



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, October 7, 2021
12:00 pm to 1:30 pm

PRESENT

Christopher Ballard—Chair
Lisa Collins
Carol Funk
Tyler Green
Michael Judd—
Recording Secretary
Judge Jill Pohlman
Judge Gregory Orme
Stanford Purser

Michelle Quist
Sarah Roberts—Staff
Clark Sabey
Nathalie Skibine
Nick Stiles—Staff
Christopher Williams—
Guest
Mary Westby

EXCUSED

Emily Adams
Troy Booher—
Emeritus Member
Patrick Burt
Scarlet Smith

1. Welcome and Introduction of New Members

Chris Ballard

Chris Ballard greeted the committee and thanked its members for their attendance. Mr. Ballard again welcomed two new members to the committee—Michelle Quist and Stanford Purser. At Mr. Ballard's invitation, the committee's members introduced themselves to one another and described their practices.

2. **Action:** **Chris Ballard**
Approval of June 3, 2021 Minutes

The committee reviewed the September 2021 minutes. Clark Sabey offered one correction: contrary to what was stated in Section 4 of those minutes, proposed amendments *had* been circulated for public comment. The September 2021 minutes will be corrected to make that change.

Mary Westby moved to approve the September 2021 minutes as modified. Judge Jill Pohlman seconded that motion, and it passed without objection by unanimous consent.

3. **Action:** **Nick Stiles**
Rule 12

The committee has already approved amendments to Rule 12, but that approval was subject to a check against the district courts' practices, which Nick Stiles had offered to handle. Mr. Stiles reported that the amended relevant district court rule at issue (CJA 4-206) has no relationship to Rule 12. The committee engaged in further discussion regarding exhibits and common practices at the district-court level, and the committee eventually concluded that the changes discussed may be more appropriately addressed at the administrative level, rather than in the appellate rules.

The committee settled on a course of action under which a representative from the committee would approach policy and planning division, explain the problems encountered at the appellate level, and propose there be an administrative solution.

Following that discussion, Judge Pohlman proposed several additional line edits to clean up stray language and clarify the meaning of rule.

After that discussion, Judge Pohlman moved to approve rule as shown on screen. Lisa Collins seconded Judge Pohlman's motion, and it passed without objection by unanimous consent.

4. **Action:** **Clark Sabey**
Rules 25 & 50 **Michael Judd**

Clark Sabey presented to the committee the results of his research regarding analogous state statutes, including a memo he had prepared and circulated. Michael Judd followed suit with brief research regarding the application of

the parallel federal rule. The committee considered whether that research prompts any changes to the standard that appears at lines 27–30 of the draft now under consideration. At Carol Funk’s recommendation, the committee discussed adding language from the Iowa version of the rule, and that language was eventually added at subsection (c)(4). The committee also discussed the provision of the rule stating that, “Withholding consent is disfavored,” which the committee believes is relatively rare in the rules. Finally, the committee engaged in further discussion about timing of amicus filings and other fine-tuning of the rule’s language.

After that discussion, Ms. Westby moved to table the proposed amendments, given the limited time remaining in the month’s meeting. Stanford Purser seconded Ms. Westby’s motion, and it passed without objection by unanimous consent. Mr. Purser offered to take up the language regarding service.

**5. Action:
Rules 19 & 20**

**Clark Sabey
Nick Stiles**

Given the limited amount of time remaining in the month’s meeting, discussion of Rules 19 and 20 was postponed until the committee’s next meeting.

**6. Discussion:
Old / New Business**

Chris Ballard

None.

7. Adjourn

Judge Orme moved to adjourn, Ms. Westby seconded, and there were no objections. The committee’s next meeting will take place on November 4, 2021.