



Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Chris Ballard, Chair
Nathalie Skibine, Vice Chair

Location: Webex (see calendar appointment for instructions)
Date: January 6, 2022
Time: 12:00 to 1:30 p.m.

Action: Welcome and approval of November 4, 2021 Minutes	Tab 1	Chris Ballard, Chair
Information: Welcome new staff member Amber Griffith	-	Nick Stiles
Action: Rule 4(f)	Tab 2	Mary Westby
Action: Rule 10(d)	Tab 3	Emily Adams
Discussion: Orders entered on weekends	-	Mary Westby
Information: Update UCJA 4-206	-	Lisa Collins
Discussion: Old/new business		Chris Ballard, Chair

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

2022 Meeting schedule:

February 3, 2022	May 5, 2022	August 4, 2022	November 3, 2022
March 3, 2022	June 2, 2022	September 1, 2022	December 1, 2022
April 7, 2022	July 7, 2022	October 6, 2022	

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

Via WebEx Videoconference
Thursday, November 4, 2021
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Lisa Collins
Carol Funk
Michael Judd—
Recording Secretary
Judge Jill Pohlman
Judge Gregory Orme

Stanford Purser
Michelle Quist
Clark Sabey
Nathalie Skibine
Scarlet Smith
Nick Stiles—Staff
Christopher Williams—
Guest
Mary Westby

EXCUSED

Patrick Burt
Tyler Green

-
1. **Action:** **Chris Ballard**
Approval of October 2021 Minutes

The committee reviewed the October 2021 minutes. Chris Ballard noted a clean-up matter related to the wording of Item 7. That change was made.

Mary Westby moved to approve the October 2021 minutes as amended. Michelle Quist seconded that motion, and it passed without objection by unanimous consent.

2. Action:

Nick Stiles

UCJA 4-206—Approved and Pending Versions

Nick Stiles began the committee’s discussion of UCJA 4-206 with a status update. A draft of that rule was scheduled to go before the policy and planning committee later the same day of the committee’s November meeting. Mr. Stiles noted that this would likely represent the start of the process with policy and planning, and a second draft may therefore be needed. Mr. Stiles had circulated an initial draft, Lisa Collins and Mary Westby proposed and put together an alternate. After discussion, the committee determined that the best approach is for Mr. Stiles to present the second draft to the policy and planning committee. Troy Booher noted that the second draft does not seem to contemplate a time period to expose of exhibits in a civil case when an appeal *is* taken, creating a possible gap when there is no eligibility for post-conviction appeal.

After that discussion, Judge Orme moved that the committee authorize Mr. Stiles to present the second draft to the policy and planning committee. Mary Westby seconded that motion, and it passed without objection by unanimous consent.

3. Action:
Rule 25

Stan Purser

Again, the committee began its discussion of Rule 25 with a status update. When the committee last left those amendments, it had nearly finalized them, except for a question related timing, which was found in section 25(g). In a discussion led by Stan Purser, the committee considered a proposal to break that subsection into two parts, one for when no motion is needed, second for when a motion has been filed. Judge Jill Pohlman offered a suggestion regarding notice timing in section 25(a). Chris Ballard recommended a change regarding “submission by the Office of the Attorney General. After working through those changes, the committee discussed *pro se* practice and details regarding stipulations by parties. The committee’s presumption, given the scope of the changes, is that the rule will be re-circulated for comment.

Following that discussion, Judge Pohlman moved to approve rule as amended and as shown on screen. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

4. Discussion:

Clark Sabey

Rules 19 and 20—Update

Clark Sabey reminded the committee of the problem at issue: Rule 20 makes no mention of Post-Conviction Remedies Act. The Supreme Court was interested in bringing that to the committee's attention, and suggested that it would be appropriate to mention the PCRA. The committee discussed whether PCRA filing issues can be addressed via a rule change, then identified what may be needed: a new opening section that says, "If you're trying to seek post-conviction relief, you need to do that in district court. If you file here, it will be referred to district court." The committee considered a further question: Is Rule 20 expressly addressed in correspondence from the appellate courts? And might it make sense to eliminate Rule 20 altogether? The committee noted another open question regarding the potential existence of some habeas power outside Rule 65 and PCRA.

