# Utah Supreme Court
# Rules of Criminal Procedure Committee

## Meeting Agenda

*Doug Thomspon, Chair*

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

Date: July 16th, 2024

Time: 12:00 p.m. – 2:00 p.m. MST

| | | |
|---|---|---|
| **Action**: Welcome and approve May 21st, 2024 Minutes | Tab 1 | Doug Thompson |
| **Discussion:** Review of Public Comments to Rule 9A | Tab 2 | Doug Thompson |

https://www.utcourts.gov/rules/urcrp.php

**Meeting Schedule for 2024:**
September 17th
November 19th

# Tab 1

# Utah Supreme Court
# Rules of Criminal Procedure Committee

## Meeting Minutes
May 21, 2024

| 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** | | |
| Judge Denise Porter | **X** | | |
| Janet Reese | **X** | | |
| Lori Seppi | **X** | | |
| Karin Fojtik | **X** | | |
| Judge Kristine Johnson | | **X** | |
| Adam Crayk | **X** | | |
| Matthew Hansen | **X** | | |
| Lindsey Wheeler | **X** | | |

**Agenda Item 1: Introduction and Approval of Minutes**

Doug welcomed the Committee members to the meeting and reviewed the meeting minutes from January 16th and March 19th. Karin moved to approve the meeting minutes. Lori Seppi requested

to fix the spelling of her last name in the January and March minutes. After changes were made, Karin moved to approve the meeting minutes and Adam Crayk seconded the motion. Seven approvals.

**Agenda Item 2: Updated Proposal to Rule 17(k)**

Lori addressed the background of Rule 17(k) and detailed the sub-committee's discussion regarding the rule's amendments. In general, the Committee decided that the amendments should refer specifically to exhibits that are "testimonial in nature." However, the committee agreed that the rule should not define what "testimonial in nature" means. Instead, the definition should be developed through case law. Lori then discussed the proposed amendments made to Rule 17(k). Lori and Doug opened discussion to the committee. Lindsey Wheeler had concerns that the new amendments could give rise to issues at the appellate level. She stated that "testimonial in nature" needs to have a definition. This led to a group discussion regarding why a definition for "testimonial in nature" is needed or consideration for more clarifying language.

Lori Seppi then described how the Committee determined not to define "testimonial in nature," because the courts have yet to define the term. She suggested that the Rule should return to the language that existed prior to *Wyatt*, leaving room for the courts to litigate the issue of what is and what is not "testimonial in nature." Matt Hansen suggested changes to the Rule's language that removes "testimonial in nature," and remove examples from the Rule of what may be testimonial in nature or what should not be given to the jury in the deliberations. This change would permit more discretion among the court and the parties for what does create prejudice or an unfair advantage. Doug Thompson indicated that he sees a distinction between the two parts of subsection (k). The first part, he argued, speaks to what will go back with the jury and what will not in the first place. The second party, he argued, speaks to what the jury may want or ask for and whether to provide those materials for deliberations. Matt agreed but reasserted his proposition to strike the second part. Doug and Matt continued discussing whether to make the proposed adjustments to the language of the Rule, including concerns about whether these adjustments give too much latitude to the court in determining what should go back to deliberations, and whether the existing case law gives the court enough guidance in making that determination. Adam Crayk explained that in some instances, physical exhibits like diagrams will be used by competing expert witnesses from both parties, and the existing guidance in the Rules needs to shed light on these situations. Karin Fojtik expressed her agreement with Lori to return back to the original language from before *Wyatt*.

Doug called the conversation to an end and invited members to the next sub-committee meeting if they would like to further discuss any changes to Rule 17(k).

**Agenda Item 3: HB209 and request to amend Rule 12.5**

Bryson and Doug presented proposed amendments to Rule 12.5 Will moved to approve the amendments. Adam seconded the motion. Seven total votes were in favor of the approved amendments.

**Agenda Item 4: Online Comments for Proposal of Rule 8**

Doug opened the discussion for online comments for the Proposal of Rule 8. The first comment from Dominique Kiahtipes suggested that (c)(1)(A) seemed overly broad and a little ambiguous. Dominique requested a list of what specific dangers and consequences the Court would like trail courts

to discuss with the defendants prior to waivers. Karin suggested that a list is not needed for the rule. No changes were made.

Doug then read the second comment submitted by George LaBonty stating, “Adding experience and training requirements for attorneys appointed on capital cases seems like a common sense move. When the stakes are so, we should make sure whoever is appointed isn’t biting off more than they can chew.” There were no additional comments or recommended changes by the committee.

Next, Doug read the third comment submitted by Sarah Carlquist. The committee discussed Sarah’s request for two stylistic suggestions. Sarah’s first suggestion is for clarification at lines 61 and 62. Karin suggested using the same language from Rule 8 (d)(4) and (e). Sarah’s second suggestion is to clarify the use of “at least” in lines 63-64. Janet Lawrence commented in agreement. At this time, no changes were made.

Doug read the final comment submitted by Christopher Bates from the Attorney General’s Office. Chris’ first suggestion requested clarification to Rule 8 (c)(1)(B)(ii). Chris suggested changing “that the case I subject to” to state “that all parties in the case, including the defendant, will be bound by” the rules of evidence and criminal procedure. Karin stated that case law allows the court to be flexible in these circumstances. She suggested that “subject to” is better than stating “bound by” because “subject to” allows flexibility. Will suggested adding “the rules of . . . apply to this case.” Matt favored the “bound by” language. Lindsey provided general support for Chris’ language change. Adam moved to adopt Will’s suggested amendment. Karin seconded the motion. Six total votes agreed.

