



Utah Supreme Court Rules of Criminal Procedure Committee

Meeting Agenda

Will Carlson, Chair

Location:

[Webex](#)

Date:

November 18, 2025

Time:

12:00 p.m. – 2:00 p.m. MST

Welcome new members Review 2026 meeting schedule		Will Carlson
Action: Approve July 15, 2025, meeting minutes	Tab 1	Will Carlson
Action: Supreme Court update on Rules 27A, 27B, & 38	Tab 2	Will Carlson
Action: Proposal for Rule 17	Tab 3	Lindsey Wheeler Trent Dressen
Discussion: Rule 16 subcommittee update		Lindsey Wheeler Lori Seppi
Discussion: Proposal for Rule 14	Tab 4	Will Carlson

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

Meeting Schedule for 2026:

January 20 th	July 21 st
March 17 th	September 15 th
May 19 th	November 17 th

Tab 1

Utah Supreme Court
Rules of Criminal Procedure Committee

Meeting Minutes

July 15, 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	Trent Dressen
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		
Michael Samantha Starks	X		
Jacqueline Carlton	X		

Call to Order and Quorum Confirmation

Doug Thompson, Committee Chair, opened the meeting by welcoming committee members. A quorum was confirmed, with at least seven voting members in attendance, allowing the meeting to proceed with official business.

Review and Approval of March 18, 2025, Meeting Minutes

The committee reviewed the minutes from the previous meeting. A motion was made by Will Carlson to approve the minutes. The motion was seconded by Karin Fojtik. Hearing no opposition, the motion passed unanimously, and the minutes were adopted into the official record.

Public Comment on Rules 7 and 7A

The committee considered a public comment from Judge McCullough regarding Rules 7 and 7A, particularly questioning the phrasing involving “protected parties” in relation to Jail Release Agreements (JRAs). Members discussed whether a protected party technically exists pre-arrangement. It was clarified that a JRA does initiate a form of protection even before a formal court order. As such, the committee did not see a need for any amendments based on the comment. A motion was made by Will Carlson and seconded by Lindsey Wheeler to adopt the rule as written and forward it to the Supreme Court with the comment included for their consideration. The motion passed unanimously.

Statute Amendments to Rules 27A and 27B

The committee next reviewed proposed amendments to Rules 27A and 27B, stemming from suggestions by Christopher Pearson, a prosecutor from St. George. The key concern involved outdated statutory citations, particularly in DUI-related provisions. Members discussed whether to keep or remove subsection references. Will Carlson raised a concern about limiting the scope to “convictions,” which could exclude plea-in-abeyance agreements that are still treated as convictions under certain circumstances. To address this, the committee agreed to revise the language to “violations of local ordinances.” A motion to approve the amended Rules 27A and 27B was made by Will Carlson, seconded by Karin Fojtik, and passed unanimously.

Statute Amendments to Rule 38

Doug Thompson presented a proposal that was made to remove statutory references that might become outdated, specifically in subsections (f) and (g). Will Carlson also proposed revised language requiring cases to be heard in district courts within “the same county” as a justice court. Concerns were raised that smaller counties may not have a district courthouse in the same county as a justice court, which could create compliance issues under the current language. Lindsey Wheeler cited the Utah Courts website, which seemingly confirms that there are district courts in each county. Bryson King cited authority that district courts are required to hold court in each county, even if via temporary or leased space. The committee agreed to defer the final revisions to venue language until confirming the physical availability of district courts in every county. A motion to adopt the remaining changes of the Rule was made by Will Carlson, seconded by Karin Fojtik and passed unanimously.

Update on subcommittee work on Rule 16

The committee discussed proposed language to Rule 16 regarding disclosure of intimate images or sensitive data extracted from a victim's device. Lindsey and Lori had each submitted different drafts. The general consensus among committee members was that the existing rule already provides sufficient protection, especially given the language around prosecutorial discretion and court-ordered disclosures. Karen emphasized the need for a process to protect prosecutors who do decide to disclose sensitive material, such as allowing a judge to review such disclosures in camera and issue protective orders. There was also concern that adding more disclosure obligations could compromise victim privacy or create due process concerns. Ultimately, the committee agreed that Lindsey and Lori would collaborate on an edited version of their proposals to be reviewed at the next meeting. Bryson was asked to send a list of the subcommittee members to assist in gathering feedback.

