

Utah Supreme Court Rules of Criminal Procedure Committee

Meeting Agenda

Doug Thompspon, Chair

Location: Webex Webinar:
<https://utcourts.webex.com/utcourts/j.php?MTID=m10b996d388b50c31667a457ac2072186>

Date: March 18th, 2025

Time: 12:00 p.m. – 2:00 p.m. MST

Action: Welcome and approve January 21 st , 2025 meeting minutes	Tab 1	Doug Thompson
Discussion: Rule 16 – Post-Willden Proposal	Tab 2	Matthew Hansen

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

Meeting Schedule for 2025:

May 20th

July 15th

September 16th

November 18th

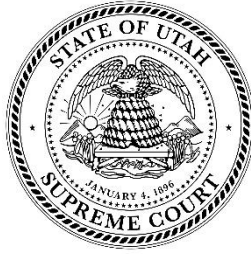
Postponed Rule Discussions:

Rule 8 (Update from subcommittee)

Rule 4 (Reviewing CORIS update)

Rule 3 (Use of AI)

Tab 1



Utah Supreme Court Rules of Criminal Procedure Committee

Meeting Minutes January 21, 2025

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		
Lindsey Wheeler	X		
Matthew Hansen	X		

Agenda Item 1: Introduction and Approval of Minutes

William Carlson stood in for Doug Thompson as acting chair and welcomed the Committee. Mr. Carlson asked for approval of the November 2024 minutes. Judge

Denise Porter moved to approve the minutes. Karin Fojtik seconded. The minutes were unanimously approved.

Agenda Item 2: Amendments to Rules 7 and 7A

Ms. Amy Hernandez reported on the amendments to Rules 7 and 7A. The Committee discussed the amendments. Ms. Karin Fojtik asked if the wording in subsections f(1) and f(2) should add "to who" wording to identify the receiver of the information. Mr. Will Carlson agreed that the Committee could clarify to say, "the court." Mr. Doug Thompson asked for approval to the amendments to Rule 7 and 7A. Ms. Lindsey Wheeler motioned to approve the proposed draft. Ms. Karin Fojtik seconded. The amendments were approved unanimously.

Agenda Item 3: Rule 4 Proposal

Mr. Will Carlson reported on Rule 4. The Committee discussed Rule 4. The Committee discussed the courts' IT system, and its effects on the prosecution's ability to comply with Rule 4. Ms. Meredith Mannebach volunteered to check with the court's IT. Mr. Will Carlson, Judge Denise Porter, Ms. Meredith Mannebach, and Mr. Bryson King will meet to discuss additional amendments to Rule 4.

Agenda Item 4: Rippey and Rule 11

Mr. Doug Thompson presented the discussion on the Supreme Court's decision in *State v. Rippey*. Mr. Thompson stated there were two proposals from Judge Corum and Mr. David Ferguson: 1. Do we need a rule? 2. Is there a need for modification?

The Committee discussed. Mr. Carlson believes that we should defer to the legislative branch to decide the boundaries. Ms. Fojtik asked what is the supreme court asking the committee to do? Mr. Thompson responded that the Court did not give any clarifying orders on what the Committee should do in light of the *Rippey* decision. Mr. Matt Hansen stated that changing the rule, specifically for a motion to withdraw a plea, could have long implications (i.e. the finality of a case, destruction of evidence). Mr. Hansen furthered in a chat comment:

"Respectfully, I think Rule 11(i) pleas should be rare. Judges know very little information before they have to decide whether to accept the pleas. Done correctly, Rule 11 (i) pleas often require a separate hearing to go over the case. It also removes the protections that come from the matrix. I

think we all agree that we need a rule. We should look at the federal rule and other jurisdictions to see how the rule works elsewhere."

Ms. Lori Seppi and Ms. Lindsey Wheeler volunteered to research Rule 11 in other states and jurisdictions. If any members have any additional research/information, please send to Mr. Doug Thompson through email. Doug asked that everyone set aside some time to research this issue further within the next 30 days. Doug requested another meeting in February to discuss Rule 11.

Agenda Item 5: Rule 16 Proposal

Mr. Matt Hansen reported the amendments to Rule 16. The committee discussed the amendments. Ms. Lori Seppi suggested the Committee organize a Rule 16 subcommittee. Ms. Seppi volunteered to be on the subcommittee.

