



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
Wednesday, May 5, 2022
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Jacqueline Carlton—Guest
Lisa Collins
Carol Funk
Amber Griffith
Michael Judd—
Recording Secretary

Judge Gregory Orme
Judge Jill Pohlman
Stanford Purser
Michelle Quist
Clark Sabey
Nathalie Skibine
Nick Stiles—Staff
Doug Thompson—Guest

EXCUSED

Patrick Burt
Tyler Green
Scarlet Smith
Mary Westby

1. Action:

Chris Ballard

Approval of April 2022 Minutes

The committee discussed its members' review of the April 2022 minutes, including identification and correction of several errors.

With those corrections made, Judge Orme moved to approve the April 2022 minutes as amended. Nathalie Skibine seconded that motion, and it passed without objection by unanimous consent.



2. **Action:**

Chris Ballard

Public Comments on Rules 4 and 20

The committee considered public comments on the proposed changes to Rules 4 and 20. Ms. Skibine expressed her support for the sentiments expressed in those comments, as did several other members and guests, and the committee acknowledged the weight of comments. Chris Ballard expressed a contrary view, and suggested that the type of deadline contemplated in the proposed changes is essential, as without a deadline, certain cases may functionally remain forever open.

The committee considered prior appellate caselaw that may reflect a needed change in these rules and recognized that it's not clear whether those directions in caselaw were ever pursued. Clark Sabey asked whether a simple requirement of "reasonableness" with respect to the deadline issue would address the problems posed in practice.

Doug Thompson spoke, recognizing that attention to an appropriate time limit is important, but also expressing concern that "deprivation of a right" appears to be limited to the examples offered in draft rule.

Judge Orme asked whether any fixed deadline could contain a carve-out for extraordinary circumstances.

The committee engaged in continued discussion regarding the interplay between this amendment and full-scope PCRA revivals. Mr. Sabey suggested more serious discussion may be warranted for a potential one-year fixed deadline, but with some sort of "escape clause." Mr. Sabey added his recollection that he believes the rules committee never took this issue up in 2014.

After that discussion, the committee recognized that it appears to be split on this issue, and it identified two separate issues to be addressed: a deadline issue, and an issue regarding the subsection (f)(5) factors identifying deprivations of rights. The committee agreed to rethink its proposal on the deadline issue, while advancing a proposal regarding the removal of the enumerated showings in subsection (f)(5).

Following that discussion, Michelle Quist moved to insert a period after the word "own" in subsection (f)(5) and delete remainder of section, then to otherwise adopt



changes to that section as shown on the screen, including stylistic changes regarding gendered pronouns. Judge Orme seconded that motion, and it passed without objection by unanimous consent.

The committee determined to create a subcommittee to further its consideration of the “deadline issue.” That committee, which will include Ms. Skibine, Mr. Sabey, Mr. Ballard, Ms. Westby, and Judge Pohlman, will reconsider the issue, including a potential review of a 2014 directive from the Supreme Court. Mr. Sabey noted, and the committee agreed, that it’s more important here to get it right than to do it fast.

Mr. Sabey moved to refer the “deadline issue” to the subcommittee. Judge Orme seconded that motion, and it passed without objection by unanimous consent.

With respect to comments on Rule 20, Mr. Ballard noted that the comments regarding that rule reiterate concerns that the Utah Supreme Court has already addressed in its *Patterson* case. The committee concluded that the comments do not identify any new concerns. Stan Purser noted a needed change to the title header. With no appetite for changing numbering of the rules as a whole, the committee determined that the rule will simply be identified as [REPEALED].

3. Action: Stan Purser
Rule 19

The committee began discussion of Rule 19. Mr. Booher raised a question regarding the page and word limits in subsection (h). The committee also discussed Rule (f)(1), which relates to timing. Mr. Booher suggested that the second sentence appear as its own subsection. The committee also discussed typefaces and the advisability of a certification requirement. Following that brief discussion, the committee determined that the best course would be to revisit Rule 19 in June.

4. Action: Carol Funk
Rule 50



Mr. Sabey suggested that given the scope of the proposed changes to Rule 50, more discussion of those changes is needed than time allowed. The committee agreed and determined that discussion of Rule 50 be deferred until June.

5. **Action:** **Chris Ballard**
Rule 22—Juneteenth Holiday

For the same reasons, discussion of Rule 22 will be deferred until June.

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

None.

7. **Adjourn**

Following that discussion, Ms. Quist moved to adjourn. Judge Pohlman seconded, and there were no objections. The committee's next meeting will take place on June 2, 2022.