



Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Nathalie Skibine, Chair
Stanford Purser, Vice Chair

Location:	Meeting held through Webex and in person at: Matheson Courthouse, Council Room, N. 301 450 S. State St. Salt Lake City, Utah 84111 https://utcourts.webex.com/utcourts/j.php?MTID=m538581f9082cdad50ff1e74adef124f9
Date:	October 3, 2024
Time:	12:00 to 1:30 p.m.

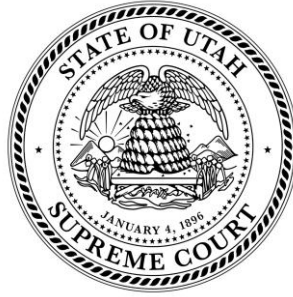
Action: Welcome and approval of September 5, 2024 Minutes	Tab 1	Nathalie Skibine, Chair
Action: Rule 8	Tab 2	Stan Purser, Clark Sabey, Mary Westby
Action: Rule 29	Tab 3	Nick Stiles
Discussion: Vexatious Litigants		Judge Christiansen Forster
Information: Board of Juvenile Court Judges Letter to Supreme Court	Tab 4	
Discussion: Old/new business		Nathalie Skibine, Chair

Committee Webpage: <https://legacy.utcourts.gov/utc/appellate-procedure/>

2024/2025 Meeting schedule:

November 7, 2024	February 6, 2025	May 1, 2025	August 7, 2025
December 5, 2024	March 6, 2025	June 5, 2025	September 4, 2025
January 2, 2025	April 3, 2025	July 3, 2025	October 2, 2025

TAB 1



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 5, 2024
12:00 pm to 1:30 pm

PRESENT

Dick Baldwin
Judge Michele
Christiansen Forster
Nicole Gray
Amber Griffith—Staff
Michael Judd—Recording
Secretary
Debra Nelson
Caroline Olsen
Judge Gregory Orme

Tera Peterson
Martha Pierce
Stan Purser
Michelle Quist
Clark Sabey
Nathalie Skibine—
Chair
Scarlet Smith
Nick Stiles—Staff
Mary Westby

EXCUSED

None

GUESTS

None

1. Action:

Nathalie Skibine

Approval of June 2024 Minutes

The committee reviewed the June 2024 minutes and identified one needed correction to the description of the motion to adjourn.

With that correction made, Mary Westby moved to approve the June 2024 minutes as they appeared in the committee's materials. Judge Michele Christiansen Forster seconded that motion, and it passed without objection by unanimous consent.

2. Action: Nathalie Skibine
Rules 19, 21, 23C, and 29

The committee noted first that, of the rules at issue, there were no additional changes proposed to the rules aside from Rule 21.

Following that discussion, Michelle Quist moved to approve all rules aside from Rule 21. Judge Michele Christiansen Forster seconded that motion, and it passed without objection by unanimous consent.

The committee then discussed a simple change to Rule 21 to remove reference to an August 1 implementation date.

Following that discussion, Ms. Westby moved to approve Rule 21 as modified and as it appeared on the screen at the committee's meeting. Judge Michele Christiansen Forster seconded that motion, and it passed without objection by unanimous consent.

3. Action: Stan Purser
Rule 8

The committee discussed the Rule 8-targeted project now assigned to subcommittee, noting that the Utah Supreme Court has encouraged the committee to determine whether any changes to Rule 8 are needed in light of changes to analogous rule of civil procedure. After initial discussion of the scope of the proposed amendments, Ms. Westby agreed to join the subcommittee, which also includes Clark Sabey and Stan Purser.

Following that agreement, the committee resolved to return to discussion of Rule 8 at its next meeting, at which it anticipates receiving a recommendation from the subcommittee.

4. Action: Clark Sabey, Michelle
Rule 42 Quist, Judge Christiansen
Forster

The committee reviewed proposed changes to Rule 42 made by Justice Pohlman, which are largely stylistic rather. The committee discussed a particular word-choice issue: changing the term "recall" to "retain." The committee noted that the rule is an attempt to formalize a procedure that's been in place

for a long time, and the committee discussed the language of the rule and the ways in which the draft rule maps onto the existing process.

Following that discussion, Judge Orme moved to table the proposed rule to allow for further development of the contemplated amendments. Mr. Sabey seconded that motion, and it passed without objection by unanimous consent. Nicole Gray will join the Rule sub-committee going forward.

