AGENDA

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, February 5, 2015
12:00 p.m. to 1:30 p.m.

12:00 p.m.	Welcome and Approval of Minutes (Tab 1)	Rodney Parker
12:05 p.m.	Public Briefs (Tab 2)	Tim Shea
12:20 p.m.	Rule 24 (Tab 3) Rule 24 and *State v. Nielsen* (Tab 4) Rule 27 (Tab 5)	Troy Booher
1:25 p.m.	Other Business	
1:30 p.m.	Adjourn	

Upcoming Meetings:

March 5, 2015
April 2, 2015
May 7, 2015

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Upcoming Meetings:

March 5, 2015
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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

Judicial Council Room
Thursday, January 8, 2014
12:00 p.m. to 1:30 p.m.

PRESENT	**EXCUSED**
Joan Watt – Chair	
Alison Adams-Perlac – Staff	
Troy Booher	
Paul Burke	
Marian Decker	
Alan Mouritsen	
Judge Gregory Orme	
Rodney Parker	
Bryan Pattison (by phone)	
John Plimpton – Recording Secretary	
Bridget Romano	
Clark Sabey	
Lori Seppi	
Tim Shea	
Anne Marie Taliaferro	
Judge Fred Voros	
Mary Westby	

1. Welcome and Approval of Minutes **Joan Watt**

Ms. Watt welcomed the committee to the meeting. She asked for any comments on the minutes from the previous meeting. Ms. Seppi said that on page 6, points 4, 5, and 6 should combined. The other committee members agreed. Mr. Parker said that on page 2, in point 3, "The committee amended Rule 9 to read as follows" should be changed to "The committee proposed that Rule 9 be amended to read as follows." The other committee members agreed.

Ms. Romano moved to approve the minutes from the meeting held on November 6, 2014, as amended. Mr. Parker seconded the motion and it passed unanimously.

2. Rule 24 **Troy Booher**

Ms. Decker introduced Jeff Gray, an attorney with the criminal appeals division of the Attorney General's office (AG), who was present at the meeting to voice the AG's concerns about the proposed amendments to Rule 24. Ms. Decker said that Mr. Gray was the AG's foremost expert on appellate brief readability, including font and typography.

Mr. Gray began with what the AG likes about the proposed amendments. He said that the AG likes the elimination of the jurisdictional statement and the relevant provisions. He said he does not think too many people, including judges, read those sections. He said most jurisdictional matters are handled with the docketing statement, and if jurisdiction is an issue on appeal, it is going to be in the argument section.

Mr. Gray said that the AG is concerned that the introduction requires too much. He pointed to the *Clopten* brief that Mr. Booher revised to comply with the proposed amendments. Mr. Gray said he thought the original briefs, which were filed under the current version of Rule 24, were easier to read. He said that the introduction in the revised *Clopten* brief was too long and included too much information. He said that the AG likes the idea of having an introduction in most cases, but it should not be a requirement for all cases. He said that the Rule should permit, but not require, an introduction. He said the Rule should state that the purpose of the introduction is to explain what the brief is about and give context to the issues.

Mr. Gray and Ms. Decker said that the AG would like to keep the argument summary section. Ms. Decker said that the argument summary should come after the fact section because the reader needs factual context for the summary to make sense. She said that including the summary in the introduction untethers it from important factual context and makes it more difficult to follow. Mr. Gray said that the introduction should not include the argument summary because it would make introductions too long.

Ms. Romano said that changing Rule 24 will not necessarily make for better brief writing. She said that every aspect of brief writing should be aimed toward advocating and concision. She said that she was convinced from reading the sample briefs that long introductions with an argument summary will not save the readers any time.

Ms. Watt agreed with the idea that an introduction should be a short introduction to the case. She said that the problem is how to articulate a rule that adequately describes what an introduction should be.

Mr. Gray went on to discuss the proposed requirements for the argument section. He said that some of the requirements detract from the ability to advocate. He said that the proposal is to have a contention statement, a preservation statement, and a standard of review for each issue before the argument even begins. He said the AG would like to keep the issue statement as it is in the current version of the Rule. He said that the contention statement is appellant-oriented.

Judge Voros asked if having the contention statement, a preservation statement, and a standard of review in the argument section makes advocates feel like they are stuck taking care of

housekeeping when they should be diving into their arguments. Mr. Gray and Ms. Decker said yes. Ms. Decker said the AG would like to keep the statement of the issues, preservation, and standard of review as they are in the current Rule.

