



Utah Supreme Court Rules of Criminal Procedure Committee

Meeting Minutes September 17, 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		
[Vacant]	N/A	N/A	
Judge Denise Porter	X		
Janet Reese		X	
Lori Seppi	X		
Karin Fojtik	X		
Judge Kristine Johnson	X		
Adam Crayk	X		

Agenda Item 1: Introduction and Approval of Minutes

Doug Thompson welcomed the Committee members to the meeting and reviewed the meeting minutes from the July 16th, 2024, meeting. Doug and Lori Seppi both noted errors in the minutes and those were corrected. Doug then asked whether the language in the Committee's discussion on Rule 9A, as captured in the meeting minutes, is an accurate representation of Will's suggestion for the rule amendment. After some discussion, Doug determined to look in his saved files to make sure the most recent draft of Rule 9A conforms to the Committee's discussion on July 16th. David Ferguson then moved to adopt the minutes, with Lindsey Wheeler seconding the motion. Without opposition, the motion passes and the minutes are approved.

Agenda Item 2: Rule 8 – Waiver of Counsel

Doug then turned the Committee's attention to Rule 8 and began by asking for volunteers to serve on a subcommittee to develop the Rule's language on waiver of counsel. Karin Fojtik, Lori Seppi, and Lindsey Wheeler volunteered for the subcommittee. The Committee will resume its work on the Rule after the subcommittee meetings.

Agenda Item 3: Rule 3 – Use of AI

Doug then asked Matt Hansen to lead the discussion on the use of AI. Matt explained his goal was to create a rule that provided notice to the court and parties that a litigant had used AI while generating court documents or filings. Doug raised a concern about defining the term AI and suggested removing the definition and instead focusing the Rule on the notice provision. Lori Seppi also asked whether the Civil or Appellate Procedure Rules Committees have already started working on a similar project. Lindsey Wheeler stated that the Appellate Committee has not started working on that project. Karin Fojtik also offered to share a spreadsheet that compiles links to all existing rules throughout the country on the use of AI. She suggested that the Rule language include a statement like, "a party is responsible for the contents of any filings, regardless of who or what drafted the filing, and will be responsible for any sanctions imposed as a result of errors or mistakes in the filing." She also suggested that instead of defining the term AI, the Committee could include language that identifies what software or program was used to assist in the drafting of filings. Will Carlson mentioned that Utah Code has already codified the term for AI, which is found in Utah Code § 13-2-12(1)(a). Will also mentioned that virtually all filings already include the use of AI if the filings was drafted using speech-to-text technology, for example. In that case, virtually all filings could be required to include the AI disclosure notice. David Ferguson offered that Rule 16 is implicated in this issue as well, given stories he's heard of police reports being drafted by AI technology that could mislead both the defense and prosecution. Doug then asked Matt whether the Committee should abandon the notice and

definition provisions and trying to address the issue by putting the responsibility on the filer as articulated by Karin. Matt explained that would work, so long as that language encompasses the scope of AI's role in research, drafting, and preparing filings. Lori noted that Rule 21 of the Appellate Rules requires that the person filing a document sign the filing and certify that they have complied with the non-public rules. Doug expressed similar thoughts regarding the certification that filers can provide in their documents. Judge Johnson urged that the Committee track their work on this issue with the Civil Rules Committee as well. Matt suggested that the Committee form a subcommittee on the issue or watch what other committees or states do with similar rules. After additional discussion, Doug explained to the Committee that he would reach out to the Civil Rules chair and see if there was any interest in working together to develop a rule.

Agenda Item 4: Proposal for Rule 43 (New) – Criminal Protective Orders

Doug then introduced Amy Hernandez, the Administrative Office of the Courts' Domestic Violence Program Coordinator, who is offering a proposal for a new rule of criminal procedure that would mirror language from the statute for the issuance of criminal protective orders. Before moving to the next item, Will and Doug discussed the Supreme Court's recent opinion in *State v. Willden*, 2024 UT 37, regarding reverse discovery and Doug asked the Committee to consider reviewing this opinion and discussing the issue for a future Committee meeting. Amy Hernandez introduced her proposal for a rule and explained that the proposal stems from a lack of data being included in protective orders that are transmitted to law enforcement agencies like BCI and the FBI, which causes the courts to be out of compliance with state and federal regulations. Karin wondered if the personal identifying information that needs to be included in these protective orders would be protected in any way. Amy reviewed the protections given to this kind of information and how it is criminally enforced. Doug also asked whether the cause of this lack of information stems from patrons and stakeholders. Amy explained that the gap stems from patrons and stakeholders, particularly in pretrial protective order contexts, and further explained that the information isn't being conveyed to law enforcement entities before a referral for prosecution. Meredith also explained that BCI partners currently expect the courts, specifically judicial assistants, to find this information using existing databases and put it into the protective order, even if it's not originally provided by a protected party, law enforcement officer, or other party to a case. Karen asked whether the Committee has the authority to put a duty on a law enforcement to collect this information, as stated in the proposed rule. Amy explained that statute already requires law enforcement to collect information and create a jail release agreement based on this information, and so this proposed rule does not actually add to their responsibility outside of what is required by statute. Doug then asked what the timeframe is for working on this issue, and whether two months would be satisfactory. Meredith explained that two months would be too slow. Given that, Doug asked

Will to work with him on developing the rule proposal and then Doug will send the proposal out to the Committee via email for consideration and approval.

After conclusion of all agenda item discussions, the Committee adjourned. The next meeting will be November 19, 2024.