5. Action: Nick Stiles
Review Manner of Appearance Rules and Consider a Rule for the Appellate Courts

Nick Stiles offered background on the potential rule change, noting that a similar rule has already been adopted in the civil, criminal, and juvenile rules and explaining that one upside of a potential rule change would be to maintain consistency. After discussion of how such a rule would function, the committee identified a potential amendment to Rule 29 and discussed the proper time limitation for such an appearance request.

Following that discussion, Judge Orme moved to table. Judge Christiansen Forster seconded that motion, and it passed without objection by unanimous consent. The committee anticipates that Mr. Stiles will present a proposed rule for consideration at the committee's October meeting.

6. Action: Nick Stiles
Appellate Disqualification

Mr. Stiles again offered background regarding the history of the committee's consideration of a rule for appellate disqualification. The committee noted that separate rules would likely be needed for the two Utah appellate courts. Mr. Stiles reported on a discussion with the Tenth Circuit and relayed that the Tenth Circuit reports not receiving this type of request. After discussion, the committee used a roll-call vote to determine that the majority of members believe do not believe that a rule is necessary. Nathalie Skibine will convey that belief to the Supreme Court at the next Supreme Court conference.

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

Nathalie Skibine

None.

8. Adjourn

Nathalie Skibine

Following the business and discussions described above, Ms. Quist moved to adjourn, and Ms. Nelson seconded. The committee adjourned. The committee's next meeting will take place on October 3, 2024.

TAB 2

1 **Rule 8. Stay or injunction pending appeal.**

2 (a) **Motion for stay or injunctive relief.**

3 (1) Initial motion in the trial court. ~~A-Unless a party can demonstrate extraordinary~~
4 ~~circumstances or that the trial court has already rejected the basis for the relief~~
5 ~~requested under this rule, the~~ party must ~~ordinarily~~ move first in the trial court for
6 the following relief pending appeal or pending disposition of a petition under Rule 5,
7 Rule 14, Rule 15, or Rule 19:

8 (A) a stay of the judgment or order without security ~~pending appeal or disposition~~
9 ~~of a petition under Rule 5;~~

10 (B) approval of a bond or other security provided to obtain a stay of the judgment
11 or order; or

12 (C) an order suspending, modifying, restoring, or granting injunctive relief ~~an~~
13 ~~injunction while an appeal is pending, unless the trial court has already rejected~~
14 ~~the basis for the requested relief.~~

15 (2) Motion in the appellate court.

16 (A) The motion for a stay or injunctive relief must include:

17 (i) the reasons the trial court denied the request;

18 (ii) the reasons for granting the relief requested and the facts relied on;

19 (iii) copies of affidavits or declarations, supporting facts subject to dispute; and

20 (iv) relevant parts of the record, including a copy of the trial court's order.

21 (B) ~~Any~~The motion must comply with Rule 23.

22 ~~(C) A motion for injunctive relief must also satisfy Rule 62(c) or Rule 65A(e).~~

23 ~~(C) Except in extraordinary circumstances, an appellate court will not act on a~~
24 ~~motion to stay a judgment or order or to suspend, modify, restore, or grant an~~

25 ~~injunction, unless the movant first requested a stay or opposed the injunction in~~
26 ~~the trial court.~~

27 (3) Stays in criminal cases. Stays pending appeal in criminal cases in which the
28 defendant has been sentenced are governed by Utah Code section [77-20-302](#) and Rule
29 [27](#) of the Utah Rules of Criminal Procedure. Stays in other criminal cases are governed
30 by this rule.

31 (b) **Bond Security** requirement.

32 ~~(1) Stay ordinarily conditioned upon giving a bondadequate security. For requests to [A](#)~~
33 ~~[stay or injunctive relief under this rule ordinarily](#) -stay enforcement of a judgment or~~
34 ~~order to pay money to which Rule [62](#) of the Utah Rules of Civil Procedure applied in the~~
35 ~~trial court, relief available pending appeal~~ will be conditioned upon giving a bond or
36 other appropriate security in the trial court, unless ~~there is no reasonable means of~~
37 ~~quantifying the security in monetary or other terms and~~ the conditions of paragraphs
38 ~~(b)(2)c) or (d)~~ are ~~met~~satisfied.

