



Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Nathalie Skibine, Chair
Stanford Purser, Vice Chair

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| 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=m93e9dce493eeadb1f3212a2d17ec0773 |
| Date: | November 7, 2024 |
| Time: | 12:00 to 1:30 p.m. |

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| Action: Welcome and approval of October 3, 2024 Minutes | Tab 1 | Nathalie Skibine, Chair |
| Action: Rule 42 | Tab 2 | Judge Christiansen Forster, Clark Sabey, Michelle Quist, Nicole Gray |
| Action: Vexatious Litigants | Tab 3 | Judge Christiansen Forster, Nick Stiles, Mary Westby, Tera Peterson |
| Action: Rule 3 | Tab 4 | Nicole Gray |
| Discussion: Old/new business | | Nathalie Skibine, Chair |

Committee Webpage: <https://legacy.utcourts.gov/utc/appellate-procedure/>

2024/2025 Meeting schedule:

| | | | |
|------------------|---------------|----------------|-------------------|
| December 5, 2024 | March 6, 2025 | June 5, 2025 | September 4, 2025 |
| January 2, 2025 | April 3, 2025 | July 3, 2025 | October 2, 2025 |
| February 6, 2025 | May 1, 2025 | August 7, 2025 | November 6, 2025 |

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 3, 2024
12:00 pm to 1:30 pm

PRESENT

Dick Baldwin
Judge Michele
Christiansen Forster
Amber Griffith—Staff
Michael Judd—Recording
Secretary
Debra Nelson
Caroline Olsen

Judge Gregory Orme
Tera Peterson
Stan Purser
Clark Sabey
Nathalie Skibine—
Chair
Nick Stiles—Staff
Mary Westby

EXCUSED

Nicole Gray
Martha Pierce
Michelle Quist
Scarlet Smith

GUESTS

None

1. Action:

Approval of September 2024 Minutes

The committee reviewed the draft September 2024 minutes. The committee identified a correction needed in Section 6.

With that correction made, Mary Westby moved to approve the September 2024 minutes as they appeared in the committee's materials. Tera Peterson seconded that motion, and it passed without objection by unanimous consent.

Nathalie Skibine

2. Action: Stan Purser
Rule 8

Stan Purser reminded the committee of the relevant background question: Does Rule 8 need to be amended so that the stay factors mirror the new preliminary-injunction factors that appear in the Utah Rules of Civil Procedure, which changed as a result of legislative action a year or so ago. The committee considered a two-part change: (1) a reworking of the rule to clarify existing language and requirements, (2) a rule revision that would leave stay-pending-appeal factors more flexible than the factors are for district courts below. The committee believes that a set of changes that meet those goals would reflect how the appellate courts have traditionally handled this type of request.

With respect to an injunction, the rule is intended to make the burden the same on appeal as below—no harder and no easier than obtaining an injunction in district court. The committee discussed the practical difference between a stay pending appeal and an injunction entered by the appellate court, including circumstances under which a party may seek the latter.

Dick Baldwin suggested several changes to the proposed rule, including striking references to Rules 14 and 15 in line 7 and changing language referring to a “bond requirement” in lines 10-11 to incorporate into prior subsection. The committee made several additional stylistic changes.

Following that discussion, Debra Nelson moved to approve Rule 8 as modified and as it appeared on the screen at the committee’s meeting. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

3. Action: Nick Stiles
Rule 29

Nick Stiles reminded the committee about the background for the potential rule change, noting again that a similar rule has already been adopted in the civil, criminal, and juvenile rules and explaining that one upside of a potential rule change would be to maintain consistency. After discussing the implications of such a rule in the appellate setting, the committee has opted for a more streamlined rule, through an addition to Rule 29.

Following that discussion, Judge Gregory Orme moved to approve Rule 29 as modified and as it appeared on the screen at the committee’s meeting. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

4. **Discussion:** **Judge Christiansen Forster**
Vexatious Litigants

Judge Christiansen Forster reported that the appellate courts have occasionally encountered vexatious litigants and have used Rule 83 to address those issues. The appellate courts believe a specific appellate rule may prove useful.

To formulate language for a proposed appellate rule, the committee welcomed the formation of a sub-committee, made up of Judge Christiansen Forster, Mary Westby, Tera Peterson, and Nick Stiles. That sub-committee will work to develop a proposed rule for submission to the committee.

5. **Discussion:** **Nick Stiles**
**Board of Juvenile Court Judges Letter to
the Supreme Court**

A letter sent to the Supreme Court from the Board of Juvenile Court Judges related to contemplated changes to rules affecting appeals from juvenile-court proceedings has been accepted for inclusion in the committee's minutes and materials, as a courtesy and for purposes of transparency.

