



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

In Person and by WebEx Videoconference
Thursday, October 6, 2022
12:00 pm to 1:30 pm

PRESENT

Emily Adams (by Webex)
Christopher Ballard—Chair
(in person)
Patrick Burt (by Webex)
Jacqueline Carlton—Guest
(by Webex)
Lisa Collins (by Webex)
Carol Funk (in person)
Amber Griffith (in person)

Michael Judd—Recording
Secretary (in person)
Michelle Quist (in person)
Clark Sabey (by Webex)
Nathalie Skibine—
Vice Chair (by Webex)
Scarlet Smith (in person)
Douglas Thompson—
Guest (by Webex)
Mary Westby (in person)

EXCUSED

Troy Booher—
Emeritus Member
Judge Michele
Christiansen Forster
Tyler Green
Judge Gregory Orme
Stanford Purser
Nick Stiles—Staff

1. Action:

Approval of September 2022 Minutes

Chris Ballard

The committee reviewed the September 2022 minutes. Chris Ballard noted two corrections needed in Item 3.

With those corrections made, Mary Westby moved to approve the September 2022 minutes. Carol Funk seconded that motion, and it passed without objection by unanimous consent.

2. **Action:** **Emily Adams**
Rule 20—Rule 19 Advisory Committee Note

The committee began by identifying the remaining concern with Rule 20: ensuring that a route exists for parties to file a petition for extraordinary relief directly with the Utah Supreme Court. The question now presented, then, is whether Rule 19 provides that route after Rule 20's repeal.

Emily Adams and Nathalie Skibine worked together on this issue and prepared a draft advisory committee note, which they presented to the committee. Mary Westby asked whether Rule 65B(b) may be a better fit for the note than 65C. Carol Funk wondered whether the note is needed, and the committee discussed the potential benefits associated with including the note. Michelle Quist observed that the text of the note should refer to "extraordinary relief" rather than to "extraordinary writs." The committee then worked together to refine the language of the note.

Following that discussion, the committee agreed that it is comfortable moving forward with a repeal of Rule 20, based on the understanding that Rule 19 provides an adequate route to file a petition for extraordinary relief.

Scarlet Smith then moved to approve the advisory committee note as it appeared on the screen at the committee meeting. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

It was also moved that the advisory committee note be published under both Rule 19 and Rule 20, for clarity's sake. Lisa Collins seconded that motion, and it too passed without objection by unanimous consent.

3. **Action:** **Mary Westby,**
Rule 19 **Clark Sabey**

After several months of work, the committee turned to what it hopes is a final Rule 19-related task: ensuring that there is no conflict between the proposed amendment to Rule 19 and the text of Rule 23C. The committee discussed minor changes to the text, both to the new language proposed this month and to the proposed changes to Rule 19 as a whole.

Following that discussion, Ms. Westby moved to approve the proposed amendment to Rule 19 as it appeared on the screen at the committee meeting. Ms. Smith seconded that motion, and it passed without objection by unanimous consent.

4. **Action:** **Chris Ballard**
Rule 4

The committee discussed a proposal, made through public comment, that any bar to a reinstatement of appeal rights under Rule 4 be premised on a showing by the prosecution that the defendant acted in bad faith by delaying the filing of the motion.

The committee also discussed whether that test could be reformulated—slightly—as “lacked a good-faith basis” rather than “acted in bad faith.” Mr. Ballard volunteered to put together draft language based on this public-comment suggestion, and the committee welcomed that idea.

Ms. Adams moved to table discussion of Rule 4 to allow time for Mr. Ballard to complete that work. Ms. Quist seconded that motion, and it passed without objection by unanimous consent.

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

The committee discussed potential changes to Rule 22. The initial call for change came because orders were being entered on weekends and holidays, prompting concerns about calculating deadlines.

It’s also come to the committee’s attention, however, that under current rules, Utah may celebrate Juneteenth on two separate days, and while the appellate rules may encompass *both* days, the Utah Rules of Civil Procedure would call for the date to be observed only once (on the day designated by Utah).

The committee discussed mimicking the approach in the Utah Rules of Civil Procedure, and Ms. Westby and Ms. Collins agreed to draft language for the committee to consider.

Ms. Funk moved to table discussion of Rule 4 to allow for that drafting. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

6. **Action:** **Mary Westby**
Rule 57
Given a lack of time to address all issues slated for discussion in October, the committee opted to defer discussion of Rule 57 until November's meeting.
7. **Action:** **Nick Stiles**
Appellate Court Disqualification
The committee likewise opted to defer discussion of appellate court disqualification until November's meeting.
8. **Discussion:** **Chris Ballard**
Old/New Business
None.
9. **Adjourn**
Following that discussion, Ms. Quist moved to adjourn, and Ms. Funk seconded that motion. The committee's next meeting will take place on November 3, 2022.