Rule 17 – Trial Calendar Prioritization (Guest: Trent Dressen)

Guest Trent Dressen, from the Utah Prosecution Council, presented concerns about Rule 17's rigid trial prioritization framework, which mandates that in-custody felony trials take precedence. He suggested amending the rule to give judges discretion to deviate from the priority list in the interest of justice, especially when a case involves repeated delays or significant victim impact. Trent also recommended revisions for a victim's right to be heard when continuances are requested, citing the Utah Victims' Bill of Rights and related statutes. Doug suggested inserting a new subsection (B)(2) to address exceptions and incorporate the Council's considerations. Lindsey Wheeler volunteered to assist Trent with drafting language for the next meeting.

Committee Chair Transition Announcement

Doug Thompson announced that this meeting would be his last after twelve years of service to the committee. He thanked the members for their work and expressed deep appreciation for the collaboration and professionalism over the years. Bryson informed the committee that nominations for Chair or Vice Chair should be submitted by August 13 in order to be considered before the next Supreme Court meeting on August 20. Committee members were encouraged to express interest or nominate others, including those outside of the current committee.

Adjournment

The meeting concluded with heartfelt thanks to Doug for his leadership and dedication. The committee acknowledged the important role he played and wished him well. The meeting was adjourned.

Follow-Up Items

- Lindsey and Lori will draft revised language for Rule 16 (intimate image/data disclosures) and coordinate with subcommittee members.

- Lindsey and Trent will draft proposed amendments to Rule 17 for discussion at the next meeting.
- The committee will verify the presence of district court access in all counties.
- All members are encouraged to submit nominations for Chair and Vice Chair roles by August 13.

Tab 2

Rules 27A, 27B, and 38

Doug Thompson and Bryson King presented proposed amendments to Rules 7, 7A, 27A, 27B, and 38 to the Supreme Court on August 20th. Rules 7 and 7A were approved as final with a November 1st effective date. Rules 27A, 27B, and 38 were sent back to the committee for further revisions.

Minutes: Douglas Thompson and Bryson King communicated that the amendments to rules 27A, 27B, and 38 update the statutory references. Justice Pohlman and Maryt Fredrickson made additional edits for clarity and consistency, in addition to stylistic revisions. Mr. Thompson reviewed each edit with the Court. Justice Pohlman expressed concern that self-represented individuals may not understand the phrase “trial de novo” and recommended the committee explain it using basic plain language. Mr. Thompson will take these rules back to the committee. Mr. Thompson also sought final approval of rules 7 and 7A. There was one comment received from Judge McCullagh indicating a potential system programming limitation related to the required information. The committee believes the changes are not problematic and does not recommend revisions. Justice Pohlman notes that the rule directs the agency that initiated the case to provide specify information but does not indicate how it must be provided. Mr. King confirmed he has been working with the domestic violence coordinator to implement the changes and the information contained in the amendments is necessary for the courts to stay in compliance. Mr. King will submit a programming change request to the CORIS committee. Justice Pohlman offered a motion to approve rules 7 and 7A as final, effective November 1, 2025. Justice Hagen seconded the motion. The motion passed unanimously.

The Committee has been tasked with amending rules 27A, 27B, and 38 to define or explain the terms “trial de novo” and “hearing de novo” using plain language.

Rule 27A. Stays pending appeal from a court not of record - Appeals for a trial de novo.

1 (a) Except as outlined in subsection paragraph (d) below, the procedures in this rule
2 shall govern stays of terms of sentences when a defendant files an appeal in a court not
3 of record for a trial de novo ~~pursuant to Utah Code § 78A-7-118(1)~~.

4 (b) Upon the timely filing of a notice of appeal for a trial de novo, the justice court shall
5 will:

6 **(b)**(1) order stayed any fine or fee payments until the appeal is resolved; and

7 **(b)**(2) order stayed any period of incarceration, unless:

8 **(b)**(2)(A) at the time of sentencing, the judge court found by a
9 preponderance of the evidence that the defendant posed a danger to
10 another person or the community; or

11 **(b)**(2)(B) the appeal does not appear to have a legal basis.

