



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

Paul Burke, Chair

Approved Minutes

Webex

Thursday, June 4, 2020

12:00 pm to 1:30 pm

PRESENT

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

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

EXCUSED

Patrick Burt
Lisa Collins
R. Shawn Gunnarson
Rodney Parker
Mary Westby

1. Welcome and Approval of May 2020 Minutes Paul C. Burke

Paul C. Burke welcomed the committee and invited comments regarding the May 2020 minutes. Mr. Burke asked that, with respect to those minutes, the paragraph appearing in Section 2 be terminated after the words "legislative outreach," to better reflect the substance of the committee's discussion. There were no objections.

Judge Jill Pohlman moved to approve the minutes from the May 2020 meeting with the proposed change. Alan Mouritsen seconded the motion and it passed by unanimous consent.

2. **Action:** **Clark Sabey**
Rule 8 – Stay/Injunction Pending Appeal

The proposed amendments to Rule 8 are intended as an adaptation of the analogous federal rule, and the committee has worked for several months to draft language that accomplishes that goal while ensuring consistence with other rules, with applicable case law, and with established practices.

The committee resumed work to clean up the language in several places of the proposed amendment, including significant attention to subsection (b)(2)'s success in articulating the intended standard, to the relationship between this rule and Rule 65A, and to the utility and language of subsection (a)(2)(C).

After an extended and productive discussion, Mr. Sabey moved to adopt the amendments to Rule 8 as they appeared on the screen at the committee meeting. Judge Pohlman seconded the motion and it passed without objection by unanimous consent.

3. **Action:** **Larissa Lee**
Rule 3 – Appeal as of Right: How Taken

Ms. Lee noted that the text of the proposed amendment has not changed since the committee last considered the amendment, in April 2020. The committee made minor changes and adjustments to the text of the rule.

Shawn Gunnarson moved to adopt the amendments to Rule 3 as they appeared on the screen at the committee meeting. Judge Pohlman seconded the motion and it passed without objection by unanimous consent.

4. **Action:** **Larissa Lee**
Incorporating Standing Order 11
(Rules 20, 34, 43, 50, 56)

Ms. Lee noted that the proposed amendments to these five rules are intended to incorporate the procedures described in Standing Order 11 related to filing by email.

With respect to Rule 20, the committee made minor changes to the proposed language, for purposes of clarity and consistency, including referring consistently to a "petition" (rather than an "application") and referring to a

“trial court” rather than a “district court.” The committee also made changes to make the proposed amendment more consistent with Rule 19.

The committee determined that additional input may be useful in determining how best to provide useful guidance for petitioners—including *pro se* petitioners—in subsection (b)(2).

Judge Pohlman moved to table the amendments to Rule 20 until the committee next meets in order to allow the committee to seek the input described above. Mr. Green seconded the motion and it passed without objection by unanimous consent.

Given the limited amount of time remaining in this month’s meeting, discussion of the proposed amendments to Rules 34, 43, 50, and 56 was reserved until the next committee meeting.

**5. Discussion: Christopher Ballard
Rule 23B and Issues Outside Remand Request Nathalie Skibine**

Given the limited amount of time remaining in this month’s meeting, discussion of the Rule 23B was reserved until the next committee meeting.

**6. Discussion: Paul C. Burke
Old/New Business**

Mr. Burke explained that the committee has, in the past, removed the July meeting from the calendar, at least in cases in which the amount and nature of work pending before the committee allows it. Mr. Burke advised the committee that a decision on a July meeting would be made in the next several weeks.

7. Adjourn

Judge Orme moved to adjourn the meeting and that motion was seconded. The committee is scheduled to meet again on either July 2 or August 6, 2020.