Adjourn

The Committee adjourned at approximately 2:00pm. The Committee will meet again in February to continue its discussion on the *Rippey* matter. It's next regularly-scheduled meeting will be March 18th, 2025 at 12:00p.m.

Tab 2

Rule 16. Discovery

(a) Disclosures by Prosecutor.

(1) *Mandatory Disclosures.* Unless otherwise prohibited by law, ~~the~~ the prosecutor must disclose to the defendant the following material or information directly related to the case of which the prosecution team has knowledge and control:

(A) written or recorded statements of the defendant and any codefendants, and the substance of any unrecorded oral statements made by the defendant and any codefendants to law enforcement officials;

(B) reports and results of any physical or mental examination, of any identification procedure, and of any scientific test or experiment;

(C) physical and electronic evidence, including any warrants, warrant affidavits, books, papers, documents, photographs, and digital media recordings;

(D) written or recorded statements of witnesses;

(i) non-exculpatory written or recorded statements between a prosecutor and a state witness in preparation for trial are excluded.

(E) reports prepared by law enforcement officials and any notes that are not incorporated into such a report; and

(F) evidence that must be disclosed under the United States and Utah constitutions, including all evidence favorable to the defendant that is material to guilt or punishment.

(2) *Timing of Mandatory Disclosures.* The prosecutor's duty to disclose under paragraph (a)(1) is a continuing duty as the material or information becomes known to the prosecutor. The prosecutor's disclosures must be made as soon as practicable following the filing of an information, except that a prosecutor must disclose all evidence that the prosecutor relied upon to file the information within five days after the day on which the prosecutor receives a request for discovery from the defendant. In every case, all material or information listed under paragraph (a)(1) that is presently and reasonably available to the prosecutor must be disclosed before the preliminary examination, if applicable, or before the defendant enters a plea of guilty or no contest or goes to trial, unless otherwise waived by the defendant.

(3) *Disclosures upon Request.*

(A) Upon request, the prosecutor must obtain and disclose to the defendant any of the material or information listed in paragraph (a)(1) which is in a record possessed by another governmental agency and may be shared with the prosecutor under Title 63G, Chapter 2, Government Records Access and Management Act. The request must identify with particularity the record sought and the agency that possesses it, and must demonstrate that the information in the record is directly related to the case.

(B) If the government agency refuses to share with the prosecutor the record containing the requested material or information under paragraph (a)(3)(A), or if the prosecution determines that it

is prohibited by law from disclosing to the defense the record shared by the governmental agency, the prosecutor must promptly file notice stating the reasons for noncompliance. The defense may thereafter file an appropriate motion seeking a subpoena or other order requiring the disclosure of the requested record.

(4) *Good Cause Disclosures*. The prosecutor must disclose any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare a defense.

(5) *Trial Disclosures*. The prosecutor must also disclose to the defendant the following information and material no later than 14 days, or as soon as practicable, before trial:

(A) Unless otherwise prohibited by law, a written list of the names and current contact information of all persons whom the prosecution intends to call as witnesses at trial; and

(B) Any exhibits that the prosecution intends to introduce at trial.

(C) Upon order of the court, the criminal records, if any, of all persons whom the prosecution intends to call as a witness at trial.

(6) *Information not Subject to Disclosure*. Unless otherwise required by law, the prosecution's disclosure obligations do not include information or material that is privileged or attorney work product. Attorney work product protection is not subject to the exception in [Rule 26\(b\)\(6\) of the Utah Rules of Civil Procedure](#).

(b) Disclosures by Defense.

(1) *Mandatory Disclosures*. Unless otherwise prohibited by law, the defense must disclose to the State the following material or information related to the case of which the defense has knowledge and control:

(A) all defenses the defense intends to assert at trial, including, but not limited to, alibi, insanity, self-defense, defense of others, entrapment, impotency, insufficiency of a prior conviction, mistaken identity, or any other defense as required by statute;

(B) the name and current contact information of each witness, including any character witness, other than the defendant, the defense intends to call as witnesses at trial;

(C) any written or recorded statement of each of the above witnesses, or if no written or recorded statements are available, a summary of any statement made by the above witnesses.

(D) information about each expert the defense intends to call at trial, including;

(i) the expert's name, address, and qualifications;

(ii) any report prepared by the expert and the result of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and

(iii) if the expert will testify at trial without preparing a written report, a summary of the general subject matter and opinions on which the expert is expected to testify.

