

## **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 Council room

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

### **Agenda**

1. Welcome and approval of minutes - Patrick Corum
2. Rule 17.5 and rule 15.5 - Patrick Corum  
Craig Johnson
3. Rule 14 - subpoenas - Patrick Corum
4. HB 308 update - Jeffrey Gray
5. Update on Pretrial Release Committee and  
rule changes - Judge Brendan McCullagh
6. Rule 18, peremptory challenges - Brent Johnson
7. Other business
8. Adjourn

Rule 17.5

(c) The court, in its discretion, may permit testimony in open court by contemporaneous transmission from a different location if the party not calling the witness waives confrontation of the witness in person. **If a party not calling the witness does not waive confrontation of the witness in person, the party calling the witness can file a motion with the court under Rule 15.5 for child victims or child witnesses of sexual or physical abuse.**

**(8) Appendix A. Amendments to statutes and rules (Excerpts)**

Although our motivation has been improving hearings and services in our smaller courthouses, these proposed rules are not limited by the size of an operation. They should be vetted by the committees responsible for the rules and by the judges and lawyers involved in the different types of cases.

**(a) Remote hearings**

**(i) Rule of Criminal Procedure 17.5. Hearings with contemporaneous transmission from a different location.**

(a) The court may conduct the following hearings with the defendant attending by contemporaneous transmission from a different location:

(a)(1) arraignment;

(a)(2) bail;

(a)(3) change of plea;

(a)(4) early case resolution;

(a)(5) initial appearance;

(a)(6) law and motion;

(a)(7) pretrial conference;

(a)(8) review;

(a)(9) roll call;

(a)(10) waiver of preliminary examination; and

(a)(11) any hearing from which the defendant has been excluded under Rule 17.

(b) The court may conduct the following hearings with the defendant attending by contemporaneous transmission from a different location if the defendant waives attendance in person:

(b)(1) preliminary examination;

(b)(2) probation violation;

(b)(3) restitution;

(b)(4) sentencing; and

(b)(5) trial.

(c) For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous

transmission from a different location if the party not calling the witness waives confrontation of the witness in person.

**(ii) Rule of Juvenile Procedure 29B. Hearings with contemporaneous transmission from a different location.**

(a) In any delinquency proceeding or proceeding under Section 78A-6-702 or Section 78A-6-703 the court may conduct the following hearings with the minor or the minor's parent, guardian or custodian attending by contemporaneous transmission from a different location:

- (a)(1) arraignment;
- (a)(2) contempt
- (a)(3) detention,
- (a)(4) law and motion;
- (a)(5) pretrial conference
- (a)(6) review; and
- (a)(7) warrant.

(b) The court may conduct the following hearings with the minor or the minor's parent, guardian or custodian attending by contemporaneous transmission from a different location if the minor or the minor's parent, guardian or custodian waives attendance in person:

- (b)(1) adjudication
- (b)(2) certification to district court.
- (b)(3) disposition;
- (b)(4) expungement.
- (b)(5) permanency;
- (b)(6) preliminary hearing;
- (b)(7) restitution;
- (b)(8) shelter; and
- (b)(9) trial.

(c) For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location if the party not calling the witness waives confrontation of the witness in person.

**(iii) Rule of Juvenile Procedure 37B. Hearings with contemporaneous transmission from a different location.**

(a) In any abuse, neglect, dependency, or substantiation proceeding and in any proceeding for the termination of parental rights, the court may conduct hearings with the minor or the minor's parent, guardian or custodian attending by contemporaneous transmission from a different location if the minor or the minor's parent, guardian or custodian waives attendance in person.

(b) For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location if the party not calling the witness waives confrontation of the witness in person.

**(iv) Rule of Civil Procedure 43. Evidence.**

(a) Form. In all trials, the testimony of witnesses shall be taken in open court, unless otherwise provided by these rules, the Utah Rules of Evidence, or a statute of this state. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

**(v) Code of Judicial Administration Rule 4-106. Electronic conferencing.**

Intent:

~~To authorize the use of electronic conferencing hearings with contemporaneous transmission from a different location in lieu of personal appearances in appropriate cases.~~

~~To establish the minimum requirements for contemporaneous transmission from a different location.~~

Applicability:

This rule shall apply to all courts of record and not of record.

Statement of the Rule:

~~(1) In the judge's discretion, any hearing may be conducted using telephone or video conferencing.~~

~~(2) Any proceeding in which a person appears by telephone or video conferencing shall proceed as required in any other hearing including keeping a verbatim record.~~

(1) If the courtroom satisfies paragraph (3), the judge may participate in a hearing by contemporaneous transmission from a different location.

1        **Rule 17.5. Hearings with contemporaneous transmission from a different location.**

2        (a) The court, in its discretion, may conduct the arraignment, bail hearing, and/or initial appearance  
3 with a defendant attending by contemporaneous transmission from a different location without the  
4 agreement of the parties or waiver of the defendant's attendance in person.

5        (b) For any other type of hearing, the court may only conduct the hearing with a defendant attending  
6 by contemporaneous transmission from a different location if the parties agree and the defendant  
7 knowingly and voluntarily waives attendance in person.

8        (c) The court, in its discretion, may permit testimony in open court by contemporaneous transmission  
9 from a different location if the party not calling the witness waives confrontation of the witness in person.

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## Utah State Courts Rules - Published for Comment

### Comments: Remote Hearings Rules

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Regarding proposed URCP 17.5, subsection (a) appears to be aimed at allowing video hearings for in-custody defendants under these circumstances. Please consider amending the "different location" language to read "jail or correctional facility." This clarification narrows the subsection's applicability to in-custody defendants. The danger with the broader "different location" language is allowing out-of-custody defendants to be excused from an initial appearance when they should otherwise appear in person (at that point any waiver of future appearances can be addressed once counsel is appointed or retained). Otherwise allowing out-of-custody defendants to appear remotely for an initial appearance confers preferential treatment on those individuals with the financial means to post bail and absent themselves from the judicial process.

Posted by Ryan Stack July 10, 2015 10:50 AM

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Regarding URCP 60(c), it is unclear what date has priority; the date of the entry of the written order or the date of the proceeding. Previously we could rely on the language as to when the order was entered, but that has been removed. Perhaps stating "not more than 90 days after the entry of the judgment... or if no order is signed the date of the proceeding.

Posted by Russell Yauney June 30, 2015 04:41 PM

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A growing number of criminal defense expert witnesses and parents' experts in juvenile child welfare cases are pressuring the parties and the Court to allow them to testify by Skype or other method from the comfort of their home or office. Having watched a few trials in juvenile court where the State's experts all testified in person and the parents' experts all testified by Skype, it is clear that there is a denial of the due process right to full cross-examination of an expert witness when the expert is not present in court. In those trials, parents' counsel freely cross-examined the State's experts with learned treatises, computer graphics and other materials, while the State's attorney could not engage in the same type of cross-examination because of the limitations of the technology.

It is anticipated that the same group of regular defense experts will begin to make the same requests in criminal cases involving child abuse allegations, and the inherent unfairness of that process should result in a rule that prohibits experts from testifying from a remote location. Given the fact that a huge cottage industry has been created among experts with questionable qualifications and with little or no scientific basis underlying their opinions, both parties should have an equal ability to fully cross-examine all experts in child abuse trials and preliminary hearings.

Posted by Robert Parrish June 26, 2015 09:48 AM

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