

**MINUTES**

**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

November 17, 2015

**ATTENDEES**

Patrick Corum- Chair  
Judge Elizabeth Hruby-Mills  
Judge Brendan McCullagh  
Judge Vernice Trease  
Professor Jensie Anderson - by phone  
Blake Hills  
Craig Johnson - by phone  
Ryan Stack  
Cara Tangaro  
Douglas Thompson

**EXCUSED**

Jeffrey Gray  
Tessa Hansen

**STAFF**

Brent Johnson

**I. WELCOME / APPROVAL OF MINUTES**

Patrick Corum welcomed the committee members to the meeting. Judge Brendan McCullagh moved to approve the minutes from the previous meeting. Judge Elizabeth Hruby-Mills seconded the motion. The motion carried unanimously.

**II. RULE 17.5**

At the last meeting, the Committee discussed the public comments to rule 17.5. One of the issues that was raised was how it would affect the procedures in rule 15.5. Craig Johnson presented an amendment to paragraph (e) that would address that concern. Judge McCullagh suggested amending the language to state: "nothing in this rule precludes or affects the procedures in rule 15.5." Douglas Thompson moved to approve rule 17.5 as amended. Craig Johnson seconded the motion. The motion carried unanimously.

### **III. RULE 14 SUBPOENAS**

Mr. Corum stated that he is still waiting for law clerk assistance on this issue. The issue will be tabled for the time-being.

### **IV. HB308**

Jeffrey Gray was unable to attend the meeting and therefore this issue will be postponed.

### **V. PRETRIAL PROCEDURES COMMITTEE UPDATE**

Judge McCullagh provided an update on the work of the Judicial Council's pretrial release committee. Judge McCullagh stated that based on the recommendations from the pretrial committee, he will be presenting various rule proposals to the committee. Judge McCullagh provided examples of those rule proposals. Judge McCullagh stated that rule 4 will be divided into three different rules, with a rule 4A dealing with indictments, rule 4B dealing with informations, and rule 4C dealing with citations. Judge McCullagh will propose that rule 5 be eliminated because it is redundant. Judge McCullagh stated that rule 6 needs to be clarified. The rule creates a preference for summonses but there are some areas in the state in which the normal practice is to issue warrants. The rule will be clarified to indicate more strongly the preference for summonses. Judge Vernice Trease asked whether bail will be eliminated entirely. Judge McCullagh stated that monetary bail will not be completely eliminated but the statute and rules will create preferences for judges to impose the least restrictive conditions possible. Judge McCullagh stated that rule 7 will be divided into six different rules, each dealing with different areas such as initial appearances for felonies, initial appearances for misdemeanors, preliminary hearings, material witnesses, etc. The rule will also include a mandatory 72 hour provision for filing informations. This is currently the practice in many areas, but is found no where in the laws.

### **VI. PEREMPTORY CHALLENGES**

Brent Johnson explained that he had done some additional research on peremptory challenges. Ryan Stack asked if the Committee could view what other states had done. Mr. Johnson explained that he had not found any states that completely eliminated peremptory challenges. Mr. Stack stated that this appears to be a solution looking for a problem. Mr. Stack stated that he believes the Batson problems have been overstated. Mr. Corum noted that the various jurisdictions in Utah are different in how they handle challenges for cause, with the Third District being extremely cautious and very much erring on the side of eliminating jurors. Cara Tangaro stated that part of the issue is the right of individuals to serve on a jury. Mr. Hill stated that there are many circumstances in which there is no basis for eliminating jurors for cause, but the prosecution or defense will know from experience that the individuals simply are not competent to grasp the issues involved with serving on a jury. Craig Johnson provided an example of a recent jury involving domestic violence. One of the prospective jurors stated that the person would be inclined to believe a defendant. The juror explained that the reason for this is that if the defendant confesses then that would be reliable. Mr. Johnson stated that from these

responses it was evident that the juror did not understand the tasks ahead, but it did not appear that there would be a basis for challenging for cause. Brent Johnson noted that there is currently a U.S. Supreme Court case in which the issue of peremptory challenges will be addressed and that case might provide guidance or resolve the issue completely. Judge McCullagh suggested tabling the issue until the case comes out.

## **VII. OTHER BUSINESS/ADJOURN**

Mr. Thompson stated that he had concerns about the amendments to rule 22 that were passed at the last meeting. Mr. Thompson noted that this appeared to come out of the dissent from the Houston decision. Mr. Thompson asked whether it was appropriate for the Committee to act on something that only came out of a dissent.

Brent Johnson explained that the entire Supreme Court bench had invited him to attend a court conference and the court had instructed the Committee to review the issue. Mr. Johnson stated that therefore this was not based simply on the dissent, but on a concern from the entire court. Mr. Johnson explained that the instruction from the court was to essentially treat rule 22 as it had never existed and to start from the beginning. Mr. Thompson thanked Mr. Johnson for the explanation and was satisfied with the actions that the Committee had taken.

Judge McCullagh stated that he will also be proposing a new rule that will address procedures for post-judgment sanctions. Judge McCullagh stated that this will be an issue for a future meeting.

## **VIII. ADJOURN**

The committee scheduled its next meeting for January 19, 2016. There being no further business the committee adjourned at 1:00 p.m.