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

Administrative Office of the Courts
Council Room
450 South State Street
Salt Lake City, Utah 84111
September 17, 2019
12:00 p.m. - 2:00 p.m.

Agenda

1.	Welcome and approval of minutes	-	Doug Thompson
2.	Rule 8(b) and (c) – proposed changes	-	Jensie Anderson
3.	Rule 16	-	Cara Tangaro
4.	Eyewitness identification - Rule 12 - Rule 617	-	Blake Hill
5.	Rule 24	-	Doug Thompson
6.	Rules 4 and 6 – proposed changes	-	Brent Johnson
7.	Rule 9 and 9A	-	Brent Johnson
8.	Rule 14 – back from public comment	-	Brent Johnson
9.	Rule 38 – proposed changes	-	Brent Johnson
10.	Other business	-	Doug Thompson
11.	Adjourn		

Rules of Criminal Procedure 2020 meeting dates. Meeting times are from 12 – 2 pm, unless otherwise noted:

January 16	July 16
March 19	September 17
May 21	November 19

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

MEETING MINUTES

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
May 21, 2019 – 12:00 p.m. to 2:00 p.m.

DRAFT

MEMBERS:	**PRESENT**	**EXCUSED**
Douglas Thompson, *Chair*	•	
Jensie Anderson	•	
Judge Patrick Corum	•	
Jeffrey S. Gray	•	
Judge Elizabeth Hruby-Mills	•	
Blake Hills	•	
Craig Johnson – by phone	•	
Joanna Landau	•	
Kelly Sargent	•	
Judge Kelly Schaeffer-Bullock	•	
Ryan Stack	•	
Cara Tangaro	•	

GUESTS:

Judge Sam Chiara
Michael Drechsel

STAFF:

Brent Johnson - excused
Minhvan Brimhall (recording secretary)

1. **Welcome ad approval of minutes:**
Douglas Thompson welcomed the committee members to the meeting. The Committee discussed the March 19, 2019 minutes. There being no changes to the minutes, Craig Johnson moved to approve the minutes. Ryan Stack seconded the motion. The motion was unanimously approved.

2. **Proposed new rule on probation supervision:**
Michael Drechsel, Associate General Counsel, discussed proposed changes to a new rule on probation supervision. The rule initially started as a proposed rule to consolidate probation supervision amongst court jurisdiction under the Code of Judicial Administration. The Board of District Court Judges met and determined that the proposal falls more in line as a rule under the Rules of Criminal Procedure. The proposed rule would allow district court probation cases to be consolidated into one case that would provide the judge a case history of the defendant's probation history and current status. The rule was approved by the Policy and Planning Committee but then placed on

hold until it can be discussed with the Rules of Criminal Procedure Committee and ownership of the rule be transferred over.

Judge Hruby-Mills noted that concerns had been raised within the Third District Court that the proposed new rule would inundate the Salt Lake County courts will all the cases and did not have a clear understanding of how this would be implemented.

The committee discussed varying factors and concerns with the proposed new rule and reviewed the language used in the proposed rule. Mr. Drechsel noted that the rule is flexible as it is currently drafted that it could be rewritten in a manner to address all areas of probation and violation concerns. The consolidation of probation cases has the potential to reduce the number of probation cases being addressed throughout the state.

Mr. Thompson recommended that a subcommittee be formed to discuss the proposed new rule and consideration to transfer the rule to the Rules of Criminal Procedure. Cara Tangaro recommended that Mr. Drechsel be a part of the subcommittee as he has experience in criminal prosecution cases and a working knowledge of the background of the formation of the proposed rule. Mr. Drechsel accepted the invitation to be a part of the subcommittee.

No motion was made on the rule. The rule will be reviewed at another date once the subcommittee has had an opportunity to meet.

3. Rules 9 and 9A – Douglas Thompson

Judge Chiara, Eighth District Court Judge, spoke to the committee regarding proposed changes to rules 9A and 9. Rules 9A and 9 were implemented a year ago but have since been suspended due to issues identified in the rule. The rule as currently written does not clearly define what a warrant, or state when an initial court appearance will be held when a person has been arrested and is incarcerated over a weekend or the holiday. The Board of District Court judges has reviewed the rule and made recommended changes to provide for more clarification. The proposed changes to rule 9A includes the definition of arrest warrant and denotes the time frame for initial court appearance to 5 pm on the next business when the arrest occurs over the weekend or on a holiday. The Board proposed that for arrests without a warrant, a filing of charges be completed within 4 days of an arrest, and the initial appearance be held within 5 business days of the arrest. This would allow for more time judge to review the probable cause statement and other information that the judge may not receive within 24 hours of the PSA notification.

The committee discussed the proposed recommendations made by the Board of District Court Judges and raised several concerns regarding implications of the rules and the

reality of judges covering hearings from a different district, as well as the impact the rule would have on rural courts that do not hold court as often as other courts.

The committee will review the proposed changes as presented by Judge Chiara and will report back to the Board of District Court Judges on further recommendations or a status update on the proposed changes. The committee thanked Judge Chiara for his attendance and participation in the meeting.

4. Rule 16 subcommittee report – Cara Tangaro

The subcommittee met last week to discuss rule 16. Cara Tangaro and Jeff Gray participated in the meeting. Rule 16 received several comments during the last comment period. The subcommittee did their best to address concerns and include recommended changes to the rule from those comments. Ms. Tangaro and Mr. Gray reviewed the proposed changes made by the subcommittee and asked for feedback from this committee. Due to the time constraint of the meeting, they were unable to review all of the proposed. Mr. Thompson asked that the subcommittee meet again to review changes as recommended by this committee and to report back at a future hearing. Ms. Tangaro and Mr. Gray agreed to have the subcommittee meet again for further review of the rule.

5. Committee note review:

Rule 18: This item was not discussed due to lack of time and will be addressed at a future meeting.

6. State v. Ogden and new restitution rule – Douglas Thompson

This item was not discussed due to lack of time and will be addressed at a future meeting.

7. Rule 12 review for publication on final approval – Brent Johnson

Mr. Johnson is out traveling and unable to attend today's meeting. Mr. Thompson noted that rule 12 will be going out for publication with no changes at this time.

8. Other business – Douglas Thompson

Mr. Thompson indicated he would not be available to attend the July 16 meeting. Ms. Tangaro stated she is unable to attend that meeting as well. No other members indicated their availability for meeting. It is undetermined at this time if the July 16 meeting will be held.