After that discussion, Mr. Sabey moved to refer the proposed amendments to Rule 20 (and/or Rule 19) to a sub-committee consisting of Mr. Sabey, Ms. Westby, and Mr. Ballard. Ms. Westby seconded, and that motion passed without objection by unanimous consent.

5. Action:

Lisa Collins

Rule 3

Ms. Collins led the committee in a discussion of proposed changes to Rule 3, which add language to deal with a problem regarding notices of appeal and vexatious litigants. Mr. Sabey noted that Rule 83 of the Utah Rules of Civil Procedure is very global and doesn't exclude notices of appeal. As a result, the committee noted, the best option may be to have Civil Rules committee look at this problem, as well.

Given the committee's ongoing discussions about how best to formulate and coordinate rule changes to address this problem, Lisa Collins moved to table the proposed amendments until the committee meets again. Judge Pohlman seconded that motion. The committee intends present this issue to civil rules committee,

stressing importance of the practice of not imposing a pre-filing requirement with respect to notices of appeal.

6. Discussion:

Chris Ballard

Old/New Business

Mr. Ballard identified one potential matter of new business: a mechanism to move to intervene in an appeal. Mr. Ballard offered to draft a proposed amendment for the committee's consideration.

7. Adjourn

After Ms. Westby moved to adjourn and Ms. Quist seconded, the committee adjourned. The committee's next meeting will take place on January 6, 2022.

Tab 2

1 **(f) Motion to reinstate period for filing a direct appeal in criminal cases.**

2 (1) If no timely appeal is filed in a criminal case, a defendant may file a motion in the
3 trial court to reinstate the time to appeal. The motion must be made within a
4 reasonable time after the initial time to appeal has expired, and must be filed
5 before any petition for postconviction relief has been filed.

6 (2) If the defendant is not represented by counsel and is indigent, the trial court must
7 appoint counsel.

8 (3) The motion must be served on the prosecuting entity. The prosecutor may file a
9 response to the motion within thirty days after being served.

10 (4) If the motion to reinstate the time to appeal is opposed, the trial court must set a
11 hearing at which the parties may present evidence.

12 (5) The defendant must show that he was deprived of the right to appeal through no
13 fault of his own by establishing that:

14 (a) counsel failed to file a timely appeal after agreeing to do so;

15 (b) the defendant diligently but futilely attempted to appeal within the
16 statutory time frame without fault on defendant's part; or

17 (c) the court or the defendant's counsel failed to properly advise defendant of
18 the right to appeal.

19 (6) If the trial court finds by a preponderance of evidence that a defendant has been
20 deprived of the right to appeal, the court must enter an order reinstating the right
21 to appeal. The defendant's notice of appeal must be filed with the clerk of the trial
22 court within 30 days after the date of entry of the order.

24 **(f) Motion to reinstate period for filing a direct appeal in criminal cases.**

25 Upon a showing that a criminal defendant was deprived of the right to appeal, the trial court shall
26 reinstate the thirty-day period for filing a direct appeal. A defendant seeking such reinstatement
27 shall file a written motion in the sentencing court and serve the prosecuting entity. If the
28 defendant is not represented and is indigent, the court shall appoint counsel. The prosecutor shall
29 have 30 days after service of the motion to file a written response. If the prosecutor opposes the
30 motion, the trial court shall set a hearing at which the parties may present evidence. If the trial
31 court finds by a preponderance of the evidence that the defendant has demonstrated that the
32 defendant was deprived of the right to appeal, it shall enter an order reinstating the time for
33 appeal. The defendant's notice of appeal must be filed with the clerk of the trial court within 30
34 days after the date of entry of the order.

35 **(g) Motion to reinstate period for filing a direct appeal in civil cases.**

36 (1) The trial court shall reinstate the thirty-day period for filing a direct appeal if the trial
37 court finds by a preponderance of the evidence that:

38 (A) The party seeking to appeal lacked actual notice of the entry of judgment at a
39 time that would have allowed the party to file a timely motion under paragraph (e)
40 of this rule;

41 (B) The party seeking to appeal exercised reasonable diligence in monitoring the
42 proceedings; and

43 (C) The party, if any, responsible for serving the judgment under Rule [58A\(d\)](#) of
44 the Utah Rules of Civil Procedure did not promptly serve a copy of the signed
45 judgment on the party seeking to appeal.

