

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, February 6, 2020
12:00 pm to 1:30 pm

PRESENT

Christopher Ballard
Troy Booher—
Emeritus Member
Paul C. Burke—Chair
Lisa Collins
Tyler Green
Michael Judd—
Recording Secretary
Larissa Lee—Staff

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

EXCUSED

Patrick Burt
R. Shawn Gunnarson
Judge Gregory Orme

1. Welcome and approval of January 2020 minutes **Paul C. Burke**

Paul C. Burke welcomed the committee, and the committee discussed their review of the January 2020 minutes. A change to the Section 1 header was proposed, to correct a description of the previous month's minutes (specifically, to change "November 2019" to "December 2019"). No objections to that change were noted, and no additional changes were proposed.

Mr. Burke moved to approve and adopt the minutes from the January 2020 meeting. Judge Jill Pohlman seconded the motion and it passed unanimously.

2. Action: Paul C. Burke
Creation of New Subcommittees

The committee discussed the creation of two new subcommittees: (1) legislative outreach, and (2) public outreach. Mr. Burke reported that the committee had been asked to designate committee members who could be made available to interface with legislators and members of the public to discuss matters that bear some relationship to the Rules of Appellate Procedure and to the Utah Courts more broadly. Mr. Burke also reported that he had proposed himself, Judge Pohlman, and Christopher Ballard as “ambassadors” for the legislative issues, and those proposals were accepted.

The “public outreach” subcommittee would include not only interfacing with members of the public, but also with the Utah State Bar, on an as-needed basis as concerns arise. Tyler Green and Scarlet Smith volunteered to serve as members of that subcommittee, and Judge Orme was identified as a third potential member, subject to his agreement.

3. Discussion and Action: Larissa Lee
Review Comments on Proposed Rules Changes

Ms. Lee provided the committee with public comments submitted in response to the proposed changes to Rules 5, 10, 21, and 26. The committee noted a comment submitted in response to Rules 21 and 26 that did not appear to address either of those rules and thus did not discuss it any further.

The committee discussed a comment regarding Rule 5, which suggested that in following the “modernizing” approach taken with respect to other rules, the time for petitioning be extended from 20 days to 21 days.

Rodney Parker moved to advance the proposal to change the time prescribed in Rule 5 from 20 to 21 days to the Supreme Court. Clark Sabey seconded the motion and it passed unanimously.

The committee also discussed a comment proposing that the committee delete references in Rule 5 to email addresses and to email and paper copies, because this information is covered in the new Rule 21.

Judge Pohlman moved to amend Rule 5 to delete the language regarding emailing versus paper copies. Ms. Smith seconded the motion and it passed unanimously.

The committee discussed several comments related to Rule 10 that relate to “well-settled law” and its relationship to the Rule 10 standard. The committee workshopped several potential versions of Rule 10 and settled on a proposed amendment.

Judge Pohlman moved to amend Rule 10(a)(1) to the form of the rule reached by the committee at its meeting. Alan Mouritsen seconded the motion and it passed unanimously.

The committee also discussed changes to Rule 10(c)(2)(B) related to preservation failure. After discussion, the committee determined that the proposed changes were unnecessary, as a failure to preserve may simply be argued as part of an overall failure to carry burden.

With those approved changes in hand, the committee agreed to send the Rules at issue, as amended, to the Supreme Court.

**4. Discussion and Action: Clark Sabey
Rule 35A/B and Related Rules 36 & 48**

Mr. Sabey guided the committee in further discussion related to Rule 35A/B, which relates to petitions for rehearing and petitions to modify, along with the related Rules 36 and 48 which, as Judge Pohlman pointed out at the January 2020 meeting, relate to Rule 35. The recommendation made to the committee was that the reference to deferral of remittitur in 35A/B could be removed, as that issue is already addressed in Rules 36 and 48.

The committee discussed slight changes to Rule 35A(a) and (b) to ensure consistency.

Troy Booher raised a concern about situations in which it is not clear whether the relief a party seeks under the Rule 35 regime would fall within the scope of Rule 35A or 35B. The committee also discussed adding a requirement in 35B(c) related to stating the other parties’ position as to the relief requested. Following those discussions, the committee opted to recast the division between Rules 35A and 35B as a distinction between *opposed* Petitions for Rehearing and *stipulated or unopposed* Motions to Amend. Mr. Parker suggested that the same goal could be accomplished by revising Rule 35 itself.

The committee ultimately decided that while the changes made represented significant progress, the best approach is for the committee to consider a recombined Rule 35 with the discussed changes at the next committee meeting.

Ms. Lee guided the committee's discussion of Rules 36 and 48. The amendments to those rules are largely clean-ups, but because they are related to Rule 35, the committee will also hold on further discussion of those rules until Rule 35 is finalized.

5. Discussion and Action: Larissa Lee
References to Physical Copies of Non-Briefs

Ms. Lee pointed the committee to Rules 9, 11, 12, and 19, all of which contain references to physical copies of non-briefs, making them inconsistent with the committee's goal to align the rules with the provisions of Standing Order No. 11.

The committee first reviewed proposed amendments to modernize and clean-up Rule 9.

Judge Pohlman moved to approve the amendments to Rule 9 as indicated. Lisa Collins seconded the motion and it passed unanimously.

The committee then turned to Rule 11 amendments. The committee determined references to "papers" are outdated and will use the more accurate term "documents."

Lisa Collins moved to approve the approve the amendments to Rule 11 as indicated on the screen at the committee meeting. Rodney Parker seconded the motion and it passed unanimously.

The committee also discussed Rule 12, to which Ms. Lee had proposed changes after further discussions with the clerk's office. The committee had no objection to the proposed changes.

Lisa Collins moved to approve the amendments to Rule 12 as indicated. Mary Westby seconded the motion and it passed unanimously.

Similarly, the committee discussed proposed changes to Rule 19, which again elicited no objections from the committee.

Lisa Collins moved to approve the amendments to Rule 19 as indicated. Judge Pohlman seconded the motion and it passed unanimously.

**6. Discussion:
Other Business**

Paul C. Burke

None.

7. Adjourn

Mr. Burke adjourned the meeting. The committee is scheduled to meet again on March 5, 2020.