



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

By WebEx Videoconference
Thursday, November 3, 2022
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Jacqueline Carlton—Guest
Judge Michele
Christiansen Forster
Lisa Collins
Amber Griffith—Staff

Tyler Green
Michael Judd—Recording
Secretary
Margaret Lindsay—Guest
Judge Gregory Orme
Stanford Purser
Clark Sabey
Nathalie Skibine—
Vice Chair
Scarlet Smith

Nick Stiles—Staff
Doug Thompson—Guest
Adam Trupp—Guest
Mary Westby
EXCUSED
Patrick Burt
Carol Funk
Michelle Quist

1. Action:

Chris Ballard

Approval of October 2022 Minutes

The committee reviewed the October 2022 minutes and offered one proposed correction, related to an incorrect identification of a committee member making a motion. That correction was made.

With that correction made, Lisa Collins moved to approve the October 2022 minutes. Mary Westby seconded that motion, and it passed without objection by unanimous consent.

2. **Action:** **Chris Ballard**
Rule 4

Chris Ballard introduced proposed language in Rule 4 designed to place the burden on a prosecutor to show that a defendant’s delay in filing a motion was unreasonable. Ms. Westby reminded the committee that it has had this discussion at least once before—years ago—and that the ultimate resolution was to leave this rule unchanged. The committee noted that leaving the rule unchanged remains an option here, as well. Ms. Westby suggested that if a change *is* made, she believes that Mr. Ballard’s proposed language balances the relevant interests well.

Emily Adams noted that, in her experience, this type of motion has appeared less often recently, after a significant uptick a year or so ago faded. Mr. Ballard reiterated his view that an amendment to create a deadline remains valuable. Tyler Green and Ms. Westby discussed the burden-shifting mechanism contained in the draft rule.

Mr. Sabey moved to vote on adopting the proposed amendment appeared in the committee materials. Given that a split vote appeared likely, the committee voted member by member. The motion passed, with eight members voting in favor of the motion and three voting against it.

3. **Action:** **Mary Westby,**
Rule 22—Juneteenth Holiday **Lisa Collins**

Ms. Westby presented two proposals to address inconsistencies in Utah’s state and federal rules related to when (and perhaps whether) certain holidays are celebrated. After some discussion, the committee was more enthusiastic about the second option—use of a link to the holidays on the court’s webpage—including a “ringing endorsement” of that option by Judge Orme.

Following that discussion, Judge Orme moved to approve the proposed amendment to Rule 22, with changes made on the screen at the committee meeting. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

The committee then returned to the full set of amendments to Rule 22. Ms. Westby moved to adopt Rule 22 as a whole, as it appeared on the screen, as amended. Emily Adams seconded, and the motion passed without objection by unanimous consent.

4. **Action:** **Mary Westby**
Rule 57

The proposed amendment to Rule 57 addresses the scope of the record on appeal in juvenile-court cases, particularly on how that rule applies to a “social file.” The

committee also discussed the reference to “admitted exhibits,” as opposed to all documents and exhibits considered below.

Following that discussion, Ms. Collins moved to adopt the proposed amendment to Rule 57 as it appeared on the screen at the committee meeting. Judge Christiansen Forster seconded that motion, and it passed without objection by unanimous consent.

5. **Action:** **Nathalie Skibine**
Utah Rule of Evidence 506

The committee considered action related to Utah Rule of Evidence 506. That action would involve amendments to the rules governing intervention on appeal in criminal cases, as flagged by the Utah Supreme Court in *In re F.L.*, 2022 UT 32. After some discussion, the committee determined that the best approach was to create a subcommittee to consider the issues. The committee also briefly discussed how to handle sealed records in such matters, with Mr. Ballard recommending that those records be presumptively designated Attorneys’ Eyes Only, allowing access only for judges and counsel.

Following that discussion, Judge Orme moved to create a subcommittee, comprising Judge Christiansen-Forster, Mr. Ballard, Ms. Skibine, Mr. Sabey, and Ms. Westby. Tyler Green seconded that motion, and it passed without objection by unanimous consent.

6. **Action:** **Nick Stiles**
Appellate Court Disqualification

Given a lack of time to address all issues slated for discussion in November, the committee opted to defer discussion of appellate court disqualification until December’s meeting.

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

None.

8. **Adjourn**

Following that discussion, adjourned. The committee’s next meeting will take place on December 1, 2022.