

MINUTES

SUPREME COURT'S ADVISORY COMMITTEE ON THE UTAH RULES OF APPELLATE PROCEDURE

Utah Supreme Court
450 South State Street
Salt Lake City, Utah 84114

Executive Dining Room
Thursday, November 7, 2019
12:00 pm to 1:30 pm

PRESENT

Christopher Ballard
Troy Boher—Emeritus Member
Paul Burke—Chair
Patrick Burt
Lisa Collins
Tyler Green
R. Shawn Gunnarson
Michael Judd—Recording Secretary
Larissa Lee—Staff

EXCUSED

Alan Mouritsen
Judge Gregory Orme
Rodney Parker
Judge Jill Pohlman
Clark Sabey
Nathalie Skibine
Scarlet Smith
Mary Westby

None

1. **Welcome and approval of October 2019 minutes**

Paul Burke

Mr. Burke welcomed the committee and thanked Judge Orme, who provided a “prelude” discussion of Item 2, advisory committee note changes. The committee reviewed the October 2019 minutes.

Shawn Gunnarson moved to approve and adopt the minutes from the October 2019 meeting. Mary Westby seconded the motion and it passed unanimously.

**2. Discussion and Action:
Review of Advisory Committee
Notes Recommended for Repeal**

**Judge Orme
Alan Mouritsen
Rodney Parker**

Judge Orme has identified eight sets of advisory committee notes to be recommended for repeal: Notes for Rules 4, 11, 12, 14, 29, 31, 42, and 43. Alan Mouritsen described the changes to the group. Rodney Parker expressed his agreement that the advisory committee notes identified by Judge Orme are obsolete, and proposed that in the future, advisory committee notes include the date on which the note was passed.

Shawn Gunnarson moved to repeal the advisory committee notes at issue. Rodney Parker seconded the motion and it passed unanimously.

**3. Discussion and Action:
Continue Discussion of Rule 5
(Interlocutory Appeal)**

**Judicial Efficiency
Subcommittee¹**

Mary Westby presented changes recommended by the subcommittee, including changes to subsection (j)'s procedures for designating a record in interlocutory appeals. A modified version of the proposed amendments to subsection (j) was provided to the committee. The committee worked to create language to clarify, in subsection (j)(2), that a party may cite to the record, to a separate paginated appendix, or both.

Shawn Gunnarson moved to adopt the rule as amended. Mary Westby seconded the motion and it passed unanimously.

**4. Discussion and Action:
Proposed Amendments to Rule 10**

**Judicial Efficiency
Subcommittee**

Mary Westby presented a set of amendments to Rule 10, describing the amendments as "fairly substantial." The goal of the amendments is to provide a "simplified appeal process," with changes designed to provide a streamlined process for summary disposition of certain categories of appeals.

¹ The members of the Judicial Efficiency Subcommittee are: Mary Westby, Christopher Ballard, Judge Pohlman, Troy Booher, Nathalie Skibine, Patrick Burt, Lisa Collins, Lori Seppi.

The committee discussed the proposed amendments, focusing on situations in which the proposed streamlined process may be useful, as well as the advantages provided by a streamlined process, in contrast to the options previously available to the appellate courts and to the parties.

Patrick Burt moved to adopt the amendments to Rule 10 as presented. Judge Pohlman seconded the motion and it passed unanimously.

5. Discussion and Action: **Clark Sabey**
Proposed Amendments to Rule 35
(Petition to Modify / Petition for Rehearing)

Clark Sabey introduced proposed amendments to Rule 35, which he describes as having “percolated for quite some time.” The proposed amendments reflect that Rule 35 is generally used in two distinct ways: (1) more rarely, to address a perceived significant legal error in a released decision, and (2) more commonly, to seek modification of a minor aspect of a released decision that does not affect the outcome.

Shawn Gunnarson moved to reconsider these amendments more fully next month. There were no objections.

6. Discussion: **Paul Burke**
Other Business

None.

7. Adjourn

Lisa Collins moved to adjourn the meeting. Christopher Ballard seconded the motion. There were no objections. The committee is scheduled to meet again on December 5, 2019.