



Draft 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, April 4, 2024
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard – Chair
Troy Booher
Lisa Collins
Debra Nelson
Judge Gregory Orme
Tera Peterson
Stanford Purser
Nathalie Skibine – Vice Chair
Scarlet Smith
Mary Westby

EXCUSED

Judge Michele Christiansen Forster
Carol Funk
Michelle Quist
Clark Sabey

STAFF

Amber Griffith
Nick Stiles
Michael Judd – Recording Secretary

GUESTS

Alexa Mareschal
Adam Trupp
Margaret Lindsay
Heath Haacke
Martha Pierce
John Peterson
Deborah Wood
Sonia Sweeney
Annie ValDez

1. **Action:** **Chris Ballard**
Approval of March 2024 Minutes

Chris Ballard welcomed everyone to the meeting. As multiple guests were attending, Mr. Ballard asked everyone to introduce themselves. Following the

introductions, the Committee reviewed the minutes from the March 7, 2024 meeting.

No corrections were suggested. Nathalie Skibine moved to approve March's minutes. Stan Purser seconded that motion, and the minutes were unanimously approved.

2. Action: Chris Ballard
Final Approval of Rules 10 and 57

No public comments were received on the proposed amendments to Rules 10 and 57. Mr. Ballard asked the Committee if they had any concerns prior to voting.

No concerns were voiced. Mary Westby moved to approve the proposed amendments as final. Lisa Collins seconded the motion, and it was approved without objection.

3. Discussion: Debra Nelson
Amendments to Rules Governing Child Welfare Appeals

Debra Nelson introduced the proposal which was submitted to the Committee by the Indigent Appellate Defense Division (IADD). Alexa Mareschal from IADD then provided a brief history of the proposal. She explained that after an original proposal was presented to the Committee in late 2022 and early 2023, various stakeholder meetings were held, and the proposal was revised based on feedback received.

The most significant provisions in the current revised proposal would eliminate the petition process and allow full briefing for all child welfare appeals. These changes are intended to give all appellants the opportunity to file a merits brief and to increase the number of opinions issued in child welfare appeals. Acknowledging that the original intent of the rules was to have these types of appeals resolved quickly, the proposed amendments also make a reply brief optional. Within seven days of the filing of appellee's brief, the appellant must notify the court if the appellant intends to submit a reply brief. The case will be submitted on the briefs absent notification of an intent to file a reply. Ms. Mareschal explained that in her opinion, the new proposal would add only "a couple of months" to the appellate process.

Jon Peterson of the Attorney General's Office stated that he does not believe the current system is broken and that all appeals currently filed are thoroughly reviewed. Mr. Peterson also questioned IADD's expectation that more opinions would be entered if all cases went to full briefing.

Deborah Wood, also of the Attorney General's Office, similarly voiced concerns with the proposal. She stressed the need for quick resolution of child welfare appeals and explained that her biggest concern is the delay this proposal would cause.

Martha Pierce, of the Guardian ad Litem's Office, also expressed concerns with the proposal and informed the Committee that, in her opinion, none of the reasons for creating these rules have changed. She also expressed skepticism that the proposal would add only "a few months" to the appellate process and that even if that were true, a delay of only "a few months" is significant to a child awaiting a ruling on their placement.

Sonia Sweeney, Juvenile Court Administrator, informed the Committee that the Board of Juvenile Judges reviewed both the original 2023 proposal and the current revised proposal and does not believe that any changes are needed.

Annie ValDez from the Court Improvement Program (CIP) explained how the CIP helped with drafting the current rules. She explained that the CIP has discussed both the original and the current proposal and has been unable to reach a consensus given its makeup.

Adam Trupp, from the Utah Indigent Defense Commission, spoke in favor of the proposal, noting that the requirement for approval before a case can go to full briefing is not found anywhere else in the appellate system.

Margaret Lindsay, from the Utah County Public Defender Association, voiced support for the proposal and stated that there is nothing more important in the law than due process, and parents deserve to be treated like every other appellant.

Troy Booher questioned why a couple of months makes a difference for these types of appeals. He also suggested that a different type of screening process could be implemented to weed out cases that do not need full briefing from those that do, perhaps allowing the appellate court to call for a response to the petition only if the court believes a response is necessary.

Tera Peterson noted that Ms. Mareschal had commented that in recent years there has been an increase in reversals and opinions. Ms. Peterson questioned whether this shows that the current process is working and that the Court is catching the cases that need to go to full briefing.

Mary Westby explained that staff attorneys review the petitions and only recommend a disposition if it is a clear affirmance or reversal, anything in the middle requiring closer scrutiny goes to chambers for review. Ms. Westby added that the staff attorneys use the petition, the State's response, and the entire record when evaluating a petition. Ms. Westby agreed with Ms. Peterson that the increase in opinions and cases that go to full briefing shows that the current process is working as intended. She also explained that, in her opinion, an increase of even "a few months" in each child welfare appeal would induce systemic delay.

Chris Ballard recognized that while there may be a need to allow more child welfare appeals to go to full briefing, implementing that change while keeping

child welfare appeals on an expediated track would appear to require the allocation of more resources to IADD, the Attorney General's Office, the Guardian ad Litem's Office, and perhaps also the appellate courts, but that is something that is beyond the Committee's power. Any change that would increase the number of cases going to full briefing would therefore require a broader-based solution involving more than merely amending the appellate rules.

Following this discussion, the Committee asked the guests to attend the beginning of the Committee's May 2nd meeting. It was suggested that the Committee reserve the first 30 minutes of that meeting for additional questions and then vote on the proposal.

**4. Action: Clark Sabey, Mary
Rule 23C and Rule 19 Westby, Troy Booher**

Item tabled due to time constraints.

**5. Action: Clark Sabey, Mary
Rule 8 Westby, Troy Booher**

Item tabled due to time constraints.

6. Adjourn Chris Ballard

Stan Purser moved to adjourn the meeting. Judge Orme seconded that motion, and the meeting was adjourned.