Utah Supreme Court
Rules of Criminal Procedure Committee

Meeting Agenda

Doug Thomspon, Chair

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

Date: September 17, 2024

Time: 12:00 p.m. – 2:00 p.m. MST

Action: Welcome and approve July 16, 2024 Minutes	Tab 1	Doug Thompson
Discussion: Rule 8 – Waiver of Counsel	Tab 2	Doug Thompson
Discussion: Rule 3 – Use of AI	Tab 3	Matthew Hansen
Discussion: Rule 43 (New) – Criminal Protective Orders and Stalking Injunctions	Tab 4	Amy Hernandez

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

Meeting Schedule for 2024:
November 19th

Tab 1

Utah Supreme Court
Rules of Criminal Procedure Committee

Meeting Minutes
July 16, 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 welcomes the Committee members and reviews the meeting minutes from May 21, 2024. Karin moves to approve the meeting minutes. Will Carlson seconds Karin's motion. Six members unanimously vote to approve meeting minutes.

Agenda Item 2: Rule 8

Doug opens discussion about Rule 8. Doug asks the members to consider splitting the qualifications portion and colloquy portion. Karin is in favor of splitting the two parts of the rule and sending the amendment for submission. There are no objections**.**

Agenda Item 3: Rule 9A Public Comments

i. Public Comment #1 – The committee addresses Evan Guymon's comment

Doug believes that the comment addresses two different functions in subpart (b)(2). Doug also states that the committee has not clarified the meaning of subpart (b)(2). Karin agrees that subpart (b)(2) needs clarification.

ii. Public Comment #2 – The committee addresses Thomas Anthony comment

Doug believes that this comment is similar to Evan Guymon's comment. Doug agrees that the setting and holding portion of the rule is confusing and the committee needs to discuss how to clarify the two portions of the rule.

iii. Public Comment #3 – The committee addresses Sean Brian's comment

Doug replies to the comment and states that the role of risk assessments does not apply to the application of this rule. Karin agrees with current writing of the rule and agrees that there is no need to make changes based on the comment.

iv. Public Comment #4 – The committee addresses Jennifer Foresta's comment

Will believes that the request within Jennifer Foresta's comment is feasible and could be applied to the larger jurisdictions along the Wasatch Front. However, Will adds that the application of Jennifer Foresta's request would be difficult to carry out in other jurisdictions.

Janet Reese states that the request would not be practical given certain factors such as: the availability of the jails, even when court hearings are held via Webex.

Judge Schaeffer-Bullock agrees with Will and Janet. She states that maybe some smaller courts could give bench warrant hearings to another court. Judge Schaeffer-Bullock adds that such a process would create another set of fiscal issues, i.e. costs.

Doug agrees with Judge Schaeffer-Bullock. Adam suggests reducing the time down to even 20 days to encourage cross collaborative efforts with other courts. Judge Schaeffer-Bullock states that there are costs to the courts with cross collaboration. Doug asks: "In a smaller jurisdiction would there be less that two courts? Is there a jurisdiction that does not have court hearing at least once a week?" Judge Schaeffer suggests that it might be beneficial to have a rural judge speak to the committee and answer the committee's questions on this matter.
Matt Hansen suggests adding language such as: "at the earliest convenience of the court" or "No later than". Karin agrees with Matt's suggestion.

Lori agrees with Judge Schaeffer's request to bring in a rural judge to speak with the committee. Lori also agrees with Matt's suggestion to change the language of the rule.

Doug makes edits, line 18, to the following: "hold the hearing at the earliest possible date, no later than…".

The committee discusses whether "earliest possible date" is too strong of language considering the courts' different scheduling across the State of Utah. Doug agrees that "earliest possible date" is too strong of language. Will suggests: "earliest practicable date." Doug agrees with Will's suggestion. Karin suggests "earliest date consistent with court's calendar." Judge Schaeffer-Bullock agrees with Karin's suggestion. Doug opens the floor for suggestions. Judge Schaeffer-Bullock suggests adding "when the court receives notice" she also believes that the 14-day requirement is too short. Doug and Janet discuss whether there should be a rule that requires the jail to provide the court with sooner notice to help courts comply with timeframe of the rules.