9. ADJOURN

With no other business, the meeting adjourned at 2 pm without a motion. The next meeting is scheduled for July 16 at 12 pm (noon) in the Judicial Council room.

MEMORANDUM

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

From: Jensie Anderson

Re: Proposed changes to Rule 8(b) and (c) of the Utah Rules of Criminal Procedure

Date: June 26, 2019

Attached please a memo from Neal Hamilton, Chairperson of the Utah Indigent Defense Funds Board, proposing changes to Rule 8 of the Utah Rules of Criminal Procedure. Neal and I will be available to discuss these proposed changes at the July 16 meeting.

Thanks so much for your consideration.

MEMORANDUM

To: Supreme Court Advisory Committee on the Rules of Criminal Procedure

From: Neal Hamilton, Chairperson Utah Indigent Defense Funds Board

Re: Proposed changes to Rule 8(b) and (c) of the Utah Rules of Criminal Procedure

Date: June 26, 2019

Rule 8

Rule 8 of the Utah Rules of Criminal Procedure currently allows an attorney to be appointed to represent an indigent defendant "who is charged with an offense for which the punishment may be death" if the trial court finds that:

> (b)(1) at least one of the appointed attorneys must have tried to verdict six felony cases within the past four years or twenty-five felony cases total;
> (b)(2) at least one of the appointed attorneys must have appeared as counsel or co-counsel in a capital or a felony homicide case which was tried to a jury and which went to final verdict;
> (b)(3) at least one of the appointed attorneys must have completed or taught within the past five years an approved continuing legal education course or courses at least eight hours of which deal, in substantial part, with the trial of death penalty cases; and
> (b)(4) the experience of one of the appointed attorneys must total not less than five years in the active practice of law.

The trial court "should also consider at least the following factors:

> (c)(1) whether one or more of the attorneys under consideration have previously appeared as counsel or co-counsel in a capital case;
> (c)(2) the extent to which the attorneys under consideration have sufficient time and support and can dedicate those resources to the representation of the defendant in the capital case now pending before the court with undivided loyalty to the defendant;
> (c)(3) the extent to which the attorneys under consideration have engaged in the active practice of criminal law in the past five years;
> (c)(4) the diligence, competency, the total workload, and ability of the attorneys being considered; and
> (c)(5) any other factor which may be relevant to a determination that counsel to be appointed will fairly, efficiently and effectively provide representation to the defendant.

I am asking Rule 8 to be amended as follows (proposed changes are underlined):

> (b)(1) at least one of the appointed attorneys must have tried to verdict six felony cases <u>as defense counsel</u> within the past four years or twenty-five felony cases total<u>, with at least six of the twenty-five felony cases being as defense counsel</u>;
> (b)(2) at least one of the appointed attorneys must have appeared as counsel or co-counsel in a capital or a felony homicide case<u>, representing a defendant,</u> which was tried to a jury and which went to final verdict;
> (b)(3) at least one of the appointed attorneys must have completed<u>, in person,</u> or taught within the past five years an approved continuing legal education course or courses at least eight hours of which deal, in substantial part, with the <u>representation of defendants in</u> death penalty cases; and
> . . .
> (c)(1) whether one or more of the attorneys under consideration have previously appeared as counsel or co-counsel in a capital case<u>, representing a defendant</u>;

These proposed changes are supported by the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases[1] (*hereinafter* ABA Guideline), which this Court has found to represent the "prevailing norms" in capital cases. *Taylor v. State*, 2007 UT 12, ¶¶ 49-55. This proposal was also submitted to the Utah Supreme Court and they justices were uniformly in favor of such a change.

I am asking for these changes because Rule 8 does not specify that the relevant experience and training needs to be in the representation of indigent defendants. I have observed an increase of former prosecutors applying for, and receiving, Rule 8 certification with the Indigent Defense Funds Board without having any experience representing indigent defendants.

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[1] *See, e.g.*, Guideline 5.1(B)(2)(f)-(g) (qualification standards should insure that defense counsel has skill in the investigation, preparation, and presentation of mitigation evidence and evidence bearing upon mental status); Guideline 8.1(B) (attorneys seeking to qualify to receive appointments in capital cases should be required to complete a comprehensive training program "in the defense of capital cases" and should have specific training in pretrial defense investigation, ethical considerations particular to capital representation, defense counsel's relationship with the client and their family, etc…); Guideline 8.1(C) (Attorneys seeking to remain on the roster or appointment roster should be required to attend and successfully complete, at least once every two years, a specialized training program that focuses on the defense of death penalty cases). 31 Hofstra L. Rev. 913, 942 (2003).

I believe the lack of specificity in Rule 8 pertaining to defense experience is an oversight. These former prosecutor applicants are all well respected and highly talented attorneys who have distinguished themselves as prosecutors. I do not intend to diminish their skills, and I have every confidence that, with proper training and experience, they can provide high quality representation in capital cases. The skill set required to defend the accused, particularly at the highest level of advocacy, is different from that required to prosecute cases. Frankly, unless an attorney has experience representing defendants on serious cases, it is a skill set they likely don't realize they are missing.

Capital representation is the most important representation defense attorneys engage in. "[T]he penalty of death is qualitatively different from a sentence of imprisonment, however long. . . . Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). This need for reliability must begin with the appointment of counsel. I am asking that Rule 8 be amended to require that counsel appointed to represent indigent defendants in cases where the punishment may be death be required to have significant experience defending cases.

Thank you for your consideration, and I look forward to discussing these topics with you on July 16.

Rule 617. Eyewitness Identification

(a) Definitions

(1) "Eyewitness Identification" means witness testimony or conduct in a criminal trial that identifies the defendant as the person who committed a charged crime.

(2) "Identification Procedure" means a lineup, photo array, or showup.

(3) "Lineup" means a live presentation of multiple individuals, before an eyewitness, for the purpose of identifying or eliminating a suspect in a crime.

(4) "Photo Array" means the process of showing photographs to an eyewitness for the purpose of identifying or eliminating a suspect in a crime.

(5) "Showup" means the presentation of a single person to an eyewitness in a time frame and setting that is contemporaneous to the crime and is used to confirm or eliminate that person as the perceived perpetrator.

