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, September 3, 2026
12:00 pm to 1:30 pm

PRESENT

Rachel Phillips Ainscough
Dick Baldwin
Daniel Day
Judge Michele Christiansen Forster
Nicole Gray
Amber Griffith—Staff
Michael Judd—Recording Secretary
Debra Nelson
Caroline Olsen
Judge Gregory Orme
Martha Pierce
Michelle Quist
Stan Purser—Vice Chair
Clark Sabey
Nathalie Skibine—Chair
Mary Westby

EXCUSED

Nick Stiles—Staff

1. Action: Nathalie Skibine, Chair

Approval of June 2026 Minutes

The committee reviewed the June 2026 minutes and proposed no changes.

Following that discussion, Mary Westby moved to approve the June 2026 minutes as modified and displayed on screen at the committee's meeting. Debra Nelson seconded that motion, and it passed without objection by unanimous consent.

2. Action: Nathalie Skibine, Chair
Rule 24

The committee received and reviewed Justice Pohlman's comments on the proposed Rule 24 amendments. The committee revised certain language and added an advisory committee note to clarify the new paragraph.

Ms. Westby moved to approve the revised rule as displayed on screen. Stan Purser seconded the motion, which passed without objection by unanimous consent. The rule will be resubmitted to the Supreme Court with a recommendation to post it for public comment.

3. Action: Nathalie Skibine, Chair
Items Referred by Supreme Court

The committee considered four items referred by the Supreme Court.

Rule 55. The committee discussed whether to allow replies in support of petitions on appeal. Ms. Westby stated that replies were unnecessary because full briefing hinges on the the nature of the issues raised. Clark Sabey flagged potential due-process concerns that could be raised by an appellant complaining about new matters raised in a response. Rachel Phillips Ainscough expressed a competing concern: a reply could be redundant and prolong the process. Ms. Nelson offered her view that parties should have the option to reply and volunteered to prepare a draft amendment for the October meeting. Alexa Mareschal of IADD will attend that meeting as a guest to participate in the discussion.

Rule 58. The committee discussed whether to preclude resolution of issues of first impression under Rule 58 without full briefing. Ms. Westby stated that discretionary issues are not resolved under Rule 58 and did not consider the proposed concern to be a problem. At Ms. Nelson's request, the committee tabled the issue until October so Ms. Mareschal could participate in further discussion.

Lack of preservation in truncated proceedings. The committee discussed whether to create a rule addressing when appellate courts may rely on a lack of preservation to dispose of issues in truncated proceedings under Rules 10(a), 10(c), and 55. Ms. Westby noted that each rule requires a party to address preservation. Dick Baldwin suggested that allowing replies under Rule 55 might resolve the concern under that rule. The committee reached a consensus to take no action on the request.

Rule 30. The committee discussed whether to amend Rule 30 to limit unpublished orders to cases resolved by well-established law. Judge Gregory Orme explained that unpublished orders are used in cases with no value beyond the parties and that parties who disagree with an unpublished order may still seek certiorari review. The committee determined that no action was needed.

4. Action: Clark Sabey
Rule 38/*Cronquist*

The committee discussed whether to amend Rule 38 in response to *Nielsen v. Cronquist*. Mr. Sabey described the question as one of policy, and Daniel Day noted that the federal rules allow the approach under discussion.

The committee tabled the issue for further consideration. Judge Michele Christiansen Forster volunteered to draft a procedure if one is needed.

5. Action: Mary Westby
Rule 23

Caroline Olsen questioned whether motions under Rule 8 must comply with Rule 23 and, if so, whether the word limit is sufficient. Ms. Olsen volunteered to draft an amendment to Rule 8 that includes a word limit.

The committee tabled Rule 23 until the October meeting for further discussion and consideration of the Rule 8 draft.

6. Action: Mary Westby
Rule 23B

Ms. Westby raised the question whether Rule 23B should include a provision allowing an overlength motion.

The committee tabled Rule 23B until the October meeting for further discussion.

7. **Adjourn Nathalie Skibine, Chair**

Judge Orme moved to adjourn, and Ms. Westby seconded the motion. The committee adjourned. The next meeting will take place on October 1, 2026.