



Approved 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 7, 2023
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard – Chair
Judge Michele M.
Christiansen Forster
Lisa Collins
Carol Funk
Amber Griffith – Staff
Debra Nelson
Judge Gregory Orme

Tera Peterson
Stanford Purser
Michelle Quist
Clark Sabey
Nathalie Skibine –
Vice Chair
Scarlet Smith
Nick Stiles – Staff
Eric Weeks – Guest
Mary Westby

EXCUSED

Michael Judd –
Recording Secretary
Troy Booher –
Emeritus Member

1. Action: **Chris Ballard**
Welcome and approval of June 2023 Minutes

Chris Ballard welcomed everyone to the meeting. The Committee welcomed two new members, Debra Nelson and Tera Peterson, and introduced themselves and provided their general area of practice.

The Committee then reviewed the June 1, 2023, minutes and no changes were suggested.

Mary Westby moved to approve the minutes. Nathalie Skibine seconded that motion, and the minutes were unanimously approved.

2. Action: Chris Ballard
Rules 5, 14, and 50 for final approval

Chris Ballard presented Rules 5, 14, and 50 for final Committee approval. One comment was received from Doug Thompson approving the changes to Rules 5 and 50.

- Stan Purser questioned if paragraph (a) of Rule 50 should specify which parts of Rule 49 must be complied with when responding to a petition for writ of certiorari. Chris Ballard agreed that it may be helpful but suggested making a new proposal for another meeting, so Rule 50 can move forward for final approval to the Supreme Court.

No further suggestions or comments were made. Lisa Collins moved to approve the rules be sent to the Supreme Court for final approval. Mary Westby seconded the motion and the motion unanimously passed.

3. Action: Chris Ballard
Rule 27

Chris Ballard reminded the Committee that this proposal was originally presented by Stan Purser and was approved by the Committee to be presented to the Supreme Court for public comment. The Supreme Court had several suggestions which Mr. Ballard incorporated into the rule. One suggestion was to make the requirements for the cover and the first page of a document mirror each other. Another suggestion was stylistic changes in accordance with the Supreme Court Style Guide. Mr. Ballard then asked the Committee for comment.

- Emily Adams noted that the word “and” was missing on line 32.
- The Committee had questions regarding paragraph (d) and the verbiage “first page,” Mr. Ballard believed “first page” was the clearest reference to a cover page, which motions and documents do not have. Carol Funk expressed that “first page” seems confusing and suggested deleting the words “first page” from line 59. After discussion the Committee decided to remove the “first page” verbiage.
- Scarlet Smith questioned if the Committee needed to clarify paragraph (c)(2) as some people may believe based on the rule that all counsel should be listed in the caption. Judge Orme agreed that not all counsel is needed on the caption but believed that we should require a minimum amount of counsel be listed. The Committee also cleaned up language in paragraph (c)(2)(A) and the list that follows, then ensured those changes were mirrored in paragraph (d)(2)(A).

Following those changes Mary Westby moved to approve the rule as shown on the screen. Scarlet Smith seconded the motion, and the motion was unanimously passed.

4. Action: Mary Westby
Rule 4

Mary Westby explained the new proposed changes to Rule 4, specifically paragraph (b)(2)(A). The changes would enable the Court to dismiss, without prejudice, appeals that have not been submitted for decision in the trial court within 150 days after entry of judgment.

- Mr. Ballard questioned if there is any danger of a party losing their right to appeal since they originally had a timely filed appeal, would the party need to realize that they must file another notice of appeal? Ms. Westby verified that the parties would need to file a new notice of appeal, even though they had originally filed a premature notice due to the appeal being dismissed without prejudice.
- Carol Funk suggested adding additional language to clarify that parties will need to file a new notice if their appeal is dismissed under this provision. Emily Adams agreed and proposed moving a portion of the language in (b)(2)(A) to a new subparagraph (B) and explain in that subparagraph that parties will need to file a new notice.
- Ms. Funk expressed that the proposal seemed confusing and people who are not used to our rules may not understand what they are supposed to do. Ms. Adams questioned if this could be done internally by adding a failure to prosecute rule. Stan Purser asked if this could be included in Rule 10.

Following these discussions Ms. Westby withdrew the proposed amendment to Rule 4 and will work on a new proposal to Rule 10. Ms. Westby moved to approve Rule 4, the version that was approved at the June meeting and recommended the rule be submitted to the Supreme Court for public comment. Ms. Smith seconded the motion, and the motion was unanimously passed.

5. Action: Nathalie Skibine
Rule 52

Nathalie Skibine introduced the proposed changes to Rule 52 in response to the *A.S. v. State*, 2023 UT 11, opinion.

Ms. Skibine spoke with Alexa Mareschal and Martha Pierce prior to the meeting, and asked their input for what the deadlines should be within the Rule. Ms. Mareschal suggested beginning the timeline when the party learns of the right to appeal, and Ms. Pierce suggested a hard 30-day deadline. Ms. Westby agreed with a hard deadline because these are time sensitive cases and suggested limiting the reinstatement period to only determination orders.

The Committee decided to go with a hard deadline of 45 days for the motion to reinstate. Ms. Skibine will get feedback from the practitioners on both sides.

Due to time constraints Michelle Quist moved to table further discussion on the proposal for Rule 52 until October's meeting. Nathalie Skibine seconded the motion, and the meeting adjourned.