

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

Webex video conferencing  
January 19, 2021  
12:00 p.m. - 2:00 p.m.

**AGENDA**

1. Welcome and approval of minutes - Doug Thompson
2. Rule 16 - Doug Thompson
3. *State v. Billings*, case #20200636 - Doug Thompson
4. *Pleasant Grove v. Terry*, case #20201029 - Doug Thompson
5. Rules 7 and 7A - Doug Thompson
6. Rule 9 - Doug Thompson
7. Rule 8 update - Joanna Landau
8. Rule 26/Expungement rule - Brent Johnson
9. Rule 17.5 update - Brent Johnson
10. URCP 5 - Brent Johnson

Next meeting: March 16, 2021, 12 pm (noon), Webex video conferencing

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

**MEETING MINUTES**

WebEx Video Conferencing  
November 17, 2020 – 12:30 p.m. to 2 p.m.

**DRAFT**

<b>MEMBERS:</b>	<b>PRESENT</b>	<b>EXCUSED</b>	<b>GUESTS:</b>
Douglas Thompson, <i>Chair</i>	•		Representative Steve Waldrip
Judge Patrick Corum	•		Jacqueline Carlton
Jeffrey S. Gray	•		Tyson Skeen
Judge Elizabeth Hruby- Mills	•		Michael Dreschel
Blake Hills	•		Matt Slawson
Craig Johnson	•		Chris Williams
Joanna Landau	•		<b>STAFF:</b>
Keri Sargent	•		Brent Johnson
Judge Kelly Schaeffer- Bullock		•	Minhvan Brimhall
Ryan Stack	•		
Cara Tangaro	•		
Matthew Tokson		•	

**1. Welcome and approval of minutes:**

Brent Johnson welcomed committee members to the meeting. The Committee considered the September 15, 2020 minutes. There being no changes to the minutes, Craig Johnson moved to approve the minutes. No second was taken and no objection was received on the motion. The motion was unanimously approved.

**2. State toxicologists testifying remotely:**

Representative Steve Waldrip was welcomed to the meeting. Representative Waldrip explained that State toxicologists express frustration about being subpoenaed to testify at a hearing, only to be told the hearing is rescheduled and their appearance is no longer needed that day. The state toxicology lab is understaffed and many of the hearings to which they are subpoenaed to testify require several hours of travel. The time away from the lab takes away FTE hours to complete the work that is needed and is not a

good use of state resources. Representative Waldrip and the state toxicology lab would like a rule amendment to rule 17.5 of the Utah Rules of Criminal Procedure to allow state toxicologists to testify remotely.

The committee agreed that cutting back on wasted resources is necessary to ensure that staff time is being utilized in the most appropriate manner. The committee discussed varying factors to a rule change that might impact both defense and prosecution with having a toxicologist testifying remotely. The committee discussed that if the defense and prosecution were able to come to an agreement prior to a hearing, and the toxicology report is made available to both parties prior to the hearing, a rule amendment may be possible. The committee also considered the impact such a rule amendment would have on the victim and witness testimony.

Michael Drechsel noted a conversation he had with Representative Paul Ray of the Legislative's Social Services Subcommittee. Representative Ray brought up the same issues regarding the use of toxicology lab resources. Mr. Drechsel researched the same type of work being done in other states and noted that some have created a procedural rule designed around notice and demand for the parties to notify each other their intent to use some sort of report, or perhaps remote testimony, and then rely on the opposing party to make a demand. If the demand is made, the person would actually attend in person. Mr. Drechsel noted this may be a way to spare some of the unnecessary resources by the state toxicology lab. Mr. Drechsel is unaware of any specific standards to this type of approach.

Following additional discussions, that committee agreed that Mr. Johnson, Jeff Gray, Judge Corum, Cara Tangaro, and Tyson Skeen will meet to discuss a potential amendment to rule 17.5 and put together draft proposal to the rule. The proposed amendments will be presented at a future meeting.

**3. Rules 8 and 11:**

Joanna Landau is working on amendments to rule 8 to address appointment of counsel. Ms. Landau recommends a subcommittee be created to assist in the discussion and drafting of amendments to the rule. Judge Corum, Judge Shaeffer-Bullock, Judge Brendan McCullagh, and Mr. Johnson will join Ms. Landau and Mr. Thompson on the subcommittee. Mr. Thompson will arrange for a meeting. The committee will provide an update at a future meeting.

With no further discussion, Judge Corum moved to create a subcommittee for rule 8. No second was taken or objection was received. The motion passed unanimously.

**4. Rule 9:**

Due to lack of time, this item will be reviewed at another meeting.

**5. Pleasant Grove City v. Terry:**

Due to lack of time, this item will be reviewed at another meeting.

**6. Rules 7 and 7A:**

Due to lack of time, this item will be reviewed at another meeting.

**7. Rules 17.5 and 18:**

Mr. Thompson was contacted by the clerk for Justice Deno Himonas regarding potential emergency amendments to rules 17.5 and 18 for the jury pilot program that will be happening in the Third District. Any changes made to the rule or the administrative order will need to be made by the end of the month, and may need to be done without recommendations from this committee.

The committee discussed that making amendments to the rules might not be an appropriate route to address the needs of the pilot program at this time, and the committee would recommend that the court's authority to promulgate the administrative order is the more appropriate action.