12 (c) If a stay is ordered, the judge justice court may leave in effect any other terms of
13 probation the judge court deems necessary including:

14 **(e)**(1) continuation of any pre-trial restrictions or orders;

15 **(e)**(2) sentencing protective orders under Utah Code § 77-36-5.1;

16 **(e)**(3) orders that limit or monitor a defendant's drug and alcohol use, including
17 use of an ignition interlock device; and

18 **(e)**(4) requiring defendant's monetary bail to continue until defendant's
19 appearance in the district court. The judge court shall will only order monetary
20 bail to continue if the court finds by clear and convincing evidence that, without
21 such security, the defendant will likely fail to appear at district court.

22 (d) The provisions of this rule do not apply to appeals for trials de novo from
23 convictions for violations of Title 41, Chapter 6a, Part 5, DUI and Reckless Driving, or
24 violations of any local ordinance as described in Utah Code § section 41-6a-501(2)(a)(iii).
25 The procedures outlined in Rule 27B shall be used in govern those cases.

26 (e) A party dissatisfied with the findings made by the justice court judge in staying a
27 sentence under this rule shall must utilize the procedure outlined in rule 27B(g) to
28 obtain relief in the district court.

Rule 27A. Stays pending appeal from a court not of record - Appeals for a trial de novo.

29 (f) A justice court may ~~at any time~~ for good cause shown amend its order granting
30 release to impose additional or different conditions of release. However, the justice
31 court may only act under this ~~subsection~~ paragraph (f) if the district court has not
32 docketed or held any hearings pursuant to this rule.

33 (g) For purposes of this rule, "term of sentence" or "sentence" ~~shall~~ includes findings of
34 contempt pursuant to Utah Code ~~§~~ section 78B-6-301 et seq.

Rule 27B. Stays pending appeal from a court not of record - Hearings de novo, DUI, and reckless driving cases.

1 (a) The procedures in this rule ~~shall be used in determining whether to govern~~ stays of
2 the payment of any fines or periods of incarceration pending the resolution of an appeal
3 for a hearing de novo, ~~pursuant to Utah Code § 78A-7-118(3)~~. This rule ~~shall~~ also
4 governs stays in all appeals involving violations of Title 41, Chapter 6a, Part 5, DUI and
5 Reckless Driving, or violations of any local ordinance as described in Utah Code §
6 41-6a-501~~(2)(a)(iii)~~.

7 (b) Periods of incarceration of 28 days or less.

8 ~~(b)~~(1) Unless exempted under subsection paragraph (b)(2), the justice court ~~judge~~
9 ~~shall will~~, upon the filing of a notice of appeal, stay the term of incarceration. The
10 ~~C~~court ~~shall will~~ then order the defendant released on the least restrictive
11 reasonably available condition or combination of conditions in Rule 27(c) that the
12 court determines will reasonably ensure the appearance of the defendant as
13 required and the safety of any other individual, property, and the community.

14 ~~(b)~~(2) However, the justice court ~~shall will~~ not order a defendant released if:

15 ~~(b)~~(2)(A) at the time of sentencing, the court makes a finding that the
16 defendant poses an identifiable risk to the safety of another individual,
17 property, or the community and that the period of incarceration, and no
18 less restrictive reasonably available alternative, is necessary to reduce or
19 eliminate that risk; or

20 ~~(b)~~(2)(B) it enters a written finding that the appeal does not appear to have
21 a legal basis.

22 (c) Periods of incarceration of longer than 28 days.

23 ~~(e)~~(1) After, or at the time of, the filing of a notice of appeal, if a stay is desired,
24 the defendant ~~shall must~~ file a written motion with the justice court requesting a
25 stay of a sentence term of incarceration of more than 28 days. That motion ~~shall~~
26 ~~must~~ be accompanied by a memorandum indicating the legal basis for the appeal
27 and that the appeal is not being taken for purposes of delay. The memorandum
28 ~~shall must~~ also address why the defendant is not a flight risk; and why the
29 defendant does not pose a danger to any other person, property, or the
30 community.

31 ~~(e)~~(2) A copy of the motion, and supporting memorandum, ~~shall must~~ be served
32 on the prosecuting attorney. An opposing memorandum may be filed within ~~7~~

Rule 27B. Stays pending appeal from a court not of record - Hearings de novo, DUI, and reckless driving cases.