Judge Voros said that, as a judge, he has found himself skipping the issue statements and just reading the tables of contents to discern the issues in the case. He said that the issue statements are really just contentions phrased in the form of a question, so having them is not very helpful. He asked Mr. Gray if he thought requiring contention statements was appellant-oriented. Mr. Gray read the proposed Rule's definition of contention statement, which is "a statement of error that the appellant contends warrants relief on appeal." Mr. Gray said the proposed Rule only requires the appellee to state whether she or she disagrees with the appellant's contention statement.

Mr. Gray said that the proposed Rule appears to put the standard of review in the argument section because there is nowhere else to put it. Judge Voros said that the point of putting the standard of review in the argument section is to try to get the parties to view the issue through the lens of the standard of review. Ms. Romano said she agreed with Judge Voros. Judge Voros said that appellants forget that they need to view the issues through the standard of review when the standard of review is early in the brief. Ms. Romano said that the 10th Circuit requires the standard of review in the argument section and she likes it that way because it forces parties to write to the standard of review. Ms. Decker said that a party who is going to ignore the standard of review is going to do it no matter where the Rule requires it to be in the brief. Mr. Gray agreed.

Judge Voros asked which other committee members practice in the 10th Circuit, and he asked them if they think including the standard of review in the argument section makes a difference. Ms. Taliaferro said she practices in the 10th Circuit and that having the standard of review in the argument section does not make much of a difference. Mr. Parker agreed with Ms. Taliaferro.

Mr. Parker said that the primary issue with brief organization is just a question of knowing where to find the different parts. He said the difference between the current Rule 24 and the 10th Circuit's rule regarding the placement of the standard of review do not make much of a difference other than knowing where to find the standard of review. He said it is less a question of readability than locatability. Ms. Taliaferro said it is beneficial as an advocate to be able to start your argument right when you get to the argument section. Ms. Decker added that having information such as preservation and standard of review in the beginning of the brief makes it easy to locate.

Judge Voros said that it is not uncommon to get a brief and not be able to understand what the case is about before reading far into the brief. He said that this problem might be fixed with an introduction.

Ms. Watt said the Rule should require a concise introduction. She said that she agrees with Mr. Gray that the introductions in the sample briefs were too long and included too much. She said that the introduction needs to communicate what the case is about, but no more, so it orients the reader and gives an idea of what to expect in the brief. Judge Orme said the introduction should be very generalized.

Mr. Booher said that, in subcommittee, Justice Lee said that if he were in practice again, he would never file another document that did not have an introduction. He said that the proposed Rule was largely motivated by a desire to reduce redundancy. He said that the average brief writer will probably be redundant in the introduction, the argument summary, and the nature of the case, so the subcommittee decided to eliminate the summary and nature of the case in favor of the introduction.

Ms. Romano said the point of an introduction is to orient the reader to the case while the reader's attention is fresh, and that point is defeated if the introduction includes an argument summary because then the introduction is too lengthy. Ms. Watt agreed, but she said the difficulty is formulating a rule that provides for a concise introduction and an argument summary and reduces redundancy. Mr. Gray said the Rule could require that the introduction not be argumentative. Several committee members said they did not think such a provision would be effective.

Judge Voros said that he would like an introduction that is a neutral orientation. Judge Orme said that the proposed Rule requires much more in the introduction than when the subcommittee initially discussed the amending the Rule. He said that the subcommittee initially preferred an introduction that was about five sentences long that generally orients the reader to the type of case and the issues on appeal.

Mr. Booher said that the subcommittee had passed around samples of much longer introductions, some of them three or four pages, that were met with approval. Mr. Burke agreed.

Mr. Gray said that the committee cannot legislate good writing, and that some attorneys will write briefs that are very readable and others will not, no matter how Rule 24 is written. Ms. Watt added that many appellate judges read briefs and all of them have idiosyncratic preferences for them. She said that the goal is to devise a general rule that helps attorneys advocate and helps judges read the briefs. Mr. Gray questioned whether contention statements would be more helpful than issue statements. Ms. Watt said she prefers issue statements because they are helpful in framing the case. She said she is satisfied with the current Rule's placement of preservation, issue statement, and standard of review, but the Rule should provide for an adequately circumscribed introduction. She said that the jurisdiction statement and relevant provisions should be eliminated. She said she thinks the Rule should provide for both an introduction and an argument summary, but she is not sure how to articulate that in a rule that also reduces redundancy. She said that an introduction should be very short.

