



**Utah Supreme Court
Rules of Criminal Procedure Committee**

**Meeting Minutes
November 11, 2023**

| Committee members | Present | Excused | Guests/Staff Present |
|-------------------------------|----------------|----------------|--------------------------------|
| Douglas Thompson, Chair | X | | Bryson King, Staff |
| Judge Kelly Schaeffer-Bullock | X | | Amber Stargell, Rec. Secretary |
| Matthew Tokson | | X | |
| William Carlson | | X | |
| David Ferguson | | X | |
| Meredith Mannebach | X | | |
| [Vacant] | | X | |
| Judge Denise Porter | | X | |
| Janet Reese | X | | |
| Lori Sepi | X | | |
| Karin Fojtik | X | | |
| Judge Kristine Johnson | X | | |
| Adam Crayk | | X | |
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Item #1: Meeting Minutes 9/19/2023

Doug Thompson welcomes the Committee to the Meeting and introduces its newest member, Judge Kristine Johnson from the Third District Bench. Doug then addresses the meeting minutes. Lori Seppi requests a correction to the minutes. With that change, Karin Fojtik moved to approve the minutes and Lori Seppi seconds the motion. Without opposition, the motion carries and the minutes are approved.

Item #2: Rule 8 Discussion

Doug Thompson then addresses the proposed URCrP Rule 8. Doug reviews the suggested changes to the rule from public comments, specifically from Judge McCullough. Doug begins by addressing the suggestion to clarify when the right to counsel attaches. Then, Doug addresses a suggestion to simplify judges' colloquies when discussing the right to counsel with a criminal defendant. With that overview, Doug invites the Committee to discuss the suggestions. Several Committee members discuss the waiver of the right to counsel, and the subsequent colloquy, to clarify what governing laws should be included in the colloquy and the extent of the judge's responsibility to review those laws. Karin Fojtik asks whether a provision related to the appointment of standby counsel would be included in the Rule. Doug asks whether anybody in the Committee thinks the rule should include a provision related to standby counsel. Judge Johnson and Lori Seppi oppose the inclusion of that provision, and Lori offers to ask colleagues in her office (LDA) about their opinion on the subject. Judge Schaeffer-Bullock also addresses the issue of victims being questioned by their alleged perpetrators when counsel or standby counsel is not appointed, but agrees it may be an issue that exists outside the scope of Rule 8. The Committee also discusses scenarios where a defendant may revoke their waiver of counsel as a means to frustrate or delay judicial process. Doug and Lori propose language to address this possibility, while leaving discretion for judges to restrict this behavior. Doug reviews the remainder of the language in the Rule, which was pre-approved by the Committee. Karen Fojtik makes additional suggestions regarding qualification of appointment as counsel in certain cases where attendance of CLEs is a requirement. Doug suggests that the Committee highlight these provisions and ask the Supreme Court to weigh in on the language. Karen also addresses substantive issues related to those provision, such as whether counsel must have prior criminal experience to qualify for appointment, or specifically criminal defense experience. Judge Schaeffer-Bullock supports including the word "criminal" in the provision. After conclusion of the discussion, Karin Fojtik moves to approve the language in the Rule and submit it to the Supreme Court for consideration. Judge Schaeffer-Bullock seconds the motion. With no opposition, the motion passes and the language will be sent to the Supreme Court.

Item #2: Rule Updates

Doug reminds the Committee that Rules 17.5 and 18.5 are Rules David Ferguson agreed to work on and lead in subcommittee. The Committee will review those rules as they progress in subcommittee. He also addresses the probation consolidation subcommittee that was previously led by Ryan Peters who, after being confirmed as a juvenile court judge, has retired from the Committee. Doug explains that the subcommittee will need to be restarted and asks if anybody from the Committee would be interested in participating. Meredith Mannebach and Amber Stargell volunteer to participate. Meredith agrees to help lead the subcommittee.

Item #3: Bench Warrant Rule

Doug reviews a request that the Committee addresses a new Rule or an amendment to an existing Rule that requires a court to schedule a hearing or bring a defendant into court within a specified time after a defendant has been booked on an outstanding bench warrant. This may help avoid delays in cases where defendants must appear in another court but have not seen the judge who issued the bench warrant and remained detained for lengthy periods of time waiting to be seen. Doug drafted a proposal for the Committee to consider, which includes a provision that the court see a defendant within 7 days after being booked on a bench warrant. Judge Schaeffer-Bullock opposes that deadline and provides scenarios from the justice court that would make that deadline difficult to impose. Judge Johnson also provides her perspective from the district court. Amber Stargell discusses her concerns with the time limit. Judge Schaeffer-Bullock suggests that the court be required to set a hearing within a certain time rather than requiring that the defendant appear before the court within a certain time. Doug will continue to work on the Rule proposal and review it with the Committee.

Following the discussion, the meeting is adjourned. The Committee will meet again on January 16th, 2024 via Webex.