33 seven days after receipt of the application, or shorter time as the court deems
34 necessary. A hearing on the application ~~shall~~ will be held within ~~7~~ seven days of
35 the court receiving either the opposing memorandum or an indication that no
36 opposing memorandum will be filed. If no opposing memorandum is filed, the
37 hearing will be held within 14 days after the application is filed with the court.

38 ~~(e)~~(3) The justice court ~~shall~~ will order the defendant released unless it finds by a
39 preponderance of the evidence that:

40 ~~(e)~~(3)(A) the defendant is a flight risk;

41 ~~(e)~~(3)(B) the defendant would pose a danger to any other person,
42 property, or the community if released under any of the conditions set
43 forth in Rule 27(c); or

44 ~~(e)~~(3)(C) the appeal does not appear to have a legal basis.

45 ~~(e)~~(4) The court ordering release pending appeal under subsection paragraph
46 (c)(3) ~~shall~~ will order that release on the least restrictive reasonably available
47 condition or combination of conditions set forth in Rule 27(c) that the court
48 determines will reasonably ensure the appearance of the defendant as required
49 and the safety of any other individual, property, and the community.

50 **(d) Fine and Fee payments.** Fine and fee payments shall be stayed pending resolution
51 of the appeal.

52 **(e) Other terms of sentence or probation.** Upon motion of the defendant, the justice
53 court may stay any other term of sentence related to conditions of probation (other than
54 incarceration) pending disposition of the appeal, upon notice to the prosecution and a
55 hearing if requested by the prosecution.

56 (f) A justice court may ~~at any time~~ for good cause shown amend its order granting
57 release to impose additional or different conditions of release. However, the justice
58 court may only act under this subsection paragraph (f) if the district court has not
59 docketed or held any hearings pursuant to this rule.

60 (g) A party dissatisfied with the relief granted, denied or modified under this rule may
61 petition the district court judge assigned to the appeal for relief.

62 ~~(g)~~(1) Such petition ~~shall~~ must be in writing and accompanied by the notice of
63 appeal filed in the justice court, the original motion for a stay and accompanying

Rule 27B. Stays pending appeal from a court not of record - Hearings de novo, DUI, and reckless driving cases.

64 papers filed in the justice court, if any, and any orders or findings of the justice
65 court on the issue. The petition ~~shall~~ must be served on the opposing party.

66 ~~(g)~~(2) The district court ~~shall~~ will schedule a hearing within ~~7~~ seven days of its
67 receipt of the petition, or a shorter time if the court determines justice requires.
68 The court ~~shall~~ will allow the opposing party an opportunity to file a
69 memorandum in opposition to the petition, and to be present and heard at the
70 hearing.

71 ~~(g)~~(3) The district court ~~shall~~ will use the same presumptions, evidentiary
72 burdens and procedures outlined in ~~subsections~~ paragraphs (b), (c) and (d) of
73 this rule in determining whether it should stay any terms of the justice court's
74 sentence during the pendency of the appeal.

75 (h) For purposes of this rule, "term of sentence" or "sentence" ~~shall~~ includes:

76 ~~(h)~~(1) any terms or orders of the justice court emanating from a plea held in
77 abeyance pursuant to Utah Code § 77-2(a)-1 et seq.; and

78 ~~(h)~~(2) findings of contempt pursuant to Utah Code § 78B-6-301 et seq.

Rule 38 Appeals from justice court to district court.

1 **(a) Appeal of a judgment or order of the justice court is as provided in Utah Code §**
2 **78A-7-118.** A case appealed from a justice court must be heard ~~in~~ by a district
3 **court**~~house~~ judge sitting located in the same county as the justice court from which the
4 case is appealed. In counties with multiple district courthouse locations, the presiding
5 judge of the district court will determine the appropriate location for the ~~hearing of~~
6 appeals.

7 **(b) The notice of appeal.**

8 ~~(b)~~(1) A notice of appeal from an order or judgment must be filed within 28 days
9 of the entry of that order or judgment.

