



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

Via WebEx Videoconference

Thursday, January 7, 2021

12:00 pm to 1:30 pm

PRESENT

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

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

EXCUSED

Patrick Burt

1. **Welcome, Approval of December 2020 Minutes** **Paul C. Burke**

Paul Burke welcomed the committee. The committee reviewed the December 2020 minutes. Mary Westby noted that the second reference to Rule 31 in Section 5 should actually be a reference to Rule 30. The committee concurred. No further comments or objections were noted.

Shawn Gunnarson moved to approve the minutes from the December 2020 meeting as amended. Ms. Westby seconded the motion and it passed by unanimous consent.

**2. Action:
Rule 19**

**Paul C. Burke
Sarah Roberts**

The most significant proposed change to Rule 19 is the deletion of Rule 19(f), which governed the service of hard copies on the clerk of court. The proposed amendments are also intended to clarify and clean up the existing language of the rule. The committee discussed the references to “respondents” in lines 6 and 37 and how to best clarify the potential categories of respondents without being unnecessarily cumbersome. The committee reviewed both Rule 65B of the Utah Rules of Civil Procedure and Rule 19 of the Federal Rules of Appellate Procedure to determine whether those rules provided useful guidance.

Judge Orme moved to strike the phrase “for all purposes” from the first sentence of Rule 19(c). Rod Parker seconded the motion. It passed without objection by unanimous consent.

Clark Sabey moved to change lines 42/43 by striking the sentence that begins “when seeking emergency relief” and the word “otherwise” in the following sentence. Ms. Westby seconded that motion and it passed without objection by unanimous consent.

Judge Jill Pohlman moved to restore the words “or agency” to line 7. That motion, too, was seconded and passed without objection by unanimous consent.

The committee also discussed the inclusion of “judges” among the list of respondents and the typical response when judges are so included, as well as the potential confusion created by this rule about how and where a petition for extraordinary relief should be filed. Mr. Burke recommended that rather than craft new language on the fly, the committee table action on the Rule for the time being.

Mr. Parker moved to table further discussion of the amendments to Rule 19 for a month to allow the committee to more fully consider additional changes to the rule. Tyler Green seconded the motion to table and it passed without objection by unanimous consent.

3. **Action:** **Chris Ballard**
Rule 20

The committee has already tentatively approved a series of amendments to Rule 20, but the committee delayed adoption until the committee could address how to refer to parties that may be *in custody* but not in prison. Chris Ballard reported that he had solicited feedback on that point, and based on that feedback, suggested the rule mirror language of the “prison mailbox rule” in Rule 21.

Nathalie Skibine moved to modify the language of lines 29–32 to clarify the proper party to serve, as shown on screen. Mr. Ballard seconded that motion, and it passed without objection.

Lisa Collins moved to strike the final twelve words (lines 16–17) from the first sentence of the proposed rule 20(b)(1). Judge Pohlman seconded that motion, and it passed without objection.

Mr. Ballard moved to adopt the amendments to Rule 20 as they appeared on the screen at the committee meeting, as supplemented by further amendments made at meeting. Ms. Collins seconded the motion and it passed without objection by unanimous consent.

4. **Action:** **Paul C. Burke**
Rule 25 **Sarah Roberts**

With respect to Rule 25, the Utah Supreme Court has asked the committee for a recommendation about timing of amicus briefs, including a recommendation about whether Utah’s Rule 25 should be modified to be made more consistent with the parallel federal rules, which differs in several respects. After some discussion, the committee settled on a proposal to adopt both the timing found in the federal rule and some of that rule’s critical language.

Ms. Westby moved to strike “guardian ad litem” throughout rule, as the guardian ad litem’s role in appellate procedure is more clearly defined elsewhere in the rules. Judge Orme seconded that motion, and it passed without objection by unanimous consent.

Mr. Parker also proposed that the committee craft an advisory committee note regarding the removal of certain language related to the guardian ad litem, to clarify the intent of that change.

Mr. Green moved to rephrase lines 3-5 and to import the federal time-for-filing provision, with certain minor tweaks related to the “motion for filing” procedure. Shawn Gunnarson seconded that motion.

After some discussion, Mr. Green moved to table discussion to allow the committee one more month to rework language. That motion was seconded and passed without objection by unanimous consent.

5. Action:

Rules 23 & 27

Paul C. Burke

Sarah Roberts

Sarah Roberts explained to the committee that the proposed amendments to Rules 23 and 27 would combine form requirements for all documents into one rule—Rule 27. The proposed amendments are not intended to make substantive changes.

Given that little time remained in the meeting, Mr. Parker move to table further discussion of Rules 23 and 27 until the committee’s next meeting. Scarlet Smith seconded and the motion passed without objection by unanimous consent.

6. Action:

Rule 56

Paul C. Burke

Sarah Roberts

Sarah Roberts explained that the proposed changes to Rule 56 hinge on changes to Rules 23 and 27.

Given the little time remaining and the relationship between these proposed changes and the proposed changes to Rules 23 and 27, the committee agreed to defer discussion of Rule 56 until the next committee meeting.

7. Discussion:

Old/New Business

Paul C. Burke

Judge Orme described for the committee a potential change to the rules flagged in *Watson v. Labor Commission*, 2020 UT App 170, ¶ 1 n.1. As that footnote observes, on the administrative-appeal side, there is no equivalent of a cross-appeal—each appellee must file its own separate petition. The

Court therefore suggests that the committee “consider amending the rules to allow cross-petitions for review in administrative cases.” The committee welcomed that addition to its list of pending tasks.

8. Adjourn

Mr. Parker moved to adjourn, and no objections were noted. The committee adjourned and is scheduled to meet again on February 4, 2021.