



## Minutes

### Supreme Court's Advisory Committee on the Utah Rules of Appellate Procedure

450 South State Street  
Salt Lake City, Utah 84114

Judicial Council Room  
Thursday, March 5, 2020  
12:00 pm to 2:00 pm

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#### PRESENT

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

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

#### EXCUSED

R. Shawn Gunnarson

#### 1. Welcome and Approval of February 2020 Minutes

Paul C. Burke

Paul C. Burke welcomed the committee and invited comments regarding the February 2020 minutes.

*Tyler Green moved to approve the minutes from the February 2020 meeting. Judge Jill Pohlman seconded the motion. Judge Gregory Orme abstained from voting, as he was not present at the last meeting. It otherwise passed unanimously.*

**2. Discussion: Legislative Update (if any)**

**Paul C. Burke  
Judge Jill Pohlman  
Christopher Ballard**

The Legislative Outreach Subcommittee reported that there were no updates related to legislative outreach. Mr. Burke noted that the committee welcomed the news that the current system of judicial selection and retention is likely to be preserved.

**3. Discussion and Action:  
Remaining Advisory Committee Notes**

**Judge Gregory  
Orme**

The committee turned first to Rule 3. Troy Booher wondered whether the second sentence of the remaining paragraph is necessary, given that the first sentence makes largely the same point regarding payment of fees in a cross-appeal. The committee reworked that paragraph into a single sentence and made other clarifying changes to the language.

Mr. Booher also noted that Rule 3(f) itself may not provide sufficiently clear guidance regarding fees for cross-appeals, and the committee noted that a return to the rule itself may be a good idea.

*Judge Orme moved to adopt the new version of this committee note to Rule 3, as revised during the committee meeting. Patrick Burt seconded the motion and it passed unanimously.*

Judge Orme observed that the note to Rule 9 may have been useful when the most recent major reworking of that rule was put into place, in order to ease the transition to the new version, but the note is no longer needed for that purpose. Mary Westby pointed out that the reference to “Form 7” is outdated, as the relevant forms are now found on the Utah Judiciary’s website. The committee reworked the existing note.

*Judge Pohlman moved to adopt the new version of the committee note to Rule 9, as revised during the committee meeting. Scarlet Smith seconded the motion and it passed unanimously.*

The committee made a number of changes to the note accompanying Rule 21, in order to remove unnecessary language, to clarify the remaining language, and to make the note consistent with the language of the rule itself.

*Mr. Green moved to adopt the new version of the committee note to Rule 21, as revised during the committee meeting. Ms. Westby seconded the motion and it passed unanimously.*

The committee turned to the note to Rule 27. Judge Orme noted that the paragraph describing “pica size” is unnecessary, as word processors are no longer new technology. The committee noted that a change to the rule itself may be needed, in order to insert a citation to the *Anders* case into the body of the rule.

*Judge Orme moved to adopt the new version of the committee note to Rule 27, as revised during the committee meeting. Judge Pohlman seconded the motion and it passed unanimously.*

After discussion and a thorough comparison to the existing text of the note to the rule itself, the committee determined that the entire note accompanying Rule 33 now appears to be unnecessary.

*Rodney Parker moved to remove this committee note, as revised during the committee meeting. Judge Pohlman seconded the motion and it passed unanimously.*

After discussion regarding the necessity of the rule and the context in which the rule is likely to arise, the committee determined that the note accompanying Rule 37 is likely to cause more problems than it solves.

*Judge Pohlman moved to remove the committee note to Rule 37. Mr. Green seconded the motion and it passed unanimously.*

The amendment to the Rule 38 note is intended to clarify the relationship between the “appellate roster” now used and the contract method that preceded the roster. The committee discussed minor changes to the rule’s text.

*Mr. Parker moved to remove this committee note, as revised during the committee meeting. Ms. Westby seconded the motion and it passed unanimously.*

The amendment to the Rule 40 note will conform the note with the text of the Rule 21 note.

*Mr. Parker moved to adopt the new version of the committee note to Rule 21, as revised during the committee meeting. Mr. Burt seconded the motion and it passed unanimously.*

Rule 41 may be due attention from the committee, as the rule deals largely with certification, then includes an embedded subparagraph related to pro hac vice admissions. The committee expressed interest in identifying a “new home” for that subparagraph within the rules.

*Judge Orme moved to remove the committee note to Rule 41. Mr. Parker seconded the motion and it passed unanimously.*

**4. Discussion and Action: Rule 8**

**Clark Sabey**

Mr. Sabey guided the committee in resumed discussions of Rule 8. Ms. Lee explained that the draft rule being considered by the committee is an adaptation of the analogous federal rule. The committee discussed whether adapting the injunction standard is appropriate, given the directive given by the Supreme Court in the order being addressed.

The committee discussed whether the adoption of the “federal approach,” which offers an appeal as of right for injunctions, is advisable, and whether that change can be made by rule.

The committee determined that given the complexity of the issues being considered, the best approach is for committee members to discuss these changes further informally and then present a more formal proposal to the committee.

5. **Discussion and Action:** **Larissa Lee**  
**Rule 35 (and Related Rules 36 and 48)** **Clark Sabey**

Ms. Lee explained that she combined previous work done by the committee back into a single rule. The committee's goal in this revision is to abandon the attempt to police substantive and non-substantive changes.

After additional productive discussion of potential changes to the rule, the committee determined the best approach is to continue revisions and discussions at the next committee meeting.

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

None.

7. **Adjourn**

*Mr. Burke adjourned the meeting. The committee is scheduled to meet again on April 2, 2020.*