Mr. Gray said that introduction is supposed to set readers up to understand what the issues are when they read the issues; it is supposed to provide background to understand the brief. Mr. Parker said the argument summary should come after the fact section so the reader has factual context.

Judge Voros said it would be difficult for the Rule to provide for optional introductions. He said there seem to be three choices: short introduction and argument summary, long introduction and no argument summary, or long introduction and summary. Mr. Parker said he would prefer a short

introduction and summary. He said he thought the current Rule was originally intended to provide for an introduction in the nature of the case section, but it has not worked out that way.

Ms. Westby said that the two words she has been hearing repeatedly are orientation and context. She said the Rule should require a short introduction that explains the case and orients or gives context to the reader. She said the Rule needs to make clear that the introduction should orient the reader and provide enough factual context for the brief to make sense as the reader continues.

Mr. Booher said that most appellate judges do not read briefs in the order that the current Rule provides. He said that, as a writer, that is frustrating because one does not know where the judge is starting in the brief. He said that that leads to redundancy. He said that requiring an introduction will help give attorneys confidence that the judge is starting the brief at the beginning, which will allow attorneys to craft their briefs in a more effective, less redundant way.

Mr. Sabey said that he thinks the committee needs to dispense with the idea that the introduction is a summary of the argument. He said that, as staff attorney at the Utah Supreme Court, he has been writing introductions that are typically one paragraph in length. Judge Orme said that the Rule could require an introduction not exceeding one paragraph in length, providing general orientation. Ms. Decker said the Rule needs to be more flexible than that.

Mr. Burke asked if there was a consensus among appellate judges on how they have their bench briefs prepared. Judge Voros said he does not have bench briefs prepared.

Judge Voros said that not infrequently in civil cases, the appellant's brief will be so focused on what the trial court got wrong that it will not say what type of case it is. He also said that the procedural history will include proceedings that are not relevant to the issue on appeal. Mr. Gray asked if revising the Rule would fix this problem. Ms. Watt said that the challenge will be to draft a rule that addresses all of the major concerns.

Judge Voros asked Mr. Gray if he has a problem with framing the issue as a contention rather than a question. Mr. Gray said he did not know if there would be a problem with it. Ms. Watt said that stating the issue as a "whether" statement gives attorneys the opportunity to frame the issue. Mr. Gray added that in the opinion the appellate court will frame the issue as a question or a "whether" statement. Judge Voros disagreed. He said that he expects the issue to be what the appellant tells him it is, and he expects the appellant to tell him that the trial court erred in some way. Judge Voros said that oftentimes appellants do not realize that they have a burden on appeal, and he would like the Rule to signal to appellants that they have a burden.

Judge Orme returned to the issue of the introduction. He said he would like the Rule to require a very succinct introduction that provides overview and context. He said that that would provide judges with a filter with which to read briefs, so they would know what is important and what is not. Judge Voros added that he would like the Rule to signal to attorneys that the introduction should be neutral.

Mr. Gray addressed fonts. He said that the Rule should permit readable fonts. He said that Book Antiqua is not the only readable font. He said the Rule should not require certain fonts, but perhaps it should forbid certain fonts. He said that Garamond is a not a very readable font. Judge Orme said Arial was a nice font.

Mr. Gray said the research shows that sans serif fonts are more easily read on a screen, but serif fonts are easier to read in print. Mr. Gray said that the AG recommends that the Rule not require certain fonts, but it should forbid unreadable fonts. Ms. Watt said the Rule could be framed in terms of readability.

Mr. Gray addressed typography. He said that double-spaced is actually harder to read than single-spaced because it is harder for the eye to move from one line to the next. He said that single-spaced with two-inch margins is easier to read and uses less paper than double-spaced with one-inch margins. Judge Orme noted that Utah appellate opinions are published single-spaced with two-inch margins. Mr. Gray recommended that the appellate courts suspend the Rule for certain groups so they could see which typographical format they prefer.

Mr. Booher said that he wants the Rule to reflect what judges want. Mr. Burke said he wants the Rule to specifically state what fonts are acceptable, rather than provide a vague standard like "readable." He said his word processor has forty fonts, and he wants to Rule to provide a list of approved fonts. Mr. Gray said as long as the list includes Book Antiqua, he is fine with it.