Due to the number of members that needed to exit the meeting during the discussion, the committee lacked a quorum and a motion could not be made.

**8. Rule 16 subcommittee report:**

The rule 16 subcommittee met and made proposed changes to the rule. The committee reviewed those changes and made minor changes to the language for consistency throughout the rule. The committee removed all pronouns, changed "defense" to "defendant", and changed "prosecution" to "prosecutor".

The committee discussed at length the language in line 46 as it relates to the criminal record of the witness the prosecution intends to call at trial. The committee noted that a criminal record may not exist for the witness that is testifying. The committee made a minor language change in line 46 and created a new line 50 as (a)(5)(C). Line 50 now reads as "Upon order of the court, the criminal records, if any, of all persons whom the prosecutor intends to call as witnesses at trial."

Following further discussions, Ryan Stack moved to approved the amendments made to line 46, (a)(5)(A), and creation of line 50, (a)(5)(C), as well as all changes made to the rule as previously modified. Blake Hills seconded the motion. The motion passed unanimously.

**9. Rule 26/Expungement:**

Due to lack of time, this item will be reviewed at another meeting.

- 10. H.B. 206 update:**  
Due to lack of time, this item will be reviewed at another meeting.
- 11. Rule 12:**  
Due to lack of time, this item will be reviewed at another meeting.
- 12. URCP 5:**  
Due to lack of time, this item will be reviewed at another meeting.
- 13. Other business:**  
None
- 14. Adjourn:**  
With no other business, the meeting adjourned without a motion due to the lack of a quorum. The meeting adjourned at 2:40 p.m. Next meeting is January 19, 2021 at 12 p.m. via Webex.



Minhvan Brimhall <minhvanb@utcourts.gov>

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## Rule 16 following the Supreme Court Conference last week

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**Douglas Thompson** <dougt@utcpd.com>

Tue, Jan 12, 2021 at 11:09 AM

To: Judge Patrick Corum <pcorum@utcourts.gov>, Jeff Gray <jgray@agutah.gov>, Blake Hills <bhills@summitcounty.org>, Judge Elizabeth Hruby <ehruby@utcourts.gov>, Craig Johnson <craigj@byu.net>, Joanna Landau <jlandau@utah.gov>, Keri Sargent <keris@utcourts.gov>, Judge Kelly Schaeffer-Bullock <ksbullock@utcourts.gov>, Ryan Stack <rstack@summitcounty.org>, Cara Tangaro <tangarolaw@gmail.com>, Matthew Tokson <matthew.tokson@law.utah.edu>, Brent Johnson <brentj@utcourts.gov>, Minhvan Brimhall <minhvanb@utcourts.gov>

Committee members,

The Rule 16 train keeps rolling down the tracks. At the Court's conference last week, the Court liked our responses to the public comments and only had two suggestions to add to our own.

The first was to clarify the language in (a)(1)(E) where we required mandatory disclosure of "reports and any notes prepared by law enforcement officials that are not incorporated into a report". The Court thought that language was a bit unclear, so my suggestion is to say "reports prepared by law enforcement officials and any notes that are not incorporated into such a report".

The second concern had to do with our non-disclosure notice requirement in (c)(2), which the Court really liked, but which they wanted to expand. Previously we had allowed prosecutors to withhold disclosing material or information they believed was not lawful to disclose. Members of the Court wanted to expand from legal requirements to include to situations where disclosure, especially with respect to early pretrial disclosures, would put a witness or codefendant at risk or would otherwise cause the defendant to know things that could be detrimental, perhaps to an ongoing investigation. The Court wanted us to think about language that could incorporate those concerns. I have added some language that might not be sufficient but should at least start the discussion:

(c)(2) If the prosecutor concludes any disclosure required under this rule is prohibited by law, or believes disclosure would endanger any person or interfere with an ongoing investigation, the prosecutor must file notice identifying the material or information withheld and the basis for non-disclosure. If disclosure is then requested by the defendant, the court must decide whether disclosure is required and whether any limitations or restrictions will apply to disclosure, such as those provided in paragraph (d).

Please take a look at these sections and give it some thought before our meeting on Tuesday Jan 19. Also, please try to make time in your schedules for this meeting as we have had to pass a few items recently (mostly because I was overbooked) and our agenda is beginning to add up.

Thank you.

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**2 attachments**



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**Rule 16 redline (Jan 6, 2021).docx**  
22K

1 **Rule 16. Discovery.**

2 (a) **Disclosures by prosecutor.** ~~Except as otherwise provided,~~

3 ~~(a)(1) Mandatory disclosures. T~~he prosecutor ~~shall~~ must disclose to the ~~defense~~ defendant  
4 ~~upon request~~ the following material or information directly related to the case of which the  
5 prosecutor team has knowledge and control:

6 ~~(a)(1)(A) relevant~~ written or recorded statements of the defendant ~~or~~ and any codefendants,  
7 and the substance of any unrecorded oral statements made by the defendant and any  
8 codefendants to law enforcement officials;

9 (a)(1)(B) reports and results of any physical or mental examination, of any identification  
10 procedure, and of any scientific test or experiment;

11 (a)(1)(C) physical and electronic evidence, including any warrants, warrant affidavits,  
12 books, papers, documents, photographs, and digital media recordings;

13 (a)(1)(D) written or recorded statements of witnesses;

14 (a)(1)(E) reports prepared by law enforcement officials and any notes that are not  
15 incorporated into such a report; and

16 (a)(1)(F) evidence that must be disclosed under the United States and Utah constitutions,  
17 including all evidence favorable to the defendant that is material to guilt or punishment.

