Subcommittee**

Ryan Peters reports on the progress from the subcommittee. The subcommittee expressed some concerns about adding more workload to certain counties and judicial districts, like the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> districts. As a potential alternative to moving cases to another county, the subcommittee is also considering efforts determine how to identify “higher priority” cases so that whatever court presides over that case hears the probation OSC first before other courts with cases involving that defendant. The subcommittee wants to collect some data to determine the extent of the impact on their proposals and want to coordinate with Dan Blanchard to collect this information. The subcommittee will meet again in February to continue their work. In the interim, the subcommittee might involve the board of district court judges to get feedback about the development of the probation consolidation rule, given Judge Taylor authored a rule several years ago on this subject. Judge Porter clarifies that the board of district court judges, and the district court administrator, specifically wanted to hear from the subcommittee about this issue and asked for a representative to meet with them. Doug Thompson asks if the subcommittee will schedule another meeting after discussing with the board of judges and Ryan Peters states that he will organize that subcommittee meeting after the discussion with the board.

### **Rule 21 – Inconsistent Verdicts and Rights to Appeal**

Though Will Carlson is not available, Doug addresses Rule 21 and suggests the subcommittee should continue to discuss the appealability of a trial court’s ruling that a guilty verdict and a not guilty verdict were inconsistent or impossible. He offers that the discussion will continue at the next full Committee meeting after the subcommittee discusses this issue.

The meeting is adjourned.