Commented [TH1]: From Arizona rule. Not sure if we need to add or remove any of these.

(E) copies of any exhibits the defense intends to introduce at trial.

(2) **Timing of Mandatory Disclosures.** The defense's duty to disclose under paragraph (b)(1) is a continuing duty as the material or information becomes known to the defense. **The defense's disclosures must be made as soon as practicable following the prosecutor's disclosures.**

~~(4)~~ (3) **Good Cause Disclosures.** The defense must disclose to the prosecutor any item of evidence which the court determines on good cause shown should be made available to the prosecutor in order for the prosecutor to adequately prepare the prosecutor's case for trial.

~~(2)~~ **Other Disclosures Required by Statute.** The defense must disclose to the prosecutor such information as required by statute relating to alibi or insanity.

~~(3)~~ (4) **Trial Disclosures.** The defense must also disclose to the prosecutor the following information and material no later than 14 days, or as soon as practicable, before trial:

(A) A written list of the names and current contact information of all persons, except for the defendant, whom the defense intends to call as witnesses at trial; and

(B) Any exhibits that the defense intends to introduce at trial.

~~(4)~~ (5) **Information not Subject to Disclosure.** The defendant's disclosure obligations do not include information or material that is privileged or attorney work product, **unless such privilege is waived.** Attorney work product protection is not subject to the exception in [Rule 26\(b\)\(6\) of the Utah Rules of Civil Procedure](#).

(c) Methods of Disclosure.

(1) The prosecutor or defendant may make disclosure by notifying the opposing party that material and information may be inspected, tested, or copied at specified reasonable times and places.

(2) If the prosecutor concludes any disclosure required under this rule is prohibited by law, or believes disclosure would endanger any person or interfere with an ongoing investigation, the prosecutor must file notice identifying the nature of the material or information withheld and the basis for non-disclosure. If disclosure is then requested by the defendant, the court must hold an in camera review to decide whether disclosure is required and whether any limitations or restrictions will apply to disclosure as provided in paragraph (d).

(d) Disclosure Limitations and Restrictions.

(1) The prosecutor or defendant may impose reasonable limitations on the further dissemination of sensitive information otherwise subject to discovery to prevent improper use of the information or to protect victims and witnesses from harassment, abuse, or undue invasion of privacy, including limitations on the further dissemination of recorded interviews, photographs, or psychological or medical reports.

(2) Upon a sufficient showing the court may at any time order that discovery or inspection be denied, restricted, or deferred, that limitations on the further dissemination of discovery be modified or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be

Commented [TH2]: I was hesitant to put in a specific number of days because I don't want to incentivize defense attorneys stonewalling until the last minute. Thoughts?

inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(e) Relief and Sanctions for Failing to Disclose.

(1) When a party fails to comply with the disclosure requirements of this rule, the court may, subject to constitutional limitations and the rules of evidence, take the measures or impose the sanctions provided in this paragraph that it deems appropriate under the circumstances. If a party has failed to comply with this rule, the court may take one or more of the following actions:

(A) order such party to permit the discovery or inspection, of the undisclosed material or information;

(B) grant a continuance of the proceedings;

(C) prohibit the party from introducing evidence not disclosed; or

(D) order such other relief as the court deems just under the circumstances.

(2) If after a hearing the court finds that a party has knowingly and willfully failed to comply with an order of the court compelling disclosure under this rule, the nondisclosing party or attorney may be held in contempt of court and subject to the penalties thereof.

(f) Identification Evidence.

(1) Subject to constitutional limitations and upon good cause shown, the trial court may order the defendant to: appear in a lineup; speak for identification; submit to fingerprinting or the making of other bodily impressions; pose for photographs not involving reenactment of the crime; try on articles of clothing or other items of disguise; permit the taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be obtained without unreasonable intrusion; provide specimens of handwriting; submit to reasonable physical or medical inspection of the accused's body; and cut hair or allow hair to grow to approximate appearance at the time of the alleged offense.

(2) Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given to the accused and the accused's counsel.

(3) Unless relieved by court order, failure of the accused to appear or to comply with the requirements of this paragraph without reasonable excuse shall be grounds for revocation of pre-trial release and will subject the defendant to such further consequences or sanctions as the court may deem appropriate, including allowing the prosecutor to offer as evidence at trial the defendant's failure to comply with this paragraph.