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, January 9, 2020
12:00 pm to 1:30 pm

PRESENT		EXCUSED
Christopher Ballard	Rodney Parker	Troy Booher—
Paul C. Burke—Chair	Judge Jill Pohlman	Emeritus Member
Patrick Burt	Clark Sabey	Alan Mouritsen
Lisa Collins	Nathalie Skibine	Judge Gregory Orme
Tyler Green	Scarlet Smith	
R. Shawn Gunnarson	Mary Westby	
Michael Judd—		
Recording Secretary		
Larissa Lee—Staff		

1.   **Welcome and approval of December 2019 minutes   Paul C. Burke**

Paul C. Burke welcomed the committee and began by discussing a scheduling issue. Mr. Burke asked whether there was any preference and/or objection to moving the September 3, 2020 meeting to September 10, 2020. No objections or preferences were raised. The committee reviewed the December 2019 minutes. Paul C. Burke recommended one change, on page 3, to change "meeting notes" to "meeting agenda." No objections were noted.

Mary Westby moved to approve and adopt the minutes from the December 2019 meeting. Judge Jill Pohlman seconded the motion and it passed unanimously.

2. **Discussion and Action:** **Clark Sabey**
Stays and quantifying security (Rule 8)

Mr. Sabey discussed recommended changes to Rule 8, which arise from an order from the Utah Supreme Court dated October 18, 2019, directing the committee to "consider revisions to Rule 8 that will provide more useful guidance . . . in determining whether to grant a stay in circumstances where there is no reasonable means of quantifying the security referenced by Rule 62 of the Rules of Civil Procedure in monetary or other terms." The committee discussed revisions to eliminate redundancies and to make more clear Rule 8's relationship to Rule 62 of the Rules of Civil Procedure.

The committee discussed adding an advisory committee note explaining the intent of the amendment, in light of the Utah Supreme Court's October 2019 order. After lengthy discussion regarding how best to fulfill the Utah Supreme Court's directive, the committee considered the idea of submitting to the Court a draft rule, along with questions regarding the Court's intent and a proposal that amendments made by the appellate rules committee be coordinated with potential parallel amendments made by the civil rules committee.

Given the complexity of the issue and the aspects of the proposed amendment that remain unresolved, discussion of Rule 8 was tabled until the next meeting.

3. **Discussion and Action:** **Clark Sabey**
Petitions for rehearing/to modify (Rule 35A/35B)

Ms. Westby recommended a change to the proposed amendment to ensure that the rule also covers "opinion orders," which have been used by the appellate courts with increasing frequency. The committee discussed a proposed change to the title of Rule 35B that would best identify the nature of the relief sought under the rule. Judge Pohlman noted that corollary changes will need to be made to Rules 36 and 48, as the Rule 35 changes will affect remittitur and other procedural matters. The committee discussed the length of time afforded to Rule 35A/35B filings and declined to recommend any extension.

Given the complexity of the issue and the aspects of the proposed amendment that remain unresolved, discussion of Rules 35A/35B was tabled until the next meeting.

4.   **Discussion and Action:**   **Clark Sabey**
          Requests for damages (Rule 33)

The committee made revisions to the draft of Rule 33(c)(3) prepared by Mr. Sabey. With those revisions made, the amendment to Rule 33 was deemed ready for a vote.

Tyler Green moved to approve and adopt the amendment to Rule 33. Mary Westby seconded the motion and it passed unanimously.

5.   **Discussion:**   **Larissa Lee**
          Reviewing public comments on Rules 5 and 10

Discussion on public comments to Rules 5 and 10 was deferred until the next meeting.

6.   **Discussion:**   **Paul C. Burke**
          Other Business

None.

7.   **Adjourn**

Mr. Burke adjourned the meeting. The committee is scheduled to meet again on February 6, 2020.