

**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

Judicial Council Room  
Thursday, September 7, 2017  
12:00 p.m. to 1:30 p.m.

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**PRESENT**

Troy Booher  
Christopher Ballard  
Paul Burke- Chair  
Lisa Collins  
Marian Decker  
James Ishida-Staff  
Alan Mouritsen  
Judge Gregory Orme  
Judge Jill Pohlman  
Adam Pace – Recording Secretary  
Bridget Romano  
Clark Sabey  
Lori Seppi  
Ann Marie Taliaferro  
Mary Westby

**EXCUSED**

R. Shawn Gunnarson  
Rodney Parker

**1. Welcome and approval of minutes**

**Paul Burke**

Mr. Burke welcomed the committee and introduced new members Judge Jill Pohlman and Christopher Ballard who are replacing Judge Fred Voros and Marian Decker. Mr. Burke presented Ms. Decker with a certificate of appreciation recognizing and thanking her for three terms of service on the committee. Mr. Burke then invited a motion to approve the minutes from the June meeting.

*Ms. Romano moved to approve the minutes from the June meeting. Ms. Decker seconded the motion and it passed unanimously.*

**2. Supreme Court action on rules package**

**Paul Burke**

Mr. Burke reported that a subcommittee comprised of Ms. Seppi, Ms. Westby, Ms. Collins, Mr. Ishida, and Mr. Burke met over the summer to discuss the committee's concerns about the requirement in proposed Appellate Rule 24 that the surname of a minor not be used without the minor's consent. The subcommittee recommended revising the language as follows: "The identity of minors should be protected by use of descriptive terms, initials, or pseudonyms. In child welfare appeals, the surname of a minor must not be used nor may a surname of a minor's biological, adoptive, or foster parent be used." The committee already voted to adopt this recommendation by email. The Supreme Court adopted the committees' proposed amendments to Rule 24 and has invited parties to start using it, even though it does not formally take effect until November 1, 2017. Mr. Mouritsen will be presenting an update on the new rule at the Utah State Bar's fall forum with Justice Thomas R. Lee.

Mr. Ishida asked the committee to address a question from the publisher about the punctuation in Rule 24(a)(5). The committee discussed this issue and agreed that the semi-colon at the end of Rule 24(a)(5)(B) should be deleted and changed to a comma, and that the reference to subsection 24(a)(5)(C) should be deleted.

*Judge Pohlman moved to revise the punctuation in Rule 24(a)(5) as stated above. Ms. Romano seconded the motion and it passed unanimously.*

Mr. Burke congratulated the committee on finally being done with Appellate Rule 24.

### **3. Proposed amendments to Appellate Rules expediting adoption appeals      Judge Orme**

The committee discussed the draft of proposed amendments to Appellate Rules 1, 52, 53, 54, 55, 56, 57, 58, and 59 prepared by Judge Orme. The purpose of these amendments is to expedite adoption and termination of parental rights appeals from the district courts and put them on the same footing as appeals from child welfare proceedings in the juvenile courts.

Ms. Romano suggested that Appellate Rules 53 and 54 should refer simply to the "clerk of the court" rather than to the "clerk of the trial court." Judge Orme agreed that the word "trial" is not necessary. Ms. Collins said that the reference in Rule 53 is needed because parties may get confused about where to file the notice of appeal.

Mr. Booher commented that the amendments may create a trap for the unwary because the time for appeals is being shortened from 30 days to 15 days, and parties in district court proceedings may not realize this because they will not think to look at the changes in Appellate Rule 1. Judge Orme agreed that this is a potential problem and said that there should be an educational component to inform people about this change. Ms. Romano suggested that district court judges should advise parties about the deadline when presiding over adoption proceedings. Mr. Ballard suggested including a cross-reference to Appellate Rule 1 in Appellate Rule 4 to draw attention to the change. Mr. Booher agreed, and pointed out that Rule 4 already contains a similar reference to the shorter time to file a notice of appeal in unlawful detainer actions. Mr. Sabey and Ms. Taliaferro also agreed that this change should be made.