Judge Voros said it is expected that within a year, all filing will be electronic. He said that means that Judges will then be reading briefs on screens more often. Judge Orme said that reading on a screen is easier with single-spacing and two-inch margins.

Ms. Watt said that the committee should be ready to discuss Rule 24 more at the next meeting. She said she would be interested to know more about judges' preferences about font and typography. Mr. Shea said that the readability of a font partly depends on its size. Ms. Watt said that the Rule should contemplate the transition to efiling. Mr. Shea said there will need to be some level of acceptance of the fact that it is impossible to satisfy everyone. Mr. Booher said the proposed amendments are the result of conversations with judges about their preferences. Judge Voros said that he, Judge Orme, and Justice Lee are the appellate judges who have the strongest opinions about font and typography.

The committee did not take any action on Rule 24.

3. Rule 24 and *State v. Nielsen*; Rule 27

The committee did not discuss Rule 24 and *State v. Nielsen* or Rule 27.

4. Other Business

There was no other business discussed at the meeting.

5. Adjourn

The meeting was adjourned at 1:24 p.m. The next meeting will be held Thursday, February 5, 2015.

Tab 2

Timothy M. Shea
Appellate Court Administrator

Andrea R. Martinez
Clerk of Court

Supreme Court of Utah

450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

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January 27, 2015

To: Appellate Rules Committee
From: Tim Shea
Re: Public briefs

In November the Supreme Court directed the Advisory Committee on the Rules of Appellate Procedure to form a workgroup to recommend policies governing the public availability of appellate briefs. The workgroup consisted of:

- David Armond, Hunter Law Library, J. Reuben Clark Law School
- Valeri Craigle, Law Library, S.J. Quinney College of Law
- Brent Johnson, General Counsel, AOC
- Rod Parker, Snow, Christensen & Martineau
- Timothy Shea, Appellate Court Administrator
- Laurie Urquiaga, Hunter Law Library, J. Reuben Clark Law School
- Jessica Van Buren, Utah State Law Library

We recommend that:

- briefs and the information they contain be public;
- attorneys be advised not to include in a brief information that is not public;
- there be a process by which the author of a brief or another party can request that the brief be classified as private or that information be redacted; and
- there be a process by which an interested person can petition that a published brief be classified as private or that information be redacted.

(1) ISSUE

Briefs are released to the three public law libraries in Utah when an appeal is closed. If someone requests access to a public brief while an appeal is pending, the request is granted, but it is an infrequent occurrence. Until relatively recently, briefs have been publicly available but difficult to obtain because one had to go to the court or to a public law library to access a brief.

Thomson Reuters and LexisNexis have been publishing briefs on the internet for many years. The Hunter Law Library has been publishing briefs online since 2004. The S.J. Quinney Law Library received a grant from the Institute of Museum and Library Services, through the Library Services and Technology Act (LSTA), and administered by the Utah State Library, to digitize and publish online its collection of briefs back to 1929. With e-filing, the potential exists for an XChange-like internet service in which briefs and other appellate records are available as soon as they are filed.

Because of their practical obscurity, the briefs of an earlier era were not written with the same concern for privacy as in the present day. Even today not all lawyers appreciate

the ease with which briefs can be accessed. The widespread online availability of briefs has raised questions about public access to information that might be confidential.

Although the Supreme Court requested this examination in the context of appellate briefs, the Code of Judicial Administration—a body of rules promulgated by the Judicial Council—already governs most aspects of public and non-public court records and seems the appropriate vehicle for establishing the policies discussed here.

(2) CURRENT LAW

(a) ALL BRIEFS ARE PUBLIC

Court records are public unless classified otherwise. CJA 4-202.02(1). With just one exception briefs have not been classified, and so they are public. [1] This principle extends even to the appeal of a judgment in an action in which trial court records are not public.

CJA 4-202.02(3) and (4) classify the records of several actions as sealed or private.[2]

Sealed

- Title 78B, Chapter 6, Part 1, Utah Adoption Act six months after the conclusion of proceedings;
- Title 78B, Chapter 15, Part 8, Gestational Agreement, six months after the conclusion of proceedings;
- Title 76, Chapter 7, Part 304.5, Consent required for abortions performed on minors; and
- expunged records.

Private

- Section 62A-15-631, Involuntary commitment under court order;
- Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed; and
- Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed.

