

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, June 1, 2017
12:00 p.m. to 1:30 p.m.

PRESENT

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

EXCUSED

Marian Decker
R. Shawn Gunnarson

1. Welcome and approval of minutes

Paul Burke

Mr. Burke introduced guest attendant Bradley Eckert who is working as an intern at the court. Mr. Burke then thanked Mr. Pace for preparing the minutes from the May meeting and invited a motion to approve them.

Judge Orme moved to approve minutes from the May meeting. Ms. Romano seconded the motion and it passed unanimously.

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

Civil Rules Committee

Mr. Ishida reported that the civil rules committee met and approved its proposed amendment to the prisoner mailbox rule in civil rule 6, which uses the term “inmate” and includes a new subsection (e)(1) defining “inmate” for the purposes of the rule as follows:

For purposes of Rule 45(i) and this paragraph (e), an inmate is a person confined to an institution or committed to a place of legal confinement.

Mr. Ishida recommended adopting this approach in the committee's proposed amendment to the prisoner mailbox provision in appellate rule 21. Ms. Romano suggested using the term "includes" rather than "is" in this definition. Mr. Booher expressed concern that people will ascribe meaning to the different language where none is intended, and suggested using the same language as the civil rules committee.

Mr. Parker moved for the committee to adopt the definition of "inmate" used by the civil rules committee and incorporate it into the proposed amendment to appellate rule 21. Mr. Mouritsen seconded the motion and it passed unanimously.

Mr. Burke invited further discussion of how to incorporate the approved definition into rule 21 and to approve the final language of the rule.

Mr. Parker made a motion to incorporate the approved definition of "inmate" as appellate rule 21(f)(1), to be followed as (f)(2) with the language in tab 1 of the meeting materials that was approved at the last meeting, with the term "inmate" reinstated where it had been deleted. This change will result in the appellate prisoner mailbox rule being identical to the civil rule, except for the reference to service. Ms. Romano seconded the motion and it passed unanimously.

3. Proposed amendment to Appellate Rule 25 and 25A Allowing State to participate in oral argument

Clark Sabey

Mr. Sabey reported the court's answers to two questions that the committee had about the proposed amendments to appellate rule 25 and 25A after the May meeting.

The first question was whether the governmental agency will have to split oral argument time with one of the parties, or whether it will receive extra time. The court said that the agency will have additional time. The second question was whether the governmental agency will receive notice of the opportunity to participate at oral argument, and the right to waive it. The court said that the agency will be notified in the same manner that notification is sent to the parties, and that it may waive the opportunity just as a party could.

Mr. Sabey said that the court preferred using the proposed language in appellate rule 25A(d) and handling the details through internal protocol.

Mr. Burke thanked Mr. Sabey for getting these answers from the court and invited a motion.

Ms. Romano moved to adopt the proposed amendments to Rule 25A(d) and Rule 25, with the changes proposed in the June 7, 2017 draft contained in the meeting materials. Mr. Sabey seconded the motion and it passed unanimously.

**4. Proposed amendment to Appellate Rule 35 re:
Petition for Rehearing**

James Ishida

Mr. Ishida gave an update on two possible amendments to appellate Rule 35 that may be referred to the committee by the supreme court for discussion at a future meeting. The first amendment is to incorporate the court's standing order no. 2 (dealing with petitions for rehearing) into Rule 35. Mr. Ishida will draft proposed language for the court to consider, which may be referred to the committee for discussion if it is approved. The second possible amendment is to amend the language in Rule 35 that reads: "a petition for rehearing will not be granted in the absence of a response," to allow for a petition to be granted in instances where there is a not a lot of change (correcting typographical errors, updating statutory citations, etc.) and notice is given to the other side. Judge Voros suggested that a potential solution would to be include a provision in Rule 35 similar to civil rule 60(a) that allows the court to grant petitions for rehearing without a response to correct clerical mistakes.

5. Logue Subcommittee report

Lori Seppi

Ms. Seppi had nothing new to report on the Logue subcommittee's progress because it hasn't met again since last time.

6. Other business

Mr. Booher asked for a status update on the proposed amendment to appellate Rule 24. Mr. Ishida said that when the committee was reviewing public comments to Rule 24 there was an issue about the privacy of juveniles. A subcommittee was formed to address this, but it hasn't met yet. Mr. Burke proposed addressing this topic at the next meeting.

Mr. Burke presented a certificate to Judge Voros recognizing and thanking him for his long and distinguished service on the committee. The committee joined in recognizing and thanking Judge Voros.

7. Adjourn

The meeting was adjourned. The next meeting will be held on September 7, 2017.