

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

PRESENT

Christopher Ballard
Paul Burke- Chair
Lisa Collins
R. Shawn Gunnarson
Alan Mouritsen
Judge Gregory Orme
Judge Jill Pohlman
Adam Pace – Recording Secretary
Rodney Parker
Bridget Romano
Clark Sabey
Lori Seppi
Nancy Sylvester-Staff
Ann Marie Taliaferro

EXCUSED

Troy Booher
Mary Westby

1. Welcome and approval of minutes

Paul Burke

Mr. Burke welcomed the committee to the meeting and invited a motion to approve the minutes from the September meeting.

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

2. Logue subcommittee report

Lori Seppi

Ms. Seppi reported that the *Logue* subcommittee’s recommendation is to take no action at this time. The subcommittee is concerned that if the rules are revised to address the concern stated in *Logue* it will create a procedural bar against motions for new trial based on newly discovered evidence in post-conviction relief cases where the defendant fails to file the motion on appeal. This would create an unreasonable burden on indigent appellate defense attorneys who are

already struggling due to limited resources. The subcommittee thinks that criminal defendants will be better served by having counsel file a motion for new trial based on newly discovered evidence in a case for post-conviction relief, where the attorney has an opportunity to conduct discovery and has the time and resources necessary to properly investigate the claim.

Mr. Burke asked if the Supreme Court's concern is being left unaddressed if no changes are made to the rules. Ms. Seppi said that the subcommittee felt the Court's concern was outweighed by the other concerns summarized above. Ms. Seppi also pointed out that Utah Code § 78B-9-402 (Petition for determination of factual innocence) allows criminal defendants to seek a new trial based on newly discovered evidence, but it is unclear whether the statute permits the petition before a direct appeal is concluded.

Mr. Gunnarson suggested that the committee explain in its report to the Court that, although it is recommending no changes be made to the rules at this time, if changes are made in the future it may be necessary for the legislature to amend the statutory framework that creates the procedural bar that the subcommittee was concerned with.

Ms. Seppi moved to adopt the recommendation of the subcommittee to take no action at this time, and to provide the Supreme Court with the committee's report and a suggestion that the legislature might want to visit this issue in the future. Mr. Gunnarson seconded the motion and it passed unanimously.

Mr. Burke thanked Ms. Seppi for her work on the *Logue* subcommittee over the past year.

3. Proposed technical amendments to Rules 26(a) and 29(d) Paul Burke

Ms. Sylvester introduced proposed technical amendments to Rules 26(a) and 29(d) to conform to the recent amendment to Rule 24. Judge Pohlman proposed using the term "principal brief" throughout Rule 26, where appropriate, to be consistent with the terminology used in Rule 24.

Mr. Gunnarson moved to adopt the proposed amendments with the additional change suggested by Judge Pohlman and to send them to the Supreme Court. Mr. Mouritsen seconded the motion and it passed unanimously.

4. Other business

The committee did not discuss other business.

5. Adjourn

The meeting adjourned at 1:30 p.m. The next meeting will be held on January 4, 2018.