Matt suggested using the language from the preliminary hearing rule which allows for "reasonable time" and "good cause." Will proposed the following rewrite with Matt's suggestion:

> *"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 SCHEDULE a bench warrant hearing within seven days of the arrest date. The hearing should be held within a reasonable time, and not later than 14 days of the arrest date if the defendant was arrested in the county where the warrant was issued, or 30 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."*

Doug opens the discussion for the rewrite submitted by Will. The group agrees with the proposed language suggestion. Doug agrees to add in the new language. Doug then suggests that the committee bring in a rural county judge to answer questions asked earlier in the discussion. There are no objections.

Additional Agenda Items: Rule 17 and more.

Lori discusses Rule 17. Lori states that the committee made progress on Rule 17.

Matt addresses recent rulings on AI generated motions. Matt suggests the committee to consider a rule based on the recent federal rulings on AI generated motions. The committee briefly discusses the potential of the rule.

Tab 2

(a) **Right to counsel** A defendant charged with a public offense has the right to self-representation the penalty for which includes the possibility of incarceration, regardless of whether actually imposed, has the right to counsel, and if indigent, has the right to court-appointed counsel if the defendant faces any possibility of the deprivation of liberty.

(b) **Capital case qualifications.** In all cases in which counsel is appointed to represent an indigent defendant who is charged with an offense for which the punishment may be death, the court ~~shall~~ will appoint two or more attorneys to represent ~~such~~ the defendant and ~~shall~~ will make a finding on the record ~~based on the requirements set forth below~~ that appointed counsel is competent in the trial of capital cases. ~~In making its determination, the court shall ensure that the experience of counsel who are under consideration for appointment have met the following minimum requirements~~ To be found competent to represent a defendant charged in a capital case, the combined experience of the appointed attorneys must meet the following requirements:

~~(b)~~(1) at least one of the appointed attorneys must have tried to verdict at least six felony cases as defense counsel within the past four years or ~~twenty-five~~ 25 felony cases total, with at least six of the 25 felony cases as defense counsel;

~~(b)~~(2) at least one of the appointed attorneys must have appeared as defense counsel or defense co-counsel in a capital or a felony homicide case which was tried to a jury and which went to final verdict;

~~(b)~~(3) within the last five years, at least one of the appointed attorneys must have completed or taught, in person, ~~within the past five years an~~ at least eight hours of approved continuing legal education ~~course or courses at least eight hours of~~ which dealt, in substantial part, with the ~~trial~~ representation of defendants in death penalty cases; and

~~(b)~~(4) at least one of the appointed attorneys must have at least ~~the experience of one of the appointed attorneys must total not less than~~ five years of experience in the active practice of law.

(c) **Capital case appointment considerations.** In making its selection of attorneys for ~~a~~ appointment in a capital case, the court ~~should~~ will also consider at least the following factors:

~~(c)~~(1) whether one or more of the attorneys under consideration have previously appeared as defense counsel or defense co-counsel in a capital case;

~~(c)~~(2) the extent to which the attorneys under consideration have sufficient time and support and can dedicate those resources to the representation of the defendant in the capital case now pending before the court with undivided loyalty to the defendant;

~~(c)~~(3) the extent to which the attorneys under consideration have engaged in the active practice of criminal law in the past five years;

~~(c)~~(4) the diligence, competency, the total workload, and ability of the attorneys being considered; and

~~(c)~~(5) any other factor which may be relevant to a determination that counsel to be appointed will fairly, efficiently, and effectively provide representation to the defendant.

