

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

AGENDA

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

January 23, 2007 - 5:15 p.m.

- | | | |
|----|----------------------------------------|--------------------------------------------------|
| 1. | WELCOME AND APPROVAL OF MINUTES | Michael Wims |
| 2. | RULE 8 | Aric Cramer |
| 3. | RULE 18 | Michael Wims
Judge Brendan McCullagh |
| 4. | RULE 15.5 SUBCOMMITTEE | Judge Brendan McCullagh
Patrick Corum |
| 5. | OTHER BUSINESS | |
| 6. | ADJOURN | |

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

From: "Aric Cramer" <ariccramer@qwest.net>
To: "Brent Johnson" <brentj@email.utcourts.gov>
Date: 10/12/06 11:18AM
Subject: Re: change of rule 8

I would like to be on the agenda. My proposal is simple. In Rule 8(b)(2) I would propose striking the words "or a felony homicide" from the qualification. The brief reasoning is that too many attorneys are being appointed who have no idea of the vast differences between a "regular" murder case and a capital case. The UACDL leadership is aware of some attorneys who are making dangerous mistakes on current capital cases that could result convictions that will have to be reversed for ineffective assistance because the attorneys have never been involved in a capital case.

Aric Cramer

----- Original Message -----

From: "Brent Johnson" <brentj@email.utcourts.gov>
To: <ariccramer@qwest.net>
Sent: Wednesday, October 11, 2006 9:46 AM
Subject: Re: change of rule 8

The next meeting is November 14 at 5:15 p.m. at the Administrative Office of the Courts. I will put you on the agenda if you can make it. If you have any specific proposals beforehand I usually like to send those out 1 week before the meeting.

>>> "Aric Cramer" <ariccramer@qwest.net> 10/08/06 09:52PM >>>
Having never done this before, I guess whatever is the proper procedure. It sounds like an audience with the committee is the first step. If so, how do I get an audience?

Aric Cramer

----- Original Message -----

From: "Brent Johnson" <brentj@email.utcourts.gov>
To: <ariccramer@qwest.net>
Sent: Sunday, October 08, 2006 8:06 PM
Subject: Re: change of rule 8

Do you need to speak with me or are you looking for an audience with the Criminal Procedure Committee?

>>> "Aric Cramer" <ariccramer@qwest.net> 10/06/06 01:21PM >>>
How do I make an appointment to speak with you?

Aric Cramer

----- Original Message -----

From: "Brent Johnson" <brentj@email.utcourts.gov>
To: <ariccramer@qwest.net>
Sent: Tuesday, October 03, 2006 1:14 PM
Subject: Re: change of rule 8

From: Michael Wims
To: Johnson, Brent
Date: 7/25/06 2:18PM
Subject: Proposed change to Rule 18(e)

Brent: Please send the attached proposed change to Rule 18(e) to the members of the Rules of Criminal Procedure Committee asking that they consider the proposed change and be prepared to discuss this at our next meeting on September 19th.

Michael D. Wims
Assistant Attorney General
Chief, Special Prosecutions Section
Criminal Justice Division
State of Utah
5272 S. College Drive, Suite 200
Murray UT 84123
(801)281-1239

Proposed amendment to Rule 18(e)(10) URCrP.
Rule 18

...

(e) A challenge for cause is an objection to a particular juror and shall be heard and determined by the court. The juror challenged and any other person may be examined as a witness on the hearing of such challenge. A challenge for cause may be taken on one or more of the following grounds. On its own motion the court may remove a juror upon the same grounds.

(e)(1) want of any of the qualifications prescribed by law;

(e)(2) any mental or physical infirmity which renders one incapable of performing the duties of a juror;

(e)(3) consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted;

(e)(4) the existence of any social, legal, business, fiduciary or other relationship between the prospective juror and any party, witness or person alleged to have been victimized or injured by the defendant, which relationship when viewed objectively, would suggest to reasonable minds that the prospective juror would be unable or unwilling to return a verdict which would be free of favoritism. A prospective juror shall not be disqualified solely because the juror is indebted to or employed by the state or a political subdivision thereof;

(e)(5) having been or being the party adverse to the defendant in a civil action, or having complained against or having been accused by the defendant in a criminal prosecution;

(e)(6) having served on the grand jury which found the indictment;

(e)(7) having served on a trial jury which has tried another person for the particular offense charged;

(e)(8) having been one of a jury formally sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict after the case was submitted to it;

(e)(9) having served as a juror in a civil action brought against the defendant for the act charged as an offense;

(e)(10) if the offense charged is punishable with death, the ~~entertaining of opinions about the death penalty as would preclude the juror from voting to impose the death penalty following conviction or would require the juror to impose the death penalty following conviction regardless of the facts; juror's views on capital punishment would prevent or substantially impair the performance of the juror's duties as a juror in accordance with the instructions of the court and the juror's oath under subsection (h).~~

(e)(11) because the juror is or, within one year preceding, has been engaged or interested in carrying on any business, calling or employment, the carrying on of which is a violation of law, where defendant is charged with a like offense;

(e)(12) because the juror has been a witness, either for or against the defendant on the preliminary examination or before the grand jury;

(e)(13) having formed or expressed an unqualified opinion or belief as to whether the defendant is guilty or not guilty of the offense charged; or

(e)(14) conduct, responses, state of mind or other circumstances that reasonably lead the court to conclude the juror is not likely to act impartially. No person may serve as a juror, if challenged, unless the judge is convinced the juror can and will act impartially and fairly.

...

(h) When the jury is selected an oath shall be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between the parties, and render a true verdict according to the evidence and the instructions of the court.

See *Wainwright v. Witt*, 469 U.S. 412, 105 S.Ct. 844, 83 L.Ed2d 841 (1985) clarifying and modifying *Witherspoon v. Illinois*, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968).