18 ~~(a)(2) the criminal record of the defendant;-~~

19 ~~(a)(3) physical evidence seized from the defendant or codefendant;-~~

20 ~~(a)(4) evidence known to the prosecutor that tends to negate the guilt of the accused,~~  
21 ~~mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced~~  
22 ~~punishment; and-~~

23 ~~(a)(5) any other item of evidence which the court determines on good cause shown should~~  
24 ~~be made available to the defendant in order for the defendant to adequately prepare a~~  
25 ~~defense.-~~

26 ~~(b)(a)(2)~~ Timing of prosecutor's mandatory disclosures. The prosecutor's duty to disclose  
27 under paragraph (a)(1) is a continuing duty as the material or information becomes known  
28 to the prosecutor. The prosecutor's disclosures must be made shall make all disclosures as  
29 soon as practicable following the filing of charges an Information. In every case, all  
30 material or information listed under paragraph (a)(1) that is presently and reasonably  
31 available to the prosecutor must be disclosed before the preliminary hearing, if applicable,  
32 or before the defendant enters a plea of guilty or no contest or goes to trial, unless

33 ~~otherwise waived by the defendant, and before the defendant is required to plead. The~~  
34 ~~prosecutor has a continuing duty to make disclosure.~~

35 (a)(3) Disclosures upon request.

36 (a)(3)(A) Upon request, the prosecutor must obtain and disclose to the defendant any of the  
37 material or information listed in paragraph (a)(1) which is in a record possessed by another  
38 governmental agency and may be shared with the prosecutor under Title 63G, Chapter 2,  
39 Government Records Access and Management Act. The request must identify with  
40 particularity the record sought and the agency that possesses it, and must demonstrate that  
41 the information in the record is directly related to the case.

42 (a)(3)(B) If the government agency refuses to share with the prosecutor the record  
43 containing the requested material or information under paragraph (a)(3)(A), or if the  
44 prosecution determines that it is prohibited by law from disclosing to the defense the  
45 record shared by the governmental agency, the prosecutor must promptly file notice stating  
46 the reasons for noncompliance. The defense may thereafter file an appropriate motion  
47 seeking a subpoena or other order requiring the disclosure of the requested record.

48 (a)(4) Good cause disclosures. The prosecutor must disclose any other item of evidence  
49 which the court determines on good cause shown should be made available to the  
50 defendant in order for the defendant to adequately prepare a defense.

51 (a)(5) Trial disclosures. The prosecutor must also disclose to the defendant the following  
52 information and material no later than 14 days, or as soon as practicable, before trial:

53 (a)(5)(A) Unless otherwise prohibited by law, a written list of the names and current  
54 contact information of all persons whom the prosecution intends to call as witnesses at  
55 trial; and

56 (a)(5)(B) Any exhibits that the prosecution intends to introduce at trial.

57 (a)(5)(C) Upon order of the court, the criminal records, if any, of all persons whom the  
58 prosecution intends to call as a witness at trial.

59 (a)(6) Information not subject to disclosure. Unless otherwise required by law, the  
60 prosecution's disclosure obligations do not include information or material that is  
61 privileged or attorney work product. Attorney work product protection is not subject to the  
62 exception in Rule 26(b)(5) of the Utah Rules of Civil Procedure.

63 ~~(e) (b) Disclosures by defense. Except as otherwise provided or as privileged,~~

64 (b)(1) Good cause disclosures. The defense shall must disclose to the prosecutor any item  
65 of evidence which the court determines on good cause shown should be made available to

66 the prosecutor in order for the prosecutor to adequately prepare the prosecutor's case for  
67 trial.

68 (b)(2) Other disclosures required by statute. The defense must disclose to the prosecutor  
69 such information as required by statute relating to alibi or insanity ~~and any other item of~~  
70 evidence which the court determines on good cause shown should be made available to the  
71 prosecutor in order for the prosecutor to adequately prepare the case.

72 (b)(3) Trial disclosures. The defense must also disclose to the prosecutor the following  
73 information and material no later than 14 days, or as soon as practicable, before trial:

74 (b)(3)(A) A written list of the names and current contact information of all persons, except  
75 for the defendant, whom the defense intends to call as witnesses at trial; and

76 (b)(3)(B) Any exhibits that the defense intends to introduce at trial.

77 (b)(4) Information not subject to disclosure. The defendant's disclosure obligations do not  
78 include information or material that is privileged or attorney work product. Attorney work  
79 product protection is not subject to the exception in Rule 26(b)(5) of the Utah Rules of  
80 Civil Procedure.

