

# Minutes

## Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

450 South State Street  
Salt Lake City, Utah 84114

WebEx  
Thursday, May 7, 2020  
12:00 pm to 1:30 pm

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### PRESENT

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

### EXCUSED

Patrick Burt  
Tyler Green  
Scarlet Smith

**1. Welcome and approval of April 2, 2020 minutes** **Paul C. Burke**

Paul C. Burke welcomed the committee, and the committee discussed their review of the April 2020 minutes. No comments or objections were noted.

*Judge Gregory Orme moved to approve and adopt the minutes from the April 2, 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. **Action:**

**Clark Sabey**

**Rule 8 – Stay or injunction pending appeal**

Clark Sabey introduced proposed language related to Rule 8. Troy Booher offered recommendations regarding restructuring provisions and clarifying internal references and the committee discussed that restructuring at length. Shawn Gunnarson raised a separate restructuring question related to how a provision related to criminal stays is “broken out” in the rule. The committee worked together to make significant organizational changes to clarify the proposed amendment.

With Mr. Booher leading out, the committee also worked to develop language that addresses the problems and delays associated with successive requests for the same relief aimed first at the trial court and then the appellate court.

*Rodney Parker moved to table the proposed amendments to give the committee additional time to consider the rule in full before it’s put before the committee for a vote. Christopher Ballard seconded the motion and it passed without objection by unanimous consent.*

4. **Action:**

**Judge Jill Pohlman  
Clark Sabey  
Larissa Lee**

**Rule 48 – Time for petitioning**

Larissa Lee introduced proposed language for Rule 48 and explained that she, Judge Jill Pohlman, Clark Sabey, and Lisa Collins had met offline to discuss a format for this amendment. The committee discussed whether a request for extension that comes *after* the deadline should require a showing of *either* good cause or excusable neglect or *both* good cause and excusable neglect. Mr. Booher mentioned that Rule 4 contains similar language and urged the committee to consider those parallel stretches of language in tandem.

The committee clarified the proposed language to ensure it is consistent with both recent amendments made to other rules and with existing practices.

*After several final revisions, Mr. Sabey moved to approve the amendments to Rule 48 as it appeared on the screen at the committee meeting. Judge Pohlman seconded the motion and it passed without objection by unanimous consent.*

**5. Action: Larissa Lee**  
**Rule 3 – Appeal as of right: how taken**

Discussion of Rule 3 was reserved for next month’s meeting.

**6. Discussion & Action: Larissa Lee**  
**Rule 29 – Oral argument**

The proposed changes allow the appellate courts to conduct oral arguments by “alternative means.” Mr. Parker expressed concern that parties may file future motions to utilize this procedure where the procedure may not be necessary or advisable. Lisa Collins and Judge Gregory Orme suggested that oral argument by “alternative means” may actually be necessary or advisable in a variety of circumstances and that the practice of holding oral arguments by videoconference may continue (at least in certain cases) even after current concerns regarding the COVID-19 pandemic dissipate.

*Mr. Parker moved to approve the amendments to Rule 29 as it appeared on the screen at the committee meeting. Mary Westby seconded the motion and it passed without objection by unanimous consent.*

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

None.

**8. Adjourn**

*Mr. Burke adjourned the meeting. The committee is scheduled to meet again on June 4, 2020.*