

SJR010S01 compared with SJR010S02

19 **Rule 17.5** , Utah Rules of Criminal Procedure

20 **Rule 18** , Utah Rules of Criminal Procedure

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22 *Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each*
23 *of the two houses voting in favor thereof:*

24 As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of
25 procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all
26 members of both houses of the Legislature:

27 Section 1. **Rule 17.5**, Utah Rules of Criminal Procedure is amended to read:

28 **Rule 17.5 . In-person, remote, and hybrid hearings; request for different format.**

(a) **Definitions.**

(1) "Participant" means a party, a participating victim, or an attorney for a party or participating victim.

(2) "In-person" means a participant will be physically present in the courtroom.

(3) "In-person hearing" means a hearing where all participants appear in person.

(4) "Remote" or "remotely" means a participant will appear by video conference or other electronic means approved by the court.

(5) "Remote hearing" means no participants will be physically present in the courtroom and all participants will appear remotely.

(6) "Hybrid hearing" means a hearing at which some participants appear in person and others appear remotely.

(b) **Setting hearing format; factors to consider.** [The] Except as provided in Rule 18(b), the court has discretion to set a hearing as an in-person hearing, a remote hearing, or a hybrid hearing. In determining which format to use for a hearing, the court will consider:

(1) the preference of the participants, if known;

(2) the anticipated hearing length;

(3) the number of participants;

(4) the burden on a participant of appearing in person compared to appearing remotely, including time and economic impacts;

(5) the complexity of issues to be addressed;

(6) whether and to what extent documentary or testimonial evidence is likely to be

SJR010S01 compared with SJR010S02

presented;

(7) the availability of adequate technology to accomplish the hearing's purpose;

(8) the availability of language interpretation or accommodations for communication with individuals with disabilities;

(9) the possibility that the court may order a party, who is not already in custody, into custody;

(10) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights; and

(11) any other factor, based on the specific facts and circumstances of the case or the court's calendar, that the court deems relevant.

(c) Request to appear by a different format.

(1) **Manner of request.** A participant may request that the court allow the participant or a witness to appear at a hearing by a different format than that set by the court. Any request must be made verbally during a hearing, by email, by letter, or by written motion, and the participant must state the reason for the request. If a participant is represented by an attorney, all requests must be made by the attorney.

(A) Email and letter requests.

(i) An email or letter request must be copied on all parties;

(ii) An email or letter request must include in the subject line, "REQUEST TO APPEAR IN PERSON, Case _____" or "REQUEST TO APPEAR REMOTELY, Case _____;" and

(iii) An email request must be sent to the court's email address, which may be obtained from the court clerk.

(B) **Request by written motion.** If making a request by written motion, the motion must succinctly state the grounds for the request and be accompanied by a request to submit for decision and a proposed order. The motion need not be accompanied by a supporting memorandum.

(2) **Timing.** All requests, except those made verbally during a hearing, must be sent to the court at least seven days before the hearing unless there are exigent circumstances or the hearing was set less than seven days before the hearing date, in which cases the request must be made as soon as reasonably possible.

SJR010S01 compared with SJR010S02

(d) Resolution of the request.

(1) **Timing and manner of resolution.** The court may rule on a request under paragraph (c) without awaiting a response. The court may rule on the request in open court, by email, by minute entry, or by written order. If the request is made by email, the court will make a record of the request if the request is denied.

(2) **Court's accommodation of participant's preference; factors to consider.** The court will accommodate a timely request unless the court makes, on the record, a finding of good cause to order the participant to appear in the format originally noticed. The court may find good cause to deny a request based on:

(A) a constitutional or statutory right that requires a particular manner of appearance or a significant possibility that such a right would be impermissibly diminished or infringed by appearing remotely;

(B) a concern for a participant's or witness's safety, well-being, or specific situational needs;

(C) a prior technological challenge in the case that unreasonably contributed to delay or a compromised record;

(D) a prior failure to demonstrate appropriate court decorum, including attempting to participate from a location that is not conducive to accomplishing the purpose of the hearing;

(E) a prior failure to appear for a hearing of which the participant had notice;

(F) the possibility that the court [~~may~~] may order a party, who is not already in custody, into custody;

(G) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights;

(H) a participant's involvement in a problem-solving court;

(I) an agreement or any objection of the parties;

(J) the court's determination that the consequential nature of a specific hearing requires all participants to appear in person; or

(K) the capacity of the court, including but not limited to the required technology equipment, staff, or security, to accommodate the request.

(3) **Effect on other participants.** The preference of one participant, and the court's accommodation of that preference, does not:

SJR010S01 compared with SJR010S02

(A) change the format of the hearing for any other participant unless otherwise ordered by the court; or

(B) affect any other participant's opportunity to make a timely request to appear by a different format or the court's consideration of that request.

116 Section 2. **Rule 18**, Utah Rules of Criminal Procedure is amended to read:

117 **Rule 18. Selection of the jury.**

(a) The judge shall determine the method of selecting the jury and notify the parties at a pretrial conference or otherwise prior to trial. The following procedures for selection are not exclusive.

~~[(a)](1)~~. The court shall summon the number of the jurors that are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted, and for all challenges for cause granted. At the direction of the judge, the clerk shall call jurors in random order. The judge may hear and determine challenges for cause during the course of questioning or at the end thereof. The judge may and, at the request of any party, shall hear and determine challenges for cause outside the hearing of the jurors. After each challenge for cause sustained, another juror shall be called to fill the vacancy, and any such new juror may be challenged for cause. When the challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and each side, beginning with the prosecution, shall indicate thereon its peremptory challenge to one juror at a time in regular turn, as the court may direct, until all peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or so many of them as shall be necessary to constitute the jury, including any alternate jurors, and the persons whose names are so called shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the court prior to voir dire.

