



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, February 4, 2021
12:00 pm to 1:30 pm

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
Sarah Roberts—Staff
Clark Sabey
Nathalie Skibine
Scarlet Smith
Nick Stiles—Staff
Mary Westby

EXCUSED

R. Shawn Gunnarson

1. **Welcome, Approval of January 2021 Minutes** **Paul C. Burke**

Paul Burke welcomed the committee. The committee reviewed the January 2021 minutes. No changes or concerns were noted.

Mary Westby moved to approve the minutes from the January 2021 meeting. Judge Jill Pohlman seconded the motion and it passed by unanimous consent.

2. **Action:** **Chris Ballard**
Rule 15

Chris Ballard explained to the committee that the proposed changes to Rule 15 were initially designed to eliminate a reference to a specific tax statute as the committee has attempted to do throughout the rules. Mr. Ballard reported that he had discussed the changes with tax practitioners, who had blessed that removal. After that approval, the proposed changes were sent along to the Supreme Court, which expressed concern about clunky language that now appears in lines 16–20. Mr. Ballard reworked that language in response.

The proposed changes to Rule 15 now remove the statutory reference that initially drew the committee’s attention, but also make other minor alterations. The rule itself exists because of unique procedure associated with appeal from a tax-commission decision, and the rule now provides a separate “track” for appeals: a case may move either to the Supreme Court through appeal or to the district court through review in the district court. The rule is designed to prohibit simultaneous review in both courts.

Judge Pohlman proposed a minor change to line 7 (so that the rule reads “proceeding,” and not “proceedings”). The committee also discussed the pour-over procedure and what may constitute “compelling circumstances” under the rule, as well as other practical concerns.

Following that discussion, Mr. Ballard moved to adopt the rule as amended as it appeared on the screen at the committee meeting. Ms. Westby seconded the motion and it passed without objection by unanimous consent.

3. **Action:** **Tyler Green**
Rules 25 & 50

The proposed amendments to Rule 25 and 50 are intended to rework the rules regarding amicus curiae practice in Utah appellate courts. Tyler Green reported that in drafting new versions of these rules, he relied upon both the United States Supreme Court’s rules of practice and the Federal Rules of Appellate Procedure. Mr. Green introduced the draft version of the rules and walked the committee through the highlights.

The committee discussed the proposed changes at length. Scarlet Smith

recommended that the committee remove reference to “verbatim quotations” in line 56. The committee discussed changes to paragraph (a) (changing “all parties to a case” to “all parties to an appeal” as well as a discussion of due dates and timing), paragraph (b) (considering the deletion of the words “brief states that” and “granted on motion”), paragraph (c) (cleaning up the language), paragraph (d) (considering availability of extensions to amici), and paragraph (h) (evaluating how to handle oral argument requests and presumptions). The committee also discussed a potential conflict in the rules with respect to constitutional challenges.

Following the committee’s discussion, Mr. Green recommended that the committee consider drafting a committee note explaining the scope and purpose of the changes to the rules regarding amicus curiae practice.

Following the committee’s discussion, Judge Pohlman moved to adopt the rule as amended as it appeared on the screen at the committee meeting. Ms. Westby seconded the motion and it passed without objection by unanimous consent.

4. Action: Sarah Roberts
Rules 23, 27 & 56

Because the committee’s discussion of Rules 15, 25, and 50 consumed all the time available for the February meeting, the committee opted to defer discussion of Rule 23, 27, and 56 until the March meeting.

5. Discussion: Paul C. Burke
Old/New Business

Mr. Burke introduced Nick Stiles, who has assumed the role of Appellate Courts Administrator. The committee expressed its enthusiasm about working with Mr. Stiles.

6. Adjourn

Mr. Green moved to adjourn, and Judge Orme seconded that motion. No objections were noted. The committee adjourned and will meet again on March 4, 2021.