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

The committee plans to discuss Rule 42 in an upcoming meeting, possibly as soon as November. A set of committee members and other stakeholders continue to work on changes to the child-welfare rules, and a proposal for those changes will be taken first to the board of juvenile judges. Those changes will therefore likely be ready for committee discussion early next year.

Finally, Ms. Westby moved that Rule 10(e) be deleted. Judge Gregory Orme seconded that motion. That change passed without objection by unanimous consent.

7. Adjourn

Nathalie Skibine

Following the business and discussions described above, Judge Orme moved to adjourn, and Ms. Westby seconded. The committee adjourned. The committee's next meeting will take place on November 7, 2024.

TAB 2

1 **Rule 42. Transfer of case from Supreme Court to Court of Appeals.**

2 (a) **Discretion of Supreme Court to transfer.** At any time before a case is set for oral
3 argument before the Supreme Court, the Court may transfer to the Court of Appeals any
4 case except those cases within the Supreme Court's exclusive jurisdiction. The order of
5 transfer ~~will~~shall be issued without opinion, written or oral, as to the merits of the appeal
6 or the reasons for the transfer.

7 (b) **Notice of intent to transfer.** When the Supreme Court issues a notice of intent to
8 transfer a case to the Court of Appeals, any party to the case may submit a letter
9 requesting that the case be retained.

10 (1) A letter concerning retention must contain:

11 (A) The name of the case and the appellate case number;

12 (B) The names of all parties involved in the case and the attorneys and firms
13 representing the parties;

14 (C) A concise statement of the issues to be presented on appeal;

15 (D) A brief explanation of the reasons supporting retention or transfer; and

16 (E) A completed checklist for appellate jurisdiction.

17 (2) The letter must not exceed five pages and must be filed within seven days
18 following issuance of the notice of intent to transfer.

19 (3) Any response to a timely letter concerning retention must be filed within five days
20 after service of the letter. The response may not exceed five pages.

21 (4) Any letter submitted outside of the provisions of paragraph (b) will not be
22 considered

23 c) Notice. Upon entry of an order of transfer or an ~~Upon entry of the~~ order granting a
24 request for retention ~~of transfer the Clerk of~~ the Supreme Court clerk will provide ~~shall~~
25 give notice ~~of entry~~ of the order of transfer by mail to each party to the proceeding and
26 to the ~~clerk of the~~ trial court clerk.

27 (1) If no timely request for retention is received or if the Supreme Court declines a
28 request to retain, the Supreme Court clerk will also provide notice to the Court of
29 Appeals. ~~Upon entry of the order of transfer, the Clerk of the Supreme Court shall~~
30 ~~transfer the original of the order and the case, including the record and file of the case~~
31 ~~from the trial court, all papers filed in the Supreme Court, and a written statement of~~
32 ~~all docket entries in the case up to and including the order of transfer, to the Clerk of~~
33 ~~the Court of Appeals.~~

34 **(de) Receipt of order of transfer by Court of Appeals.** Upon receipt from the Supreme
35 Court clerk of the ~~original~~ order of transfer, ~~from the Clerk of the Supreme Court, the~~
36 ~~Clerk of~~ the Court of Appeals clerk will~~shall~~ enter the appeal upon the Court of Appeals
37 docket. The ~~Clerk of the~~ Court of Appeals clerk will~~shall~~ immediately give notice to each
38 party to the proceeding and to the clerk of the trial court that the appeal has been
39 docketed and that all further filings will be made with the Court of Appeals clerk. ~~Clerk~~
40 ~~of the Court of Appeals. The notice shall state the docket number assigned to the case in~~
41 ~~the Court of Appeals.~~

42 **(e) ~~Transferd) Filing or transfer of appeal record.~~** If the record on appeal has already~~not~~
43 been filed with the ~~Clerk of the~~ Supreme Court ~~as of the date of the order of transfer, the~~
44 ~~Clerk of the Supreme Court shall notify the clerk of the trial court that upon completion~~
45 ~~of the conditions for filing the record by that court, the clerk shall transmit~~ the record on
46 appeal will be ~~to the Clerk of the Court of Appeals. If, however, the record on appeal has~~
47 ~~already been~~ transmitted to the Court of Appeals clerk ~~and filed with the Clerk of the~~
48 ~~Supreme Court as of the date of the entry of the order of transfer, the Clerk of the Supreme~~
49 ~~Court shall transmit the record on appeal to the Clerk of the Court of Appeals~~ within five
50 days of the date of the entry of the order of transfer.