46 (2) A party seeking such reinstatement shall file a written motion in the trial court within
47 one year from the entry of judgment. The party shall comply with Rule [7](#) of the Utah
48 Rules of Civil Procedure and shall serve each of the parties in accordance with Rule [5](#) of
49 the Utah Rules of Civil Procedure.

50 (3) If the trial court enters an order reinstating the time for filing a direct appeal, a notice
51 of appeal must be filed within 30 days after the date of entry of the order.

52

Tab 3

1 **Rule 10. Procedures for summary disposition or simplified appeal process.**

2 **(a) Time for filing; grounds for motion for summary disposition.**

3 (a)(1) A party may move at any time to dismiss the appeal or the petition for review on
4 the basis that the appellate court lacks jurisdiction. Any response to such motion must be
5 filed within 14 days from the date of service.

6 (a)(2) After a docketing statement has been filed, the court, on its own motion, and on
7 such notice as it directs, may dismiss an appeal or petition for review if the court lacks
8 jurisdiction; or may summarily affirm the judgment or order that is the subject of review,
9 if it plainly appears that no substantial question is presented; or may summarily reverse in
10 cases of manifest error.

11 (a)(3) The time for taking other steps in the appellate process is suspended pending
12 disposition of a motion for summary affirmance, reversal, or dismissal.

13 (a)(4) As to any issue raised by a motion for summary disposition, the court may defer its
14 ruling until plenary presentation and consideration of the case.

15 **(b) Simplified appeal process; eligible appeals.**

16 (b)(1) For appeals involving the application of well-settled law to a set of facts, the court
17 may designate an appeal for a simplified appeal process. An appellant in a case pending
18 before the Court of Appeals may move for a simplified appeal process under this
19 subsection within 10 days after the docketing statement is filed or the case is transferred
20 to the court of appeals, whichever is later.

21 (b)(2) Appeals eligible for a simplified process are those involving the application of
22 well-settled law to a set of facts, which may include, but are not limited to, cases in the
23 following categories:

24 (b)(2)(A) appeals challenging only the sentence in a criminal case;

25 (b)(2)(B) appeals from the revocation of probation or parole;

26 (b)(2)(C) appeals from a judgment in an unlawful detainer action; and

27 (b)(2)(D) petitions for review of a decision of the Department of Workforce
28 Services Workforce Appeals Board or the Labor Commission.

29 **(c) Memoranda in lieu of briefs.**

30 (c)(1) In appeals designated under subsection (b), the parties must file memoranda in
31 support of their positions instead of briefs. The schedule for preparing memoranda will be
32 set by appellate court order.

33 (c)(2) A party's principal memorandum must include:

34 (c)(2)(A) an introduction describing the nature and context of the dispute,
35 including the disposition in the court or agency whose judgment or order is under
36 review;

37 (c)(2)(B) a statement of the issues for review, including a citation to the record
38 showing that the issue was preserved for review or a statement of grounds for
39 seeking review of an issue not preserved;

40 (c)(2)(C) an argument, explaining with reasoned analysis supported by citations to
41 legal authority and the record, why the party should prevail on appeal; no separate
42 statement of facts is required, but facts asserted in the argument must be
43 supported by citations to the record;

44 (c)(2)(D) a claim for attorney fees, if any, including the legal basis for an award;
45 and

46 (c)(2)(E) a certificate of compliance, certifying that the memorandum complies
47 with rule 21 regarding public and private documents.

48 (c)(3) An appellant or petitioner may file a reply memorandum limited to responding to
49 the facts and arguments raised in appellee's or respondent's principal memorandum. The
50 reply memorandum must include an argument and a certificate of compliance with rule
51 21 regarding public and private documents.

52 (c)(4) Principal memoranda must be no more than 7,000 words or 20 pages if a word
53 count is not provided. A reply memorandum must be no more than 3,500 words or 10
54 pages if a word count is not provided.

55 (d) **Extension of time.** By stipulation filed with the court **before the date a memorandum is due**
56 **to be filed**, the parties may extend the time for filing by no more than 21 days. Any additional
57 motions for an extension of time will be governed by rule 22(b).

58