81 ~~(d) Timing of defense disclosures. Unless otherwise provided, the defense attorney shall~~  
82 ~~make all disclosures at least 14 days before trial or as soon as practicable. The defense has~~  
83 ~~a continuing duty to make disclosure.~~

84 ~~(e) (c) Methods of disclosure. When convenience reasonably requires,~~

85 ~~(c)(1) ¶The prosecutor or defense defendant may make disclosure by notifying the~~  
86 ~~opposing party that material and information may be inspected, tested or copied at~~  
87 ~~specified reasonable times and places.~~

88 ~~(c)(2) If the prosecutor concludes any disclosure required under this rule is prohibited by~~  
89 ~~law, or believes disclosure would endanger any person or interfere with an ongoing~~  
90 ~~investigation, the prosecutor must file notice identifying the material or information~~  
91 ~~withheld and the basis for non-disclosure. If disclosure is then requested by the defendant,~~  
92 ~~the court must decide whether disclosure is required and whether any limitations or~~  
93 ~~restrictions will apply to disclosure, such as those provided in paragraph (d).~~

94 (d) Disclosure limitations and restrictions.

95 (d)(1) The prosecutor or defense defendant may impose reasonable limitations on the  
96 further dissemination of sensitive information otherwise subject to discovery to prevent  
97 improper use of the information or to protect victims and witnesses from harassment,  
98 abuse, or undue invasion of privacy, including limitations on the further dissemination of  
99 ~~videotaped recorded~~ interviews, photographs, or psychological or medical reports.

100 ~~(f)(d)(2) Restrictions on disclosure.~~ Upon a sufficient showing the court may at any time  
101 order that discovery or inspection be denied, restricted, or deferred, that limitations on the  
102 further dissemination of discovery be modified or make such other order as is appropriate.  
103 Upon motion by a party, the court may permit the party to make such showing, in whole or  
104 in part, in the form of a written statement to be inspected by the judge alone. If the court  
105 enters an order granting relief following such an ex parte showing, the entire text of the  
106 party's statement shall be sealed and preserved in the records of the court to be  
107 made available to the appellate court in the event of an appeal.

108 ~~(g)(e) Relief and sanctions for F~~ailing to disclose.

109 ~~(e)(1) When a party fails to comply with the disclosure requirements of this rule, If at any~~  
110 ~~time during the course of the proceedings it is brought to the attention of the court that a~~  
111 ~~party has failed to comply with this rule,~~ the court may, subject to constitutional limitations  
112 and the rules of evidence, take the measures or impose the sanctions provided in this  
113 paragraph that it deems appropriate under the circumstances. If a party has failed to  
114 comply with this rule, the court may take one or more of the following actions:

115 (e)(1)(A) order such party to permit the discovery or inspection; of the undisclosed  
116 material or information;

117 ~~(e)(1)(B)~~ grant a continuance of the proceedings; ~~or~~

118 ~~(e)(1)(C)~~ prohibit the party from introducing evidence not disclosed; ~~or~~

119 ~~(e)(1)(D) it may enter such other~~ order such other relief as ~~it~~ the court deems just under the  
120 circumstances.

121 ~~(e)(2) If after a hearing the court finds that a party has knowingly and willfully failed to~~  
122 ~~comply with an order of the court compelling disclosure under this rule, the nondisclosing~~  
123 ~~party or attorney may be held in contempt of court and subject to the penalties thereof.~~

124 ~~(f) Identification evidence.~~

125 ~~(f)(1) (h) Additional requirements that may be imposed on the accused.~~ Subject to  
126 constitutional limitations and upon good cause shown, the trial court may order the  
127 defendant to the accused may be required to:

128 ~~(h)(1)~~ appear in a lineup;

129 ~~(h)(2)~~ speak for identification;

130 ~~(h)(3)~~ submit to fingerprinting or the making of other bodily impressions;

131 ~~(h)(4)~~ pose for photographs not involving reenactment of the crime;

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(January 12, 2021)

- 132 ~~(h)(5)~~ try on articles of clothing or other items of disguise;
- 133 ~~(h)(6)~~ permit the taking of samples of blood, hair, fingernail scrapings, and other bodily  
134 materials which can be obtained without unreasonable intrusion;
- 135 ~~(h)(7)~~ provide specimens of handwriting;
- 136 ~~(h)(8)~~ submit to reasonable physical or medical inspection of the accused's body; and
- 137 ~~(h)(9)~~ cut hair or allow hair to grow to approximate appearance at the time of the alleged  
138 offense.
- 139 (f)(2) Whenever the personal appearance of the accused is required for the foregoing  
140 purposes, reasonable notice of the time and place of such appearance shall be given to the  
141 accused and the accused's counsel.
- 142 (f)(3) Unless relieved by court order, Failure of the accused to appear or to comply with  
143 the requirements of this paragraph rule, unless relieved by order of the court, without  
144 reasonable excuse shall be grounds for revocation of pre-trial release and will subject the  
145 defendant to such further consequences or sanctions as the court may deem appropriate,  
146 including allowing the prosecutor to offer as evidence at trial the defendant's failure to  
147 comply with this paragraph, may be offered as evidence in the prosecutor's case in chief  
148 for consideration along with other evidence concerning the guilt of the accused and shall  
149 be subject to such further sanctions as the court should deem appropriate.

1 **Rule 7. Initial proceedings for class A misdemeanors and felonies.**

2 (a) **First appearance.** At the defendant's first appearance, the court must inform the defendant:

3 (a)(1) of the charge in the information or indictment and furnish a copy;

4 (a)(2) of any affidavit or recorded testimony given in support of the information and how  
5 to obtain them;

6 (a)(3) of the right to retain counsel or have counsel appointed by the court without  
7 expense if unable to obtain counsel;

8 (a)(4) of rights concerning pretrial release, ~~including bail~~; and

9 (a)(5) that the defendant is not required to make any statement, and that any statement the  
10 defendant makes may be used against the defendant in a court of law.

