

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, February 2, 2017
12:00 p.m. to 1:30 p.m.

PRESENT

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

EXCUSED

Troy Booher
Alan Mouritsen
Ann Marie Taliaferro

1. Welcome and approval of minutes Committee Member Disclosures

Paul Burke

Mr. Burke welcomed the committee to the meeting and invited a motion to approve the minutes from the December meeting. *Ms. Romano moved to approve the December minutes. Ms. Seppi seconded the motion and it passed unanimously.* Mr. Burke then asked each of the committee members to disclose a brief summary of their practice area, as is normally done at the beginning of each year. Each member present did so.

2. Rule 25 and new Rule 24A- Public comments submitted on proposed amendments

Paul Burke

The committee discussed the public comments received in response to the proposed amendments to Rule 24 and the new Rule 24A.

- Several of the comments related to typos, which the committee agreed to correct.

- One comment suggested amending Rule 24(a)(1)(B) to require identification of counsel for the parties, to aid the appellate court’s discovery of potential conflicts of interest. Judge Voros said that he and other judges are able to look at the cover of the briefs to identify counsel, and that this has never been a problem. Several committee members said they felt the change was unnecessary, and that it would create more work for counsel. The committee decided to leave the rule alone.
- One comment suggested using the singular form of both “surname” and “parent” in Rule 24(d) instead of the plural form. The committee agreed to make this change.
- Judge Orme raised a concern with the language in Rule 24(d) requiring that a minor’s surname not be used without consent from the minor. He pointed out that a minor lacks legal capacity to give consent. Mr. Burke suggested, and the committee agreed, to delete phrase “without consent of minor” in line 114. Judge Voros commented that in the rare cases where a minor wants to be identified by his or her surname, the minor could file a motion.
- Ms. Seppi raised the concern that identifying the surname of a parent will identify the surname of the minor if the parent’s name is in the caption. Judge Voros commented that the court has an obligation to name defendants in a criminal case, which conflicts with the requirement of Rule 26(d) as written that surnames of a minor’s parents not be used. Mr. Burke agreed and said that this part of the rule is unworkable as presently written. Ms. Westby suggested that revisions to this language should focus on the concern for privacy in child welfare appeals. Judge Voros suggested forming a subcommittee to draft new language to address the problem, to be presented at a future meeting. The committee agreed with this approach, and Mr. Burke, Ms. Seppi, and Ms. Westby volunteered to be on the subcommittee.
- One comment suggested that Rule 24(g)(2) should be clarified to say whether the page or word limit includes the certificate of compliance and the certificate of service. Mr. Parker suggested that the rule should be consistent with the way the federal rules handle this issue, which counts everything from the Introduction to the Conclusion in the word limit. The committee agreed the change should be made to be consistent with the federal rule.
- One comment suggested amending the language in Rule 24(i), line 217, to insert “an appropriate sanction including” before “attorney fees.” The committee agreed to make this change.
- One comment suggested changing the language in Rule 24A(d) to emphasize that reply briefs are optional. Judge Voros suggested changing the language in line 13 from “must” to “may.” The committee agreed to make this change.

3. Rule 21- Conforming amendment to Civil Rule 5— prisoner mailbox rule

Supreme Court

Mr. Ishida explained that the Supreme Court approved for publication a proposal from the Civil Rules Committee to include a new subdivision (g) in Civil Rule 5 which has popularly been described as the “prisoner mailbox rule.” The proposal was intended to mirror its counterpart in Appellate Rule 21(f). However, the Supreme Court wanted to clarify when the clock starts to run on filing a responsive document, and so added the following language at the end of proposed new subdivision (g): “Response time will be calculated from the date the papers are received by

the court.” The Court asked the committee to consider whether Appellate Rule 21(f) should be amended to include this new language.

The committee discussed whether the response time should run from the time the papers are received by the State or the court, and agreed that using the court date is best. Ms. Westby suggested and others agreed that current practice at the court should be refined to ensure that the State is notified when the court receives the paper. Ms. Romano moved to amend Appellate Rule 21(f) to include the new language suggested by the Supreme Court. Mr. Parker seconded the motion and it passes unanimously.

4. INFORMATION- Logue Subcommittee report

Lori Seppi

Ms. Seppi reported that the Logue subcommittee has had one meeting so far and is in the process of putting together proposed language for the committee to consider at a future meeting. The proposed amendment will be to the criminal rules, but will be presented to the civil and appellate rules committees for comment.

5. Rule 30—Technical amendment to Title

Paul Burke

Judge Voros moved to amend Appellate Rule 30 to remove the word “dismissal” from its title, because the rule does not address dismissal. Judge Orme seconded the motion and it passed unanimously.

6. Appendix of Forms

James Ishida

Mr. Ishida presented a suggestion that the committee eliminate the 17 illustrative forms attached to the end of the appellate rules. He explained that a new judicial council committee was created to prepare forms. The civil rules committee already decided to abrogate Civil Rule 84 relating to forms, and the federal rules committee did this about three years ago.

Mr. Sabey commented that the appellate forms are better than nothing right now, although many of them are outdated. Judge Orme suggested and the committee agreed that the forms should be left alone until a new set has been promulgated by the new judicial council committee.

7. Other business

Judge Orme suggested a possible change to the rules to expedite resolution of adoption appeals would be to amend the rules that deal with child welfare appeals to include appeals from adoption cases. He said he would draft proposed language to present at a future meeting to accomplish this.

8. Adjourn

The meeting was adjourned at 1:13 p.m.. The meeting scheduled for March 2, 2017 is cancelled and the next meeting will be held on April 6, 2017.