



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, December 1, 2022
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Judge Michele
Christiansen Forster
Carol Funk
Amber Griffith—Staff
Tyler Green
Michael Judd—Recording
Secretary

Judge Gregory Orme
Stanford Purser
Michelle Quist
Clark Sabey
Nathalie Skibine—
Vice Chair
Scarlet Smith
Nick Stiles—Staff
Mary Westby

EXCUSED

Patrick Burt
Lisa Collins

1. Action: **Chris Ballard**
Approval of November 2022 Minutes

The committee reviewed the November 2022 minutes and did not note any needed changes.

After that review, Scarlet Smith moved to approve the November 2022 minutes. Mary Westby seconded that motion, and it passed without objection by unanimous

consent.

2. **Action:** **Emily Adams**
Juvenile Briefing Rules

Emily Adams updated the committee on discussions she'd had with various stakeholders regarding the rules governing child-welfare cases. After those discussions, the most promising course appears to be to pause consideration of these potential amendments until February, to allow time for further consultation with additional stakeholders, including the indigent-defense office, the Attorney General's office, and the Guardian ad Litem's office.

By way of elaboration, Ms. Adams explained that 25 years ago, in an effort to make child-welfare appeals faster, Utah's rules for child-welfare "petitions on appeal" created an expedited procedure so children can achieve permanency faster. The question facing stakeholders, now, is whether it make sense for the "petition on appeal" process to stay in place. The changes now proposed would make child-welfare appeals more closely resemble the process that applies to any other appeal, but with certain expediting requirements. These changes would therefore create a dual track, depending on whether an evidentiary hearing was held below.

Mary Westby then flagged an issue for committee: Is the committee empowered to make the large-scale changes that are being contemplated? The committee discussed the priorities and concerns that have motivated the stakeholders to seek the changes at issue.

Following that discussion, the committee noted that the specific proposal at issue has been withdrawn. The committee's next step will be to hear reports from other stakeholders at its February meeting.

3. **Discussion:** **Chris Ballard** **Judge Michele**
Intervention on Appeal **Nathalie Skibine** **Christiansen Forster**
Mary Westby

Nathalie Skibine introduced the animating issue: Do the intervention issues presented in *F.L. v. Court of Appeals*, 2022 UT 32 (filed July 7, 2022), merit changes to Utah's rules regarding intervention on appeal? After consideration, the subcommittee determined that no changes are necessary or warranted, as the existing rules provided an acceptable framework in *F.L.* The subcommittee also noted that other jurisdictions appear to have navigated

intervention-on-appeal issues without the rule changes considered by the committee here.

The committee then moved to a second issue: How should privileged records be handled on appeal after they are reviewed *in camera* by the district court and then not admitted? The committee understands that the Rules of Evidence committee is reviewing that question now.

Given that report, the subcommittee's ultimate recommendation, on both issues, is to not do anything at this time. The committee agreed with that recommendation.

4. Action: Nick Stiles
Appellate Court Disqualification

Nick Stiles presented the issue and introduced the proposed rule to the committee. As Mr. Stiles explained it, Utah appellate courts have noted that Utah does not currently have a disqualification rule, though between 30 and 40 other states do. The proposed rule under consideration tracks Nevada's. The committee noted that lines 46 and 73 would need slight adjustments to the language to address pronoun issues. Mr. Stiles also identified a second question: If the rule were adopted, where would it be placed?

Ms. Adams noted that the reference to "affidavits" may now be outdated and may need to be replaced by "declarations" (or have the phrase "or declarations" added to the text. Troy Booher asked whether the rule is needed. As Mr. Booher explained, while most states may have them, Utah hasn't appeared to have had a pressing need for one, and there are challenges associated with application of the rule.

Mr. Stiles responded that he was happy to report back that committee has considered a change, but that we've determined our current system is working well. Carol Funk spoke in favor of the rule, as it could promote transparency and structure.

Following that discussion, Ms. Westby moved to create subcommittee to study the issue. Carol Funk seconded that motion and the motion passed without objection by unanimous consent. That subcommittee will include Clark Sabey, Mary Westby, Scarlet Smith, Lisa Collins, and Carol Funk.

5. **Discussion:**

Chris Ballard

Old/New Business

By way of new business, Mr. Booher suggested attention to Rule 5, in an effort to address a lurking “back door” in interlocutory appeals. The committee expressed interest in a proposal to address the issue.

6. **Adjourn**

Ms. Westby moved to adjourn, and Ms. Funk seconded. The committee adjourned. The committee’s next meeting will take place in February 2023.