



Minutes

Supreme Court's Advisory Committee on the
Utah Rules of Appellate Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Via WebEx Videoconference
Thursday, September 1, 2022
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Jacqueline Carlton—Guest
Judge Michele Christiansen
Forster
Lisa Collins
Carol Funk
Tyler Green
Amber Griffith

Michael Judd—Recording
Secretary
Judge Gregory Orme
Stanford Purser
Michelle Quist
Clark Sabey
Nathalie Skibine—
Vice Chair
Nick Stiles—Staff
Scarlet Smith
Mary Westby

EXCUSED

Patrick Burt

1. Action: Chris Ballard
Introductions and Approval of June 2022 Minutes

The committee introduced itself to its newest member, Judge Michele Christiansen Forster. The committee reviewed the June 2022 minutes and did not note any needed changes or corrections.

Mary Westby moved to approve the June 2022 minutes as circulated. Emily Adams seconded that motion, and it passed without objection by unanimous consent.

2. Action: Chris Ballard
Rules 8, 17, 23B, 29 & 37

This set of rules arrives back on the committee's agenda after being sent out for public comment. Chris Ballard noted that the committee received no comments from the public during the latest round of circulation.

Given the absence of any public comments, Judge Christiansen Forster moved to approve Rules 8, 17, 23B, 29, and 37 in the form they were sent out for comment. Mary Westby seconded that motion, and it passed without objection by unanimous consent.

3. Action: Chris Ballard
Rule 20

Mr. Ballard reported to the committee that he had recommended to the Utah Supreme Court that Rule 20 be repealed—which had been the committee's recommendation. Mr. Ballard also reported that Justice Pearce had raised one concern: After repeal, will there still an option to file a motion for relief directly with the Utah Supreme Court?

The committee worked together, and at length, on several approaches to address that concern, including a potential reworking of parts of Rule 56. After a substantial discussion, the committee considered whether carving out additional time to discuss the proposed changes may be the most reasonable approach, to ensure that the issue arrive back at the committee in a way that ensures all members are comfortable and ensures there is an avenue to file for extraordinary relief.

Mr. Ballard expressed a belief that Rule 19 may already address Justice Pearce's concern, and the committee weighed a proposal under which an advisory-committee note would be added to Rule 19, explaining that Rule 20 has been repealed and that Rule 19 provides a route for parties to obtain extraordinary relief. Judge Orme suggested that Emily Adams propose language for the advisory-committee note, given her familiarity with the issue.

Following that discussion, Carol Funk moved to table discussion of Rule 19 and to continue the discussion at the committee's next meeting. Judge Christiansen Forster seconded that motion, and it passed without objection by unanimous consent.

4. Action: Mary Westby
Rule 19

The committee noted that it has been at work on rounds of potential revisions to Rule 19 for several months now. At issue at this month's meeting were minor clarifications about handling a writ without a response, while retaining the ability to call for a response. The committee discussed potential confusion related to how Rule 23C applies and connects to this rule. The committee then discussed at length how emergency petitions will be handled. One potential solution identified by the committee is to add language clarifying that Rule 23C will govern in any conflict between Rule 23C and Rule 19.

Given the need to square Rule 19 with Rule 23C, Mary Westby moved to table discussion of Rule 19 and to resume discussion at the committee's next meeting. Carol Funk seconded that motion, and it passed without objection by unanimous consent.

5. Action: Chris Ballard
Rule 22—Juneteenth Holiday

Given a lack of time to address all issues slated for discussion in September, the committee opted to defer discussion of Rule 22 until October's meeting.

6. Action: Carol Funk
Rule 50 Clark Sabey

Carol Funk presented to the committee two alternative options for modifying the cert-petition response mechanism, as reflected in the meeting materials. The committee discussed those two potential approaches, and considered at length way to at least *leave open* the option for a party opposing a cert petition to file an opposition without the court calling for one. After discussion, the weight of committee members' opinions tipped in the other direction: parties opposing cert petitions will file a response only if requested.

Following that discussion, Ms. Westby moved to approve the first of the two options presented by Ms. Funk. Judge Orme seconded that motion, and it passed without objection by unanimous consent. That option will be presented to the Utah Supreme Court for its consideration.

7. Action: Mary Westby
Rule 57

Ms. Westby indicated that because the proposed amendments to Rule 57 are simple but not uncontroversial, it may be best for the committee to hold off on discussion of Rule 57 until October. The committee agreed.

8. Action: Nick Stiles
Appellate Court Disqualification

Given a lack of time to address all issues slated for discussion in September, the committee opted to defer discussion of appellate court disqualification until October's meeting.

9. Discussion: Chris Ballard
Old/New Business

Nick Stiles informed the committee that if its members are comfortable moving its meeting back to an in-person format, court protocols allow for that option. The committee will consider both a full return to in-person meetings or a rotation between videoconference and in-person meetings.

10. Adjourn

Following that discussion, the committee adjourned. The committee's next meeting will take place on October 6, 2022.