

**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

Judicial Council Room  
Thursday, September 1, 2016  
12:00 p.m. to 1:30 p.m.

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**PRESENT**

Joan Watt- Chair  
Troy Booher  
Paul Burke  
Marian Decker  
James Ishida-Staff  
Alan Mouritsen  
Judge Gregory Orme  
Adam Pace – Recording Secretary  
Rodney Parker  
Clark Sabey  
Lori Seppi  
Ann Marie Taliaferro  
Judge Fred Voros  
Mary Westby

**EXCUSED**

R. Shawn Gunnarson  
Bridget Romano

**1. Welcome and approval of minutes**

**Joan Watt**

Ms. Watt welcomed the committee to the meeting and introduced James Ishida who will be assuming the staff position previously occupied by Tim Shea. Ms. Watt invited a motion to approve the minutes from the June meeting. *Mr. Burke moved to approve the June minutes. Ms. Taliaferro seconded the motion and it passed unanimously.*

Ms. Watt announced that she will be leaving the committee in November. Ms. Watt also reported that the procedure for amending rules has changed so the proposed rule amendments will now be sent to the court for review before sending them out for public comment.

**2. Consideration of comments**

Ms. Watt reported on the public comments that were received on the proposed amendments to Rules 2, 14, and 52, and the new Rule 25A.

**Rule 2.** The committee discussed the comments on Rule 2 and agreed that the language “except as to the provisions of Rules...” should be amended to read “except as to jurisdictional provisions of Rules...” *Mr. Sabey moved to recommend this amendment to the language of URAP 2. Ms. Decker seconded the motion and is passed unanimously.*

**Rule 14.** No comments.

**Rule 25A.** The committee agreed to remove a type in subpart (b)(3), line 30 to remove the article “a” before the word intent. The corrected sentence reads: “On a governmental entity filing a notice of intent...” *Mr. Burke moved to recommend this amendment to the language of Rule 25A. Mr. Booher seconded the motion and is passed unanimously.*

**Rule 52.** No comments. *Mr. Parker moved to recommend that the supreme court adopt the proposed amendment to Rule 52. Mr. Sabey second the motion and it passed unanimously.*

### 3. Consideration for Publication

**Rule 24. Briefs.** Ms. Watt led the committee in a discussion of the proposed amendments to Rule 24.

- (a)(1). No comments.
- (a)(2). Ms. Watt suggested that the last sentence “The table of contents should link to the section of the brief or to the item in the addendum” is related to e-filing issue, and should be taken out for now. She suggested the language should be highlighted and put into the e-filing packet.
- (a)(3). No comments.
- (a)(4). No comments.
- (a)(5). No comments.
- (a)(6). No comments.
- (a)(7). Mr. Burke commented that the language “must contain” leaves the door open for parties to include additional information in the summary of the argument beyond what must be contained in it. He suggested changing that language to “must be”. The committee decided to leave the language alone.
- (a)(8). No comments.
- (a)(9). Mr. Parker asked whether the deletion of the word “incurred” makes the attorney fees provision ambiguous. The committee discussed the provision and agreed to revise the language to read: “A party seeking attorney fees for work performed on appeal must state...” *Mr. Booher moved to make this revision Rule 24(a)(9). Mr. Parker seconded the motion and it passed unanimously.*
- (a)(10). Mr. Mouritsen asked whether the word “short” should be deleted from the heading. The committee discussed this and agreed to leave the provision as it is.
- (a)(11). The committee agreed to remove the period inside the parenthetical on Line 56.
- (a)(12). Mr. Parker asked whether the language about binding the addendum as part of the brief should be left in. The committee discussed this and agreed to leave the provision as it is. *Mr. Booher moved to approve Rule 24(a)(12) without further changes. Ms. Westby seconded the motion and it passed unanimously.*

*Mr. Parker moved to approve Rule 24(a)(1)-(a)(12) as discussed up to this point. Ms. Seppi seconded the motion as it passed unanimously.*