Mr. Booher asked if parties should be able to request an extension of time to file a notice of appeal, similar to what is provided in Rule 4(e). Ms. Westby said that allowing extensions would cause delay that would defeat the purpose of the amendments, which is to expedite the appeals. Judge Orme suggested having a transition period for one year that allows parties to file notice of appeal within either 15 or 30 days. Ms. Westby suggested that it would be better for the court to grant requests for extension of time during the transition period, to avoid confusion over the jurisdictional deadline.

Ms. Collins suggested that the court's forms for ruling on these matters should be updated to include language about the changes.

Mr. Booher asked if divorce decree orders ever terminate parental rights, and if so, whether they should included. Ms. Romano said it is possible, but not likely. Ms. Collins agreed that would be very rare.

Ms. Collins suggested deleting language in the last sentence of Appellate Rule 54(a) which reads: "Within the same period, the appellant shall file a copy with the clerk of the juvenile court...." She explained that the court does not need copies of the transcripts to be filed anymore, but service on the parties is still required. Mr. Booher suggested leaving the last sentence, and just deleting the language "file a copy with the clerk of the juvenile court and." Mr. Burke and Ms. Collins agreed with this suggestion.

Mr. Ishida said that he sent the proposed amendments to the juvenile rules committee and he is waiting for their feedback. Mr. Burke invited a motion to table discussion of this matter until the next meeting to allow time to receive the feedback and to prepare a new draft incorporating the committee's proposed changes.

*Ms. Collins moved to table discussion of this issue until the next meeting. Ms. Romano seconded the motion and it passed unanimously.*

#### **4. Proposed amendments to Appellate Rule 35 (Petition for Rehearing)**

**Judge Orme  
James Ishida**

Judge Orme and Mr. Ishida introduced the proposed amendment to Appellate Rule 35, which addresses petitions for rehearing. Mr. Ishida explained that the change to Rule 35(a) is intended to incorporate the Supreme Court's Standing Order 2. The committee discussed the proposed language and agreed that it is unnecessary, and that Rule 35(a) should be left alone.

The committee discussed whether to amend Rule 35(e) to say "A petition for rehearing will normally not be granted in the absence of a request for a response." The intent of the change is to provide the court flexibility to grant a petition for rehearing without issuing a request for response in cases that involve clerical or non-substantive changes to an opinion. Judge Pohlman said that she doesn't think of correcting a clerical mistake as granting a motion for rehearing, and that she doesn't like using the word "normally." Others agreed that the word "normally" should not be used because it is vague. Ms. Westby suggested, and others agreed, that it would be best

to address this issue by considering an amendment to Appellate Rule 30 that allows the court to correct non-substantive errors in an opinion.

The committee agreed that Rule 35(k) should be amended to say: “Petitions for rehearing that are not timely presented under this rule and consecutive petitions for rehearing will not be considered.”

Mr. Booher commented that if the court ignores improper petitions for rehearing and does not provide notice that the petition will not be considered, there is risk that the petitioner will mistakenly believe that the jurisdictional deadline to file a petition for certiorari has been tolled. Ms. Collins said that the court normally sends a letter to the petitioner to give them notice when a petition for rehearing is improper. Mr. Sabey agreed that it is a good practice for the court to continue to send these letters.

*Judge Pohlman moved to make no change to Rule 35(a) and Rule 35(e), and to amend Rule 35(k) as stated above. Ms. Seppi seconded the motion and it passed unanimously.*

Mr. Burke suggested tabling discussion of the proposed change to Appellate Rule 30 until a future meeting when it is noticed on the agenda.

## **5. Report from *Logue* Subcommittee**

**Lori Seppi**

Ms. Seppi reported that the *Logue* subcommittee is expected to have a recommendation to present to the committee at the next meeting. The recommendation will most likely be to not make any changes to the rules at this time, due to concerns about creating a procedural bar for PCRA cases, and creating burdens for appellate counsel who are appointed to represent indigent defendants.

## **6. Miscellaneous Matters**

Mr. Burke thanked Ms. Decker once again for her service on the committee and reminded the committee members that they should feel free to raise any issues with the rules they want to discuss in the future.

Mr. Ishida will be leaving the committee to become the new Court Executive for the Fourth Circuit Court of Appeals in Virginia. The committee joined Judge Orme in noting Mr. Ishida’s many contributions to the committee over the past year and a half and thanking him for his service.

## **7. Adjourn**

The meeting was adjourned. The next meeting will be held on November 2, 2017.