



## Agenda

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

*Chris Ballard, Chair*  
*Nathalie Skibine, Vice Chair*

**Location:** Meeting held through Webex and in person at:  
Matheson Courthouse, Council Room, N. 301  
450 S. State St.  
Salt Lake City, Utah 84111  
<https://utcourts.webex.com/utcourts/j.php?MTID=m538581f9082cdad50ff1e74adef124f9>

**Date:** November 2, 2023

**Time:** 12:00 to 1:30 p.m.

<b>Action:</b> Welcome and approval of October 2023 Minutes	Tab 1	Nathalie Skibine, Vice Chair
<b>Action:</b> Rule 52	Tab 2	Nathalie Skibine
<b>Action:</b> Rule 11	Tab 3	Nathalie Skibine
<b>Action:</b> Rule 22	Tab 4	Tera Peterson
<b>Action:</b> Rule 10	Tab 5	Mary Westby
<b>Update:</b> Bail Orders	—	Lisa Collins
<b>Discussion:</b> Old/new business		Nathalie Skibine, Vice Chair

**Committee Webpage:** <https://legacy.utcourts.gov/rules/urap.php>

#### **2023 Meeting schedule:**

December 7, 2023	March 7, 2024	June 6, 2024	October 3, 2024
January 4, 2024	April 4, 2024	August 1, 2024	November 7, 2024
February 1, 2024	May 2, 2024	September 5, 2024	December 5, 2024

# TAB 1



## 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

In Person and by WebEx Videoconference  
Thursday, October 5, 2023  
12:00 pm to 1:30 pm

#### PRESENT

Emily Adams  
Christopher Ballard—Chair  
Troy Booher—  
Emeritus Member  
Eric Weeks—Guest  
Judge Michele  
Christiansen Forster  
Lisa Collins  
Carol Funk  
Amber Griffith—Staff  
Tera Peterson

Michael Judd—Recording  
Secretary  
Alexandra Mareschal—  
Guest  
Debra Nelson  
Stanford Purser  
Clark Sabey  
Nick Stiles—Staff  
Nathalie Skibine—  
Vice Chair  
Scarlet Smith

#### EXCUSED

Judge Gregory Orme  
Mary Westby  
Michelle Quist

**1. Action:**

**Chris Ballard**

**Approval of September 2023 Minutes**

The committee reviewed the September 2023 minutes and noted no changes.

*After that review, Nathalie Skibine moved to approve the September 2023 minutes. Lisa Collins seconded that motion, and it passed without objection by unanimous consent.*

2. **Action:** **Nathalie Skibine**  
**Rule 52(c)**

In a recent case styled *A.S. v. State*, the Utah Supreme Court encouraged the committee to “consider[] a new rule that would ‘reinstate the time for appeal in child welfare cases where the parent’s right to effective counsel is implicated.’” See 2023 UT 11, ¶ 43 n.15. The committee noted concerns about a hard deadline and spent time exploring whether that path to reinstatement should be subject to different rules, depending on the nature of the child-welfare proceeding, as well as how long a period to provide for parents under these circumstances.

*Following that discussion, Judge Michele Christiansen Forster moved to table to allow for further discussion, including with Mary Westby and with others with specialized insight. Stan Purser seconded that motion, and it passed without objection by unanimous consent.*

3. **Discussion:** **Lisa Collins**  
**Vexatious Litigants** **Judge Christiansen**  
**Forster**

The appellate courts have expressed interest in a rule related to vexatious litigants. The committee discussed the existing framework for dealing with such litigants, and it reviewed a memo summarizing approaches taken in other states. The committee understands that, of the options presented, the approach taken in the Michigan rules holds the most appeal.

*Following the committee’s discussion, the committee resolved to address this issue again at next month’s meeting and anticipates that draft language should be available for consideration by that point.*

4. **Action:** **Nathalie Skibine**  
***State v. Chadwick*/Utah Rule of Evidence 506**

The committee continued its discussion, in light of issues arising in *State v. Chadwick*, of how sealed records are treated when part of the appellate record. The committee also discussed the practical use of an advisory note that would

help direct parties regarding treatment of sealed materials. That note may most sensibly appear alongside Appellate Rule 11.

