



Minutes

Supreme Court's Advisory Committee on the Utah Rules of Appellate Procedure

450 South State Street
Salt Lake City, Utah 84114

WebEx
Thursday, April 2, 2020
12:00 pm to 1:30 pm

PRESENT

Christopher Ballard
Troy Booher—
Emeritus Member
Paul C. Burke—Chair
Lisa Collins
Tyler Green
R. Shawn Gunnarson
Michael Judd—
Recording Secretary

Larissa Lee—Staff
Alan Mouritsen
Judge Gregory Orme
Rodney Parker
Judge Jill Pohlman
Clark Sabey
Nathalie Skibine
Scarlet Smith

EXCUSED

Patrick Burt
Mary Westby

1. Welcome and approval of March 2020 minutes Paul C. Burke

Paul C. Burke welcomed the committee, and the committee discussed their review of the March 2020 minutes.

Shawn Gunnarson moved to approve and adopt the minutes from the March 2020 meeting. Lisa Collins seconded the motion and it passed without objection, by unanimous consent.

2. Discussion: Legislative Update (if any)

**Paul C. Burke
Judge Jill Pohlman
Christopher Ballard**

The Legislative Outreach Subcommittee reported that there were no updates related to legislative outreach.

**3. Discussion and Action:
Rule 8**

Clark Sabey

Clark Sabey met with Troy Booher and Tyler Green after last month's meeting to discuss how Rule 8 would overlap with other rules, including Rules 65 and 62. Mr. Sabey has proposed a change that would "carve out" parts of the proposed Rule 8 (in paragraph (b)(3)) to adjust for those rules. Mr. Booher stated that the proposed changes addressed his concerns.

Judge Orme observed that the committee is likely on the right track, but that further analysis is likely needed before specific rule language is proposed.

Judge Orme moved to table the proposed amendment, with the intent to resume discussion next month after further analysis, and Tyler Green seconded. The motion passed unanimously without objection.

**4. Discussion and Action:
Rule 35 (and related Rules 36 & 48)**

**Larissa Lee
Clark Sabey**

The committee discussed the utility of a length limitation for nonsubstantive or clerical errors, and Rodney Parker and Lisa Collins both suggested that such a limitation was unnecessary, given the nature of the rule and prior filings by practitioners.

Lisa Collins moved to amend paragraph (b) to remove the length limitation and Rodney Parker seconded that motion. The motion passed unanimously without objection.

The committee discussed whether a specific time limitation would prove useful. Judge Orme explained that the court prefers prompt action on such filings because quick attention to clerical errors prevents those errors from being included in printed reporters. The committee also discussed the

courts' discretion to make such corrections without prompting and whether or not notice to the parties in advance of such corrections is needed.

Mr. Booher stated that a concern he previously raised still remains—that the opposing party may disagree about whether the target of a proposed correction is, in fact, a “clerical error” or something more substantive. The committee worked together on new language that would allow an appellate court to construe a letter filed under paragraph (b) as a petition for rehearing. Shawn Gunnarson recommended several changes to the language of the proposed rule to make the rule clearer and more consistent, and the committee agreed with each of those changes. Christopher Ballard recommended retention or revision of two phrases set for removal. The committee agreed with each of those changes.

Mr. Parker moved to approve the amendments to Rule 35 as indicated on the screen at the committee meeting. Judge Orme seconded the motion and it passed by unanimous consent.

The committee considered the corresponding changes to Rule 36. Mr. Booher mused about frequent confusion among district court judges about what—if anything—a district court can do with a case while it is on appeal. Ms. Collins and Judge Orme suggested that this may be an issue of “inter-judicial education” more than an issue for this committee to take up through the rulemaking process.

Judge Pohlman moved to approve the amendments to Rule 36 as indicated on the screen at the committee meeting. Mr. Parker seconded the motion and it passed by unanimous consent.

Judge Pohlman moved to approve an amendment to Rule 35 as indicated on the screen at the committee meeting, which used the word “rejected” rather than refused. That motion was seconded and it passed by unanimous consent.

The committee turned to accompanying changes to Rule 48, which are meant to modernize the language. The committee discussed whether an untimely petition should be deemed “refused” (as the rule now reads) or “rejected.” The committee decided to change that language to “rejected.” The committee worked together to sharpen the language of paragraph (e), which provides the framework for requesting extensions of time. The committee suggested breaking this into three parts: stipulated extension requests within 30 days, nonstipulated requests within 30 days, and requests made 30–60 days, to be reviewed at the next meeting.

The committee determined that the appropriate approach is to table the proposed amendment and update paragraph (e).

5. Discussion and Action: Larissa Lee
Rule 3

Ms. Lee introduced changes to Rule 3 that address the payment of fees by a cross-appellant, as well as other clean-up to the rule. Mr. Parker expressed concern about taking up a number of changes within the limited amount of time remaining.

The committee agreed to table the proposed amendment, with the intent to resume discussion next month after further analysis. The motion passed unanimously without objection.

6. Discussion: Paul C. Burke
Other Business

Mr. Burke passed along to the committee gratitude expressed by the Utah Supreme Court for the attention given by the committee to revisions to the advisory committee notes.

7. Adjourn

Mr. Burke adjourned the meeting. The committee is scheduled to meet again on May 7, 2020.