



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, April 13, 2022
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Patrick Burt
Jacqueline Carlton—Guest
Lisa Collins
Carol Funk
Amber Griffith

Michael Judd—
Recording Secretary
Judge Jill Pohlman
Judge Gregory Orme
Stanford Purser
Clark Sabey
Nathalie Skibine
Nick Stiles—Staff
Mary Westby

EXCUSED

Tyler Green
Michelle Quist
Scarlet Smith

1. Action:

Chris Ballard

Approval of March 2022 Minutes

The committee identified several minor corrections, including a reference to “opposing counsel” in the final paragraph of Section 2, a change from “mention” to “mentioned” in the final paragraph of Section 3, and a change from “filed” to “entered” in Section 2.

With those corrections made, Mary Westby moved to approve the March 2022

minutes as amended. Judge Pohlman seconded that motion, and it passed without objection by unanimous consent.

2. Action: Chris Ballard
Public Comments on Rules 10, 11, and 12

Chris Ballard led out by observing that Leslie Slaugh’s comment is well-taken: Will the issues addressed by these rule changes be resolved by electronic filing? And do the rule changes need to anticipate that? The committee discussed a new exhibit rule practiced by the district courts—that any exhibit that’s been scanned in by a district court is sent to the appellate courts as well. Lisa Collins informed the committee that some of the concerns raised will be alleviated as district-court clerks catch up with that new practice. The committee noted that the second comment submitted is also well-taken but likely does not call for changes to the text of the rule itself. Nick Stiles informed the committee that efforts to establish electronic filing remain active. The committee spent time considering Will Hains’s comments, and incorporated aspects of those comments into the text of Rule 11.

Following that discussion, Ms. Westby moved to amend the rules as shown on-screen at the committee’s meeting, in response to comments received. Lisa Collins seconded that motion, and it passed without objection by unanimous consent.

3. Action: Stan Purser
Rules 11, 22, and 24

Stan Purser presented the proposed changes to the committee. Mr. Ballard suggested that the term “any party” be changed to “a party,” in all three rules. The committee engaged in a lengthy discussion about how the new requirements imposed by these rules would apply specifically to requests for overlength briefs, and the committee ended in agreement that the proposed changes don’t apply as well to that type of request.

Following that discussion, Ms. Westby moved to strike the proposed amendment to Rule 24. Carol Funk seconded that motion, and it passed without objection by unanimous consent.

Ms. Collins then moved to adopt the proposed changes to Rules 11 and 22, as those rules appeared on-screen at the committee’s meeting. Ms. Funk seconded that

motion, and it passed without objection by unanimous consent.

4. **Action:** **Nathalie Skibine**
Rules that use “affidavit” and “memorandum” **Nick Stiles**
Lisa Collins
Amber Griffith

The subcommittee responsible for these changes presented to the committee a table identifying all rules that include either the term “affidavit” or the term “memorandum.” The subcommittee noted that two rules had already incorporated this type of change. Nathalie Skibine walked the committee through a table of changes, including instances in which the subcommittee opted not to make these proposed changes. The committee spent time discussing any distinctions, in practice, between affidavits and declarations.

After that discussion, Judge Orme moved that the definition of declaration (including reference to Title 78B, Chapter 18a, Uniform Unsworn Declarations Act) be moved to the advisory committee note. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

Judge Pohlman then moved that the committee adopt the proposed changes to Rules 8 and 17, as amended and as discussed at the committee’s meeting. Clark Sabey seconded that motion, and it passed without objection by unanimous consent.

Judge Pohlman then moved that, in Rule 37, the word “unsworn” be deleted and the proposed advisory committee note be added. Stan Purser seconded that motion, and it passed without objection by unanimous consent.

Ms. Skibine moved that the committee adopt the proposed changes to Rules 23B and 29, as amended and as discussed at the committee’s meeting, and the committee noted that the words “or declarations” be added to those rules. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

Finally, Ms. Skibine moved that the committee adopt the proposed changes to Rule 19, as amended and as discussed at the committee’s meeting, with the word “memorandum” being changed to “discussion.” Mr. Sabey seconded that motion, and it passed without objection by unanimous consent.

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

Mr. Ballard noted that Mr. Purser is working on amendments to Rule 19, regarding extraordinary writs. Mr. Ballard also noted an issue regarding court holidays: Juneteenth is a new holiday, celebrated under federal rules on June 19, with Saturday occurrences celebrated on Fridays, and Sunday occurrences celebrated on Mondays. Utah's Juneteenth law may read differently, and may result in conflicting court holidays—an issue the rules may need to address. Ms. Funk raised a question about how cert petitions are addressed, and the committee plans to give that question further attention at future meetings.

6. Adjourn

Following that discussion, Mr. Ballard adjourned the meeting. The committee's next meeting will take place on May 5, 2022.