

Supreme Court's Advisory Committee on the Rules of Criminal Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

*The meeting is scheduled
in the Council Room.

February 17, 2015
12:00 p.m. - 2:00 p.m.

Agenda

1. Welcome - Patrick Corum
2. Rules published for public comment - Patrick Corum
Brent Johnson
3. Review Legislation - Patrick Corum
Brent Johnson
4. Other business
5. Adjourn

Utah State Courts Rules - Published for Comment

Comments: Rules of Criminal Procedure

Rule 26. If the amendment to (d) anticipates the court creating all the final judgments and commitments someone should carefully consider the fiscal note. currently the state is preparing those in the 8th district. our clerks are fully occupied with their assigned tasks and would not have the time to accomplish the additional workload. at least 3 additional district clerks would be necessary to accomplish the anticipated change. It would be far better to allow each district the option of designating which entity should prepare that documentation.

Posted by Ed Peters on October 23, 2014 11:13 AM

URCrP 026. I am not sure the purpose behind requiring the Court to prepare the final judgment and sentence. Obviously the Court has to approve and sign any final judgment and sentence, but many courts have the parties prepare the written judgment and then present it to the Court for the Court's approval. This not only expedites the process by avoiding the extra delay caused by a judge having to hand write multiple judgments in a day, but it also allows the party to work out the exact wording to which the parties are willing to agree.

Additionally, in the case of misdemeanors (see UCA 77-13-4), the plea can be done by affidavit or written agreement. This rule change would prevent the parties from preparing the proposed judgment for the Court to include with the other plea documents. Currently, when we draft a proposed judgment, we have lines for the defendant and the defense attorney to sign stating they approve of the proposed judgment as drafted. This speeds up the process, insures that the parties know what is being proposed specifically, and places the defendant's approving signature right on the judgment. This proposed rule change will make pleas by affidavit significantly more difficult.

Posted by Randall K. McUne on October 3, 2014 08:25 AM

Rule 26. Written orders, judgments and decrees.

(a) In all pretrial and postconviction rulings by a court, counsel for the party or parties obtaining the ruling shall within ~~fifteen~~ 14 days, or within a shorter time as the court may direct, file with the court a proposed order, judgment, or decree in conformity with the ruling.

(b) Copies of the proposed findings, judgments, and orders shall be served upon opposing counsel before being presented to the court for signature unless the court otherwise orders. Notice of objections shall be submitted to the court and counsel within ~~five~~ seven days after service.

(c) All orders, judgments, and decrees shall be prepared in such a manner as to show whether they are entered based on a ruling after a hearing or argument, the stipulation of counsel, the motion of counsel or upon the court's own initiative, and shall identify the attorneys of record in the cause or proceeding in which the judgment, order or decree is made. If the order, judgment, or decree is the result of a hearing, the order shall include the date of the hearing, the nature of the hearing, and the names of the attorneys and parties present at the hearing.

(d) The trial court shall prepare the final judgment and sentence, and any commitment order. The trial court shall serve the final judgment and sentence on the parties and immediately transmit any commitment order to the county sheriff.

~~(d) (e) All orders, judgments and decrees shall be prepared as separate documents and shall not include any matters by reference unless otherwise directed by the court. Orders not constituting judgments or decrees may be made a part of the documents containing the stipulation or motion upon which the order is based.~~

~~(e) (f) No orders, judgments, or decrees based upon stipulation shall be signed or entered unless the stipulation is in writing, signed by the attorneys of record for the respective parties and filed with the clerk or the stipulation was made on the record .~~

Rule 4. Prosecution of public offenses.

(a) Unless otherwise provided, all offenses shall be prosecuted by indictment or information sworn to by a person having reason to believe the offense has been committed.

(b) An indictment or information shall charge the offense for which the defendant is being prosecuted by using the name given to the offense by common law or by statute or by stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge. If issued, the information shall include the citation number. Failure to include the number will not affect the court's jurisdiction. An information may contain or be accompanied by a statement of facts sufficient to make out probable cause to sustain the offense charged where appropriate. Such things as time, place, means, intent, manner, value and ownership need not be alleged unless necessary to charge the offense. Such things as money, securities, written instruments, pictures, statutes and judgments may be described by any name or description by which they are generally known or by which they may be identified without setting forth a copy. However, details concerning such things may be obtained through a bill of particulars. Neither presumptions of law nor matters of judicial notice need be stated.