Next, the group discussed Chris’ concerns about the following language: “As part of its colloquy, the court may inquire as to the defendant's literacy, educational background, and legal training. . . .” Chris suggested that the use of a permissive “may” suggest that the inquiry is optional. Chris also provides additional language suggestions to the colloquy. Will provided that the current language is not problematic to the case law because it does not stand alone. Doug opens the discussion for additional suggestions on the language. After a brief discussion, Doug suggested taking this issue back to the courts. The group then discussed Chris’ suggestions regarding stand-by counsel. The group agrees that Chris’ suggestions for stand-by counsel should be further addressed.

# Tab 2

(a)(1) For purposes of this rule an "arrest warrant" means a warrant issued by a judge or magistrate pursuant to Rule 6(c), or after a defendant's failure to appear at an initial appearance or arraignment after having been summoned.

(a)(2) An "arrest warrant" does not include a warrant issued for failing to appear for a subsequent court proceeding or for reasons other than those described in ~~subsection~~ paragraph (a)(1).

(b)(1) When a peace officer or other person arrests a defendant pursuant to an arrest warrant and the ~~arrested person~~ defendant cannot meet the release conditions required by the judge or magistrate issuing the arrest warrant~~,~~ the ~~person arrested~~ defendant must be presented to a judge or magistrate within 48 hours after arrest. The information provided to the judge or magistrate must include the case number, and the results of any validated pretrial risk assessment.

(b)(2) When a peace officer or other person arrests a defendant pursuant to a warrant issued for reasons other than those described in paragraph (a)(1), and the defendant cannot meet the release conditions required by the judge or magistrate issuing the warrant, the court will set a bench warrant hearing within seven days of the arrest date. If the defendant was arrested in the county where the warrant was issued, the court will hold the bench warrant hearing within 14 days of the arrest date. If the defendant was arrested outside the county where the warrant was issued, the court will hold the bench warrant hearing within 30 days of the arrest date.

(b)(~~2~~3) If the time periods in ~~this subsection~~ paragraph (b) expire on a weekend or legal holiday, the period expires at 5:00pm on the next business day.

(c) With the results of a pretrial risk assessment, and having considered the factors that caused the court to issue an arrest warrant in the first place, the judge or magistrate may modify the release conditions.

(d) Any defendant who remains in custody after the review process must be seen by the court issuing the arrest warrant no later than the third day after the arrest.

(e) If the ~~arrested person~~ defendant meets the release conditions required by the arrest warrant, the ~~person~~ defendant must be released and instructed to appear as required in the issuing court.

(f) Any posted security must be forwarded to the court issuing the arrest warrant.

# 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.





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

Posted: May 21, 2024

Utah Courts

## Rules of Criminal Procedure – Comment Period Closes July 5, 2024

**URCrP009A. Amend.** The Utah Supreme Court's Advisory Committee on the Rules of Criminal Procedure recently amended Rule 9A to include procedures related to defendants in custody on a bench warrant based on a failure to appear for a court proceeding. Once notified that a defendant has been arrested on a bench warrant, a court must set a bench hearing date following the defendant's arrest. The amended Rule provides the timeframe in which the court must first schedule the bench hearing and the timeframe in which the court must hold the bench hearing. The Rule is approved for a 45-day public comment period.

This entry was posted in **-Rules of Criminal Procedure**, **URCrP009A**.

« Supreme Court Rules of Professional Practice – Comment Period Closes July 12, 2024

Notice of Proposed Amendments to Utah Supreme Court's Advisory Committee Rules – Comment Period Closes July 5, 2024 »

UTAH COURTS

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4 thoughts on "Rules of Criminal Procedure – Comment Period Closes July 5, 2024"

Evan Guymon

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- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
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- CJA03-0109
- CJA03-0111

May 21, 2024 at 12:11 pm

Lines 17-18 should be their own paragraph or subsection with a description similar but opposite to lines 13-15 for clarity.

Reply

Thomas Anthony
May 21, 2024 at 3:52 pm

How soon after the arrest or the custody of a defendant "must" a court set the hearing?
As written this is vague.

Reply

Sean Brian
May 22, 2024 at 8:43 am

Bench warrants are different from arrest warrants. The issuing court should have the opportunity to determine whether and under what conditions a Defendant should be released because that judge has the context and history with that Defendant. When that kind of information is available, wading into the uncertainty of risk evaluations with a new judge seems ill-advised.

Reply

Jennifer Foresta
June 3, 2024 at 5:45 pm

To make someone wait up to 14 days (or even 30, if arrested in another county) before being seen by the court on a bench warrant seems extraordinarily excessive, particularly as district court warrants are usually non-bailable, clients often miss court inadvertently, and most of these RBW hearings are now happening by Webex anyway. There is no good reason why the time from arrest to hearing should not be the same as it is for other arrests. This should be amended to give the warrant-issuing Court 48 hours to set conditions on release, or require a hearing within 7 days of arrest to address the custody status on no-bail holds.

Reply

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