(b) Admissibility in General. In cases where eyewitness identification is contested, the court shall exclude the evidence if the party challenging the evidence shows that a factfinder, considering the factors in this subsection (b), could not reasonably rely on the eyewitness identification. In making this determination, the court may consider, among other relevant factors, expert testimony and other evidence on the following ~~non-exclusive list~~:

(1) Whether the witness had an adequate opportunity to observe the suspect committing the crime;

(2) Whether the witness's level of attention to the suspect committing the crime was impaired because of a weapon or any other distraction;

(3) Whether the witness had the capacity to observe the suspect committing the crime, including the physical and mental acuity to make the observation;

(4) Whether the witness was aware a crime was taking place and whether that awareness affected the witness's ability to perceive, remember, and relate it correctly;

(5) Whether a difference in race or ethnicity between the witness and suspect affected the identification;

(6) The length of time that passed between the witness's original observation and the time the witness identified the suspect;

(7) Any instance in which the witness either identified or failed to identify the suspect and whether this remained consistent thereafter;

(8) Whether the witness was exposed to opinions, photographs, or any other information or influence that may have affected the independence of the witness in making the identification; and

(9) Whether any other aspect of the identification was shown to affect reliability.

(c) Identification Procedures. If an identification procedure was administered to the witness by law enforcement and the procedure is contested, the court must determine whether the identification procedure was unnecessarily suggestive or conducive to mistaken identification. If so, the eyewitness identification must be excluded unless the court, considering the factors in subsection (b) and this subsection (c), finds that there is not a substantial likelihood of misidentification.

(1) Photo Array or Lineup Procedures. To determine whether a photo array or lineup is unnecessarily suggestive or conducive to mistaken identification, the court should consider the following:

(A) Double Blind. Whether law enforcement used double blind procedures in organizing a lineup or photo array for the witness making the identification. If law enforcement did not use double blind procedures, the court should consider the degree to which the witness's identification was the product of another's verbal or physical cues.

(B) Instructions to Witness. Whether, at the beginning of the procedure, law enforcement provided instructions to the witness that

(i) the person who committed the crime may or may not be in the lineup or depicted in the photos;

(ii) it is as important to clear a person from suspicion as to identify a wrongdoer;

(iii) the person in the lineup or depicted in a photo may not appear exactly as he or she did on the date of the incident because features such as weight and head and facial hair may change; and

(iv) the investigation will continue regardless of whether an identification is made.

(C) Selecting Photos or Persons and Recording Procedures. Whether law enforcement selected persons or photos as follows:

(i) Law enforcement composed the photo array or lineup in a way to avoid making a suspect noticeably stand out, and it composed the photo array or lineup to include persons who match the witness's description of the perpetrator and who possess features and characteristics that are

reasonably similar to each other, such as gender, race, skin color, facial hair, age, and distinctive physical features;

(ii) Law enforcement composed the photo array or lineup to include the suspected perpetrator and at least five photo fillers or five additional persons;

(iii) Law enforcement presented individuals in the lineup or displayed photos in the array using the same or sufficiently similar process or formatting;

(iv) Law enforcement used computer generated arrays where possible; and

(v) Law enforcement recorded the lineup or photo array procedures.

(D) Documenting Witness Response.

(i) Whether law enforcement timely asked the witness how certain he or she was of any identification and documented all responses, including initial responses; and

(ii) W~~w~~hether law enforcement refrained from giving any feedback regarding the identification.

(E) Multiple Procedures or Witnesses.

(i) Whether or not law ~~enforcement involved~~enforcement involved the witness in multiple identification procedures wherein the witness viewed the same suspect more than once; and

(ii) ~~w~~Whether law enforcement conducted separate identification procedures for each witness, and the suspect was placed in different positions in each separate procedure.

(2) Showup Procedures. To determine whether a showup is unnecessarily suggestive or conducive to mistaken identification, the court should consider the following:

(A) Whether law enforcement documented the witness's description prior to the showup.

(B) Whether law enforcement conducted the showup at a neutral location as opposed to law enforcement headquarters or any other public safety building and whether the suspect was in a patrol car, handcuffed, or physically restrained by police officers.

(C) Whether law enforcement instructed the witness that the person may or may not be the suspect.

(D) Whether, if the showup was conducted with two or more witnesses, law enforcement took steps to ensure that the witnesses were not permitted to communicate with each other regarding the identification of the suspect.

(E) Whether the showup was reasonably necessary to establish probable cause.

(F) Whether law enforcement presented the same suspect to the witness more than once.

(G) Whether the suspect was required to wear clothing worn by the perpetrator or to conform his or her appearance in any way to the perpetrator.

(H) Whether the suspect was required to speak any words uttered by the perpetrator or perform any actions done by the perpetrator.

(I) Whether law enforcement suggested, by any words or actions, that the suspect is the perpetrator.

(J) Whether the witness demonstrated confidence in the identification immediately following the procedure and law enforcement recorded the confidence statement.

(3) Other Relevant Circumstances. In addition to the factors for the procedures described in parts (1) and (2) of this subsection (c), the court may evaluate an identification procedure using any other circumstance that the court determines is relevant.

(d) Admissibility of Photographs. Photographs used in an identification procedure may be admitted in evidence if:

(1) the prosecution has demonstrated a reasonable need for the use;

(2) the photographs are offered in a form that does not imply a prior criminal record; and

(3) the manner of their introduction does not call attention to their source.

(e) Expert Testimony. When the court admits eyewitness identification evidence, it may also receive related expert testimony upon request.

(f) Jury Instruction. When the court admits eyewitness identification evidence, the court may, and shall if requested, instruct the jury consistent with the factors in subsections (b) and (c) and other relevant considerations.

[**02/05/19**]

Rule 24. Motion for new trial.

(a) The court may, upon motion of a party or upon its own initiative, grant a new trial in the interest of justice if there is any error or impropriety which had a substantial adverse effect upon the rights of a party.

(b) A motion for a new trial shall be made in writing and upon notice. The motion shall be accompanied by affidavits or evidence of the essential facts in support of the motion. If additional time is required to procure affidavits or evidence the court may postpone the hearing on the motion for such time as it deems reasonable.

(c) A motion for a new trial shall be made not later than 14 days after entry of the sentence, or within such further time as the court may fix before expiration of the time for filing a motion for new trial.

(d) If a new trial is granted, the party shall be in the same position as if no trial had been held and the former verdict shall not be used or mentioned either in evidence or in argument.

(e) The order granting or denying a motion for new trial must identify and explain the ground or grounds for the decision to facilitate appellate review.

Rule 4. Prosecution by information.

