

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, December 1, 2016
12:00 p.m. to 1:30 p.m.

PRESENT

Troy Booher
Paul Burke- Chair
Marian Decker
James Ishida-Staff
Judge Gregory Orme
Adam Pace – Recording Secretary
Rodney Parker
Bridget Romano
Clark Sabey
Lori Seppi
Judge Fred Voros
Mary Westby

EXCUSED

Alan Mouritsen
R. Shawn Gunnarson
Ann Marie Taliaferro

1. Welcome and approval of minutes

Paul Burke

Mr. Burke welcomed the committee to the meeting. Ms. Romano introduced her guest Anna Crandall. Mr. Burke suggested amending the minutes from the November meeting to reflect that the committee presented former committee chair Joan Watt with a certificate of appreciation from the Utah Supreme Court, and voted to thank her for her service on the committee. *Ms. Romano moved to approve the November minutes with this amendment. Ms. Seppi seconded the motion and it passed unanimously.*

2. Rule 37. Suggestion of mootness; voluntary dismissal

Judge Voros

Judge Voros presented the proposed changes to Rule 37 that were last discussed at the October meeting. Judge Voros explained the revision to Rule 37(c) is intended to provide a safety valve for counsel who cannot obtain the affidavit from their client necessary to support a motion for voluntary dismissal of an appeal. Ms. Seppi asked what a “reasonable factual basis” is for counsel to believe that the appellant no longer wishes to pursue the appeal. Judge Voros

commented that it should be up to counsel to decide. The rule does not require counsel to articulate a reasonable factual basis—just to certify that there is one.

Ms. Romano asked why the last sentence in 37(a) was deleted. She said that it may be worth keeping that sentence to let practitioners know that they can file a motion for voluntary dismissal if the issues are moot. Judge Voros said that the court wants to determine mootness for itself, which resolved Ms. Romano’s concern. Ms. Seppi supported deleting the last sentence because it required appellants to file a motion for voluntary dismissal if they thought the issue was moot, rather than file a suggestion of mootness. Ms. Romano commented from a practitioner standpoint that if the court stays briefing on the merits to consider a suggestion of mootness, it should fully resolve the issue of mootness before requiring the parties to resume briefing on the merits.

The committee discussed the proposed deletion of the last sentence in 37(b), and agreed that the sentence should be kept, but reworded to say: “The stipulation must specify the terms of payment of costs and fees, if any.”

Judge Voros moved to adopt the proposed amendments to Rule 37 with this change. Ms. Decker seconded the motion, and it passed unanimously. Mr. Sabey abstained from voting on the amendments related to automatic dismissal of appeals.

**3. Selection of subcommittee member re
Logue vs. Court of Appeals, 2016 UT 44 (2016)**

Paul Burke

Mr. Burke reported that the Utah Supreme Court agreed with the suggestion to form a joint subcommittee with the civil and criminal rules committees to address the court’s request in the *Logue* decision. Mr. Burke asked for volunteers to serve on the subcommittee. Ms. Westby, Mr. Sabey, and Ms. Seppi volunteered. Ms. Decker volunteered Mark Field from the Utah Office of the Attorney General. Mr. Burke asked Mark Field and Ms. Seppi to serve as the committee’s representatives on the subcommittee.

4. Rule 52 Proposals re child welfare appeals

Supreme Court

Mr. Burke invited discussion about whether Rules 52-59 should be adjusted relating to child welfare appeals and expediting adoption appeals. Ms. Westby said that she asked for feedback on this issue from the juvenile rules committee, but she has not heard anything back. Ms. Romano said she would follow up with the chair of the juvenile rules committee about it.

Several members of the committee said that they did not have a clear sense of the issues with Rules 52-59 that need to be addressed. Mr. Sabey said that the issue relating to expediting adoption appeals came from a letter the court received from an adoptive family complaining about the uncertainty that had plagued them for years while their appeal was pending. Ms. Romano asked if the committee could read the letter to better understand the family’s complaint. Judge Voros said that it may be a case management problem, rather than a need for an amended rule. Mr. Parker agreed, saying that the court has internal mechanisms to deal with case management issues. Judge Voros suggested that the court could treat adoption appeals like

election issues, where an order is issued right away and the opinion is issued later. Judge Voros also suggested that a procedure similar to that provided for in Rule 30(d) could be established, allowing the court to dispose of the case by order without written opinion. Judge Orme said that the court needs to have discretion whether to expedite the appeal, and suggested that this issue should be placed on the agenda for discussion at the annual judicial conference.

The committee decided to continue discussion of these issues at a future meeting after obtaining feedback from the juvenile rules committee and the judicial conference.

5. Appellate Rules Committee outreach

Paul Burke

Mr. Burke asked for suggestions about how to obtain feedback from the legal community about changes that should be made to the rules. He also invited the committee members to suggest issues to consider.

Mr. Booher suggested the committee consider briefing of certified questions. He said that simultaneous briefing should be the default, but that there should be a mechanism for deciding when ordered briefing applies. Mr. Sabey suggested the committee also consider the order of oral argument for certified questions. Ms. Romano suggested the committee consider a policy governing when the court dismisses an appeal as improvidently granted.

Mr. Ishida suggested using the website to invite feedback from the community. Mr. Burke suggested sending an email to the Utah bar. Mr. Burke invited the committee to submit other suggestions by email to either him or Mr. Ishida.

6. Adjourn

The meeting was adjourned at 1:06 p.m.. The next meeting will be held on January 5, 2017.