- (b). Mr. Burke asked whether the sub provisions (b)(1)-(b)(4) should be numbered (1)-4). The committee discussed this and agreed to leave the provision as is. *Judge Orme moved to approve Rule 24(b) as drafted. Judge Voros seconded the motion and it passed unanimously.*
- (c). No comments. *Judge Voros moved to approve Rule 24(c) as drafted. Ms. Seppi seconded the motion and it passed unanimously.*
- (d). Mr. Parker encouraged the committee to adopt this provision without further revision. Mr. Booher asked whether the language “must not” in the last sentence should be changed to “may not.” The committee discussed this and agreed to leave the provision as it is. *Judge Orme moved to approve Rule 24(d) as drafted. Ms. Taliaferro seconded the motion and it passed unanimously.*
- (e). Judge Voros commented that the language “marked by the clerk” will need to be updated later when e-filing is implemented, but is fine for now. *Judge Voros moved to approve Rule 24(e) as drafted. Mr. Burke seconded the motion and it passed unanimously.*
- (f). *Judge Voros moved to approve Rule 24(f) as drafted. Mr. Mouritsen seconded the motion and it passed unanimously.*
- (g). Ms. Watt asked whether the conclusion section of a brief counts towards the word limit, pointing out that it is not mentioned in sub section (g)(2). Mr. Parker pointed out that the old language did not mention conclusions either, and suggested leaving the language as it is. *Mr. Parker moved to approve Rule 24(g) as drafted. Ms. Seppi seconded the motion and it passed unanimously.*
- (h). The committee discussed whether Rule 24(h) should be put on the agenda for a future meeting to discuss the mechanism of requesting permission to file an over-length brief. Ms. Watt offered to meet with the court and ask if it wants the committee to address this issue. *Judge Voros moved to approve Rule 24(h) as drafted. Mr. Parker seconded the motion and it passed unanimously.*
- (i). *Mr. Burke moved to add an Oxford comma after the word “immaterial.” Mr. Parker seconded the motion and it passed unanimously.*
- (j). The committee agreed to revise the language in Rule 24(j) to read: “When authority of central importance to an issue comes to the attention of a party....” *Mr. Burke moved to approve Rule 24(j) with this change. Judge Voros seconded the motion and it passed unanimously.*
- Advisory Committee Notes.
  - Ms. Watt suggested that the second sentence in the comment to paragraph (b) should use the word “identify” rather than “summarize. The corrected language should read: “it is good practice to identify the point that is being responded to.” Ms. Seppi pointed out in Line 266 that the word “be” should be inserted before useful. The corrected language should read: “Descriptions such as ‘witness’ or ‘neighbor’ can also be useful....” *Judge Voros moved to approve the Advisory Committee Notes with these changes. Ms. Decker seconded the motion and it passed unanimously.*
  - The committee discussed the comment to paragraph (a)(8) and its reference to *State v. Nielsen* and marshalling. Mr. Ishida commented that when he was on the federal rules committee they were sensitive to including citations to case law or statutes in the rules,

because they can change over time. Mr. Parker stated that he did not like the statement that “an appellant must nevertheless marshal....,” and questioned whether it was correct. The committee agreed to revise the note to paragraph (a)(8) to read: “The 2017 amendments remove the reference to marshaling. *State v. Nielsen*, 2014 UT 10, 326 P.3d 645, hold that the failure to marshal evidence is not a technical deficiency resulting in default, but marshaling is a manner in which an appellant may carry its burden of persuasion when challenging a finding or verdict. *Judge Voros moved to approve this revision. Mr. Parker seconded the motion and it passed unanimously.*”

**Rule 24A. Briefs in Cross-Appeals.** Judge Voros suggested deleting the comma in Line 8 after the word “brief.” *Judge Orme moved to approve Rule 24A with this change. Ms. Decker seconded the motion and it passed unanimously.*

The committee deferred discussion of other rules until the next meeting.

#### **4. Discussion of “e-filing” rules**

The committee deferred discussion of this item until the next meeting.

#### **5. Status of proposed rules amendments**

The committee deferred discussion of this item until the next meeting.

#### **6. Adjourn**

The meeting was adjourned at 1:51 p.m. The next meeting will be held on Tuesday October 11, 2016.