



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, February 2, 2023
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Patrick Burt
Judge Michele
Christiansen Forster
Lisa Collins
Carol Funk
Amber Griffith—Staff
Tyler Green

Michael Judd—Recording
Secretary
Alexandra Mareschal—
Guest
Judge Gregory Orme
Michelle Quist
Clark Sabey
Nathalie Skibine—
Vice Chair
Nick Stiles—Staff
Mary Westby

EXCUSED

Stanford Purser
Scarlet Smith

1. Action:

Chris Ballard

Approval of December 2022 Minutes

The committee reviewed the December 2022 minutes. The committee noted two typos that needed changes, and those changes were made.

After that review, Mary Westby moved to approve the December 2022 minutes. Lisa Collins seconded that motion, and it passed without objection by unanimous consent.

2. Action: Chris Ballard
Comments received on Rules 19, 20, 23, and 23C

Chris Ballard noted that the public comments the committee has received and reviewed raise concerns that have been addressed previously, both by the committee and by the Utah Supreme Court in *Patterson v. State*, 2021 UT 52. The purpose of public circulation, at this stage, was to gather input on the advisory committee notes.

The committee discussed whether specific language may be needed to ensure that fee-waiver availability is clear on the face of the rule. Following that discussion, the committee determined that no further action is needed.

3. Action: Chris Ballard
Rules 19, 20, 23, and 23C

Following that discussion related to the comments received, Ms. Westby moved to recommend all four rules for final approval. Clark Sabey seconded that motion and the motion passed without objection by unanimous consent.

4. Discussion: Chris Ballard
Update on Child-Welfare Rules Nick Stiles

Mr. Ballard provided the committee with background, including a description of a stakeholder meeting in January. That stakeholders' view, at the conclusion of that meeting, is that a proposed update to child-welfare rules represents something bigger than what this committee can take on, given the significant policy considerations at issue.

Mr. Ballard's suggestion is that the committee report to the Utah Supreme Court on its efforts in this area and ask them how to proceed. Judge Gregory Orme agreed that the committee ought to do nothing else until it has received word from the supreme court. Alexandra Mareschal, who appeared as a guest at the meeting, confirmed that the committee is well aware of the concerns she'd raised and agreed that seeking guidance from the Utah Supreme Court is the "best next step forward."

Mr. Ballard suggested that the committee should expect a report on that discussion with the Utah Supreme Court at its March meeting.

5. **Action:** Clark Sabey Carol Funk
Update from Disqualification Scarlet Smith Mary Westby
Subcommittee Lisa Collins Nick Stiles

Nick Stiles reported on behalf of the “disqualification committee” and relayed information regarding various options for potential disqualification procedures, including rules, a potential standing order, and the need for different approaches among the two appellate courts.

The committee discussed possible modifications of the appellate courts’ internal policies and practices to inform practitioners about recusals and other related matters. The committee understands that the Utah Court of Appeals judges are still in favor of such a rule, and while the committee will not take any further action at this time, it understands that the proposal will be discussed at the next appellate board meeting, likely in mid-March.

6. **Action:** Chris Ballard
Rule 14 Amber Griffith

The committee discussed a flagged issue: Rule 14 does not appear to contain a filing-fee requirement, as that requirement appears to have been removed accidentally, through an amendment related to planned electronic filing in 2016. The committee considered whether that requirement needs to be added back into the text of the rule. Because the existing practice is still to collect filing fees, and because Rules 5 and 48 appear to contain specific language providing for such fees, including similar language here would make this consistent. Ms. Westby volunteered to draft language, including tracking down the statutory basis for fees. The committee welcomed that proposal.

7. **Discussion:** Chris Ballard
Notices of Appeal Filed by a Party Subject to a Vexatious-Litigant Order Under URCP 83

The committee discussed whether any changes are needed to the revised approach to handling notices of appeal filed by parties subject to a vexatious-litigant order. Ms. Collins reported that the current approach appears to be working as designed, and the committee determined that no further action is

needed at this time.

8. Discussion: Chris Ballard
Old/New Business

With respect to the March meeting, the committee determined to hold the meeting in person, with a remote-attendance option.

9. Adjourn

The committee adjourned. The committee's next meeting will take place on March 2, 2023.