(a) **Commencing a prosecution.** A prosecution may be commenced by filing an information. The information shall be filed in a format required by rules of the Judicial Council.

(b) **Contents of information.** An information shall contain:

(b)(1) If known, the defendant's name, date of birth, and last known address.

(b)(1)(A) If the name of the defendant is not known, the prosecution shall identify the defendant as John or Jane Doe, and shall provide any known identifying information.

(b)(1)(B) Other identifying information may be provided in accordance with rules of the Judicial Council, provided the information does not include non-public records.

(b)(2) Numbered counts using the name given to the offense by statute or ordinance, or stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge.

(b)(2)(A) The prosecution may allege alternate theories of the same offense in a single count or in multiple counts.

(b)(3) Unless otherwise contained in filings accompanying the Information, a booking number if the defendant was arrested and detained on charges related to the information. Any pretrial release conditions shall be included, such as:

(b)(3)(A) monetary bail or other pretrial release conditions set by the magistrate when determining probable cause at arrest;

(b)(3)(B) whether the defendant was denied pretrial release;

(b)(3)(C) whether the defendant was released to a pretrial supervision agency; and

(b)(3)(D) whether the defendant is in custody.

(c) **Felonies and class A misdemeanors.** If a felony or class A violation is alleged, and in all cases requesting a warrant, an information shall:

~~(c)(1)~~ contain or be accompanied by a statement of facts sufficient to support probable cause for the charged offense or offenses. The information need not include facts such as time, place, means, intent, manner, value, and ownership unless necessary to charge the offense. Supporting physical materials such as money, securities, written instruments, pictures, statutes, and judgments may be identified using names or by describing the documents. Neither presumptions of law nor matters of judicial notice need be stated, ~~and~~

~~(c)(2) be reviewed for sufficiency by a judge of the court in which it is filed. If the judge determines from the information, or from any supporting statements or affidavits, that there is probable cause to believe the offenses have been committed and that the accused committed them, the judge shall proceed under rule 6. If the judge determines there is not probable cause, the judge shall return the information to the prosecutor and dismiss the case without prejudice if a sufficient information is not filed within 28 days.~~

(d) **Amending the information.** 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 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 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) **Bill of particulars.** When facts not set out in an information are required to inform a defendant of the nature and cause of the offense charged, so as to enable the defendant to prepare a defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed at arraignment or within 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.

Effective May 1, 2017

Rule 6. Warrant of arrest or summons.

(a) Upon the filing of an indictment, or upon the acceptance of an information by a judge, the court shall set the case for an initial appearance or arraignment, as appropriate. The court shall then issue a summons directing the defendant to appear for that hearing, except as described in subsection (c).

(b) The summons shall inform the defendant of the date, time and courthouse location for the initial appearance or arraignment. The summons may be mailed to the defendant's last known address, or served by anyone authorized to serve a summons in a civil action.

(c) If the defendant is not a corporation, a judge may issue a warrant of arrest instead of a summons if the court finds from the information and any supporting statements or affidavits that:

(c)(1) The defendant’s address is unknown or the defendant will not otherwise appear on a summons; or

(c)(2) there is substantial danger of a breach of the peace, injury to persons or property, or danger to the community.

(d) A judge shall issue a warrant of arrest in cases where the defendant has failed to appear in response to a summons.

(e) Prior to issuing a warrant the judge shall review the information for sufficiency. If the judge determines from the information, or from any supporting statements or affidavits, that there is probable cause to believe the offenses have been committed and that the accused committed them, the judge may issue the warrant. If the judge determines there is not probable cause the judge shall notify the prosecutor. If the prosecutor does not file a sufficient information within 28 days the judge must dismiss the case.

(e)(1) When a warrant of arrest is issued, the judge shall state on the warrant:

(e)(~~1~~2) Whether the defendant is denied pretrial release under the authority of Utah Code § 77-20-1, and the alleged facts supporting.

(e)(~~2~~3) The conditions of pretrial release the court requires of the defendant, including monetary bail.

(e)(3)(A) In determining the amount of monetary bail, the judge shall set the lowest amount reasonably calculated to ensure the defendant's appearance at court.

(e)(3)(B) The court shall state whether the defendant's personal appearance is required or whether the defendant may remit the monetary bail to satisfy any obligation to the court pursuant to Utah Code § 77-7-21.

(e)(4) The geographic area from which the issuing court will guarantee transport pursuant to Utah Code § 77-7-5.

(f) The clerk of the court shall enter the warrant into the court information management system.

(g) Service, Execution and return of the warrant.

(g)(1) The warrant shall be served by a peace officer. The officer may execute the warrant at any place within the state.

(g)(2) The warrant shall be executed by the arrest of the defendant. The officer need not possess the warrant at the time of the arrest. Upon request, the officer shall show the warrant to the defendant as soon as practicable. If the officer does not have the warrant in possession at the time of the arrest, the officer shall inform the defendant of the offense charged and of the fact that the warrant has been issued.

(g)(3) The person executing a warrant or serving a summons shall make return thereof to the magistrate as soon as practicable.

(h) The court may periodically review unexecuted warrants to determine whether they should be recalled.

Effective July 1, 2016

Rule 9. Proceedings for persons arrested without a warrant on suspicion of a crime.

(a)(1) **Probable cause determination**. A person arrested and delivered to a correctional facility without a warrant for an offense must be presented without unnecessary delay before a magistrate for the determination of probable cause and whether the suspect qualifies for pretrial release under Utah Code § 77-20-1, and if so, what if any conditions of release are warranted.

(a)(2)(A) The arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which defendant was arrested must, as soon as reasonably feasible but in no event longer than 24 hours after the arrest, present to a magistrate a sworn statement that contains the facts known to support probable cause to believe the defendant has committed a crime. The statement must contain any facts known to the affiant that are relevant to determining the appropriateness of precharge release and the conditions thereof.

(a)(2)(B) If available, the magistrate should also be presented the results of a validated pretrial risk assessment tool.

(a)(2)(C) The magistrate must review the information provided and determine if probable cause exists to believe the defendant committed the offense or offenses described. If the magistrate finds there is probable cause, the magistrate must determine if the person is eligible for pretrial release pursuant to Utah Code § 77-20-1, and what if any conditions on that release are reasonably necessary to:

(a)(2)(C)(i) ensure the appearance of the accused at future court proceedings;

(a)(2)(C)(ii) ensure the integrity of the judicial process;

(a)(2)(C)(iii) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and

(a)(2)(C)(iv) ensure the safety of the public and the community.