11 (b) **Right to counsel.** If the defendant is present at the initial appearance without counsel, the  
12 court must determine if the defendant is capable of retaining the services of an attorney within a  
13 reasonable time. If the court determines the defendant has such resources, the court must allow  
14 the defendant a reasonable time and opportunity to retain and consult with counsel. If the court  
15 determines the defendant is indigent, the court must appoint counsel pursuant to Rule 8, unless  
16 the defendant knowingly and intelligently waives the right to counsel.

17 (c) **Release conditions.**

18 ~~(c)(1) Except as provided in paragraph (c), the court must address whether the defendant~~  
19 ~~is entitled to pretrial release issue a pretrial status order pursuant to Utah Code § section~~  
20 ~~77-20-1. Parties should be prepared to address this issue, including notice requirements~~  
21 ~~under Utah Code section 77-37-3 and Utah Code section 77-38-3, and if so, what if any~~  
22 ~~conditions the court will impose to reasonably ensure the continued appearance of the~~  
23 ~~defendant, integrity of the judicial process, and safety of the community. The court must~~  
24 ~~utilize the least restrictive conditions needed to meet those goals.~~

25 ~~(c)(2) The determination of pretrial release eligibility and conditions may be reviewed~~  
26 ~~and modified upon application by either party based on a material change in~~  
27 ~~circumstances, or other good cause.~~

28 ~~(c)(2) A motion to modify the pretrial status order issued at initial appearance may be~~  
29 ~~made by either party at any time upon notice to the opposing party sufficient to permit the~~  
30 ~~opposing party to prepare for the hearing and to permit each alleged victim to be notified~~  
31 ~~and be present.~~

32 ~~(c)(3) Subsequent motions to modify a pretrial status order may be made only upon a~~  
33 ~~showing that there has been a material change in circumstances.~~

34 | (c)(4) A hearing on a motion to modify a pretrial status order may be held in conjunction  
35 | with a preliminary hearing or any other pretrial hearing.

36 | (d) **Continuances.** ~~If counsel are not prepared~~Upon application of either party and a showing  
37 | of good cause, the court ~~shall~~ may allow up to a seven day continuance of the hearing to allow  
38 | for preparation, including notification to any victims. The court may allow more than seven days  
39 | with the consent of the defendant.

40 | (e) **Right to preliminary examination.**

41 | (e)(1) The court must inform the defendant of the right to a preliminary examination and  
42 | the times for holding the hearing. If the defendant waives the right to a preliminary  
43 | examination, and the prosecuting attorney consents, the court must order the defendant  
44 | bound over for trial.

45 | (e)(2) If the defendant does not waive a preliminary examination, the court must  
46 | schedule the preliminary examination upon request. The examination must be held within  
47 | a reasonable time, but not later than 14 days if the defendant is in custody for the offense  
48 | charged and not later than 28 days if the defendant is not in custody. These time periods  
49 | may be extended by the magistrate for good cause shown. Upon consent of the parties,  
50 | the court may schedule the case for other proceedings before scheduling a preliminary  
51 | hearing.

52 | (e)(3) A preliminary examination may not be held if the defendant is indicted.

53 | Effective ~~May 1, 2018~~October 1, 2020

1 **Rule 7A. Procedures for arraignment on class B or C misdemeanors, or infractions.**

2 (a) **Initial appearance.** At the defendant's initial appearance, the court must inform the  
3 defendant:

4 (a)(1) of the charge in the information, indictment, or citation and furnish a copy;

5 (a)(2) of any affidavit or recorded testimony given in support of the information and how  
6 to obtain them;

7 (a)(3) of the right to retain counsel or have counsel appointed by the court without  
8 expense if unable to obtain counsel;

9 (a)(4) of rights concerning pretrial release, ~~including bail~~; and

10 (a)(5) that the defendant is not required to make any statement, and that any statement the  
11 defendant makes may be used against the defendant in a court of law.

12 (b) **Right to counsel.** If the defendant is present at the initial appearance without counsel, the  
13 court must determine if the defendant is capable of retaining the services of an attorney within a  
14 reasonable time. If the court determines the defendant has such resources, the court must allow  
15 the defendant a reasonable time and opportunity to retain and consult with counsel. If the court  
16 determines defendant is indigent, the court must appoint counsel pursuant to Rule-rule 8, unless  
17 the defendant knowingly and intelligently waives such appointment.

18 (c) **Release conditions.**

19 ~~(c)(1) Except as provided in paragraph (d), if counsel are present and prepared, the court must~~  
20 ~~address whether the defendant is entitled to pretrial release issue a pretrial status order pursuant to~~  
21 ~~Utah Code section§ 77-20-1. Parties should be prepared to address this issue, including notice~~  
22 ~~requirements under Utah Code section 77-37-3 and Utah Code section 77-38-3. , and if so, what~~  
23 ~~if any conditions the court will impose to reasonably ensure the continued appearance of the~~  
24 ~~defendant, integrity of the judicial process, and safety of the community. The court must use the~~  
25 ~~least restrictive conditions needed to meet those goals.~~

26 (c)(1) A motion to modify the pretrial status order issued at initial appearance may be  
27 made by either party at any time upon notice to the opposing party sufficient to permit the  
28 opposing party to prepare for the hearing and to permit each alleged victim to be notified  
29 and be present.