(c) The court may strike any surplus or improper language from an indictment or information.

(d) The court may permit an information to be amended at any time before trial has commenced so long as the substantial rights of the defendant are not prejudiced. If an additional or different offense is charged, the defendant has the right to a preliminary hearing on that offense as provided under these rules and any continuance as necessary to meet the amendment. The court may permit an indictment or information to be amended after the trial has commenced but before verdict if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced. After verdict, an indictment or information may be amended so as to state the offense with such particularity as to bar a subsequent prosecution for the same offense upon the same set of facts.

(e) When facts not set out in an information or indictment are required to inform a defendant of the nature and cause of the offense charged, so as to enable him to prepare his defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed at arraignment or within ~~ten~~ 14 days thereafter, or at such later time as the court may permit. The court may, on its own motion, direct the filing of a bill of particulars. A bill of particulars may be amended or supplemented at any time subject to such conditions as justice may require. The request for and contents of a bill of particulars shall be limited to a statement of factual information needed to set forth the essential elements of the particular offense charged.

(f) An indictment or information shall not be held invalid because any name contained therein may be incorrectly spelled or stated.

(g) It shall not be necessary to negate any exception, excuse or proviso contained in the statute creating or defining the offense.

(h) Words and phrases used are to be construed according to their usual meaning unless they are otherwise defined by law or have acquired a legal meaning.

(i) Use of the disjunctive rather than the conjunctive shall not invalidate the indictment or information.

(j) The names of witnesses on whose evidence an indictment or information was based shall be endorsed thereon before it is filed. Failure to endorse shall not affect the validity but endorsement shall be ordered by the court on application of the defendant. Upon request the prosecuting attorney shall, except upon a showing of good cause, furnish the names of other witnesses he proposes to call whose names are not so endorsed.

(k) If the defendant is a corporation, a summons shall issue directing it to appear before the magistrate. Appearance may be by an officer or counsel. Proceedings against a corporation shall be the same as against a natural person.

Rule 29. Disability and disqualification of a judge or change of venue.

(a) If, by reason of death, sickness, or other disability, the judge before whom a trial has begun is unable to continue with the trial, any other judge of that court or any judge assigned by the presiding officer of the Judicial Council, upon certifying that the judge is familiar with the record of the trial, may, unless otherwise disqualified, proceed with and finish the trial, but if the assigned judge is satisfied that neither he nor another substitute judge can proceed with the trial, the judge may, in his discretion, grant a new trial.

(b) If, by reason of death, sickness, or other disability, the judge before whom a defendant has been tried is unable to perform the duties required of the court after a verdict of guilty, any other judge of that court or any judge assigned by the presiding officer of the Judicial Council may perform those duties.

(c)(1)(A) A party to any action or the party's attorney may file a motion to disqualify a judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and shall be supported by an affidavit stating facts sufficient to show bias or prejudice, or conflict of interest.

(c)(1)(B) The motion shall be filed after commencement of the action, but not later than ~~20~~ 21 days after the last of the following:

(c)(1)(B)(i) assignment of the action or hearing to the judge;

(c)(1)(B)(ii) appearance of the party or the party's attorney; or

(c)(1)(B)(iii) the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

If the last event occurs fewer than ~~20~~ 21 days prior to a hearing, the motion shall be filed as soon as practicable.

(c)(1)(C) Signing the motion or affidavit constitutes a certificate under Rule 11, Utah Rules of Civil Procedure and subjects the party or attorney to the procedures and sanctions of Rule 11. No party may file more than one motion to disqualify in an action.

(c)(1)(D) The other parties to the action may not file an opposition to the motion and if any response is filed it will not be considered. The moving party need not file a Request to Submit for Decision under Rule 12. The motion will be submitted for decision upon filing,

(c)(2) The judge against whom the motion and affidavit are directed shall, without further hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing judge. The judge shall take no further action in the case until the motion is decided. If the judge grants the motion, the order shall direct the presiding judge of the court or, if the court has no presiding judge, the presiding officer of the Judicial Council to assign another judge to the action

or hearing. Assignment in justice court cases shall be in accordance with Utah Code Ann. §78A-7-208. The presiding judge of the court, any judge of the district, any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge.

(c)(3)(A) If the reviewing judge finds that the motion and affidavit are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge or the presiding officer of the Judicial Council to do so. Assignment in justice court cases shall be in accordance with Utah Code Ann. §78A-7-208.

