

**UTAH SUPREME COURT ADVISORY COMMITTEE
ON THE RULES OF CRIMINAL PROCEDURE**

MEETING MINUTES

May 17th, 2022

12:00 – 2:00 p.m.

Via Webex

<u>MEMBERS PRESENT</u>	<u>MEMBERS EXCUSED</u>	<u>GUESTS</u>	<u>STAFF</u>
Doug Thompson Janet Reese Meredith Mannebach William Carlson David Ferguson Elizabeth Hruby-Mills Ryan Peters Ryan Stack Denise Porter Matthew Tokson	Craig Johnson Kelly Schaeffer-Bullock	Neal Hamilton	Bryson King

1. WELCOME, INTRODUCTION OF NEW STAFF, AND APPROVAL OF MINUTES:

Doug Thompson welcomed the members to the Committee meeting and introduced Bryson King, new staff for the Committee, who is replacing Stacy Haacke. The minutes from the prior meeting were approved by unanimous vote of the attending members.

2. Rule 8: Ready for Public Comment

Guest, Mr. Neal Hamilton, addressed the committee and reviewed amendments to Rule 8. Mr. Ryan Peters stated his agreement with the changes proposed in subsection (b)(1) and Doug Thompson proposed changes to subsections (b)(2) and (d)(1) for clarity. Janice Porter moved to adopt the Committee's amendments proposed to subsections (c) and (d). Ryan Peters seconds and no objection is heard. The motion carries.

Doug Thompson reviews subsections (a) and (b) with the Committee and there is discussion about whether the amendments permit a judge's subjective discomfort with an individual's education, training, and background when requesting self-representation or whether these considerations are merely relevant to an objective finding of knowing and voluntary waiver. Doug Thompson clarifies it is the latter. William Carlson proposes an amendment to subsection

(b)(2) and then moves to approve all of the Committee's amendments to Rule 8. Ryan Slack seconds and there is no objection. The motion carries. Rule 8 will be sent to the Supreme Court to approve for public comment.

3. Rule 42: Ready for Public Comment

Doug Thompson addresses Rule 42 and reviews its progress in subcommittee and in the Committee. He directs his attention, specifically, to subsection (b)(3)(B). William Carlson indicates concern with the current e-filing procedure and asks how the AOC will process objections from prosecutors to individual cases on the automatic expungement-eligible list. Bryson King clarifies that once a list is created, a prosecutor may file an objection to a case being included on that list, so long as the objection is e-filed in the case and is filed under the category "Automatic Expungement Objection." CORIS will flag the objection and will make the case ineligible. The AOC will then manually remove the case from the list. Doug Thompson says he will take some time to review this process with the AOC and match it with the Rule's language. There is discussion to also review the AOC's process in subsection (b)(2)(A) to ensure consistency with the Rule.

Doug Thompson invites the Committee to discuss subsection (c)(2) amendments. William Carlson indicates his approval of the language because it directs notice to prosecuting agencies and not individual prosecutors who may or may not be employed with those agencies anymore. Janet Reese also clarifies that in (c)(3), certificates will be filed into the court's docket by uploading them into CORIS. She also states that when a criminal case does not exist (for example, because an arrest never led to charges), an expungement case will be created, otherwise a petition for expungement will be filed in an existing criminal case and procedures for processing the expungement will occur in the existing criminal case. The word "case" is replaced with "action" to account for the distinction between the two scenarios.

William Carlson proposes removing language in (c)(4)(B) that requires prosecutors to send notice to victims of an expungement petition using Judicial Council-approved forms. Mr. Carlson moves for the amendment, David Ferguson seconds, and there is no objection. The motion carries and the language is removed.

Doug Thompson directs the Committee's attention to subsection (c)(4)(C) and the Committee agrees to replace "serve" with "provide notice" (or variations thereof) in the subsection. Discussion over subsection (c)(4)(D) clarifies that any court findings will occur in the expungement order issued by the Court. There is further discussion from William Carlson about the number of days provided in subsection (c)(5) and whether it should be 35 or 60 and Doug Thompson references the statute to confirm 35 is the correct number.

William Carlson moves to adopt all of the Committee's amendments to Rule 42. Ryan Stack seconds the motion, no objection is heard. The motion carries and the Rule will be sent to the Supreme Court to approve for public comment. Ryan Peters asks that we clarify the AOC's process for subsection (b)(2)(A) and Doug Thompson indicates he will follow up with the

Committee through email and invite a motion if any changes to the language are needed.

4. Rule 12.5: Back from subcommittee and ready for public comment

Doug Thompson then addresses amendments to Rule 12.5 and there is discussion about amending subsection (c) to clarify whether the district court has absolute discretion to review and modify rulings made by the justice court after a DV case transfer. The Committee agrees to remove the list of decisions subject to review to improve readability and further agrees to add language clarifying that the district court may, in its discretion, grant a motion to address rulings from the justice court after the transfer.

David Ferguson suggests the Committee clarify in subsection (a) that a notice cannot be filed in a case not set for trial. The Committee agrees and adopts the changes. Ryan Peters then asks to clean up language in the Rule and change “notice to” to “notice of” and make capitalizations consistent. Those changes are made. Changes to the language for timing of notices in cases set for trial, in subsection (g) is made after discussion among the Committee.

Upon Ryan Slack’s excusal from the meeting, an insufficient number of votes remain in the Committee to approve a motion. Ryan Peters moves to adopt the amendments to Rule 12.5, William Carlson seconds, no objection is heard, and Doug indicates he will finalize the motion via email to secure all necessary votes for the motion’s approval.

Adjourn:

After these discussions, Doug indicates any remaining items of business will be discussed through email. The meeting is adjourned.