10 ~~(b)~~(2) Contents of the notice. The notice required by this rule must be in the form
11 of, or substantially similar to, that provided in the appendix of this rule. At a
12 minimum the notice must contain:

13 ~~(b)~~(2)(A) a statement of the order or judgment being appealed and the
14 date of entry of that order or judgment;

15 ~~(b)~~(2)(B) the current address at which the appealing party may receive
16 notices concerning the appeal;

17 ~~(b)~~(2)(C) a statement as to whether the defendant is in custody because of
18 the order or judgment appealed; and

19 ~~(b)~~(2)(D) a statement that the notice has been served on the opposing
20 party and the method of that service.

21 ~~(b)~~(3) Deficiencies in the form of the filing will not cause the court to reject the
22 filing. They may, however, impact the efficient processing of the appeal.

23 **(c) Motion to reinstate period for filing appeal.**

24 ~~(e)~~(1) Upon a showing that a defendant was deprived of the right to appeal, the
25 justice court ~~must~~ will reinstate the 28-day period for filing an appeal. A
26 defendant seeking such reinstatement must file a written motion in the justice
27 court and serve the prosecuting entity. The court ~~must~~ will appoint counsel if the
28 defendant qualifies for court-appointed counsel. The prosecutor must have 21
29 days after service of the motion to file a written response. If the prosecutor
30 opposes the motion, the justice court ~~must~~ will set a hearing at which the parties
31 may present evidence. If the justice court finds by a preponderance of the

Rule 38 Appeals from justice court to district court.

32 evidence that the defendant has demonstrated that the defendant was deprived
33 of the right to appeal, ~~it must~~ the court will enter an order reinstating the time for
34 appeal. The defendant's notice of appeal must be filed with the justice court clerk
35 ~~of the justice court~~ within 28 days after the date of entry of the order.

36 ~~(e)~~(2) Absent a showing of excusable neglect, a motion to reinstate may be filed
37 no later than six months after the original time for appeal has expired.

38 **(d) Duties of the justice court.**

39 (1) ~~Duties of the justice court.~~ Within ~~7~~ seven days of receiving the notice of
40 appeal, the justice court ~~must~~ will transmit to the appropriate district court an
41 appeal packet containing:

42 ~~(d)(1)~~(A) the notice of appeal;
43 ~~(d)(1)~~(B) the docket;
44 ~~(d)(1)~~(C) the information or citation; and
45 ~~(d)(1)~~(D) the judgment and sentence, if any.

46 ~~(d)~~(2) Upon request from the district court the justice court ~~must~~ will transmit to
47 the district court any other orders and papers filed in the case.

48 **(e) Duties of the district court.**

49 ~~(e)~~(1) Upon receipt of the appeal packet from the justice court, the district court
50 ~~must~~ will hold a scheduling conference to determine ~~what~~ the issues ~~must be~~
51 ~~resolved by the on~~ appeal. The district court ~~must~~ will send notices to the
52 appellant at the address provided on the notice of appeal. Notices to the other
53 party must be served to the address provided in the justice court docket for that
54 party.

55 ~~(e)~~(2) If the defendant is in custody because of the matter appealed, the district
56 court ~~must~~ will hold the conference within ~~7~~ seven days of the receipt of the
57 appeals packet. If the defendant is not in custody because of the matter appealed,
58 the court ~~must~~ will hold the conference within 28 days of receipt of the appeals
59 packet.

Rule 38 Appeals from justice court to district court.

60 (f) **District court procedures for trials de novo.** ~~An~~ The following procedures apply to
61 an appeal by a defendant ~~for a trial de novo pursuant to Utah Code § 78A-7-118(1) must~~
62 ~~be accomplished by the following procedures:~~

63 (f)(1) If the defendant elects to go to trial, the district court will determine what
64 number and level of offenses the defendant is facing.

65 (f)(2) Discovery, the trial, and any pre-trial evidentiary matters the court deems
66 necessary, will be held in accordance with these rules.

67 (f)(3) After the trial, the district court ~~must will~~, if appropriate, sentence the
68 defendant and enter judgment in the case as provided in these rules and
69 otherwise by law.

70 (f)(4) When entered, the judgment of conviction or order of dismissal serves to
71 vacate the judgment or orders of the justice court and becomes the judgment of
72 the case.

73 (f)(5) A defendant may resolve an appeal by waiving trial and compromising the
74 case by any process authorized by law to resolve a criminal case.

75 (f)(5)(A) Any plea must be taken in accordance with these rules.

