

**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

Judicial Council Room  
Thursday, May 5, 2016  
12:00 p.m. to 1:30 p.m.

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**PRESENT**

Joan Watt- Chair  
Troy Booher  
Marian Decker  
R. Shawn Gunnarson  
Judge Gregory Orme  
Adam Pace – Recording Secretary  
Rodney Parker  
Bridget Romano  
Clark Sabey  
Lori Seppi  
Tim Shea-Staff  
Judge Fred Voros  
Mary Westby

**EXCUSED**

Paul Burke  
Alan Mouritsen  
Ann Marie Taliaferro

**1. Welcome and approval of minutes**

**Joan Watt**

Ms. Watt welcomed the committee to the meeting and invited a motion to approve the minutes from the April meeting.

*Ms. Romano moved to approve the April minutes. Ms. Seppi seconded the motion and it passed unanimously.*

**2. Further follow up to e-filing**

**Tim Shea**

Mr. Shea introduced issues for further discussion based on public comments to the e-filing rules and the feedback that was received in the in e-filing CLE. Some comments addressed the need for sample forms and supporting information to be created and provided on the court’s e-filing website. Mr. Shea reported that the court can create this material without the need for any further rule amendments.

The comments raised several issues with respect to linking to the electronic record when there are multiple cases underlying the appeal. The committee identified and discussed different scenarios where this could happen, including PCRA (Post Conviction Remedy Act) proceedings, Rule 19 petitions for extraordinary writs, and possibly others. Mr. Shea proposed further revisions to Rule 21A to provide the citation formats needed for citing to records of multiple cases (D:1:#:#, D:2:#:#. etc.). Mr. Shea also suggested that there needs to be a mechanism in place to alert the court when there are multiple cases underlying the appeal, so the electronic records can be gathered and associated with the appeal in the e-filing system. Also, in some cases the record might not be available in electronic format, and might so voluminous that it would be unduly burdensome on the district court to require that it be scanned. There needs to be a mechanism in place to decide how these records are gathered and transferred to the appellate court.

The committee discussed and agreed that the appellate court should have discretion to decide on a case by case basis whether a voluminous paper record should be scanned. The committee discussed the best way to alert the court when there are multiple records that need to be linked from cases underlying the appeal. The options that were discussed included: 1) putting the information in the docketing statement; 2) making the parties file a motion; and 3) allowing the parties to identify associated cases in a drop-down menu in the e-filing system. Judge Voros commented, and others agreed, that the third option was preferable. Judge Voros also commented that only the record that was actually in front of the district court should be linked to on appeal. Otherwise, parties should have to make a motion to supplement the record. Mr. Sabey asked whether the district courts in PCRA proceedings could be required to make the records from any underlying cases part of the record before it is sent up on appeal. Judge Voros suggested that this may require an amendment to civil rule 65A, not the appellate rules. Ms. Watt asked Ms. Romano to gather feedback on this issue from her colleagues that also do PCRA work to discuss at the next meeting.

The committee agreed that the e-filing system should be designed to provide the ability for the district and appellate courts to link to records from other cases, and to identify them with the proper labels so they are easily citable on appeal. Mr. Parker commented this proposal might be too ambitious, and suggested revising Rule 21A to require linking to the electronic record “when possible” in order to account for scenarios that are likely to arise when linking to the electronic record is not possible, or does not function properly. The committee agreed with this suggestion.

Mr. Shea said that he would incorporate these suggestions into a new revision of Rule 21A to be presented and discussed at the next meeting. He reported that the court is preparing a standing order that it will issue to allow filing of documents by email in the interim until the e-filing system is ready. Finally, Mr. Shea pointed out that the e-filing system has been delayed, and asked the committee to consider whether it should move forward with a modified version of the proposed e-filing rules in the interim. Ms. Watt invited the committee members to review the e-filing rules and to identify what portions could be adopted before the e-filing system is complete—to be discussed in a future meeting.

### **3. Rule 52. Child Welfare Appeals**

**Mary Westby**

Ms. Westby proposed, and the committee agreed, that Rule 52 should be amended to make it consistent with the recent changes that were approved to Rule 4(b). Mr. Booher questioned whether the language in Rule 52(c) regarding the timing for filing a cross appeal should be left as “after a notice of appeal is filed,” and not changed to “after the date on which the first notice of appeal is docketed.” He commented that there might be confusion between the date that an appeal is docketed and the date it is filed. The committee agreed with this suggestion. Mr. Sabey asked if the same change should be made to Rule 4(b). The committee agreed that change should be made as well. Ms. Watt invited a motion to approve these proposed changes.

*Mr. Booher moved to approve the proposed change to Rule 52. Ms. Romano seconded the motion and it passed unanimously.*

*Mr. Gunnarson moved to approve proposed change to Rule 4(b). Ms. Romano seconded the motion and it passed unanimously.*

Judge Voros suggested the committee should consider inviting feedback from practitioners on the changes that are being made to rules governing child welfare appeals.

### **4. Rule 37. Suggestion of mootness; voluntary dismissal**

**Judge Voros**

Discussion of this issue was tabled until the next meeting.

### **5. Rule 23D. Challenging the constitutionality of a statute or ordinance Tim Shea**

Mr. Shea reported that the Supreme Court requested he draft a rule requiring the parties to serve their briefs on the Attorney General (or the county or municipal attorney, as the case may be) if a party challenges the constitutionality of a statute or ordinance. He asked the committee to discuss a new proposed Rule 23D.

Ms. Romano commented that she is in favor of the concept of the rule, but that the proposed time frames in the rule do not work because they are too short. She also raised several other concerns with the way the rule is drafted. The committee discussed various other questions raised by this rule. Ms. Watt suggested, and the committee agreed, that a subcommittee should be formed to examine the proposed rule and make further recommendations. Ms. Romano agreed to chair the subcommittee comprised of herself, Mr. Gunnarson, Mr. Booher, and Mr. Sabey.

**6. Rule 40. Attorney's or party's certificate; sanctions and discipline**      **Tim Shea**

Discussion of this issue was tabled until the next meeting.

**7. Adjourn**

The meeting was adjourned at 1:29 p.m. The next meeting will be held on Thursday June 2, 2016.