(a)(2)(D) If the magistrate finds the statement does not support probable cause to support the charges filed, the magistrate may determine what if any charges are supported, and proceed under subsection (a)(2)(C).

(a)(2)(E) If probable cause is not articulated for any charge, the magistrate must return the statement to the submitting authority indicating such.

(a)(3) A statement that is verbally communicated by telephone must be reduced to a sworn written statement prior to presentment to the magistrate. The statement must be retained by the submitting authority and as soon as practicable, a copy shall be delivered to the magistrate who made the determination.

(a)(4) The arrestee need not be present at the probable cause determination.

(b) **Magistrate availability.**

(b)(1) The information required in subsection (a)(2) may be presented to any magistrate, although if the judicial district has adopted a magistrate rotation, the presentment should be in accord with that schedule or rotation. If the arrestee is charged with a capital offense, the magistrate may not be a justice court judge.

(b)(2) If a person is arrested in a county other than where the offense was alleged to have been committed, the arresting authority may present the person to a magistrate in the location arrested, or in the county where the crime was committed.

(c) **Time for review.**

(c)(1) Unless the time is extended at 24 hours after booking, if no probable cause determination and order setting bail have been received by the custodial authority, the defendant must be released on the arrested charges on recognizance.

(c)(2) During the 24 hours after arrest, for good cause shown an arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which defendant was arrested may request an additional 24 hours to hold a defendant and prepare the probable cause statement or request for release conditions.

(c)(3) If after 24 hours, the suspect remains in custody, an information <u>charging the suspect with offenses from the incident leading to the arrest</u> must be filed without delay, <u>and no later than the fourth calendar day after the defendant was arrested</u> ~~charging the suspect with offenses from the incident leading to the arrest~~.

~~(c)(4)(A) If no information has been filed by 5:00pm on the fourth calendar day after the defendant was booked, the release conditions set under subsection (a)(2)(B) shall revert to recognizance release.~~

(c)(4)(~~B~~A) The four day period in this subsection may be extended upon application of the prosecutor for a period of three more days, for good cause shown.

(c)(4)(~~C~~B) If the time periods in this subsection (c)(4) or subsection (d) expire on a weekend or legal holiday, the period expires at 5:00pm on the next business day.

(d) **Time for Initial Appearance or Arraignment**

(d) When a person has been arrested and has not been released pursuant to subsections (a) or (c) or when the person cannot provide any condition or security required by the magistrate, the person shall appear before the court that issued the warrant within five calendar days after the person was arrested. If an information has been filed, the court shall conduct an initial appearance. If an information has not been filed, the court shall order the person released from custody unless the prosecutor has requested an extension pursuant to subsection (c)(4)(b). If an extension is granted pursuant to subsection (c)(4)(b), the court shall conduct an initial appearance on the next calendar day after the extension period.

(e) **Other processes**. Nothing in this rule is intended to preclude the accomplishment of other procedural processes at the time of the determination referred to in subsection (a)(2).

Rule 9A Procedures for persons arrested pursuant to an arrest warrant.

(a)(1) For purposes of this rule an “arrest warrant” means a warrant issued by a judge pursuant to Rule 6(c), or after a defendant’s failure to appear at an initial appearance or arraignment after having been summoned.

(a)(2) An “arrest warrant” does not include a warrant issued for failing to appear for a subsequent court proceeding or for reasons other than those described in subsection (a)(1).

(a)(3) For purposes of this rule "booked" means that an arrested person has been processed into a jail and notice of the incarceration has been provided to the court that issued the warrant.

(b)(1) When a peace officer or other person arrests a defendant pursuant to an arrest warrant and the arrested person cannot provide any condition or security required by the judge or magistrate issuing the arrest warrant, ~~the person arrested must be presented to a magistrate within 24 hours after arrest. The information provided to the magistrate must include the case number, and the results of any validated pretrial risk assessment.~~ the court must conduct an initial appearance or arraignment within three calendar days after the arrested person was booked. This time may be extended by the court to accommodate the person’s transportation to the jurisdiction from which the warrant issued.

(b)(2) If the time periods in this subsection (b) expire on a weekend or legal holiday, the period expires at 5:00 pm on the next business day.

~~(c) With the results of the pretrial risk assessment, and having considered the factors that caused the court to issue an arrest warrant in the first place, the magistrate may modify the release conditions~~.

~~(d) Any defendant who remains in custody after the review process must be seen by the court issuing the arrest warrant no later than the third day after the arrest.~~

~~(e)~~(c) If the arrested person meets the conditions, or provides the security required by the arrest warrant, the person must be released and instructed to appear as required in the issuing court.

~~(f)~~(d) Any posted security must be forwarded to the court issuing the arrest warrant.

URCrP 9 and 9A – comment period closed September 1, 2019:

1) **Terry Moore**
   July 18, 2019 at 4:13 pm

These rules may be fine for district and full time justice courts. However, courts in this county (Cache) often are not informed by the jail that a defendant has been arrested on their warrant. In addition, in part time courts or courts with only one judge there may be times when the judge is not available i.e. camping where no internet or cell service is available. I recommend that something be added to allow the presiding judge to be contacted when a judge from the issuing court is not available.

2) **Judge Derek P. Pullan**
   August 27, 2019 at 4:20 pm

Comment: Proposed Criminal Rules 9 and 9A
Judge Derek P. Pullan
Fourth District Court Judge

Problems with Rule 9

The proposed rule requires that a person who remains in custody 24 hours after a warrantless arrest must be charged by information "without delay, and no later than the fourth calendar day after [he] was arrested." URCrP 9(c)(3). The old rule imposed a consequence for not filing timely–the arrested person was released on his own recognizance. The new rule eliminates this language.

The new rule then adopts a five-calendar day failure to file deadline in subsection (d). The rule provides if a person is incarcerated on a warrantless arrest and cannot post bail, "he shall appear before the court that issued the warrant within five calendar days after the person was arrested. If an information has been filed, initial appearance is conducted. If no information has been filed, the person is released.

So there is an inherent conflict in the rule. Subsection (c)(3) imposes a four-day failure to file deadline, with no consequence for not filing timely. Subsection (d) then imposes a five-calendar day failure to file deadline, this one with the "teeth" of own recognizance release for violating it. As a practical matter, the proposed rule extends the failure to file deadline from four calendar days to five. The effect of this extension is to permit low-risk offenders to be held in jail for one additional day without any charge being filed.