76 (f)(5)(B) The court ~~must will~~ proceed to sentence the defendant or enter
77 such other orders required by the particular plea or disposition.

78 (f)(5)(C) When entered, the district court's judgment or other orders
79 vacate the orders or judgment of the justice court and become the order or
80 judgment of the case.

81 (f)(5)(D) A defendant who moves to withdraw a plea entered pursuant to
82 this ~~section paragraph (f)~~ may only seek to withdraw it pursuant to the
83 provisions of Utah Code § 77-13-6.

84 (f)(6) **Other dispositions.** A defendant, at a point prior to entering a plea
85 admitting guilt or a no contest plea, or prior to commencement of trial, may
86 choose to withdraw the appeal and have the case remanded to the justice court.
87 Within 14 days of the defendant notifying the court of such an election, the
88 district court ~~shall will~~ remand the case to the justice court.

89 (g) **District court procedures for hearings de novo.** If ~~the appeal a party~~ seeks a de
90 novo hearing ~~pursuant to Utah Code § 78A-7-118(3) or (4);~~

Rule 38 Appeals from justice court to district court.

91 ~~(g)~~(1) the district court ~~must~~ will conduct such hearing and make the appropriate
92 findings or orders, and

93 ~~(g)~~(2) within 14 days of entering its findings or orders, the district court ~~must~~ will
94 remand the case to the justice court, unless the case is disposed of by the findings
95 or orders, or the district court retains jurisdiction ~~pursuant to § 78A-7-118(6)~~.

96 **(h) Retained jurisdiction.** In cases where the district court retains jurisdiction after
97 disposing of the matters on appeal, the district court ~~must~~ will order the justice court to
98 forward all monetary bail, other security, or revenues received by the justice court to
99 the district court for disposition. The justice court ~~must~~ will transmit such monies or
100 securities within 21 days of receiving the order.

101 **(i) Other bases for remand.** The district court may also dismiss the appeal and remand
102 the case to the justice court if it finds that the defendant has abandoned the appeal.

103 **(j) Justice court procedures on remand.** Upon receiving a remanded case, the justice
104 court ~~must~~ will set a review conference to determine what, if any, proceedings ~~need be~~
105 ~~taken~~ are needed. If the defendant is in custody because of the case being considered,
106 such hearing must be had within five days of receipt of the order of remand. Otherwise,
107 the review conference should be had within 28 days. The court ~~must~~ will send notice of
108 the review conference to the parties at the addresses contained in the notice of appeal,
109 unless those have been updated by the district court.

110 (k) During the pendency of the appeal, and until a judgment, order of dismissal, or
111 other final order is entered in the district court, the justice court will retain jurisdiction
112 to monitor terms of probation or other consequences of the plea or judgment, unless
113 those orders or terms are stayed pursuant to Rule 27A.

114 **(l) Reinstatement of dismissed appeal.**

115 ~~(l)~~(1) An appeal dismissed pursuant to ~~subsection~~ paragraph (i) may be
116 reinstated by the district court ~~upon~~ motion of the defendant for:

117 ~~(l)~~(1)(A) mistake, inadvertence, surprise, excusable neglect; or

118 ~~(l)~~(1)(B) fraud, misrepresentation, or misconduct of an adverse party.

119 ~~(l)~~(2) The motion must be made within a reasonable time after entry of the order
120 of dismissal or remand.

Tab 3

Rule 17. The trial

(b) **Calendar priorities.** Unless the interests of justice dictate otherwise, cases shall be set on the trial calendar to be tried in the following order:

(b)(1) misdemeanor cases when defendant is in custody;

(b)(2) felony cases when defendant is in custody;

(b)(3) felony cases when defendant is on bail or recognizance; and

(b)(4) misdemeanor cases when defendant is on bail or recognizance.

(b)(5) The interests of justice include the circumstances of the prosecution, the defense, and the victim.

(b)(6) If a court continues a case, the court shall allow a crime victim to be heard on the matter in accordance with 77-38-4(1)(b)

Tab 4

Rule 14

Will Carlson:

Considering evolving service-process practices in other states and comparative inefficiencies under the current version of Utah Rules of Criminal Procedure Rule 14(a)(3) (hereafter “Rule 14(a)(3)”), I respectfully submit the following recommendations for the Advisory Committee’s consideration. The goal is to modernize the service provisions for subpoenas in criminal proceedings to enhance operational efficiency while preserving due-process safeguards for witnesses and parties.