*Following the committee's discussion, Ms. Skibine volunteered to prepare a draft amendment to Rule 11, and the committee will address this issue again at next month's meeting.*

**5. Discussion: Chris Ballard  
Old/New Business**

Tera Peterson brought to the committee's attention a new practice related to extension requests and completed-by dates. Specifically, the existing Appellate Rule 22(b)(4)(D) provides that a motion for enlargement of time "shall state the date on which the event [at issue] will be completed." The committee may consider a potential clarification to that rule to conform the rule to longstanding practice, and Mr. Purser and Ms. Peterson will take the lead in drafting proposed language.

**6. Adjourn**

*Following the business described above, Carol Funk moved to adjourn, and Debra Nelson seconded. The committee adjourned. The committee's next meeting will take place on November 2, 2023.*

# TAB 2

1 **Rule 52. Child welfare appeals.**

2 (a) **Time for appeal.** A notice of appeal from an order in a child welfare proceeding, as  
3 defined in Rule [1\(f\)](#), must be filed within 15 days of the entry of the order appealed from.  
4 If the juvenile court enters an order on a Saturday, Sunday, or legal holiday, the date of  
5 entry will be deemed to be the first day following the juvenile court's entry that is not a  
6 Saturday, Sunday, or legal holiday.

7 (b) **Time for appeal extended by certain motions.**

8 (1) If a party timely files in the trial court any of the following, the time for all parties  
9 to appeal from the judgment runs from the entry of the dispositive order:

10 (A) A motion for judgment under Rule [50\(b\)](#) of the Utah Rules of Civil Procedure;

11 (B) A motion to amend or make additional findings of fact, whether or not an  
12 alteration of the judgment would be required if the motion is granted, under Rule  
13 [52\(b\)](#) of the Utah Rules of Civil Procedure;

14 (C) A motion to alter or amend the judgment under Rule [59](#) of the Utah Rules of  
15 Civil Procedure; or

16 (D) A motion for a new trial under Rule [59](#) of the Utah Rules of Civil Procedure.

17 (2) A notice of appeal filed after announcement or entry of judgment, but before entry  
18 of an order disposing of any motion listed in paragraph (b), will be treated as filed  
19 after entry of the order and on the day thereof, except that the notice of appeal is  
20 effective to appeal only from the underlying judgment. To appeal from a final order  
21 disposing of any motion listed in paragraph (b)(1), a party must file a notice of appeal  
22 or an amended notice of appeal within the prescribed time measured from the entry  
23 of the order.

24 (c) ~~Time for~~ [Additional or](#) **cross-appeal.** If a timely notice of appeal is filed by a party,  
25 any other party may file a notice of appeal within 5 days after the first notice of appeal

26 was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of this  
27 rule, whichever period last expires.

28 (d) Motion to reinstate period for filing a direct appeal in child welfare appeals.

29 (1) The juvenile court ~~must~~ will reinstate the 15-day period for filing a direct appeal  
30 in a child welfare case if a parent with a right to effective assistance of counsel  
31 demonstrates by a preponderance of evidence that the parent was deprived of the  
32 right to appeal through no fault of the parent.

33 (2) The motion must be filed within ~~XX~~45 of the entry of the order appealed from.

34 (3) If the parent is not represented by counsel and has the right to effective  
35 assistance of counsel, the juvenile court will appoint counsel.

36 (4) The motion must be served on the attorney general and the guardian ad litem.  
37 The attorney general, the guardian ad litem, or both may file a response to the  
38 motion within 14~~28~~ days after being served.

39 (5) If the motion to reinstate the time to appeal is opposed, the juvenile court will  
40 set a hearing at which the parties may present evidence.

41 (6) If the juvenile court enters an order reinstating the time for filing a direct  
42 appeal, the parent's notice of appeal must be filed with the clerk of the juvenile  
43 court within 15 days after the date the order is entered.

44 (e) **Appeals of interlocutory orders.** Appeals from interlocutory orders are governed by  
45 Rule 5.

46 *Effective May 1, 2023*

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**TAB 3**

1 **Rule 11. The record on appeal.**

2 (a) **Composition of the record on appeal.** The record on appeal consists of the documents  
3 and exhibits filed in or considered by the trial court, including the presentence report in  
4 criminal matters, and the transcript of proceedings, if any.

5 (b) **Preparing, paginating, and indexing the record.**

6 (1) Preparing the record. On the appellate court's request, the trial court clerk will  
7 prepare the record in the following order:

8 (A) all original documents in chronological order;

9 (B) all published depositions in chronological order;

10 (C) all transcripts prepared for appeal in chronological order;

11 (D) a list of all exhibits offered in the proceeding [and the exhibits](#); and

12 (E) in criminal cases, the presentence investigation report.

