



## 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 3, 2022  
12:00 pm to 1:30 pm

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#### PRESENT

Emily Adams	Michael Judd —	Nathalie Skibine
Christopher Ballard — Chair	Recording Secretary	Scarlet Smith
Troy Booher — Emeritus Member	Amber Griffith	Nick Stiles — Staff
Patrick Burt	Judge Jill Pohlman	Mary Westby
Lisa Collins	Judge Gregory Orme	
Carol Funk	Stanford Purser	
Tyler Green	Michelle Quist	<b>EXCUSED</b>
	Clark Sabey	None

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1. **Action:** **Chris Ballard**  
**Approval of January 2022 Minutes**

The committee reviewed the January 2022 minutes and noted minor corrections needed to Items 1, 6, and 7.

*With those corrections made, Michelle Quist moved to approve the January 2022 minutes as amended. Judge Pohlman seconded that motion, and it passed without objection by unanimous consent.*

2. **Action:** **Chris Ballard**  
**Rule 4(f)**

Christopher Ballard reported to the committee that he had discussed revisions to Rule 4(f) with the Utah Supreme Court and that the Court appreciated those changes. The Court indicated, however, that it would like the rule to contain a more concrete deadline for filing a motion to reinstate the period for direct appeal. Mr. Ballard proposed that the rule include a 90-day deadline. Emily Adams offered that based on her experience with clients, 90 days seems too short. Nathalie Skibine also noted that in many cases, it can be difficult to pin down exactly when an individual “had the facts” needed to bring a motion, particularly when facts are not properly communicated from an attorney to client. Judge Orme suggested that the committee may consider a reference to facts being “personally known” to the individual seeking relief.

The committee continued with a robust discussion regarding what triggers the running of the deadline at issue. Judge Pohlman then suggested the possibility of extending the deadline to one year, which would eliminate motions that are difficult to resolve because they are brought 10 to 15 years after the fact, while providing ample time to identify the need for a motion. The committee agreed with that proposal.

*Following that discussion, Judge Pohlman moved to adopt the amendment as modified and as shown on screen at the committee meeting. Judge Orme seconded that motion, and it passed without objection by unanimous consent.*

3. **Action:** **Chris Ballard**  
**Rule 25**

The committee considered two public comments regarding the proposed changes to Rule 25. The first comment dealt with a concern about giving notice. The committee suggested that the deadline at issue be cut back by 7 days, thereby allowing time for an interested non-party to search for and consider amicus issues before filing notice of amicus brief. (That change would be implemented by changing the number “14” on line 4 of the draft rule to “7.”)

*Following that discussion, Tyler Green moved to approve the rule as amended and as shown on screen at the committee meeting. Judge Pohlman seconded that motion,*

*and it passed without objection by unanimous consent.*

The second comment dealt with whether the committee should clarify the deadline in subsection (g)(1), either by express statement or by reference. The committee engaged in a brief discussion, but then noted that it had already considered the possibility of providing specific deadlines and preferred the current approach.

*Following that discussion, Clark Sabey moved to leave the rule unchanged. Stan Purser seconded that motion, and it passed without objection by unanimous consent.*

**4. Action:  
Rule 23**

**Stan Purser**

The draft amendment to Rule 23 introduces an obligation to confer with the other side on all motions. The committee discussed the pros and cons of the requirement, including whether it may be necessary and what types of motion, by force of existing rules, would be excluded. After discussion, Mr. Sabey proposes that the committee craft some sort of recommendation/encouragement, but stop short of mandating as part of the rules. The committee landed on an approach in which this requirement is imposed on motions on a category-by-category basis. However, the committee did agree to change the rule's use of the word "memorandum" to "discussion" to avoid confusion about separate motions and memoranda.

*After that discussion, Mr. Sabey moved to approve the rule as amended and as shown on screen at the committee meeting. Mary Westby seconded that motion, and it passed without objection by unanimous consent.*

5. **Action:** **Chris Ballard**  
**Rule 20** **Clark Sabey**  
**Mary Westby**

The subcommittee on Rule 20 reported that it had met and discussed a proposal that Rule 20 be deleted, for the reasons described in the subcommittee's memo to the committee.

*Following that discussion and based on the committee's review of that memo, Ms. Westby moved to delete Rule 20. Ms. Quist seconded that motion, and it passed without objection by unanimous consent.*

6. **Discussion:** **Nick Stiles**  
**Orders-on-the-Weekends Memo** **Mary Westby**

The committee resumed its discussion of the nature of the orders-on-weekends problem, both in concept and in application. After that discussion, Ms. Westby offered to generate a proposal for how best to address this issue. The committee welcomed that offer, and agreed to wait to coordinate with other committees regarding a proposal until we've agreed on an approach.

7. **Discussion:** **Chris Ballard**  
**Old/New Business**

Ms. Quist raised a follow-up concern about the timing mechanisms of the proposed new Rule 25. The committee will attend to that concern in a future meeting.

8. **Adjourn**

*After a productive meeting, Ms. Westby moved to adjourn. Lisa Collins seconded that motion. There were no objections and the motion carried. The committee's next meeting will take place on March 3, 2022.*