I. Background

Under current Rule 14(a)(3), service of a subpoena in criminal proceedings requires personal delivery of a copy of the subpoena to the witness (or interpreter) and notification of its contents. Moreover, the personal service requirement is further constrained by requiring the service be completed by a peace officer from within the county where it is served. This rigid personal-delivery format can pose operational challenges: locating witnesses in remote areas, coordinating service across counties (or states), handling witness availability issues, and increased cost/time burdens on criminal law offices, both prosecution and defense. Given that other jurisdictions permit substituted or alternative methods of service (e.g., leaving at dwelling address, mailing, or emailing), there is a mismatch between the criminal subpoena service rule and practical realities.

II. Recommendation for Rule Revision

I recommend that the Committee consider one or more of the following changes to Rule 14(a)(3):

1. **Amend the service-method language** to permit, in addition to personal delivery by law enforcement, substituted service (e.g., service by a non-party other than law enforcement, leaving the subpoena at the witness’s usual place of abode or business with a person of suitable age and discretion, mailing a copy, email, and verbal service are all used various forms in other states).
2. **Clarify return/proof of service requirements:** Require that the server (or process server) execute a written return specifying date/time, method of service (personal vs substituted), address of service, and identity of person served (or with whom left).
3. **Consider a safe-harbor, waiver, or motion to approve alternative service clause:** For witness service across county lines, or where unsuccessful attempts at personal service have been made, permit a waiver of personal service, or a filing

with the court requesting approval of alternative method of service with the court retaining discretion to approve. The Committee should consider whether to require “reasonable diligence” (e.g., two service attempts at different times/days) before substituted service applies.

4. **Maintain witness protection and perception of fairness:** While relaxing methods, continue to require that the witness be informed of the contents of the subpoena (as currently required) and given reasonable time to respond or raise objections, thereby preserving due-process integrity.

III. Rationale for Change

- Efficiency gains: By allowing substituted service in appropriate cases, service can be effected faster and more reliably, reducing delays and motion practice over service defects.
- Alignment with civil practice: Permitting more flexible methods brings criminal subpoena service in Utah into closer alignment with civil practice within the state and with practices in other states, thereby simplifying cross-system workflows.
- Preservation of rights: The proposed changes would not eliminate personal service as a method, they simply recognize substitute methods in a digital era. The core protections (notification of contents, right to object or motion, return of service) remain intact.
- Practical need in rural/remote contexts: Utah’s geography and inter-county witness logistics make rigid personal-delivery burdensome-flexible service methods reduce risk of service failure and hearing/trial continuances.
- Reduction of service-related litigation: Clearer rule language permitting substituted methods should reduce contested hearings over “service was invalid” issues and free court and party resources for substantive issues rather than technical service disputes.

Incorporating a more flexible service framework in Rule 14(a)(3) will enhance the practicality of subpoena service in criminal proceedings in Utah while maintaining essential fairness and witness rights.

1 Rule 14. Subpoenas**2 (a) Subpoenas requiring the attendance of a witness or interpreter and production or**
3 inspection of records, papers, or other objects.

4 (a) A subpoena to require the attendance of a witness or interpreter before a
5 court, magistrate, or grand jury in connection with a criminal investigation or
6 prosecution may be issued by the magistrate with whom an information is filed, the
7 prosecuting attorney on his or her own initiative or upon the direction of the
8 grand jury, or the court in which an information or indictment is to be tried. The
9 clerk of the court in which a case is pending must issue in blank to the defendant,
10 without charge, as many signed subpoenas as the defendant may require. An
11 attorney admitted to practice in the court in which the action is pending may also
12 issue and sign a subpoena as an officer of the court.

13 (a) A subpoena may command the person to whom it is directed to appear and
14 testify, or to produce in court or to allow the inspection of records, papers or other
15 objects, other than those records pertaining to a victim covered by
16 paragraph **Subsection** (b). The court may quash or modify the subpoena if
17 compliance would be unreasonable.