(c)(3)(B) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.

(c)(3)(C) The reviewing judge may deny a motion not filed in a timely manner.

~~(d)(1) If the prosecution or a defendant in a criminal action believes that a fair and impartial trial cannot be had in the jurisdiction where the action is pending, either may, by motion, supported by an affidavit setting forth facts, ask to have the trial of the case transferred to another jurisdiction:~~

~~(d)(2) If the court is satisfied that the representations made in the affidavit are true and justify transfer of the case, the court shall enter an order for the removal of the case to the court of another jurisdiction free from the objection and all records pertaining to the case shall be transferred forthwith to the court in the other county. If the court is not satisfied that the representations so made justify transfer of the case, the court shall either enter an order denying the transfer or order a formal hearing in court to resolve the matter and receive further evidence with respect to the alleged prejudice.~~

~~(e) When a change of judge or place of trial is ordered all documents of record concerning the case shall be transferred without delay to the judge who shall hear the case.~~

(d)(1) In the courts of record, if a party believes that a fair and impartial trial cannot be had in the court location or in the county where the action is pending, that party may move to have the trial of the case take place with a jury from another county or the case transferred to a court location in a county where a fair trial may be held. Such motion shall be supported by an affidavit setting forth facts.

(d)(2) If the court is satisfied that the representations made in the affidavit required by subsection (1) are true and justify a change of jury pool or location, the court shall enter an order transferring the case, or selecting a jury from a county free from the objection. If the court is not satisfied that the representations justify an alternate jury pool or transfer of the case, the court shall either enter an order denying the motion or order a hearing to receive further evidence with respect to the alleged prejudice and resolve the matter.

(d)(3) In the justice courts, if a party believes that a fair and impartial trial cannot be had in the court location or in the county where the action is pending, that party may move to have the trial of the case take place with a jury from another county or in a court location where a fair trial may be held. Such motion shall be supported by an affidavit setting forth facts.

(d)(4) If the court is satisfied that the representations made in the affidavit required by subsection (3) are true and justify a change of jury pool or location, the court shall enter an order selecting a jury from a county free from the objection; or directing that trial proceedings be held in a court location free from the objection. If the court is not satisfied that the representations justify an alternate jury pool or relocation of the trial, the court shall either enter an order denying the motion or order a hearing to receive further evidence with respect to the alleged prejudice and resolve the matter.

(d)(5) A motion filed pursuant to this subsection (d) shall be filed not later than 14 days after the party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

(e) When a change of judge or place of trial is ordered all documents of record concerning the case shall, without delay, be transferred or made available in the new location.

28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section 77-23-215 is enacted to read:

30 77-23-215. Return of documents, materials, and objects obtained through use of a
31 search warrant.

32 (1) (a) If the officer who executes a search warrant subsequently determines that
33 documents, materials, or objects seized are not relevant to the investigation for which the
34 warrant was issued, the officer may return those documents, materials, or objects to the person
35 or entity from whom they were seized.

36 (b) If a document, material, or object seized may be subject to discovery by the defense
37 pursuant to Utah Rules of Criminal Procedure, Rule 16(a)(3) or (4), the document, material, or
38 object is not considered irrelevant and may not be returned without a court order.

39 (2) (a) The officer under Subsection (1) shall obtain a receipt for the documents,
40 materials, or objects that are returned, and shall file with a magistrate of the issuing court an
41 amended return of warrant and inventory that reflects the returned items.

42 (b) The receipt shall identify specifically which documents, materials, or objects were
43 returned.

44 (3) (a) Documents and materials returned under this section are not records as defined
45 by Subsection 63G-2-103(22)(a).

46 (b) Objects returned under this section are presumed to not have historical or
47 evidentiary value and are not subject to a retention schedule under Subsection 63A-12-103(10).

Legislative Review Note
as of 2-9-15 2:49 PM

Office of Legislative Research and General Counsel

FORCIBLE ENTRY AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Code of Criminal Procedure regarding the use of forcible entry when serving a search warrant or making an arrest.