39 ~~(c) (2) Stay in cases not conditioned on [giving a bond](#)security.~~ Ordinarily a stay ~~or~~
40 ~~[injunctive relief](#)~~ without ~~a bond or other~~ security will not be granted unless the
41 movant demonstrates ~~that the following factors weigh in favor of the stay~~~~or~~
42 ~~[injunctive relief](#)~~:

43 ~~(A) a likelihood of success on the merits;~~ ~~or the case presents serious issues on the~~
44 ~~merits warranting appellate review and the appellant demonstrates:~~

45 ~~(BA) a likelihood of irreparable harm to the movant outweighing the harm to any~~
46 ~~other party;~~

47 ~~(C) and~~ the stay would not be adverse to the public interest; ~~and~~ ~~or~~

48 ~~(DB) any extraordinary circumstances~~ that justify~~ies issuing a stay~~ ~~the relief~~.

49 ~~(d) Injunction in cases not conditioned on security. (e) Injunctions.~~ For requests for
50 ~~injunctive relief to which Rules [65A](#) or [62](#) of the Utah Rules of Civil Procedure applied in~~

51 ~~the trial court, any relief available pending appeal is governed by those rules.~~An
52 injunction without security will not be granted unless the movant demonstrates:
53 (A) a substantial likelihood of prevailing on the merits on appeal;
54 (B) the movant will suffer irreparable harm unless the injunction is granted;
55 (C) the irreparable harm to the movant outweighs whatever harm the proposed
56 injunction may cause the party enjoined; and
57 (D) the injunction would not be adverse to the public interest.

58 *Effective May 1, 2023*

59 **Advisory Committee Note**

60 “Declaration” refers to an unsworn declaration as described in Title 78B, Chapter 18a,
61 Uniform Unsworn Declarations Act.

62 *Adopted 2022*

63

TAB 3

Note: Rule 29 is set to be submitted to the Supreme Court for final approval on October 9, 2024. The following proposed amendments were made on the anticipated version of Rule 29 to be effective November 1, 2024.

1 **Rule 29. Oral Argument.**

2 (a) **Holding oral argument.**

3 (1) **Supreme Court.** Oral argument will be held in cases before the Supreme Court
4 unless the court determines that oral argument will not aid the decisional process.

5 (2) **Court of Appeals.** Oral argument will be allowed in all cases in which the Court
6 of Appeals determines that oral argument will significantly aid the decisional process.

7 (3) **Argument format.** The court may hold oral argument in person, by phone, or by
8 videoconference.

9 (b) **Notice; waiver; cancellation; [appearing remotely](#); continuance.**

10 (1) **Supreme Court.** Not later than 28 days before the date on which a case is
11 calendared, the clerk will give notice of the time and place of oral argument, and the
12 time to be allowed each side. If all parties to a case believe oral argument will not
13 benefit the court, they may file a joint motion to cancel oral argument not later than
14 14 days from the date of the clerk's notice. The court will grant the motion only if it
15 determines that oral argument will not aid the decisional process. A motion to
16 continue oral argument must be supported by (1) a stipulation of all parties or a
17 statement that the movant was unable to obtain such a stipulation, and (2) an affidavit
18 or declaration of counsel specifying the grounds for the motion. A motion to continue
19 filed not later than 14 days from the date of the clerk's notice may be granted on a
20 showing of good cause. A motion to continue filed thereafter will be granted only on
21 a showing of exceptional circumstances. [A motion to appear remotely may be filed](#)
22 [not later than 21 days before oral argument. A motion to appear remotely filed within](#)
23 [21 days of oral argument may be granted on a showing of good cause.](#)

24 (2) **Court of Appeals.** Not later than 28 days before the date on which a case is
25 calendared, the clerk will give notice to all parties that oral argument is to be
26 permitted, the time and place of oral argument, and the time to be allowed each side.
27 Any party may waive oral argument by filing a written waiver with the clerk not later
28 than 14 days from the date of the clerk’s notice. If one party waives oral argument and
29 any other party does not, the party waiving oral argument may nevertheless present
30 oral argument. A request to continue oral argument or for additional argument time
31 must be made by motion. A motion to continue oral argument must be supported by
32 (1) a stipulation of all parties or a statement that the movant was unable to obtain such
33 a stipulation, and (2) an affidavit or declaration of counsel specifying the grounds for
34 the motion. A motion to continue filed not later than 14 days from the date of the
35 clerk’s notice may be granted on a showing of good cause. A motion to continue filed
36 thereafter will be granted only on a showing of exceptional circumstances. [A motion](#)
37 [to appear remotely may be filed not later than 21 days before oral argument. A motion](#)
38 [to appear remotely filed within 21 days of oral argument may be granted on a](#)
39 [showing of good cause.](#)

40 (c) **Argument order.** The appellant argues first and the appellee responds. The appellant
41 may reply to the appellee’s argument if appellant reserved part of appellant’s time for
42 this purpose. The time reserved may not exceed five minutes, and such argument in
43 reply is limited to responding to points made by appellee in appellee’s oral argument and
44 answering any questions from the court.