~~[(a)](2)~~. The court shall summon the number of jurors that are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted and for all challenges for cause granted. At the direction of the judge, the clerk shall call jurors in random order. The judge may hear and determine challenges for cause during the course of questioning or at the end thereof. The judge may and, at the request of any party, shall hear and determine challenges for cause outside the hearing of the jurors. When the challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and

SJR010S01 compared with SJR010S02

each side, beginning with the prosecution, shall indicate thereon its peremptory challenge to one juror at a time in regular turn until all peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or so many of them as shall be necessary to constitute the jury, including any alternate jurors, and the persons whose names are so called shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the court prior to voir dire.

~~[(a)](3) In courts using lists of prospective jurors generated in random order by computer,~~
the clerk may call the jurors in that random order.

(b)

(1) (i) In a felony case, the court must conduct jury selection in person at the place of trial unless both parties agree, on the record, that jury selection be conducted virtually.

(ii) When jury selection is conducted {as described} in person under paragraph (b)(1)(i), all prospective

jurors must appear in person for examination.

(2) The court may permit counsel or the defendant to conduct the examination of the prospective jurors or may itself conduct the examination. In the latter event, the court may permit counsel or the defendant to supplement the examination by such further inquiry as [it] the court deems proper, or may itself submit to the prospective jurors additional questions requested by counsel or the defendant.

(3) Prior to examining the jurors, the court may make a preliminary statement of the case.

The court may permit the parties or their attorneys to make a preliminary statement of the case, and notify the parties in advance of trial.

(c) A challenge may be made to the panel or to an individual juror.

~~[(e)](1) The panel is a list of jurors called to serve at a particular court or for the trial of a particular action. A challenge to the panel is an objection made to all jurors summoned and may be taken by either party.~~

~~[(e)](1)(i) A challenge to the panel can be founded only on a material departure from the procedure prescribed with respect to the selection, drawing, summoning and return of the panel.~~

~~[(e)](1)(ii) The challenge to the panel shall be taken before the jury is sworn and shall be in~~

SJR010S01 compared with SJR010S02

writing or made upon the record. It shall specifically set forth the facts constituting the grounds of the challenge.

~~[(e)(1)](iii) If a challenge to the panel is opposed by the adverse party, a hearing may be had to try any question of fact upon which the challenge is based. The jurors challenged, and any other persons, may be called as witnesses at the hearing thereon.~~

~~[(e)(1)](iv) The court shall decide the challenge. If the challenge to the panel is allowed, the court shall discharge the jury so far as the trial in question is concerned. If a challenge is denied, the court shall direct the selection of jurors to proceed.~~

~~[(e)](2) A challenge to an individual juror may be either peremptory or for cause. A challenge to an individual juror may be made only before the jury is sworn to try the action, except the court may, for good cause, permit it to be made after the juror is sworn but before any of the evidence is presented. In challenges for cause the rules relating to challenges to a panel and hearings thereon shall apply. All challenges for cause shall be taken first by the prosecution and then by the defense alternately. Challenges for cause shall be completed before peremptory challenges are taken.~~

(d) A peremptory challenge is an objection to a juror for which no reason need be given. In capital cases, each side is entitled to 10 peremptory challenges. In other felony cases each side is entitled to four peremptory challenges. In misdemeanor cases, each side is entitled to three peremptory challenges. If there is more than one defendant the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

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

~~[(e)](1) Want of any of the qualifications prescribed by law.~~

~~[(e)](2) Any mental or physical infirmity which renders one incapable of performing the duties of a juror.~~

~~[(e)](3) Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted.~~

SJR010S01 compared with SJR010S02

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

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

~~[(e)](6) Having served on the grand jury which found the indictment.~~

~~[(e)](7) Having served on a trial jury which has tried another person for the particular offense charged.~~

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

~~[(e)](9) Having served as a juror in a civil action brought against the defendant for the act charged as an offense.~~

~~[(e)](10) If the offense charged is punishable with death, the juror's views on capital punishment would prevent or substantially impair the performance of the juror's duties as a juror in accordance with the instructions of the court and the juror's oath in [subsection (h)] paragraph (g).~~

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

~~[(e)](12) Because the juror has been a witness, either for or against the defendant on the preliminary examination or before the grand jury.~~

~~[(e)](13) Having formed or expressed an unqualified opinion or belief as to whether the defendant is guilty or not guilty of the offense charged.~~

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

(f) The court may impanel alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties. Alternate jurors must

SJR010S01 compared with SJR010S02

have the same qualifications and be selected and sworn in the same manner as any other juror. If one or two alternate jurors are called, the prosecution and defense shall each have one additional peremptory challenge. If three or four alternate jurors are called, each side shall have two additional peremptory challenges. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors. The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

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

247

Section 3. **Effective date.**

Effective Date.

~~{As provided in}~~ (1) In accordance with Utah Constitution, Article VIII, Section 4, {this resolution takes effect} the amendments in

~~{upon}~~ this resolution pass upon approval by a two-thirds vote of all members elected to each house.

(2) After passage of this resolution under Subsection (1), the amendments in this resolution take effect on January 1, 2027.

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