30 (c)(2) Subsequent motions to modify a pretrial status order may be made only upon a  
31 showing that there has been a material change in circumstances.

32 (c)(3) A hearing on a motion to modify a pretrial status order may be held in conjunction  
33 with a preliminary hearing or any other pretrial hearing.

34 (d) Continuances. Upon application of either party and a showing of good cause, the court may  
35 allow up to a seven day continuance of the hearing to allow for preparation, including  
36 notification to any victims. The court may allow more than seven days with the consent of the  
37 defendant.

38 ~~(e)(2) The determination of pretrial release eligibility and conditions, may be reviewed~~  
39 ~~and modified upon application by either party based on a material change in~~  
40 ~~circumstances, or other good cause.~~

41 ~~(d) Continuances. If defense counsel is not present or not yet prepared, the court must~~  
42 ~~allow up to a seven day continuance of the hearing to allow for preparation. The court~~  
43 ~~may allow more than seven days with the consent of the defendant.~~

44 **(e) Entering a plea.**

45 (e)(1) If defendant is prepared with counsel, or if defendant waives the right to be  
46 represented by counsel, the court must call upon the defendant to enter a plea.

47 (e)(2) If the plea is guilty, the court must sentence the defendant as provided by law.

48 (e)(3) If the plea is not guilty, the court must set the matter for trial or a pretrial  
49 conference within a reasonable time. Such time should be no longer than 30 days if  
50 defendant is in custody.

51 (e)(4) The court may administratively enter a not guilty plea for the defendant. If the  
52 court has appointed counsel, the defendant does not desire to enter a plea, or for other  
53 good cause, the court must then schedule a pretrial conference.

54 Effective ~~May 1, 2018~~October 1, 2020

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

2 (a)(1) **Probable cause determination.**

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

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

15 (a)(32)(B) If available, the magistrate should also be presented the results of a validated  
16 pretrial risk assessment tool.

17 (a)(42)(C) The magistrate must review the information provided and determine if  
18 probable cause exists to believe the defendant committed the offense or offenses  
19 described. If the magistrate finds there is probable cause, the magistrate must determine  
20 if the person is eligible for pretrial release pursuant to Utah Code § 77-20-1. The  
21 magistrate will impose the least restrictive reasonably available conditions of release  
22 reasonably necessary to:  
23 ~~, and what if any conditions on that release are reasonably necessary to:~~

24 (a)(42)(A)(i) ensure the individual's appearance ~~of the accused~~ at future court  
25 proceedings;

26 (a)(42)(B)(ii) ensure ~~the integrity of the judicial process~~ that the individual will  
27 not obstruct or attempt to obstruct the criminal justice process;

28 (a)(42)(C)(iii) ~~prevent direct or indirect contact with witnesses or victims by the~~  
29 ~~accused, if appropriate~~ ensure the safety of any witnesses or victims of the offense  
30 allegedly committed by the individual; and

31 (a)(42)(D)(iv) ensure the safety and welfare of the public and the community.

32 (a)(52)(D) If the magistrate finds the statement does not support probable cause to  
33 support the charges filed, the magistrate may determine what if any charges are  
34 supported, and proceed under subsection paragraph (a)(42)(C).

35 | (a)(~~62~~)(~~E~~) If probable cause is not articulated for any charge, the magistrate must return  
36 | the statement to the submitting authority indicating such.

37 | (a)(~~73~~) A statement that is verbally communicated by telephone must be reduced to a  
38 | sworn written statement prior to presentment to the magistrate. The statement must be  
39 | retained by the submitting authority and as soon as practicable, a copy shall be delivered  
40 | to the magistrate who made the determination.

41 | (a)(~~84~~) The arrestee need not be present at the probable cause determination.

42 | **(b) Magistrate availability.**

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

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

50 | **(c) Time for review.**

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

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

58 | (c)(3) If after 24 hours, the suspect remains in custody, an information must be filed  
59 | without delay charging the suspect with offenses from the incident leading to the arrest.

60 | (c)(4)(A) If no information has been filed by 3:00pm on the fourth calendar day after the  
61 | defendant was booked, the release conditions set under subsection (a)(~~42~~)(~~B~~) shall revert  
62 | to recognizance release.

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

65 | (c)(4)(C) If the time periods in this subsection (c)(4)(A) and (c)(4)(B) expire on a  
66 | weekend or legal holiday, the period expires at 3:00pm on the next business day.

67 (d) **Other processes.** Nothing in this rule is intended to preclude the accomplishment of other  
68 | procedural processes at the time of the probable cause determination ~~referred to in subsection~~  
69 | ~~(a)(2)~~.

70 | Effective ~~November 18, 2019~~October 1, 2020

1 **Rule 26. Written orders, judgments and decrees.**

2 (a) In all pretrial and post-conviction rulings by a court, counsel for the party or parties obtaining  
3 the ruling shall within 14 days, or within a shorter time as the court may direct, file with the  
4 court a proposed order, judgment, or decree in conformity with the ruling.

5 (b) Copies of the proposed findings, judgments, and orders shall be served upon opposing  
6 counsel before being presented to the court for signature unless the court otherwise orders.  
7 Notice of objections shall be submitted to the court and counsel within five days after service.