13 (2) Pagination.

14 (A) Using Bates numbering, the entire record must be paginated.

15 (B) If the appellate court requests a supplemental record, the same procedures as  
16 in (b)(2)(A) apply, continuing Bates numbering from the last page number of the  
17 original record.

18 (3) Index. A chronological index of the record must accompany the record on appeal.  
19 The index must identify the date of filing and starting page of the document,  
20 deposition, or transcript.

21 (4) Examining the record. Appellate court clerks will establish rules and procedures  
22 for parties to check out the record after pagination.

23 (c) **The transcript of proceedings; duty of appellant to order; notice to appellee if partial**  
24 **transcript is ordered.**

25 (1) Request for transcript; time for filing. Within 14 days after filing the notice of  
26 appeal, or within 30 days of the notice of appeal where an indigent appellant has a  
27 statutory or constitutional right to counsel, the appellant must order the transcript(s)  
28 online at [www.utcourts.gov](http://www.utcourts.gov), specifying the entire proceeding or parts of the  
29 proceeding to be transcribed that are not already on file. The appellant must serve on  
30 the appellee a designation of those parts of the proceeding to be transcribed. If no such  
31 parts of the proceedings are to be requested, within the same period the appellant  
32 must file a certificate to that effect with the appellate court clerk and serve a copy on  
33 the appellee.

34 (2) Transcript required of all evidence regarding challenged finding or conclusion. If  
35 the appellant intends to argue on appeal that a finding or conclusion is unsupported  
36 by or is contrary to the evidence, the appellant must include in the record a transcript  
37 of all evidence relevant to such finding or conclusion. Neither the court nor the  
38 appellee is obligated to correct appellant's deficiencies in providing the relevant  
39 portions of the transcript.

40 (3) Statement of issues; cross-designation by appellee. If the appellant does not order  
41 the entire transcript, the appellee may, within 14 days after the appellant serves the  
42 designation or certificate described in paragraph (c)(1), order the transcript(s) in  
43 accordance with (c)(1), and serve on the appellant a designation of additional parts to  
44 be included.

45 (d) **Agreed statement as the record on appeal.** In lieu of the record on appeal as defined  
46 in paragraph (a) of this rule, the parties may prepare and sign a statement of the case,  
47 showing how the issues presented by the appeal arose and were decided in the trial court  
48 and setting forth only so many of the facts averred and proved or sought to be proved as  
49 are essential to a decision of the issues presented. If the court deems the statement  
50 accurate, it, together with such additions as the trial court may consider necessary fully  
51 to present the issues raised by the appeal, will be approved by the trial court. The trial  
52 court clerk will transmit the statement to the appellate court clerk within the time

53 prescribed by Rule [12\(b\)\(2\)](#). The trial court clerk will transmit the record to the appellate  
54 court clerk on the trial court's approval of the statement.

55 **(e) Statement of evidence or proceedings when no report was made or when transcript**  
56 **is unavailable.** If no report of the evidence or proceedings at a hearing or trial was made,  
57 or if a transcript is unavailable, or if the appellant is impecunious and unable to afford a  
58 transcript in a civil case, the appellant may prepare a statement of the evidence or  
59 proceedings from the best available means, including recollection. The statement must be  
60 served on the appellee, who may serve objections or propose amendments within 14 days  
61 after service. The statement and any objections or proposed amendments must be  
62 submitted to the trial court for resolution, and the trial court clerk will conform the record  
63 to the trial court's resolution.

64 **(f) Supplementing or modifying the record.**

65 (1) If any dispute arises as to whether the record is complete and accurate, the dispute  
66 may be submitted to and resolved by the trial court. The trial court will ensure that  
67 the record\_ accurately reflects the proceedings before the trial court, including by  
68 entering any necessary findings to resolve the dispute.

69 (2) If anything material to either party is omitted from or misstated in the record by  
70 error of the trial court or court personnel, by accident, or because the appellant did  
71 not order a transcript of proceedings that the appellee needs to respond to issues  
72 raised in the appellant's brief, the omission or misstatement may be corrected and a  
73 supplemental record may be created and forwarded:

74 (A) on stipulation of the parties;

75 (B) by the trial court before or after the record has been forwarded; or

76 (C) by the appellate court on a motion from a party. The motion must state the  
77 position of every other party on the requested supplement or modification or why  
78 the movant was unable to learn a party's position.

