



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

Via WebEx Videoconference
Thursday, November 4, 2021
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Lisa Collins
Carol Funk
Michael Judd—
Recording Secretary
Judge Jill Pohlman
Judge Gregory Orme

Stanford Purser
Michelle Quist
Clark Sabey
Nathalie Skibine
Scarlet Smith
Nick Stiles—Staff
Christopher Williams—
Guest
Mary Westby

EXCUSED

Patrick Burt
Tyler Green

1. Action: **Chris Ballard**
Approval of October 2021 Minutes

The committee reviewed the October 2021 minutes. Chris Ballard noted a clean-up matter related to the wording of Item 7. That change was made.

Mary Westby moved to approve the October 2021 minutes as amended. Michelle Quist seconded that motion, and it passed without objection by unanimous consent.

2.

Action:

Nick Stiles

UCJA 4-206— Approved and Pending Versions

Nick Stiles began the committee’s discussion of UCJA 4-206 with a status update. A draft of that rule was scheduled to go before the policy and planning committee later the same day of the committee’s November meeting. Mr. Stiles noted that this would likely represent the start of the process with policy and planning, and a second draft may therefore be needed. Mr. Stiles had circulated an initial draft, and Lisa Collins and Mary Westby proposed and put together an alternate. After discussion, the committee determined that the best approach is for Mr. Stiles to present the second draft to the policy and planning committee. Troy Booher noted that the second draft does not seem to contemplate a time period to dispose of exhibits in a civil case when an appeal *is* taken, creating a possible gap when there is no eligibility for post-conviction appeal.

After that discussion, Judge Orme moved that the committee authorize Mr. Stiles to present the second draft to the policy and planning committee. Mary Westby seconded that motion, and it passed without objection by unanimous consent.

3.

Action:

Stan Purser

Rule 25

Again, the committee began its discussion of Rule 25 with a status update. When the committee last left those amendments, it had nearly finalized them, except for a question related to timing, which was found in section 25(g). In a discussion led by Stan Purser, the committee considered a proposal to break that subsection into two parts, one for when no motion is needed, second for when a motion has been filed. Judge Jill Pohlman offered a suggestion regarding notice timing in section 25(a). Chris Ballard recommended a change regarding “submission by the Office of the Attorney General. After working through those changes, the committee discussed *pro se* practice and details regarding stipulations by parties. The committee’s presumption, given the scope of the changes, is that the rule will be re-circulated for comment.

Following that discussion, Judge Pohlman moved to approve rule as amended and as shown on screen. Ms. Westby seconded that motion, and it passed without objection

by unanimous consent.

4. Discussion:

Clark Sabey

Rules 19 and 20—Update

Clark Sabey reminded the committee of the problem at issue: Rule 20 makes no mention of Post-Conviction Remedies Act. The Supreme Court was interested in bringing that to the committee’s attention, and suggested that it would be appropriate to mention the PCRA. The committee discussed whether PCRA filing issues can be addressed via a rule change, then identified what may be needed: aew opening section that says, “If you’re trying to seek post-conviction relief, you need to do that in district court. If you file here, it will be referred to district court.” The committee considered a further question: Is Rule 20 expressly addressed in correspondence from the appellate courts? And might it make sense to eliminate Rule 20 altogether? The committee noted another open question regarding the potential existence of some habeas power outside Rule 65 and PCRA.

After that discussion, Mr. Sabey moved to refer the proposed amendments to Rule 20 (and/or Rule 19) to a sub-committee consisting of Mr. Sabey, Ms. Westby, and Mr. Ballard. Ms. Westby seconded, and that motion passed without objection by unanimous consent.

**5. Action:
Rule 3**

Lisa Collins

Ms. Collins led the committee in a discussion of proposed changes to Rule 3. Those changes add language to deal with a problem regarding notices of appeal and vexatious litigants. Mr. Sabey noted that Rule 83 of the Utah Rules of Civil Procedure is very global and doesn’t exclude notices of appeal. As a result, the committee noted, the best option may be to have Civil Rules committee look at this problem, as well.

Given the committee’s ongoing discussions about how best to formulate and coordinate rule changes to address this problem, Lisa Collins moved to table the proposed amendments until the committee meets again. Judge Pohlman seconded that motion. The committee intends to present this issue to civil rules committee, stressing importance of the practice of not imposing a pre-filing requirement with respect to notices of appeal.

Chris Ballard

**6. Discussion:
Old/New Business**

Mr. Ballard identified one potential matter of new business: a mechanism to move to intervene in an appeal. Mr. Ballard offered to draft a proposed amendment for the committee's consideration.

7. Adjourn

After Ms. Westby moved to adjourn and Ms. Quist seconded, the committee adjourned. The committee's next meeting will take place on January 6, 2022.