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.