79 (3) The moving party, or the court if it is acting on its own initiative, must serve on  
80 the parties a statement of the proposed changes. Within 14 days after service, any  
81 party may serve objections to the proposed changes.

82 (g) Accessing sealed records. A record sealed in the district court remains sealed on  
83 appeal. A party may file a motion or petition to access the sealed record in accordance  
84 with Rule 4-202.04 of the Utah Code of Judicial Administration.

85

# TAB 4

**Rule 22. Computation and enlargement of time.**

(a) **Computation of time.** In computing any period of time prescribed by these rules, by court order, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run is not included. If the designated period of time begins to run from the date of entry of an order or judgment and the order or judgment is entered on a Saturday, Sunday, or legal holiday, the date of entry will be deemed to be the first day following the entry that is not a Saturday, Sunday, or legal holiday. The last day of the period must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed, without reference to any additional time under paragraph (d), is less than 11 days, intermediate Saturdays, Sundays, and legal holidays must be excluded in the computation.

(1) “Legal holiday” is any holiday that is recognized and observed by the State of Utah, as specified here:

<https://www.utcourts.gov/en/about/miscellaneous/law-library/holidays.html>

**(b) Enlargement of time.**

(1) Motions for an enlargement of time for filing briefs beyond the time permitted by stipulation of the parties under Rule [26](#) are not favored.

(2) The court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of time. This rule does not authorize the court to extend the jurisdictional deadlines specified by any of the rules listed in Rule [2](#). For the purpose of this rule, good cause includes, but is not limited to, the complexity of the case on appeal, engagement in other litigation, and extreme hardship to counsel.

(3) A motion for an enlargement of time shall be filed prior to the expiration of the time for which the enlargement is sought.

- (4) A motion for enlargement of time shall state:
- (A) with particularity the good cause for granting the motion;
  - (B) whether the movant has previously been granted an enlargement of time and, if so, the number and duration of such enlargements;
  - (C) when the time will expire for doing the act for which the enlargement of time is sought;
  - (D) the date on which the act for which the enlargement of time is sought will be ~~completed~~ due if the motion for enlargement of time is granted; and
  - (E) except as to a motion under paragraph (c), the position of every other party on the requested extension or why the movant was unable to learn a party's position.
- (5) If the good cause relied upon is engagement in other litigation, the motion must:
- (A) identify such litigation by caption, number and court;
  - (B) describe the action of the court in the other litigation on a motion for continuance;
  - (C) state the reasons why the other litigation should take precedence over the subject appeal;
  - (D) state the reasons why associated counsel cannot prepare the brief for timely filing or relieve the movant in the other litigation; and
  - (E) identify any other relevant circumstances.
- (6) If the good cause relied upon is the complexity of the appeal, the movant must state the reasons why the appeal is so complex that an adequate brief cannot reasonably be prepared by the due date.
- (7) If the good cause relied upon is extreme hardship to counsel, the movant must state in detail the nature of the hardship.



(8) All facts supporting good cause must be stated with specificity. Generalities, such as “the motion is not for the purpose of delay” or “counsel is engaged in other litigation,” are insufficient.

(c) **Ex parte motion.** Except as to enlargements of time for filing and service of briefs under Rule [26](#), a party may file one ex parte motion for enlargement of time not to exceed 14 days if no enlargement of time has been previously granted, if the time has not already expired for doing the act for which the enlargement is sought, and if the motion otherwise complies with the requirements and limitations of paragraph (b) of this rule.

(d) **Additional time after service by mail.** Whenever a party is required or permitted to do an act within a prescribed period after service of a document and the document is served by mail, 3 days shall be added to the prescribed period.

Effective ~~May 1, 2023~~

#### **Advisory Committee Note**

A motion to enlarge time must be filed prior to the expiration of the time sought to be enlarged. A specific date on which the act will be completed must be provided. The court may grant an extension of time after the original deadline has expired, but the motion to enlarge the time must be filed prior to the deadline.

Both appellate courts place appeals in the oral argument queue in accordance with the priority of the case and after principal briefs have been filed. Delays in the completion of briefing will likely delay the date of oral argument.

*Adopted 2020*

# TAB 5

1 **Rule 10. Procedures for summary disposition or simplified appeal process.**

2 (a) Time for filing; grounds for motion for summary disposition.