The records in the following actions also are private, but the case history, judgment, orders, decrees, and letters of appointment are public. The record of a public hearing also is a public record.

- Title 30, Husband and Wife (An action for consortium due to personal injury is public.);
- Title 77, Chapter 3a, Stalking Injunctions;
- Title 75, Chapter 5, Protection of Persons Under Disability and their Property;
- Title 78B, Chapter 7, Protective Orders;
- Title 78B, Chapter 12, Utah Child Support Act;
- Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;
- Title 78B, Chapter 14, Uniform Interstate Family Support Act;
- Title 78B, Chapter 15, Utah Uniform Parentage Act; and
- an action to modify or enforce a judgment in any of these actions.

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[1] CJA 4-202.02(4)(V) classifies as private all appellate records in a proceeding under URAP 60, Judicial bypass appeals.

[2] Everyone is denied access to a sealed record, even court personnel, except upon court order. The court, the parties, the parties' designees, and select others can access a private record.

An appeal of a judgment in these actions is brought under Title 78A, Chapter 3 or Chapter 4, which give jurisdiction to the Supreme Court and Court of Appeals, so briefs and other appellate records are public even in actions in which the trial court's records are private. This conclusion is emphasized by the manner in which the rule expressly classifies some select appellate records.

CJA 4-202.02(4)(U) excepts "briefs filed pursuant to court order" from the private classification of other records filed in child welfare appeals. In other words, the records in an appeal of a child welfare proceeding generally are private, but the briefs are public. CJA 4-202.02(4)(W) classifies as private an addendum to a brief, but not the brief itself, in the following appeals:

- adoption;
- termination of parental rights;
- abuse, neglect, and dependency;
- substantiation under Section 78A-6-323; and
- protective orders or dating violence protective orders.

(b) SOME INFORMATION WITHIN A BRIEF IS NOT PUBLIC

Although a brief may be public, is the information within the brief also public? The answer may not be as obvious as it seems. Because of its definition, a "record" includes:

- a case file;
- the documents within a case file; and
- the information within a document.

The Code of Judicial Administration classifies records at all three levels. Briefs are not classified and so are public, but some information that might be found within a brief is classified as other than public. The list of non-public information is long and varied and includes, among other bits of data: some personal identifying and locating information; often times the name of a minor; sometimes the name of a juror; medical, psychiatric, or psychological information; and the identity of a confidential source.

Although CJA 4-202.09(9)(B) advises that "public records, even with non-public information, will be accessible," non-public information is supposed to remain confidential, even when contained in a public record. CJA 4-202.09(6) requires that the court "allow access to the information in the record that the requester is entitled to inspect, and … deny access to the information in the record the requester is not entitled to inspect." This requirement makes more sense when applied to a non-public document in a public case than when applied to non-public information in a public document. A victim impact statement or presentence investigation report, which are not public records, can easily be separated from the other felony records of which they are a part. It is unrealistic to expect a clerk to read a brief to make sure that the author did not include the victim's address. That is why CJA 4-202.09(9)(A) requires the filer to omit non-public information and to certify that all non-public information has been omitted.

(c) TRIAL COURT RECORDS

Trial court records should not lose their classification by virtue of the case being appealed. The appellate courts should protect trial court records to the same extent as the trial court does. The record on appeal as it sits in the court's file room is simple to protect. The record on appeal in an electronic folder also is simple to protect. The difficulty comes when a lawyer includes in an addendum to a brief a copy of a non-public trial court record. Usually an addendum is bound as part of a brief. If an addendum

contains non-public trial court records, that part of the addendum should be separate and appropriately classified for the records it contains.

(3) RECOMMENDATIONS

(a) BRIEFS AND THE INFORMATION THEY CONTAIN SHOULD BE PUBLIC

The law must be public; it cannot be otherwise. Appellate opinions are as much the law as the Legislature's statutes, and briefs serve a critical role in the development of appellate opinions. The legislative history of a statute may bear upon its interpretation; a brief serves a similar role for an opinion.

There may come a case in which counsel needs to include non-public information in order to zealously represent his or her client and yet does not want to publicly disclose the information. The court has the authority to classify that brief as private. CJA 4-202.04(2)(C) establishes the process. Short of that case, however, a brief and the information it contains should be public. CJA 4-202.09(9)(B) already advises that "public records, even with non-public information, will be accessible." The courts must trust the author to omit non-public information from a brief. If non-public information is included, the courts must trust the author with the conclusion that the information is necessary for the appeal. In briefing an appeal—just as in a trial, oral argument, a legislative committee hearing, or any other public government forum—one must be careful about what one says and must expect that what one says will be public.