8 (c) All orders, judgments, and decrees shall be prepared in such a manner as to show whether  
9 they are entered based on a ruling after a hearing or argument, the stipulation of counsel, the  
10 motion of counsel or upon the court's own initiative, and shall identify the attorneys of record in  
11 the cause or proceeding in which the judgment, order or decree is made. If the order, judgment,  
12 or decree is the result of a hearing, the order shall include the date of the hearing, the nature of  
13 the hearing, and the names of the attorneys and parties present at the hearing.

14 (d) The trial court shall prepare the final judgment and sentence, and any commitment  
15 order. The trial court shall serve the final judgment and sentence on the parties and immediately  
16 transmit the commitment order to the county sheriff.

17 (e) All orders, judgments and decrees shall be prepared as separate documents and shall not  
18 include any matters by reference unless otherwise directed by the court.

19 (f) No orders, judgments, or decrees based upon stipulation shall be signed or entered unless the  
20 stipulation is in writing, signed by the attorneys of record for the respective parties and filed with  
21 the clerk or the stipulation was made on the record.

22 (g) Every prosecuting entity must provide to the Administrative Office of the Courts a single  
23 email address where notices may be sent in automatic expungement cases. If the prosecuting  
24 entity changes the email address, the prosecuting entity must immediately notify the  
25 Administrative Office of the Courts.

26 Effective November 1, 2015

**Rule \_\_\_\_\_. Automatic Expungement**

**1 (a) Definitions**

2 (a)(1) "AOC" means the Administrative Office of the Court.

3 (a)(2) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
4 Safety.

5 (a)(3) "Clean slate eligible case" means the same as defined in Utah Code §77-40-102.

6 (a)(4) "Conviction" means a judgment by a criminal court on a verdict or finding of guilty  
7 after trial, a plea of guilty, or a plea of nolo contendere.

8 (a)(5) "Expunge" means to seal or otherwise restrict access to the individual's record  
9 when the record includes a criminal investigation, detention, arrest, or conviction.

**10 (b) Cases eligible for automatic expungement**

11 (b)(1) Records in the following case types may be expunged automatically:

12 (b)(1)(A) a case that resulted in an acquittal on all charges;

13 (b)(1)(B) except as provided in paragraph (b)(2), a case that is dismissed with  
14 prejudice; and

15 (b)(1)(C) a clean slate eligible case.

16 (b)(2) A case that is dismissed after completion of a plea in abeyance agreement is not  
17 eligible for automatic expungement.

**18 (c) Identifying eligible cases**

19 (c)(1) If funding is available to create technology that can automatically identify cases  
20 eligible for automatic expungement, once a month the AOC must identify for  
21 each court the cases that are eligible for automatic expungement. The AOC must  
22 separately identify the cases that are clean slate eligible.

23 (c)(2) If technology is not available, a person seeking expungement must file a petition  
24 under Utah Code 77-40-107. A person may also submit a written request, on a  
25 form provided by the court, to the court where the person's case is located to  
26 have the person's case included on the list of cases eligible for expungement.

27                   The request must include the person's name, court where the case is located,  
28                   case number, and person's date of birth. The court must confirm eligibility before  
29                   including the case on a list of eligible cases.

30   **(d) Notice to prosecuting entities**

31           (d)(1)   When a list of clean slate eligible cases is created, the AOC must email a list of  
32           eligible cases to the entity that prosecuted the case. The information for each  
33           clean slate eligible case must include, at a minimum, the individual's first name,  
34           last name, date of birth, and case number.

35           (d)(2)   Every prosecuting entity in the state must provide the AOC with the email  
36           address where notices should be sent. The prosecuting entity must immediately  
37           notify the AOC if the entity wants the notices sent to a different email address.

38           (d)(3)   The AOC is not required to send the prosecuting entity the lists of cases to be  
39           expunged under paragraphs (b)(1)(A) and (b)(1)(B).

40   **(e) Objection by prosecuting entities**

41           (e)(1)   If the prosecuting entity objects to the expungement of a clean slate eligible case,  
42           the prosecuting agency must e-file an objection within 35 days of the date notice  
43           was sent under paragraph (d)(1). If an objection is received, the AOC must  
44           remove the case from the list of clean slate eligible cases.

45           (e)(2)   Failure to properly e-file an objection will result in the objection being rejected.

46           (e)(3)   After the period for objections has expired, the AOC will provide each court with a  
47           list of the remaining clean slate eligible cases.

48   **(f) Expungement orders**

49           (f)(1)   Upon receiving a list of cases eligible for automatic expungement, the court must  
50           issue an expungement order for each eligible case.

51           (f)(2)   The AOC must provide copies of the expungement orders to the bureau and the  
52           prosecuting entity.

53           *Effective* \_\_\_\_\_

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

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

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

(c) Subject to subsection (d), For good cause 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 the right to confront the witness in person.

(d) In misdemeanor cases, a forensic toxicologist may provide testimony by contemporaneous transmission in open court from a different location. The court may order a forensic toxicologist to appear in person on a showing of good cause by either party.

~~(d)~~ (e) Nothing in this rule precludes or affects the procedures in rule 15.5.