3 ~~(a)~~(1) A party may move at any time to dismiss the appeal or the petition for review  
4 on the basis that the appellate court lacks jurisdiction. Any response to such motion  
5 must be filed within 14 days from the date of service.

6 ~~(a)~~(2) After a docketing statement has been filed, the court, on its own motion, and on  
7 such notice as it directs, may dismiss an appeal or petition for review if the court lacks  
8 jurisdiction; or may summarily affirm the judgment or order that is the subject of  
9 review, if it plainly appears that no substantial question is presented; or may  
10 summarily reverse in cases of manifest error.

11 ~~(a)~~(3) If the effective date of a notice of appeal is tolled under the provisions of rule  
12 4(b) or 4(c), the court, on its own motion, and on such notice as it directs, may dismiss  
13 the appeal for failure to prosecute if

14 (A) any motion within the scope of rule 4(b) has not been submitted to the district  
15 court for decision within 150 days after the motion was filed; or

16 (B) a proposed final judgment has not been submitted to the court within 150 days  
17 after the announcement of judgment under rule 4(c).

18 A dismissal for failure to prosecute under this rule will be without prejudice to the  
19 filing of a timely notice of appeal after the entry of a dispositive order or final  
20 judgment.

21 ~~(a)~~(4) The time for taking other steps in the appellate process is suspended pending  
22 disposition of a motion for summary affirmance, reversal, or dismissal.

23 ~~(a)~~(5) As to any issue raised by a motion for summary disposition, the court may  
24 defer its ruling until plenary presentation and consideration of the case.

25 (b) Simplified appeal process; eligible appeals.

26 ~~(b)~~(1) For appeals involving the application of well-settled law to a set of facts, the  
27 court may designate an appeal for a simplified appeal process. An appellant in a case  
28 pending before the Court of Appeals may move for a simplified appeal process under  
29 this subsection within 10 days after the docketing statement is filed or the case is  
30 transferred to the court of appeals, whichever is later.

31 ~~(b)~~(2) Appeals eligible for a simplified process are those involving the application of  
32 well-settled law to a set of facts, which may include, but are not limited to, cases in  
33 the following categories:

34 ~~(b)~~(2)(A) appeals challenging only the sentence in a criminal case;

35 ~~(b)~~(2)(B) appeals from the revocation of probation or parole;

36 ~~(b)~~(2)(C) appeals from a judgment in an unlawful detainer action; and

37 ~~(b)~~(2)(D) petitions for review of a decision of the Department of Workforce  
38 Services Workforce Appeals Board or the Labor Commission.

39 (c) Memoranda in lieu of briefs.

40 ~~(e)~~(1) In appeals designated under subsection (b), the parties must file memoranda in  
41 support of their positions instead of briefs. The schedule for preparing memoranda  
42 will be set by appellate court order.

43 ~~(e)~~(2) A party's principal memorandum must include:

44 ~~(e)~~(2)(A) an introduction describing the nature and context of the dispute,  
45 including the disposition in the court or agency whose judgment or order is under  
46 review;

47 ~~(e)~~(2)(B) a statement of the issues for review, including a citation to the record  
48 showing that the issue was preserved for review or a statement of grounds for  
49 seeking review of an issue not preserved;

50 ~~(e)(2)~~(C) an argument, explaining with reasoned analysis supported by citations  
51 to legal authority and the record, why the party should prevail on appeal; no  
52 separate statement of facts is required, but facts asserted in the argument must be  
53 supported by citations to the record;

54 ~~(e)(2)~~(D) a claim for attorney fees, if any, including the legal basis for an award;  
55 and

56 ~~(e)(2)~~(E) a certificate of compliance, certifying that the memorandum complies  
57 with rule 21 regarding public and private documents.

58 ~~(e)(3)~~ An appellant or petitioner may file a reply memorandum limited to responding  
59 to the facts and arguments raised in appellee's or respondent's principal  
60 memorandum. The reply memorandum must include an argument and a certificate  
61 of compliance with rule 21 regarding public and private documents.

62 ~~(e)(4)~~ Principal memoranda must be no more than 7,000 words or 20 pages if a word  
63 count is not provided. A reply memorandum must be no more than 3,500 words or 10  
64 pages if a word count is not provided.

65 (d) Extension of time. By stipulation filed with the court prior to the expiration of time in  
66 which a memorandum is due, the parties may extend the time for filing by no more than  
67 21 days. Any additional motions for an extension of time will be governed by rule 22(b).

68 ~~Effective November 1, 2022~~