The proposed rule also creates additional problems. When combined with Rule 9(c)(4)—(which allows the deadline to be extended to "5:00 p.m. on the next business day" when the failure to file deadline expires on a weekend or legal holiday)—the new rule permits a person who cannot make bail to remain in jail uncharged for up to nine days. A person arrested on the Monday

before President's Day at 6:00 a.m. will remain in jail, uncharged until the next Tuesday before appearing before the Court and being released. During this period of time, low-risk offenders—many of whom will appear in justice courts on minor offenses—who pose no threat to public safety will lose their jobs, lose their housing, and go off prescribed medications intended to treat mental health conditions. All of these life disruptions starkly increase the risk of recidivism. We can do much better than this.

There is no persuasive reason why the failure to file deadline cannot be two calendar days after the date of arrest. Yes, there will be complex cases in which more time will be needed to screen the case and file. But these cases are relatively rare and the rule allows for an extension of time for good cause. Rules should be drafted to deal with what commonly occurs in most cases, and then provide narrow exceptions for the rare case.

Problems with Rule 9A

The proposed rule requires that when a person is arrested on a warrant and cannot post bail, "the court must conduct an initial appearance or arraignment within three calendar days after the person was "booked." URCrP 9A(b)(1). The rule defines "booked" to mean not only that the arrested person "has been processed into a jail" but also that "notice of the incarceration has been provided to the court that issued the warrant." URCrP 9A(a)3).

The problem is in the definition of "booked." The definition of "booked" is written in the passive voice which means that no one is specifically tasked with the duty to provide the Court with "notice of the incarceration." Who does this–the arresting officer, booking staff at the jail, the prosecutor? With no one identified as the person responsible for notice, notice will not be given and a person–who is physically incarcerated–will languish in jail because he has not been "booked" for purposes of Rule 9A.

Rule 9A also permits an arrested person to be incarcerated for seven days before initial appearance. This is so because, if the three calendar day deadline for initial appearance "expires on a weekend or legal holiday" the time is extended to "5:00 p.m. on the next business day." URCrP 9A(b)(2). This means that a person arrested on the Wednesday before President's Day at 6:00 a.m. will not have her initial appearance until the next Tuesday. Again, during this week of incarceration, low risk offenders—many of whom will appear in justice courts on minor offenses—who pose no risk to public safety lose their jobs, lose their housing, and go off prescribed medications intended to treat mental illness. These losses significantly increase the likelihood of recidivism. We can do much better than this.

Absent the need for transportation to the warrant-issuing jurisdiction, there is no persuasive reason why persons arrested on a warrant cannot appear for initial appearance on the next court day.

In some parts of rural Utah, criminal first appearances may be held on only one or two days per week. But this practice needs to change. In many areas of the state, judges can now conduct initial appearances by telephone, video-conferencing, closed circuit television, or other electronic

means. Given the availability of this technology, there is no reason why court cannot be conducted on every day of the work week in almost all court sites statewide.

There may be remote jurisdictions that do not presently have access to these technologies. But the answer for this problem is to provide access, not to adopt a rule that grounds pre-trial release and filing deadlines on procedures followed in the least-resourced areas of the state.

The District Court Board's Prior Recommendation And What Followed:

In May 2015, after conducting a state-wide survey of the procedures followed in each district, the District Court Board unanimously recommended that the judiciary adopt a uniform process for reviewing probable cause statements, setting bail, and scheduling initial appearances. One of the Board's recommendations was that informations be filed within 72 hours of booking. The Board's findings and recommendations were presented in a memorandum directed to the Chief Justice.

The Court ultimately adopted Rule 9 which required informations to be filed by 5:00 p.m. on the fourth calendar day after a warrantless arrest. URCrP 9(c)(3). If this deadline was not met, the release conditions automatically reverted to own recognizance release. The Court adopted Rule 9A which required that people arrested on a warrant to be presented to a magistrate within 24 hours after arrest. URCrP 9A(b). The magistrate could modify the release conditions. If the arrested person remained in custody after this review process, he or she had to be seen by the court issuing the warrant no later than the third day after the arrest. URCrP 9A(d).

The 5:00 p.m. deadline in Rule 9 created procedural havoc because courts close at 5:00 p.m. There was no mechanism for automatic release if the deadline was not met. Clerks were reluctant to issue orders of automatic release. With no information filed, there was no case file in which such orders would be kept. As for Rule 9A, no accommodation was made for people arrested on a warrant far from the issuing court. In such instances, personal appearance within 3 days before the issuing court proved impossible. These and other concerns made rules 9 and 9A unworkable and both rules were temporarily suspended.

The Board's endorsement of proposed Rules 9 and 9A is a good faith effort to address some of these important concerns. But the endorsement perpetuates the original decision to depart from the Board's first recommendation. Whatever rule we adopt should place a high priority on getting arrested people before the Court sooner, not later. Failure to achieve this fundamental goal means that the criminal justice system is creating the very criminogenic risk the system is intended to prevent.

In light of the failure of the proposed rules to meet this critical objective, I recommend that both rules be resubmitted to the Utah Supreme Court's Advisory Committee for further review and consideration.

3) **Todd Shaughnessy**
August 28, 2019 at 10:31 am

I share Judge Pullan's concerns about Rules 9 and 9A and join in his comments. The Utah judiciary, and our stakeholders in this area, have made tremendous investments of time and resources in updating and improving our pretrial release practices. Those efforts are undermined by unnecessary delays in the process. The Judicial Council's study committee on pretrial release recommended amendment of the rules consistent with the original recommendation of the Board of District Court Judges. At some point, the rules strayed from these recommendations for reasons that are not clear to me, and these further amendments seem to stray further still. The rules should, in my opinion, be written to address the ordinary case, not the extraordinary one, and should unambiguously communicate the time periods at issue and how they are calculated. It is important to keep in mind that these rules will be relied upon not just by judges and lawyers, but by those who operate jails and other stakeholders in the system, which further highlights the need for clarity. Because of their importance, I would recommend taking another shot at getting these right.
Todd Shaughnessy

Rule 14. Subpoenas

(a) **Subpoenas requiring the attendance of a witness or interpreter and production or inspection of records, papers, or other objects.**

(a)(1) A subpoena to require the attendance of a witness or interpreter before a court, magistrate or grand jury in connection with a criminal investigation or prosecution may be issued by the magistrate with whom an information is filed, the prosecuting attorney on his or her own initiative or upon the direction of the grand jury, or the court in which an information or indictment is to be tried. The clerk of the court in which a case is pending shall issue in blank to the defendant, without charge, as many signed subpoenas as the defendant may require. An attorney admitted to practice in the court in which the action is pending may also issue and sign a subpoena as an officer of the court.

