

## 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, October 3, 2019  
12:00 pm to 1:30 pm

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#### PRESENT

Christopher Ballard  
Troy Bocher—Emeritus Member  
Paul Burke—Chair  
Tyler Green (by phone)  
Michael Judd—Recording Secretary  
Larissa Lee—Staff  
Alan Mouritsen  
Judge Gregory Orme  
Judge Jill Pohlman  
Clark Sabey  
Nathalie Skibine  
Scarlet Smith  
Nancy Sylvester—Staff  
Mary Westby

#### EXCUSED

Patrick Burt  
Lisa Collins  
R. Shawn Gunnarson  
Rodney Parker

#### 1. **Welcome and approval of September 2019 minutes**      **Paul Burke**

Mr. Burke welcomed the committee and introduced Larissa Lee, the new Appellate Courts Administrator, and Michael Judd, the committee's new Recording Secretary. Mr. Burke invited a motion to approve the minutes from the September 2019 meeting

*Judge Pohlman moved to approve the minutes from the September 2019 meeting. Judge Orme seconded the motion and it passed unanimously.*

- 2. Discussion and Action:** Lisa Collins  
**Continued Discussion of Rule 21(a)** Mary Westby  
**(Incorporating Standing Order No. 11)** Nancy Sylvester

The committee continued its discussion of Rule 21(a), working toward an amendment that will incorporate Utah Supreme Court Standing Order No. 11, which relates to the filing of documents by email. The committee reviewed, revised, and finalized the provisions in paragraph (a), and it also made several additional changes to Rule 21, including the rule's treatment of electronic signatures for email filings. The committee noted that the proposed changes to Rule 21 do not incorporate Standing Order No. 11's requirement that paper copies of an emailed brief be delivered no more than 7 days after filing by email. The committee noted that it may make most sense to include that requirement in an amendment to Rule 24.

*Judge Orme moved to recommend that the version of Rule 21(a) that the committee wordsmithed together at the September 2019 meeting be recommended to the Supreme Court. Judge Pohlman seconded the motion and it passed unanimously. (In light of the potential changes to Rule 24, it may be useful to hold off on sending Rule 21 to the Supreme Court until that "paper briefs" issue is resolved.)*

- 3. Discussion and Action:** Mary Westby  
**Discussion of Rule 5**  
**Designating the record on interlocutory appeal**

The proposed revision of Rule 5 relates to the efforts of the judicial efficiency subcommittee. Ms. Westby discussed with the committee a number of changes to Rule 5, including the addition of proposed paragraph (j), which provides that the trial court will not prepare or transmit the record, but rather that the record on appeal consist of the order appealed and several categories of related materials. Mr. Booher recommended that a provision be included that allows the parties to refer in their briefs to other parts of the record, as the record is defined in Rule 11(a). Ms. Westby indicated that additional, related proposed rule changes were in the process of being prepared.

*Judge Pohlman moved to adopt the changes to Rule 5 but to withhold circulating the changes until further edits could be proposed. Judge Orme seconded the motion and it passed unanimously.*

4. **Discussion:** **Judge Orme**  
**Alan Mouritsen**  
**Rodney Parker**  
**Advisory Committee Notes Project**

Judge Orme reported to the committee that he had reviewed the full set of Advisory Committee Notes and that those Notes fall into three categories: some should be retained in full, some should be edited for relevance, and others should be repealed in their entirety. Judge Orme proposed that he work with Ms. Lee to make a table categorizing the Notes and making recommendations as to how each Note should be addressed. The committee plans to address the Notes category by category, over successive future meetings.

5. **Discussion:** **Lisa Collins**  
**Mary Westby**  
**Unrepresented litigants and the appellate rules**

Ms. Westby briefly discussed with the committee the packets created for unrepresented litigants in the appellate courts. Ms. Westby noted that while the packets could be accessed through the appellate courts website, they may be difficult to locate. The committee believes that committee members may be able to work with Jessica Van Buren and Jason Ralston to identify a solution to that accessibility problem.

6. **Discussion:** **Christopher Ballard**    **Troy Booher**  
**Mary Westby**            **Nathalie Skibine**  
**Judge Pohlman**  
**Judicial Efficiency**

The committee briefly discussed continuing efforts to make recommendations that promote judicial efficiency, including their efforts to identify certain classes of cases best suited to be addressed in efficiency-promoting rule changes.

**7. Discussion:**

**Paul Burke**

**Other Business**

Mr. Burke noted that Mr. Burt has asked to participate as a member of the judicial efficiency subcommittee, and Mr. Burke encouraged other committee members interested in certain subcommittees to follow Mr. Burt's lead in expressing that interest and joining a subcommittee.

**8. Adjourn**

*Mr. Ballard moved to adjourn the meeting. Judge Pohlman seconded the motion and it passed unanimously. The committee is scheduled to meet again on November 7, 2019.*