18 (a) A subpoena may be served by any person over the age of 18 years who is
19 not a party. Service must be made by delivering a copy of the subpoena to the
20 witness or interpreter personally and notifying the witness or interpreter of the
21 contents. A peace officer must serve any subpoena delivered for service in the
22 peace officer's county.

23 (a) Written return of service of a subpoena must be made promptly to the court
24 and to the person requesting that the subpoena be served, stating the time and
25 place of service and by whom service was made.

26 (a)(5) A subpoena may compel the attendance of a witness from anywhere in the
27 state.

28 (a)(6) When a person required as a witness is in custody within the state, the court
29 may order the officer having custody of the witness to bring the witness before the
30 court.

31 (a)(7) Failure to obey a subpoena without reasonable excuse may be deemed a
32 contempt of the court responsible for its issuance.

33 (a)(8) If a party has reason to believe a material witness is about to leave the state,
34 will be too ill or infirm to attend a trial or hearing, or will not appear and testify
35 pursuant to a subpoena, the party may, upon notice to the other, apply to the court
36 for an order that the witness be examined conditionally by deposition. The party
37 must file an affidavit providing facts to support the party's request. Attendance of
38 the witness at the deposition may be compelled by subpoena. The defendant
39 must~~shall~~ be present at the deposition and the court will make whatever order is
40 necessary to effect such attendance. A deposition may be used as substantive
41 evidence at the trial or hearing to the extent it would otherwise be admissible
42 under the Utah Rules of Evidence if the witness is too ill or infirm to attend, the
43 party offering the deposition has been unable to obtain the attendance of the
44 witness by subpoena, or the witness refuses to testify despite a court order to do
45 so.

46 (b) **Subpoenas for the production of records of victim.**

47 (b)(1) No subpoena or court order compelling the production of medical, mental
48 health, school, or other privileged records pertaining to a victim may~~shall~~ be
49 issued by or at the request of any party unless the court finds after a hearing, upon
50 notice as provided below, that the records are material and the party is entitled to

51 production of the records sought under applicable rules of privilege, and state and
52 federal law.

53 (b)(2) The request for the subpoena or court order ~~shall~~must identify the records
54 sought with particularity and be reasonably limited as to subject matter.

55 (b)(3) The request for the subpoena or court order ~~shall~~must be filed with the court
56 as soon as practicable, but no later than 28 days before trial, or by such other time
57 as permitted by the court. The request and notice of any hearing must~~shall~~ be
58 served on counsel for the victim or victim's representative and on the opposing
59 party. Service on an unrepresented victim must be facilitated through the
60 prosecutor. The prosecutor must make reasonable efforts to provide a copy of the
61 request for the subpoena to the victim or victim's representative within 14 days of
62 receiving it.

63 (b)(4) If the court makes the required findings under subsection (b)(1), it must issue
64 a subpoena or order requiring the production of the records to the court. The court
65 will then conduct an in camera review of the records and disclose to the defense
66 and prosecution only those portions that the requesting party has demonstrated a
67 right to inspect.

68 (b)(5) Any party issuing a subpoena for non-privileged records, papers or other
69 objects pertaining to a victim must serve a copy of the subpoena upon the victim
70 or victim's representative. Service on an unrepresented victim must be facilitated
71 through the prosecutor. The prosecutor must make reasonable efforts to provide
72 a copy of the subpoena to the victim within 14 days of receiving it. The subpoena
73 may not require compliance in less than 14 days after service on the prosecutor or
74 victim's representative.

75 **(b)**(6) The court may, in its discretion or upon motion of either party or the victim
76 or the victim's representative, issue any reasonable order to protect the privacy of
77 the victim or to limit dissemination of disclosed records.

78 **(b)**(7) For purposes of this rule, "victim" and "victim's representative" are used as
79 defined in Utah Code section~~s~~ 77-38-2.

80 **(b)**(8) Nothing in this rule alters or supersedes other rules, privileges, statutes, or
81 caselaw pertaining to the release or admissibility of an individual's medical,
82 psychological, school, or other records.

83 (c) **Applicability of Rule 45, Utah Rules of Civil Procedure.** The provisions of Rule 45 of
84 the, Utah Rules of Civil Procedure, will govern the content, issuance, objections to, and
85 service of subpoenas to the extent those provisions are consistent with the Utah Rules of
86 Criminal Procedure.