Highlighted Provisions:

This bill:

- ▶ amends existing law regarding the use of forcible entry by a law enforcement officer when executing a warrant;
- ▶ requires a law enforcement officer to wear a uniform with clear text that identifies that person as a peace officer;
- ▶ requires any officer who executes a warrant to be equipped with a body camera that actively records through the duration of the execution of the warrant;
- ▶ provides that a search or administrative warrant may not be issued by a justice court judge; and
- ▶ provides that any evidence obtained in violation of these provisions is not admissible in any civil, criminal, or administrative proceeding.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 77-7-8, as last amended by Laws of Utah 2014, Chapter 297

30 77-23-210, as last amended by Laws of Utah 2014, Chapter 297

31

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section 77-7-8 is amended to read:

34 **77-7-8. Forcible entry to conduct search or make arrest -- Conditions requiring a**
35 **warrant.**

36 (1) (a) Subject to Subsection (2), a peace officer when making an arrest may forcibly
37 enter the building in which the person to be arrested is located, or in which there is probable
38 cause for believing [~~him~~] the person to be.

39 (b) Before making the forcible entry, the officer shall:

40 (i) identify himself or herself as a law enforcement officer; [~~and~~]

41 (ii) demand admission; and

42 (iii) explain the purpose for which admission is desired.

43 (c) (i) The officer need not give a demand and explanation, or identify himself or
44 herself, before making a forcible entry under the exceptions in Section 77-7-6 [~~or where there~~
45 ~~is probable cause to believe evidence will be easily or quickly secreted or destroyed~~].

46 (ii) The officer shall identify himself or herself and state the purpose [~~of~~] for entering
47 the premises as soon as practicable after entering the premises.

48 (d) The officer may use only that force which is reasonable and necessary to effectuate
49 forcible entry under this section.

50 (2) If the building to be entered under Subsection (1) appears to be a private residence
51 or the officer knows the building is a private residence, and if there is no consent to enter or
52 there are no exigent circumstances, the officer shall, before entering the building:

53 (a) obtain an arrest or search warrant if the building is the residence of the person to be
54 arrested; or

55 (b) obtain a search warrant if the building is a residence, but not the residence of the
56 person whose arrest is sought.

57 Section 2. Section 77-23-210 is amended to read:

58 **77-23-210. Force used in executing a search warrant -- When notice of authority**

59 is required as a prerequisite.

60 (1) When a search warrant has been issued authorizing entry into any building, room,
61 conveyance, compartment, or other enclosure, the officer executing the warrant may enter:

62 (a) if, after giving notice of the officer's authority and purpose, there is no response or
63 the officer is not admitted with reasonable promptness; or

64 (b) without notice of the officer's authority and purpose as provided in Subsection (3).

65 (2) The officer executing the warrant under Subsection (1) may use only that force
66 which is reasonable and necessary to execute the warrant.

67 (3) (a) The officer shall identify himself or herself and state the purpose ~~[of]~~ for
68 entering the premises as soon as practicable.

69 (b) The officer may enter without notice only if:

70 (i) there is ~~[reason]~~ probable cause to believe that the notice will endanger the life or
71 safety of the officer or another person; or

72 ~~[(ii) there is probable cause to believe that evidence may be easily or quickly secreted~~
73 ~~or destroyed; or]~~

74 ~~[(iii)] (ii)~~ the magistrate, ~~[having found probable cause based upon proof provided~~
75 ~~under oath, that the object of the search may be easily or quickly secreted or destroyed, or]~~
76 having found reason to believe that physical harm may result to any person if notice were
77 given, has directed that the officer need not give notice of authority and purpose before
78 entering the premises to be searched under ~~[Rule 40,]~~ the Rules of Criminal Procedure.

79 (c) The officer shall wear a uniform with large, conspicuous text stating that the officer
80 is a peace officer.

81 (d) The officer shall be equipped with a camera worn on the officer's body that actively
82 records throughout the duration of the execution of the warrant.

83 (4) (a) The officer shall take reasonable precautions in execution of any search warrant
84 to minimize the risks of unnecessarily confrontational or invasive methods which may result in
85 harm to any person.

86 (b) The officer shall minimize the risk of searching the wrong premises by verifying
87 that the premises being searched is consistent with a particularized description in the search
88 warrant, including such factors as the type of structure, the color, the address, and orientation
89 of the target property in relation to nearby structures as is reasonably necessary.

- 90 (5) A warrant may not be issued under this section by a justice court judge.
91 (6) Any evidence obtained in violation of this section is inadmissible in any civil,
92 criminal, or administrative proceeding.

Legislative Review Note
as of 12-30-14 9:03 AM

Office of Legislative Research and General Counsel