## Supreme Court Advisory Committee on the Rules of Civil Procedure, Subcommittee on Expungement

### Suggestion for addition to Rule 5, Utah Rules of Civil Procedure

#### (a)(4) Service in expungement actions.

Service of a Petition for Expungement may be made by petitioner filing with the court a Petition for Expungement, BCI Certificate, and proposed Order, along with a Certificate of Service documenting delivery of the Petition and BCI certificate, under this rule, to the prosecutor's office. If the petitioner is unable to locate the prosecutorial office that handled the court proceedings, the petitioner shall deliver the copy of the Petition and BCI certificate to the county attorney's office in the jurisdiction where the arrest occurred. Once 60 days has passed after service on the prosecutorial office, and if the court has not issued an Order, the petitioner may file a request to submit for decision as provided in Rule 7(g).

Here is current Rule 5 with the proposed addition highlighted:

#### **Rule 5. Service and filing of pleadings and other papers.**

##### **(a) When service is required.**

**(a)(1) Papers that must be served.** Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:

- (a)(1)(A) a judgment;
- (a)(1)(B) an order that states it must be served;
- (a)(1)(C) a pleading after the original complaint;
- (a)(1)(D) a paper relating to disclosure or discovery;
- (a)(1)(E) a paper filed with the court other than a motion that may be heard ex parte; and
- (a)(1)(F) a written notice, appearance, demand, offer of judgment, or similar paper.

**(a)(2) Serving parties in default.** No service is required on a party who is in default except that:

- (a)(2)(A) a party in default must be served as ordered by the court;
- (a)(2)(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);
- (a)(2)(C) a party in default for any reason must be served with notice of any hearing to determine the amount of damages to be entered against the defaulting party;
- (a)(2)(D) a party in default for any reason must be served with notice of entry of judgment under Rule [58A\(d\)](#); and
- (a)(2)(E) a party in default for any reason must be served under Rule [4](#) with pleadings asserting new or additional claims for relief against the party.

**(a)(3) Service in actions begun by seizing property.** If an action is begun by seizing property and no person is or need be named as defendant, any service required before the filing of an answer, claim or appearance must be made upon the person who had custody or possession of the property when it was seized.

**(a)(4) Service in expungement actions.**

Service of a Petition for Expungement may be made by petitioner filing with the court a Petition for Expungement, BCI Certificate, and proposed Order, along with a Certificate of Service documenting delivery of the Petition and BCI certificate, under this rule, to the prosecutor's office. If the petitioner is unable to locate the prosecutorial office that handled the court proceedings, the petitioner shall deliver the copy of the Petition and BCI certificate to the county attorney's office in the jurisdiction where the arrest occurred. Once 60 days has passed after service on the prosecutorial office, and if the court has not issued an Order, the petitioner may file a request to submit for decision as provided in Rule 7(g).

**(b) How service is made.**

**(b)(1) Whom to serve.** If a party is represented by an attorney, a paper served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if:

(b)(1)(A) an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers being served relate to a matter within the scope of the Notice; or

(b)(1)(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a paper was last served on the attorney.

**(b)(2) When to serve.** If a hearing is scheduled 7 days or less from the date of service, a party must serve a paper related to the hearing by the method most likely to be promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

**(b)(3) Methods of service.** A paper is served under this rule by:

(b)(3)(A) except in the juvenile court, submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account;

(b)(3)(B) emailing it to

(b)(3)(B)(i) the most recent email address provided by the person to the court under Rule 10(a)(3) or Rule 76, or

(b)(3)(B)(ii) to the email address on file with the Utah State Bar;

(b)(3)(C) mailing it to the person's last known address;

(b)(3)(D) handing it to the person;

(b)(3)(E) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(b)(3)(F) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(b)(3)(G) any other method agreed to in writing by the parties.

**(b)(4) When service is effective.** Service by mail or electronic means is complete upon sending.

**(b)(5) Who serves.** Unless otherwise directed by the court:

(b)(5)(A) every paper required to be served must be served by the party preparing it; and

(b)(5)(B) every paper prepared by the court will be served by the court.

**(c) Serving numerous defendants.** If an action involves an unusually large number of defendants, the court, upon motion or its own initiative, may order that:

(c)(1) a defendant's pleadings and replies to them do not need to be served on the other defendants;

(c)(2) any cross-claim, counterclaim avoidance or affirmative defense in a defendant's pleadings and replies to them are deemed denied or avoided by all other parties;

(c)(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all other parties; and

(c)(4) a copy of the order must be served upon the parties.

**(d) Certificate of service.** A paper required by this rule to be served, including electronically filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not apply to papers required to be served under paragraph (b)(5)(B) when service to all parties is made under paragraph (b)(3)(A).

**(e) Filing.** Except as provided in Rule [7\(j\)](#) and Rule [26\(f\)](#), all papers after the complaint that are required to be served must be filed with the court. Parties with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

**(f) Filing an affidavit or declaration.** If a person files an affidavit or declaration, the filer may:

(f)(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code Section [46-1-16\(7\)](#);

(f)(2) electronically file a scanned image of the affidavit or declaration;

(f)(3) electronically file the affidavit or declaration with a conformed signature; or

(f)(4) if the filer does not have an electronic filing account, present the original affidavit or declaration to the clerk of the court, and the clerk will electronically file a scanned image and return the original to the filer.

The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for inspection upon request until the action is concluded, including any appeal or until the time in which to appeal has expired.

#### [Advisory Committee Notes](#)

Effective May 1, 2019