(d) **Capital case appeals.** In all cases where an indigent defendant is sentenced to death, the court ~~shall~~ will appoint one or more attorneys to represent such defendant on appeal and ~~shall~~ will make a finding that counsel is competent in the appeal of capital cases. To be found competent to represent on appeal ~~persons~~ a person sentenced to death, the combined experience of the appointed attorneys must meet the following requirements:

~~(d)~~(1) at least one attorney must have served as counsel in at least three felony appeals; and

~~(d)~~(2) within the last five years, at least one attorney must have attended and completed ~~within the past five years~~ an approved continuing legal education course which ~~deals~~ dealt, in substantial part, with the trial or appeal of death penalty cases.

(e) **Post-conviction cases.** In all cases in which counsel is appointed to represent an indigent petitioner pursuant to Utah Code ~~§~~ section 78B-9-202~~(2)(a)~~, the court ~~shall~~ will appoint one or more attorneys to represent such petitioner at post-conviction trial and on post-conviction appeal and ~~shall~~ will make a finding that counsel is qualified to represent persons sentenced to death in post-conviction cases. To be found qualified, the combined experience of the appointed attorneys must meet the following requirements:

~~(e)~~(1) at least one of the appointed attorneys must have served as counsel in at least three felony or post-conviction appeals;

~~(e)~~(2) at least one of the appointed attorneys must have appeared as counsel or co-counsel in a post-conviction case at the evidentiary hearing, on appeal, or otherwise demonstrated proficiency in the area of post-conviction litigation;

~~(e)~~(3) within the last five years at least one of the appointed attorneys must have attended and completed or taught ~~within the past five years~~ an approved continuing legal education course which dealt, in substantial part, with the trial and appeal of death penalty cases or with the prosecution or defense of post-conviction proceedings in death penalty cases;

~~(e)~~(4) at least one of the appointed attorneys must have tried to judgment or verdict three civil jury or felony cases within the past four years or ten cases total; and

~~(e)~~(5) the experience of at least one of the appointed attorneys must total not less than five years in the active practice of law.

(f) **Appointing from appellate roster.** When appointing counsel for an indigent defendant on appeal from a court of record, the court ~~must~~ will select an attorney from

the appellate roster maintained by the Board of Appellate Judges under rule 11-401 of the Utah Rules of Judicial Administration, subject to any exemptions established by that rule.

(g) **Noncompliance.** Mere noncompliance with this rule or failure to follow the guidelines set forth in this rule ~~shall~~ will not ~~of~~ in itself be grounds for establishing that appointed counsel ineffectively represented the defendant at trial or on appeal.

(h) **Litigation expenses and attorney fees.**

~~(h)~~(1) ~~Cost~~ Litigation expenses and attorney~~s'~~ fees for appointed counsel ~~shall~~ will be paid as described in Chapter 22 of Title 78B.

~~(h)~~(2) ~~Cost~~ Litigation expenses and attorney~~s~~ fees for post-conviction counsel ~~shall~~ will be paid pursuant to Utah Code ~~§~~ section 78B-9-202~~(2)(a).~~

Tab 3

Rule 3. Service and filing of papers.

(a) All written motions, notices and pleadings shall be filed with the court and served on all other parties.

a. If any attorney for a party, or a pro se party, has used Artificial Intelligence ("AI") in the preparation of any complaint, answer, motion, brief, or other paper, they shall in a clear and plain factual statement, disclose that AI has been used in any way in the preparation of the filing, and certify, that each and every citation to the law or the record in the filing, has been verified as accurate. Parties will be held responsible for the contents of any filing that they submit to the Court, regardless if AI drafted any portion of their filing.

b. Artificial intelligence is defined as[1] a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to-

i. perceive real and virtual environments;
ii. abstract such perceptions into models through analysis in an automated manner; and
iii. use model inference to formulate options for information or action.

[OR]

c. Artificial intelligence is defined as[2]:

i. "Any artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight, or that can learn from experience and improve performance when exposed to data sets.
ii. An artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action.
iii. An artificial system designed to think or act like a human, including cognitive architectures and neural networks.
iv. A set of techniques, including machine learning, that is designed to approximate a cognitive task.
v. An artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception,

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[1] **15 USC §9401. Definitions**

In this chapter:

(3) Artificial intelligence

The term "artificial intelligence" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to-

(A) perceive real and virtual environments;
(B) abstract such perceptions into models through analysis in an automated manner; and
(C) use model inference to formulate options for information or action.