(a)(2) A subpoena may command the person to whom it is directed to appear and testify or to produce in court or to allow inspection of records, papers or other objects, other than those records pertaining to a victim covered by Subsection (b). The court may quash or modify the subpoena if compliance would be unreasonable.

(a)(3) A subpoena may be served by any person over the age of 18 years who is not a party. Service shall be made by delivering a copy of the subpoena to the witness or interpreter personally and notifying the witness or interpreter of the contents. A peace officer shall serve any subpoena delivered for service in the peace officer's county.

(a)(4) Written return of service of a subpoena shall be made promptly to the court and to the person requesting that the subpoena be served, stating the time and place of service and by whom service was made.

(a)(5) A subpoena may compel the attendance of a witness from anywhere in the state.

(a)(6) When a person required as a witness is in custody within the state, the court may order the officer having custody of the witness to bring the witness before the court.

(a)(7) Failure to obey a subpoena without reasonable excuse may be deemed a contempt of the court responsible for its issuance.

(a)(8) ~~Whenever~~ If a party has reason to believe that a material witness is about to leave the state, ~~is so~~ will be too ill or infirm ~~as~~ to ~~afford reasonable grounds for believing that the witness will be unable to~~ attend a trial or hearing, or will not appear and testify pursuant to a subpoena, ~~either~~ the party may, upon notice to the other, apply to the court for an order that the witness be examined conditionally by deposition. The party must file an affidavit providing facts to support the party's request. Attendance of the witness at the deposition may be compelled by subpoena. The defendant shall be present at the deposition and the court shall make whatever order is necessary to effect such attendance. A deposition may be used as substantive evidence at the trial or hearing to the extent it would otherwise be admissible under the Rules of Evidence if the witness

is too ill or infirm to attend, the party offering the deposition has been unable to obtain the attendance of the witness by subpoena, or the witness refuses to testify despite a court order to do so.

(b) **Subpoenas for the production of records of victim.**

(b)(1) No subpoena or court order compelling the production of medical, mental health, school, or other ~~non-public~~ privileged records pertaining to a victim shall be issued by or at the request of ~~the defendant~~ any party unless the court finds after a hearing, upon notice as provided below, that the records are material and the ~~defendant~~ party is entitled to production of the records sought under applicable rules of privilege, and state and federal law.

(b)(2) The request for the subpoena or court order shall identify the records sought with particularity and be reasonably limited as to subject matter.

(b)(3) The request for the subpoena or court order shall be filed with the court as soon as practicable, but no later than 28 days before trial, or by such other time as permitted by the court. The request and notice of any hearing shall be served on counsel for the victim or victim's representative and on the ~~prosecutor~~ opposing party. Service on an unrepresented victim ~~shall~~ must be ~~made on~~ facilitated through the prosecutor. The prosecutor must make reasonable efforts to provide a copy of the request for the subpoena to the victim or victim's representative within 14 days of receiving it.

(b)(4) If the court makes the required findings under subsection (b)(1), it shall issue a subpoena or order requiring the production of the records to the court. The court shall then conduct an in camera review of the records and disclose to the defense and prosecution only those portions that the ~~defendant~~ requesting party has demonstrated a right to inspect.

(b)(5) Any party issuing a subpoena for non-privileged records, papers or other objects pertaining to a victim must serve a copy of the subpoena upon the victim or victim's representative. Service on an unrepresented victim must be facilitated through the prosecutor. The prosecutor must make reasonable efforts to provide a copy of the subpoena to the victim within 14 days of receiving it. The subpoena may not require compliance in less than 14 days after service on the prosecutor or victim's representative.

(b)~~(5)~~(6) The court may, in its discretion or upon motion of either party or the victim or the victim's representative, issue any reasonable order to protect the privacy of the victim or to limit dissemination of disclosed records.

(b)~~(6)~~(7) For purposes of this rule, "victim" and "victim's representative" are used as defined in Utah Code ~~Ann.~~ § 77-38-2~~(2)~~.

(b)(8) Nothing in this rule alters or supersedes other rules, privileges, statutes or caselaw pertaining to the release or admissibility of an individual's medical, psychological, school or other records.

(c) **Applicability of Rule 45, Utah Rules of Civil Procedure.** The provisions of Rule 45, Utah Rules of Civil Procedure, shall govern the content, issuance, objections to, and service of subpoenas to the extent that those provisions are consistent with the Utah Rules of Criminal Procedure.

URCrP 14 – Comment period closed August 11, 2019:

1) **Captain America**
   July 1, 2019 at 1:03 pm

Privileged as opposed to non-public is better because it is more narrowly defines the breadth of materials. It also applies to all parties, which seems appropriate.

2) **Carol Verdoia**
   August 9, 2019 at 3:09 pm

The change from “non-public” victim records to “privileged” victim records has serious, perhaps unintended, consequences. It is not clear whether the word “privileged” is meant to be strictly defined in accordance with the evidentiary privileges or whether it is being used more broadly. In accordance with the Rule’s previous advisory committee note, the purpose of this provision was to protect a victim from exploitation in the court process and assure that the dignity of the victim was respected/protected as provided in the victim’s rights statutes. Assuming that the word “privileged” is strictly defined as an evidentiary privilege, this proposed language would allow a criminal defendant to have access to child victim records maintained by the Division of Child and Family Services/Child Protective Services, without the requirement of notice to a victim or a court hearing and determination that the records are material. The DCFS/CPS records do not neatly fall into the categories of “medical, mental health, school . . .” records, or to evidentiary privileges. It also appears that the proposed language at (b)(8), at lines 81-83, potentially eviscerate, or conflict with, the provisions of (b)(1), lines 51-55. Removing the words “non-public” but then adding the language at (b)(8) which provides a catch-all provision, creates a very confusing rule for the court and practitioners.

Rule 38. Appeals from justice court to district court.

(a) **Appeal of a judgment or order of the justice court is as provided in Utah Code § 78A-7-118.** A case appealed from a justice court shall be heard in a district courthouse located in the same county as the justice court from which the case is appealed. In counties with multiple district courthouse locations, the presiding judge of the district court shall determine the appropriate location for the hearing of appeals.