We recommend that Rule 4-202.02 be amended to expressly classify briefs and the information they contain as public. Although a brief currently is public by virtue of not being classified, the classification of records is technical and detailed, and an express classification will serve to clarify.

(b) WRITING BRIEFS WITH NON-PUBLIC INFORMATION

The first step in keeping briefs public is to write them in a way that does not reveal non-public information. The goal is simple to state but sometimes difficult to achieve. Of course the author should never gratuitously disclose non-public information. If the information is not needed, do not include it. If the information is needed, there may be a way to convey it and yet mask it. URAP 24(d) advises that "it promotes clarity to use the designations used in the lower court or in the agency proceedings ["plaintiff" or "defendant"], or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc." Not mentioned but along the same lines are "the victim," "the witness," and "the adoptee's natural father." Truncating necessary information is more cumbersome but still valid.

Sometimes non-public information can be deduced from public information. The author should be sensitive to this circumstance but should not let it hinder the brief.

The advisory committee is considering a new rule of appellate procedure, Rule 21A:

> Rule 21A. Appellate filings containing other than public information and records.
>
> (a) Record on appeal. All parts of the record on appeal retain the same classification as in the trial court or administrative agency unless otherwise classified by the appellate court.
>
> (b) Appellate filings. If any appellate filing contains information or records classified as other than public, the filing party shall also file a copy with all non-public information redacted accompanied by a certification that

> identifies the appropriate classification, including a citation to the statute, rule or order that supports that classification.

Paragraph (a) serves as an important reminder that non-public trial court records do not lose their confidentiality in an appeal, but it is not necessary as a statement of law because CJA 4-202.02, the rule that classifies records, applies to "the judicial branch."

We recommend a direction different from paragraph (b). If non-public information has been included in a brief, the presumption should be that the information is needed and the author recognizes that it will be public. The author should certify that all of the information in the filing is public, even if a law classifies the information as something other than public.[3] There should be no need for two versions of a document unless the court orders it as a result of a motion to classify a brief as private or to redact information.

(c) MOTION TO CLASSIFY A BRIEF AS PRIVATE OR TO REDACT INFORMATION

If the author needs to include non-public information in order to adequately represent his or her client and yet does not want to publicly disclose the information, the author will need to consider filing a motion to classify the brief as private. In making that decision the author needs to evaluate the factors favoring public availability of the information and the factors favoring confidentiality because the court will need to do the same. To classify a record as other than public, the court must "identify and balance the interests favoring opening and closing the record; and … determine there are no reasonable alternatives to closure sufficient to protect the interests favoring closure." CJA 4-202.04(3).

If the author does not claim the protection offered by the law, any other party to the appeal should be able to file a motion to classify the brief as private or to redact information from it. The other party to the appeal may conclude that the author reveals non-public information that is not needed for the appeal or, if needed, that should be kept confidential. The court's internal processes will keep the brief confidential until the court rules on the motion.

Given the nature of the information sometimes contained in briefs, we recommend that briefs not be made available until 5 days after filing—the time allowed by statute and rule to respond to a request for a record—allowing the other party time to file a motion to classify the brief as private or to redact information from it. This will be especially important if the appellate courts ever build an XChange-like public interface for their records, which would potentially make briefs immediately available on the internet.

(d) PETITION TO CLASSIFY A PUBLISHED BRIEF AS PRIVATE OR TO REDACT INFORMATION

Occasionally a criminal conviction is appealed, and the defendant later petitions to expunge the conviction. If a trial court grants the petition, the petitioner can legally represent that s/he has not been arrested or convicted of that criminal offense. Additionally, when the petitioner serves the order on an agency, the agency must expunge the petitioner's records, which means "to seal or otherwise restrict access." Section 77-40-102(8). By the time of an expungement order, the briefs will have been published on the internet and elsewhere for several years.

Similarly, an older brief or its addendum may contain information or records that were public when the brief was publicly released but are private under current law. Or possibly

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[3] The certification currently required by CJA 4-202.09(9) is different: "upon information and belief, all non-public information has been omitted or redacted from the public record."

a brief or its addendum contain information or records that were classified as private, but the applicability of the classification was not appreciated by the author. These briefs also will have been published on the internet and elsewhere.