51 **(fe) Subsequent proceedings before Court of Appeals.** Upon receipt by the ~~Clerk of the~~
52 Court of Appeals clerk of an~~the~~ order of transfer ~~and the entry thereof upon the docket~~
53 ~~of the Court of Appeals,~~ the case will~~shall~~ proceed before the Court of Appeals to final
54 decision and disposition as in other appellate cases pursuant to these rules.

1 **Rule 42. Transfer of case from Supreme Court to Court of Appeals.**

2 (a) **Discretion of Supreme Court to transfer.** At any time before a case is set for oral
3 argument before the Supreme Court, the Court may transfer to the Court of Appeals any
4 case except those cases within the Supreme Court's exclusive jurisdiction. The order of
5 transfer will be issued without opinion, written or oral, as to the merits of the appeal or
6 the reasons for the transfer.

7 (b) **Notice of intent to transfer.** When the Supreme Court issues a notice of intent to
8 transfer a case to the Court of Appeals, any party to the case may submit a letter
9 requesting that the case be retained.

10 (1) A letter concerning retention must contain:

11 (A) The name of the case and the appellate case number,

12 (B) The names of all parties involved in the case and the attorneys and firms
13 representing the parties,

14 (C) A concise statement of the issues to be presented on appeal,

15 (D) A brief explanation of the reasons supporting retention or transfer, and

16 (E) A completed checklist for appellate jurisdiction.

17 (2) The letter must not exceed five pages and must be filed within seven days
18 following issuance of the notice of intent to transfer.

19 (3) Any response to a timely letter concerning retention must be filed within five days
20 after service of the letter. The response may not exceed five pages.

21 (4) Any letter submitted outside of the provisions of paragraph (b) will not be
22 considered

23 c) **Notice.** Upon entry of an order of transfer or an order granting a request for retention
24 the Supreme Court clerk will provide notice of the order to each party to the proceeding
25 and to the trial court clerk.

26 (1) If no timely request for retention is received or if the Supreme Court declines a
27 request to retain, the Supreme Court clerk will also provide notice to the Court of
28 Appeals of the order of transfer.

29 (d) **Receipt of order of transfer by Court of Appeals.** Upon receipt from the Supreme
30 Court clerk of the order of transfer, the Court of Appeals clerk will enter the appeal upon
31 the Court of Appeals docket. The Court of Appeals clerk will immediately give notice to
32 each party to the proceeding and to the clerk of the trial court that the appeal has been
33 docketed and that all further filings will be made with the Court of Appeals clerk.

34 (e) **Transfer of appeal record.** If the record on appeal has already been filed with the
35 Supreme Court clerk the record on appeal will be transmitted to the Court of Appeals
36 clerk within five days of the date of the entry of the order of transfer.

37 (f) **Subsequent proceedings before Court of Appeals.** Upon receipt by the Court of
38 Appeals clerk of an order of transfer, the case will proceed before the Court of Appeals
39 to final decision and disposition as in other appellate cases pursuant to these rules.

TAB 3

1 **Rule XX. Vexatious litigants.**

2 **(a) Definitions.**

3 (1) The appellate court may find a person to be a "vexatious litigant" if the person,
4 with or without legal representation, including an attorney acting pro se, does any
5 two or more of the following:

6 (A) files an unmeritorious brief, motion, petition, or other document that has no
7 basis in the rules of appellate procedure, or includes documents that are not in
8 the record on appeal,

9 (B) files a brief, motion, petition, or other document that contain redundant,
10 immaterial, impertinent, or scandalous material,

11 (C) engages in tactics that are frivolous or solely for the purpose of harassment or
12 delay,

13 (D) purports to represent or to use the procedures of a court other than a court of
14 the United States, a court created by the Constitution of the United States or by
15 Congress under the authority of the Constitution of the United States, a tribal
16 court recognized by the United States, a court created by a state or territory of the
17 United States, or a court created by a foreign nation recognized by the United
18 States, or

19 (E) after being found to be a vexatious litigant by a trial court, continues a similar
20 course of conduct in the appellate courts.

21 **(b) Vexatious litigant orders.** The court may, on its own motion or on the motion of any
22 party, after notice and an opportunity to be heard, enter an order requiring a vexatious
23 litigant to:

24 (1) furnish security to assure payment of the moving party's reasonable expenses,
25 costs, and if authorized, attorney fees incurred in a pending action;

26 (2) obtain legal counsel before proceeding in a pending action;

27 (3) obtain legal counsel before filing any future appeal or petition;

28 (4) abide by a prefiling order requiring the vexatious litigant to obtain the court's
29 permission before filing any briefs, motions, petitions, or other documents in a
30 pending action.

