

Approved

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

July 19, 2016

ATTENDEES

Patrick Corum – Chair
Judge Elizabeth Hruby-Mills
Judge Vernice Trease
Professor Jensie Anderson - by phone
Jeffrey Gray
Blake Hills
Craig Johnson
Maureen Magagna
Ryan Stack
Cara Tangaro
Douglas Thompson
Tessa Hansen – Recording Secretary

EXCUSED

Judge Brendan McCullagh
Brent Johnson

I. WELCOME/APPROVAL OF MINUTES

Patrick Corum welcomed the committee members to the meeting. Mr. Corum welcomed Maureen Magagna to the committee. Ms. Magagna is the Clerk of Court in the Second District Court. Mr. Corum next discussed the May 17, 2016 minutes. A member moved to approve the minutes, another member seconded the motion. The motion carried unanimously.

II. RULES PUBLISHED FOR PUBLIC COMMENT (RULES 4, 5, 6, 22, and 38)

Mr. Corum initially discussed comments received on rules 4, 5, 6 and 22. It was noted that Utah County does use PC statements, however, in Summit County PC statements are not required unless a warrant is issued. The committee discussed the cumbersome burden the prosecutors would face in requiring PC statements for all cases. Additionally, it was noted there could be a financial burden on the cities if more employees are needed to cover the time of preparing these. The committee discussed the recent change in Weber County, which is now using PC statements in district court.

The committee next discussed that PC is a legal requirement and a defendant's right. It was noted that even if the number was extremely high, each person facing jail-time deserves this right. It was suggested that there isn't a difference between a PC statement and a citation, other than an information would provide more information about the offense. There was concern about the burden the request imposes on cities and counties. In one small county a prosecutor noted she works alone, without staff, and is barely able to keep up with the current workload.

The committee discussed the possibility of requiring PC statements for felonies, but not for minor offenses.

The majority of defendants in justice courts are issued citations. Currently, the rule is not clear on whether justice courts are included. The committee discussed inviting Ryan Robinson to a future meeting to discuss this.

Mr. Corum stated he will follow up with Brent Johnson on this issue.

III. RULE 18

The committee next discussed rule 18. There was a small change to the rule then it was sent to the Supreme Court without a public comment phase.

IV. RULE 6 - REWRITE

The committee then discussed rule 6. Rule 6 had a minor change then was sent to the Supreme Court, along with rules 4 and 5, on an emergency basis without prior sending it out for public comment. The Supreme Court approved the rules subject to public comment. The three rules were effective July 1, 2016.

Craig Johnson submitted an amended proposal to rule 6. It was discussed that this change is needed to comply with Utah Code § 77-20-1, which was amended May 10, 2016. The amendment would address § 77-20-1(2)(c). The committee addressed Mr. Johnson's proposed amendment to section (e)(3)(A). A member moved to approve the amendment to rule 6, another member seconded the motion. The motion carried unanimously.

The committee discussed rule 6(c). Currently the rule does not comply with § 77-20-1(2)(c). There was discussion on whether to list the statutes related to this rule in rule 6(c) or whether to rephrase the wording to add "subject to . . ." It was noted that none of § 77-20-1(2) is listed in rule 6(c)(2). The comments received reflected concerns about whether someone can be denied bail in any case. After discussion by the committee, Craig Johnson stated he will revise rule 6 and distribute it for comment and vote.

V. RULE 22

The committee discussed the Supreme Court's recommendation that the rule be amended to narrow the time-frame after sentencing. The committee addressed the comments received. The question presented was what defines "illegal sentence." Currently, judges have discretion on this; however, amending the rule will take that away. Typically times for appeals end 30 days after sentencing. It was noted that the rule should be defined. There is direction through case law that specifically addresses illegal sentences. It was noted that the statute presumes sentences to be concurrent unless noted at sentencing.

After further discussion, the committee decided to table this issue until Judge Brendan McCullagh is in attendance, since the amendment was his creation.

VII. RULE 38

The committee briefly discussed rule 38. Currently, the rule states a person has 30 days to file a notice of appeal, however, the statute now says a person has 28 days for an appeal from a justice court. A member moved to approve the amendment to rule 38(b)(1), another member seconded the motion. The motion carried unanimously.

VIII. OTHER BUSINESS/ADJOURN

With Judge McCullagh not being able to attend this meeting the committee was unable to discuss the remaining issues. The meeting was then adjourned at 1:30. The next meeting will be held September 20, 2016.