In these circumstances, the appeal likely will have been completed, possibly several years earlier. CJA 4-202.04 can govern the process to petition to classify a published brief or to redact information from it, but the request will need to be a petition because the appellate court loses jurisdiction upon remittitur.

Classifying a brief that has already been published or redacting information from it must be considered in light of the continued widespread availability of the opinion, which will contain similar information. Another important factor is the impossibility of completely removing a brief from public circulation. The State Law Library can remove its copy of the brief from its shelves. The S.J. Quinney Law Library and the Hunter Law Library are looking for direction and will honor a request to remove a brief, including from their webpages. Thomson Reuters and LexisNexis may be willing to voluntarily remove a brief, but an order does not bind anyone that was not a party to the petition. So the order likely will have no effect on re-publishers, like Google Scholar and other search engines. If a published brief is later classified as private or if information in the brief is redacted, the result likely will be its availability from some sources and not others.

(e) EXPUNGEMENT

If someone obtains an order expunging a conviction, an agency must sequester the petitioner's records if the petitioner serves the agency with the order. Section 77-40-102(8). CJA 4-205(4)(B) directs how the clerk of the court will secure the court's paper records and computer database. The clerk of the appellate court should take these steps upon being served with an expungement order.

However, we recommend that the court not sequester the brief as the result of an expungement order unless the petitioner obtains an order to do so under CJA-4-202.04. The expungement order shows that the petitioner has met all of the statutory requirements and that expungement is not contrary to public interest. Section 77-40-107. These are important factors favoring privacy. In order to seal the brief, however, the court should have an opportunity to balance the interests favoring continued public availability since the brief may provide important context for the opinion. In entering an expungement order the trial court judge will not have considered this issue.

(f) PROCESS FOR SEQUESTERING A BRIEF

If a brief that has already been published is classified as private, it should be the petitioner's responsibility to serve that order on the State Law Library, the Hunter Law Library, the S.J. Quinney Law Library, Thomson Reuters, LexisNexis and any other organization that may have published the brief. Being an organization within the judicial department, the State Law Library will honor the order. The order cannot bind a publisher that was not party to the petition.

Rule 4-202.02. Records classification.

Intent:

To classify court records as public or non-public.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) Court records are public unless otherwise classified by this rule.

(2) Public court records include but are not limited to:

(2)(A) abstract of a citation that redacts all non-public information;

(2)(B) aggregate records without non-public information and without personal identifying information;

(2)(C) appellate briefs and the information they contain;

~~(2)(C)~~ (2)(D) arrest warrants, but a court may restrict access before service;

~~(2)(D)~~ (2)(E) audit reports;

~~(2)(E)~~ (2)(F) case files;

~~(2)(F)~~ (2)(G) committee reports after release by the Judicial Council or the court that requested the study;

~~(2)(G)~~ (2)(H) contracts entered into by the judicial branch and records of compliance with the terms of a contract;

~~(2)(H)~~ (2)(I) drafts that were never finalized but were relied upon in carrying out an action or policy;

~~(2)(I)~~ (2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure;

~~(2)(J)~~ (2)(K) financial records;

~~(2)(K)~~ (2)(L) indexes approved by the Management Committee of the Judicial Council, including the following, in courts other than the juvenile court; an index may contain any other index information:

~~(2)(K)(i)~~ (2)(L)(i) amount in controversy;

~~(2)(K)(ii)~~ (2)(L)(ii) attorney name;

~~(2)(K)(iii)~~ (2)(L)(iii) case number;

~~(2)(K)(iv)~~ (2)(K)(iv) case status;

~~(2)(K)(v)~~ (2)(L)(v) civil case type or criminal violation;

~~(2)(K)(vi)~~ (2)(L)(vi) civil judgment or criminal disposition;

~~(2)(K)(vii)~~ (2)(L)(vii) daily calendar;

~~(2)(K)(viii)~~ (2)(L)(viii) file date;

~~(2)(K)(ix)~~ (2)(L) party name;

~~(2)(L)~~ (2)(M) name, business address, business telephone number, and business email address of an adult person or business entity other than a party or a victim or witness of a crime;

~~(2)(M)~~ (2)(N) name, address, telephone number, email address, date of birth, and last four digits of the following: driver's license number; social security number; or account number of a party;

~~(2)(N)~~ (2)(O) name, business address, business telephone number, and business email address of a lawyer appearing in a case;