31 (5) abide by a prefiling order requiring the vexatious litigant to obtain the court's
32 permission before filing any future appeal or petition, or

33 (6) take any other action reasonably necessary to curb the vexatious litigant's
34 abusive conduct.

35 **(c) Necessary findings and security.**

36 (1) The court must find by clear and convincing evidence that the party is a
37 vexatious litigant.

38 (2) The court may identify the amount of the security and the time within which it is
39 to be furnished. If the security is not furnished as ordered, the court may dismiss the
40 vexatious litigant's appeal or petition.

41 **(d) Orders in a pending action.**

42 (1) If a vexatious litigant is subject to an order requiring the court's permission to file
43 any briefs, motions, petitions, or other documents, the vexatious litigant must
44 submit the proposed filing to the clerk of court and must:

45 (A) demonstrate that the filing is based on a good faith dispute of the facts;

46 (B) demonstrate that the filing is warranted under existing law or a good faith
47 argument for the extension, modification, or reversal of existing law; and

48 (C) include an oath, affirmation or declaration under criminal penalty that the
49 filing is not filed for the purpose of harassment or delay and contains no
50 redundant, immaterial, impertinent or scandalous matter.

51 (2) A pre-filing order in a pending action shall be effective until a final determination
52 of the action unless otherwise ordered by the court.

53 **(e) Contempt sanctions.** Disobedience by a vexatious litigant of a pre-filing order may
54 be punished as contempt of court.

55 **(f) Other authority.** This rule does not affect the authority of the court under other
56 statutes and rules or the inherent authority of the court.

TAB 4

1 **Rule 3. Appeal as of right – how taken**

2 **(a) Filing the notice of appeal.**

3 (1) Except as otherwise provided by law, a party may appeal a final order or judgment
4 from a district [court](#), ~~or a~~ [juvenile court](#), [or the Business and Chancery Court](#) to the
5 appellate court by filing a notice of appeal with the trial court clerk within the time
6 allowed by Rule 4.

7 (2) An appellant's failure to take any step other than timely filing a notice of appeal
8 does not affect the validity of the appeal, but is ground only for the appellate court to
9 act as it considers appropriate, including dismissing the appeal or other sanctions
10 short of dismissal, and awarding attorney fees.

11 **(b) Joint or consolidated appeals.** If two or more parties are entitled to appeal from a
12 judgment or order and their interests are such as to make joinder practicable, they may
13 file a joint notice of appeal or may join in an appeal of another party after filing separate
14 timely notices of appeal. Joint appeals may proceed as a single appeal with a single
15 appellant. Individual appeals may be consolidated by order of the appellate court upon
16 its own motion or upon motion of a party, or by stipulation of the parties to the separate
17 appeals.

18 **(c) Party Designation.** The party taking the appeal is known as the appellant and the
19 adverse party as the appellee. Unless otherwise directed by the appellate court, the
20 appeal will not change the title of the action or proceeding. For original proceedings in
21 the appellate court, the party making the original application is known as the petitioner
22 and any other party as the respondent.

23 **(d) Notice of appeal contents.** The notice of appeal must:

24 (1) specify the party or parties taking the appeal;

25 (2) designate the judgment, order, or part thereof being appealed;

26 (3) name the court from which the appeal is taken; and

27 (4) name the court to which the appeal is taken.

28 (e) **Serving the notice of appeal.** The appellant must serve the notice of appeal on each
29 party to the judgment or order in accordance with the requirements of the court from
30 which the appeal is taken. If counsel of record is served, the certificate of service must
31 include the name of the party represented by that counsel.

32 (f) **Filing fee in civil appeals.** When filing any notice of separate, joint, or cross appeal in
33 a civil case, the party taking the appeal or cross appeal must, pursuant to Rule 21, pay the
34 filing fee established by law to the trial court clerk, unless waived by the trial court. The
35 trial court clerk must accept a notice of appeal regardless of whether the filing fee has
36 been paid.

37 (g) **Docketing of appeal.**

38 (1) **Transmitting notice of appeal to the appellate court.** After an appellant files the
39 notice of appeal, the trial court clerk must immediately email a copy of the notice of
40 appeal to the appellate court clerk. The email will include:

41 (A) the date the notice of appeal was filed, and

42 (B) the clerk's statement declaring whether the filing fee was paid and whether the
43 cost bond required by Rule 6 was filed.

44 (2) **Docketing the appeal.** Upon receiving the copy of the notice of appeal from the
45 trial court clerk, the appellate court clerk will enter the appeal on the docket. An
46 appeal will be docketed under the title given to the action in the trial court, with the

47 appellant identified as such, but if the title does not contain the name of the appellant,
48 such name will be added to the title.