[2] 10 U.S. Code §2358 notes

planning, reasoning, learning, communicating, decision making, and acting."

(b) Whenever service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney, unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) The party preparing an order shall, upon execution by the court, mail to each party a copy thereof and certify to the court such mailing.

(b) Whenever service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney, unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) The party preparing an order shall, upon execution by the court, mail to each party a copy thereof and certify to the court such mailing.

Rule 16. Discovery.
Effective: 5/3/2023

(a) Disclosures by prosecutor.

(1) Mandatory disclosures. 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;

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

(F) **identification of any evidentiary materials that were AI-generated; and**

(G) 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) 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) 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) Information not subject to disclosure. The defendant'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.

(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 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.

Tab 4

URCrP Rule 43 Criminal Protective Orders and Stalking Injunctions

(a) Definitions:

(1) “AOC” means the Administrative Office of the Court.

(2) “Protective order” means a criminal protective order or criminal stalking injunction that the courts must make available on the Statewide Domestic Violence Network.

(3) “Protected parties” means any person (including family or household members of the victim) that are included in the protective order and receive protection from that protective order.

(4) “Request” means an initial protective order request, a request to modify the protective order, or a request to dismiss the protective order.

(b) Requests:

(1) A request must be submitted in writing to the courts on the forms required by the AOC. These forms are:

(A) the Notice of Safeguarded Information form and

(i) the protective order request form or

(ii) the proposed protective order form.

(2) A person may submit a request to the courts for a protective order, to modify their existing protective order, or to dismiss their protective order if they are a victim in a case.

(c) Duties of Law Enforcement Officers

(1) Law enforcement officer must provide the following information to the courts at the time the citation is issued, or the defendant is arrested:

(A) protected parties’ full names,

(B) protected parties’ dates of birth,

(C) defendant’s full name

(D) defendant’s date of birth,

(E) defendant’s race, and

(F) defendant’s gender.

(2) If known, the law enforcement officer must provide the following information about the defendant:

(A) social security number,

(B) government issued driver license or identification number,

(C) alien registration number,

(D) government passport number,

(E) state identification number, or

(F) FBI number.

(d) Duties of the prosecutor

(1) The prosecutor must provide the following information to the courts at the time the information is filed in the district and justice courts:

(A) protected parties’ full names,

(B) protected parties' dates of birth,
(i) the court may allow the prosecutor to file the information or petition without the protected parties' dates of birth for good cause shown.
(C) defendant's full name
(D) defendant's date of birth,
(E) defendant's race, and
(F) defendant's gender.

(2) If known, the prosecutor must provide the following information about the defendant:
(A) social security number,
(B) government issued driver license or identification number,
(C) alien registration number,
(D) government passport number,
(E) state identification number, or
(F) FBI number.

(e) Duties of the court

(1) If the information is provided by the prosecutor, law enforcement officers, victim advocates, parties, or victims, the court will enter the most up-to-date and correct version of the following information into the protective order record:
(A) protected parties' full names,
(B) protected parties' dates of birth,
(C) defendant's full name
(D) defendant's date of birth,
(E) defendant's race, and
(F) defendant's gender.
(G) social security number,
(H) government issued driver license or identification number,
(I) alien registration number,
(J) government passport number,
(K) state identification number, or
(L) FBI number.

(2) The court must enter an expiration date for the protective order. If there is no expiration date because the protective order is permanent or because the expiration date is unknown, the court will enter January 1, 3000 as the expiration date.

(3) The court may only issue one protective order per case in accordance with the National Crime Information Center's requirements.

(4) The court must serve the protective order in accordance with the rules of service or send the protective order to law enforcement for service.