

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, April 6, 2017
12:00 p.m. to 1:30 p.m.

PRESENT

Troy Booher
Paul Burke- Chair
Lisa Collins
Marian Decker
James Ishida-Staff
R. Shawn Gunnarson
Alan Mouritsen
Judge Gregory Orme
Adam Pace – Recording Secretary
Bridget Romano
Clark Sabey
Lori Seppi
Ann Marie Taliaferro
Judge Fred Voros
Mary Westby

EXCUSED

Rodney Parker

1. Welcome and approval of minutes

Paul Burke

Mr. Burke welcomed the committee to the meeting and introduced Lisa Collins as a new member. Several of the committee members provided updated addresses for the committee member list. Mr. Burke then invited a motion to approve the minutes from the February meeting.

Mr. Gunnarson moved to approve the February minutes. Ms. Westby seconded the motion and it passed unanimously.

**2. Conforming amendment to Civil Rule 6-
prisoner mailbox rule**

Civil Rules Committee

Mr. Burke explained that after the proposed changes to the “prisoner mailbox rule” in URCP 6 were sent out for public comment, Kyle Kaiser at the Utah Attorney General’s office proposed two additional changes: 1) that the rule should be modified to include documents that are only served and need not be filed; and 2) that the rule should be modified to recognize legal mail requirements at correctional institutions and to adapt to the necessity of indigent postage. Mr. Burke invited further discussion of a conforming amendment to URAP 25 to incorporate these suggestions.

Ms. Westby suggested and the committee agreed that it is not necessary to incorporate Mr. Kaiser’s proposed clarification of documents that are “served” and “filed” into URAP 25.

Ms. Decker suggested adopting the language in FRAP 25(a)(c)(i) that requires an inmate to provide a declaration or notarized statement setting out the date of deposit in the institution’s internal mail system contemporaneously with a filing in order to take advantage of the prisoner mailbox rule.

Mr. Burke asked if the definition of inmate should be expanded to include individuals confined in correctional institutions other than prisons. Ms. Romano agreed that the term “inmate” may not be broad enough to cover all of the categories of people that should be included under the prisoner mailbox rule. She will find out how the state mental hospital refers to its patients and how its mailing system works and report to the committee at the next meeting.

Mr. Burke suggested that URAP 25 should not include the requirement in FRAP 25 for first-class or prepaid postage, but rather should require compliance with the mailing rules of the institution or place of confinement.

Mr. Sabey suggested and Judge Orme and Ms. Westby agreed that it is unnecessary to adopt the language in FRAP 25(c)(ii) providing the court of appeals discretion to permit later filing of a declaration or notarized statement. Ms. Sabey said this could be problematic for jurisdictional deadlines, and would be unnecessary for other deadlines because the court already has discretion to grant an extension.

Mr. Gunnarson suggested that it would be useful to create a form declaration and attach it to the rule.

The committee reached a consensus that URAP 25 should be amended to incorporate the requirement in FRAP 25(c)(i) for a contemporaneous declaration; to eliminate the reference to first class or pre-paid mail and replace it with a reference to compliance with the mailing rules of the institution or place of confinement; and to eliminate the reference to the court’s discretion to permit the later filing of a declaration.

Mr. Burke said he would prepare and circulate draft language of the proposed revision to URAP 25 for discussion at a future meeting.

3. Logue Subcommittee report

Lori Seppi

Ms. Seppi reported that the Logue subcommittee has met twice now and is still in the process of putting together proposed language for the committee to consider at a future meeting.

4. Suggestions for proposed rule amendments

James Ishida

Mr. Gunnarson suggested amending the appellate rules to provide a mechanism for the court of appeals to stay its own proceedings for good cause shown. Judge Voros commented that the court gets these type of motions on a regular basis already, although there is not a rule specifically addressing it. Mr. Sabey commented that the court has inherent powers to stay its own proceedings and that URAP 23 already provides a mechanism for filing motions. Mr. Burke suggested that Mr. Gunnarson and the court personnel should look at this issue further and discuss it at a future meeting.

Judge Orme proposed amending the language in URAP 35(k) to say that untimely or consecutive petitions for rehearing “will not be considered by the court,” instead of saying “will not be received by the clerk.”

Mr. Sabey said there are other places in the rules where similar language is used. Judge Orme asked Mr. Sabey and Ms. Collins to review the rules and identify other places where this change could be made, for discussion at a future meeting.

5. Other business

The committee did not discuss other business.

6. Adjourn

The meeting was adjourned at 1:00 p.m.. The next meeting will be held on May 4, 2017.