45 (d) **Cross and separate appeals.** A cross or separate appeal is argued with the initial
46 appeal at a single argument, unless the court otherwise directs. If a case involves a
47 separate appeal, the plaintiff in the action below is deemed the appellant for the purpose
48 of this rule unless the parties otherwise agree or the court otherwise directs. If separate
49 appellants support the same argument, care must be taken to avoid duplicative
50 arguments. Unless otherwise agreed by the parties, in cases involving a cross-appeal the
51 appellant, as determined pursuant to Rule [24A](#), opens the argument and presents only

52 the issues raised in the appellant’s opening brief. The cross-appellant then presents an
53 argument that answers the appellant’s issues and addresses original issues raised by the
54 cross-appeal. The appellant then presents an argument that replies to the cross-
55 appellant’s answer to the appellant’s issues and answers the issues raised on the cross-
56 appeal. The cross-appellant may then present an argument that is confined to a reply to
57 the appellant’s answer to the issues raised by the cross-appeal. The court will grant
58 reasonable requests, for good cause shown, for extended argument time.

59 (e) **Nonappearance of parties.** If the appellee fails to appear to present argument, the
60 court will hear argument on behalf of the appellant, if present. If the appellant fails to
61 appear, the court may hear argument on behalf of the appellee, if present. If neither party
62 appears, the case may be decided on the briefs, or the court may direct that the case be
63 rescheduled for argument.

64 (f) **Submission on the briefs.** By agreement of the parties, a case may be submitted for
65 decision on the briefs, but the court may direct that the case be argued.

66 (g) **Use of physical exhibits at argument; removal.** If physical exhibits other than
67 documents are to be used at the argument, counsel must arrange to have them placed in
68 the courtroom before the court convenes on the date of the argument. After the argument,
69 counsel must remove the exhibits from the courtroom unless the court otherwise directs.
70 If exhibits are not reclaimed by counsel within a reasonable time after notice is given by
71 the clerk, they will be destroyed or otherwise disposed of.

72 *Effective ~~November 1, 2024~~*

73 Advisory Committee Note

74 “Declaration” refers to an unsworn declaration as described in Title 78B, Chapter 18a,
75 Uniform Unsworn Declarations Act.

76 *Note adopted 2022*

TAB 4



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

June 26, 2024

Ron Gordon
State Court Administrator
Neira Siaperas
Deputy Court Administrator

Utah Supreme Court
450 S State St
Salt Lake City, UT 84111
c/o Nick Stiles, Appellate Court Administrator
via email only: nicks@utcourts.gov

RE: Proposed Changes to Utah Rules of Appellate Procedure

Distinguished Justices:

The Board of Juvenile Court Judges is concerned about potential changes to the Rules of Appellate Procedure (Rules) related to child welfare appeals proposed by the Utah Supreme Court Advisory Committee on the Rules of Appellate Procedure (Committee). Earlier in the process of reviewing these Rules, the Committee solicited our input, and we recommended that no change be made to the Rules.

We recommended no change because of the collaborative work in developing these Rules years ago. The current Rules were agreed upon by many stakeholders, including parental defenders, as they benefit children and families without compromising the constitutional rights of parents. The Rules mirror the expedited nature of the entire child welfare process and have been upheld as constitutional. *See In re B.A.P.*, 2006 UT 68, 148 P.3d 934.

Even with these expedited Rules in place, it still takes significant time for child welfare appeals to be resolved. During this time, parents and children are in limbo. For children who perceive time differently, these appeals take forever.

We hope you will be cautious in changing any Rule that could cause further delay. We believe that achieving permanency is beneficial for all parties and appreciate the work of the appellate courts in making this happen.

Thank you for your consideration of these matters.

Sincerely,

For the Board of Juvenile Court Judges:

A handwritten signature in black ink, appearing to read "Brent H. Bartholomew".

Brent H. Bartholomew
Chair

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.