(b) **The notice of appeal.**

(b)(1) A notice of appeal from an order or judgment must be filed within 28 days of the entry of that order or judgment.

(b)(2) Contents of the notice. The notice required by this rule shall be in the form of, or substantially similar to, that provided in the appendix of this rule. At a minimum the notice shall contain:

(b)(2)(A) a statement of the order or judgment being appealed and the date of entry of that order or judgment;

(b)(2)(B) the current address at which the appealing party may receive notices concerning the appeal;

(b)(2)(C) a statement as to whether the defendant is in custody because of the order or judgment appealed; and

(b)(2)(D) a statement that the notice has been served on the opposing party and the method of that service.

(b)(3) Deficiencies in the form of the filing shall not cause the court to reject the filing. They may, however, impact the efficient processing of the appeal.

(c) **Motion to reinstate period for filing appeal.**

(c)(1) Upon a showing that a defendant was deprived of the right to appeal, the justice court shall reinstate the thirty-day period for filing an appeal. A defendant seeking such reinstatement shall file a written motion in the justice court and serve the prosecuting entity. The court shall appoint counsel if the defendant qualifies for court-appointed counsel. The prosecutor shall have 21 days after service of the motion to file a written response. If the prosecutor opposes the motion, the justice court shall set a hearing at which the parties may present evidence. If the justice court finds by a preponderance of the evidence that the defendant has demonstrated that the defendant was deprived of the right to appeal, it shall enter an order reinstating the time for appeal. The defendant's notice of appeal must be filed with the clerk of the justice court within 30 days after the date of entry of the order.

(c)(2) Absent a showing of excusable neglect, a motion to reinstate may be filed no later than six months after the original time for appeal has expired.

(d)(1) **Duties of the justice court.** Within 7 days of receiving the notice of appeal, the justice court shall transmit to the appropriate district court an appeal packet containing:

(d)(1)(A) the notice of appeal;

(d)(~~2~~1)(B) the docket;

(d)(~~3~~1)(C) the information or citation; and

(d)(~~4~~1)(D) the judgment and sentence, if any; ~~and~~.

(d)(~~5~~2) Upon request from the district court the justice court must transmit to the district court any other orders and papers filed in the case.

(e) **Duties of the district court.**

(e)(1) Upon receipt of the appeal packet from the justice court, the district court shall hold a scheduling conference to determine what issues must be resolved by the appeal. The district court shall send notices to the appellant at the address provided on the notice of appeal. Notices to the other party shall be to the address provided in the justice court docket for that party.

(e)(2) If the defendant is in custody because of the matter appealed, the district court shall hold the conference within 7 days of the receipt of the appeals packet. If the defendant is not in custody because of the matter appealed, the court shall hold the conference within 28 days of receipt of the appeals packet.

(f) **District court procedures for trials de novo.** An appeal by a defendant pursuant to Utah Code § 78A-7-118(1) shall be accomplished by the following procedures:

(f)(1) If the defendant elects to go to trial, the district court will determine what number and level of offenses the defendant is facing.

(f)(2) Discovery, the trial, and any pre-trial evidentiary matters the court deems necessary, shall be held in accordance with these rules.

(f)(3) After the trial, the district court shall, if appropriate, sentence the defendant and enter judgment in the case as provided in these rules and otherwise by law.

(f)(4) When entered, the judgment of conviction or order of dismissal serves to vacate the judgment or orders of the justice court and becomes the judgment of the case.

(f)(5) A defendant may resolve an appeal by waiving trial and compromising the case by any process authorized by law to resolve a criminal case.

(f)(5)(A) Any plea shall be taken in accordance with these rules.

(f)(5)(B) The court shall proceed to sentence the defendant or enter such other orders required by the particular plea or disposition.

(f)(5)(C) When entered, the district court's judgment or other orders vacate the orders or judgment of the justice court and become the order or judgment of the case.

(f)(5)(D) A defendant who moves to withdraw a plea entered pursuant to this section may only seek to withdraw it pursuant to the provisions of Utah Code § 77-13-6.

(f)(6) Other dispositions. A defendant, at a point prior to entering a plea admitting guilt or a no contest plea, or prior to commencement of trial, may choose to withdraw the appeal and have the case remanded to the justice court. Within 14 days of the defendant notifying the court of such an election, the district court shall remand the case to the justice court.

(g) **District court procedures for hearings de novo.** If the appeal seeks a de novo hearing pursuant to Utah Code § 78A-7-118(3) or (4); and

(g)(1) the court shall conduct such hearing and make the appropriate findings or orders.

(g)(2) Within 14 days of entering its findings or orders, the district court shall remand the case to the justice court , unless the case is disposed of by the findings or orders, or the district court retains jurisdiction pursuant to § 78A-7-118(6).

(h) **Retained jurisdiction.** In cases where the district court retains jurisdiction after disposing of the matters on appeal, the court shall order the justice court to forward all cash bail, other security, or revenues received by the justice court to the district court for disposition. The justice court shall transmit such monies or securities within 21 days of receiving the order.

(i) **Other bases for remand.** The district court may also dismiss the appeal and remand ~~a~~ the case to the justice court if it finds that the defendant has abandoned the appeal.

(j) **Justice court procedures on remand.** Upon receiving a remanded case, the justice court shall set a review conference to determine what, if any proceedings need be taken. If the defendant is in custody because of the case being considered, such hearing shall be had within five days of receipt of the order of remand. Otherwise, the review conference should be had within 28 days. The court shall send notice of the review conference to the parties at the addresses contained in the notice of appeal, unless those have been updated by the district court.

(k) During the pendency of the appeal, and until a judgment, order of dismissal, or other final order is entered in the district court, the justice court shall retain jurisdiction to monitor terms of probation or other consequences of the plea or judgment, unless those orders or terms are stayed pursuant to Rule 27A.

(l) **Reinstatement of dismissed appeal.**

(l)(1) An appeal dismissed pursuant to subsection ~~(h)~~(i) may be reinstated by the district court upon motion of the defendant for:

(l)(1)(A) mistake, inadvertence, surprise, excusable neglect; or

(l)(1)(B) fraud, misrepresentation, or misconduct of an adverse party.

(l)(2) The motion shall be made within a reasonable time after entry of the order of dismissal or remand.

Effective May 1, 2017