



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, March 4, 2021

12:00 pm to 1:30 pm

PRESENT

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

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

Tyler Green

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

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

Judge Orme moved to approve the minutes from the February 2021 meeting. That motion was seconded and it passed without objection by unanimous consent.

2. Discussion: Paul C. Burke
Legislative Update & Appellate Case Management

The committee opened discussion regarding the legislative session. No committee members were aware of issues or tasks raised by that session.

Mr. Burke informed the committee that the Utah Supreme Court had asked him to solicit feedback on how to manage or implement procedures to address long-standing cases. (Examples of such procedures may include status conferences or summary decisions with more detailed reasoning to come.) Judge Orme offered insight into what may account for delays in certain cases. The committee discussed whether a notice to the parties, sent after 6 to 8 months, would help address the problem. After discussion, the committee opted not to recommend any of the procedures discussed, but to retain the topic on its working agenda to be considered in conjunction with future amendments related to case management.

3. Discussion: Judge Orme
Cross-Petitions for Review in Administrative Cases

Judge Orme introduced the topic of cross-petitions for review in administrative cases, which had been introduced at a prior committee meeting, and expressed that he does not have a strong opinion on whether the problem merited any change to the existing rules. Lisa Collins informed the committee that parties ask about this rules nuance quite often, and suggested that if there is no compelling reason for the bar on cross-petitions, the committee should consider removing that bar. After further discussion, including discussion of whether Utah's administrative rules require such cross-petitions to be brought separately, the committee concluded that lifting the bar on cross-petitions may prove to be a good idea, but noted that it may require coordination between Utah's rules of administrative procedure and the appellate rules. Judge Orme suggested that the topic be considered as part of next year's "housekeeping" legislation, and the committee agreed to return to the issue at that later date.

4. **Action:**
Rule 22

Paul C. Burke
Sarah Roberts

Sarah Roberts introduced the proposed amendment, emphasizing that there are no substantive changes and that the stylistic changes are intended to ensure consistency as to how time is computed.

Mary Westby moved to strike the final two sentences of 22(a), and Scarlet Smith seconded. After some discussion about the computation of time, the committee agreed that the amendment at issue and the lingering questions regarding computation of time be separated, and Ms. Westby agreed to withdraw her motion.

The committee discussed several other minor changes: Judge Pohlman recommended that on lines 6-7, the committee change the phrase “business days” back to previous language. Ms. Collins lodged a question about the utility of subsection (b)(3)’s requirement. The committee recommended that that requirement be left in place. Christopher Ballard recommended that the phrase “prior to the” be simplified to read “before.”

Following that discussion, Ms. Westby moved to table the proposed amendment, given the committee’s overarching project to address the “counting of days” issue. Judge Pohlman seconded the motion and it passed without objection by unanimous consent.

5. **Action:**
Rule 50

Tyler Green

The committee noted that at the February 2021 meeting, it passed Rule 25 but left Rule 50 unpassed and that the changes to Rule 50 are largely stylistic. Troy Booher initiated a discussion about the time requirement in subsection 50(d) and recommended that the time be shortened to 7 days. Judge Pohlman suggested that in line 23, the word “it” be added, for the purposes of clarity. Rodney Parker recommended that even after the proposed changes and clarifications are made, the rule be examined for possible additional clean-up, and Mr. Ballard agreed.

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

6. **Action:**
Rules 30 & 31

Judicial Efficiency
Subcommittee

The committee began discussion of Rules 30 and 31 with Judge Orme recommending that the rule drop the word “published,” as that word does not reflect any substantive determination made by our appellate courts.

Judge Orme moved to remove word “published,” Ms. Westby seconded, and the motion passed without objection by unanimous consent.

Clark Sabey noted that, with respect to the proposed new provision’s final clause, there are other sources of law that may not be covered in the language proposed by the guiding case.

Mr. Sabey moved to strike that final clause, and Judge Orme seconded that motion. After some discussion, that motion was withdrawn, and Shawn Gunnerson proposed instead that the second sentence be stricken. Mr. Parker seconded that motion and it passed without objection.

Mr. Ballard suggested that in lines 22–23, the phrase “of the court” be stricken and replaced with the phrase, “entry of the decision in the court’s records constitutes the entry of the court’s judgment.”

Mr. Ballard moved to make that change, Ms. Westby seconded, and the motion passed without objection by unanimous consent.

Mr. Booher questioned the usefulness of subparagraph 30(e), suggesting that the cross-reference may not be necessary. Judge Pohlman agreed.

Mr. Parker moved to remove subparagraph 30(e), Ms. Westby seconded, and the motion passed without objection by unanimous consent.

Ms. Westby moved to adopt Rule 30 as amended as it appeared on the screen at the committee meeting. Mr. Ballard seconded the motion and it passed without objection by unanimous consent.

The committee noted that Rule 31 is intended to contain only stylistic clean-up. Mr. Booher suggested that subparagraph 31(c) be deleted.

Judge Pohlman moved to delete subparagraph 31(c). After discussion regarding a potential difference between Rules 30(e) and 31(c), the motion was seconded and it passed without objection.

After further discussion, Mr. Parker moved to table the amendments to Rule 31, at least in part to resolve a perceived conflict between Rules 31(a) and (b). Judge Orme seconded that motion and no objections were noted.

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

Mr. Burke noted that the committee's agenda is growing long, and that it faces a considerable amount of unfinished business, including several items on the committee's follow-up agenda. Mr. Burke recommended that the committee plan on meeting until 2:00 pm at its April meeting to work through backlog of "tabled items." The committee agreed.

8. Adjourn

Mr. Parker moved to adjourn. That motion was seconded and no objections were noted. The committee adjourned and will meet again on April 1, 2021.