~~(2)(O)~~ (2)(P) name, business address, business telephone number, and business email address of court personnel other than judges;

~~(2)(P)~~ (2)(Q) name, business address, and business telephone number of judges;

~~(2)(Q)~~ (2)(R) name, gender, gross salary and benefits, job title and description, number of hours worked per pay period, dates of employment, and relevant qualifications of a current or former court personnel;

~~(2)(R)~~ (2)(S) unless classified by the judge as private or safeguarded to protect the personal safety of the juror or the juror's family, the name of a juror empaneled to try a case, but only 10 days after the jury is discharged;

~~(2)(S)~~ (2)(T) opinions, including concurring and dissenting opinions, and orders entered in open hearings;

~~(2)(T)~~ (2)(U) order or decision classifying a record as not public;

~~(2)(U)~~ (2)(V) private record if the subject of the record has given written permission to make the record public;

~~(2)(V)~~ (2)(W) probation progress/violation reports;

~~(2)(W)~~ (2)(X) publications of the administrative office of the courts;

~~(2)(X)~~ (2)(Y) record in which the judicial branch determines or states an opinion on the rights of the state, a political subdivision, the public, or a person;

~~(2)(Y)~~ (2)(Z) record of the receipt or expenditure of public funds;

~~(2)(Z)~~ (2)(AA) record or minutes of an open meeting or hearing and the transcript of them;

~~(2)(AA)~~ (2)(BB) record of formal discipline of current or former court personnel or of a person regulated by the judicial branch if the disciplinary action has been completed, and all time periods for administrative appeal have expired, and the disciplinary action was sustained;

~~(2)(BB)~~ (2)(CC) record of a request for a record;

~~(2)(CC)~~ (2)(DD) reports used by the judiciary if all of the data in the report is public or the Judicial Council designates the report as a public record;

~~(2)(DD)~~ (2)(EE) rules of the Supreme Court and Judicial Council;

~~(2)(EE)~~ (2)(FF) search warrants, the application and all affidavits or other recorded testimony on which a warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40;

~~(2)(FF)~~ (2)(GG) statistical data derived from public and non-public records but that disclose only public data;

~~(2)(GG)~~ (2)(HH) Notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the delinquency history summary of the person are public records. The delinquency history summary

shall contain the name of the person, a listing of the offenses for which the person was adjudged to be within the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.

(3) The following court records are sealed:

(3)(A) records in the following actions:

(3)(A)(i) Title 78B, Chapter 6, Part 1, Utah Adoption Act six months after the conclusion of proceedings, which are private until sealed;

(3)(A)(ii) Title 78B, Chapter 15, Part 8, Gestational Agreement, six months after the conclusion of proceedings, which are private until sealed; and-

(3)(A)(iii) Title 76, Chapter 7, Part 304.5, Consent required for abortions performed on minors; and

(3)(B) expunged records;

(3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code Section 77-23a-15;

(3)(D) records showing the identity of a confidential informant;

(3)(E) records relating to the possession of a financial institution by the commissioner of financial institutions under Utah Code Section 7-2-6;

(3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;

(3)(G) records designated as sealed by rule of the Supreme Court;

(3)(H) record of a Children's Justice Center investigative interview after the conclusion of any legal proceedings; and

(3)(I) other records as ordered by the court under Rule 4-202.04.

(4) The following court records are private:

(4)(A) records in the following actions:

(4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;

(4)(A)(ii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed; and

(4)(A)(iii) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed; and

(4)(B) records in the following actions, except that the case history; judgments, orders and decrees; letters of appointment; and the record of public hearings are public records:

(4)(B)(i) Title 30, Husband and Wife, except that an action for consortium due to personal injury under Section 30-2-11 is public;

(4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;

(4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;

(4)(B)(iv) Title 78B, Chapter 7, Protective Orders;

(4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;

(4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;

(4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;

(4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);

(4)(C) aggregate records other than public aggregate records under subsection (2);

(4)(D) alternative dispute resolution records;

(4)(E) applications for accommodation under the Americans with Disabilities Act;

(4)(F) citation, but an abstract of a citation that redacts all non-public information is public;

(4)(G) judgment information statement;

(4)(H) judicial review of final agency action under Utah Code Section 62A-4a-1009;

(4)(I) the following personal identifying information about a party: driver's license number, social security number, account description and number, password, identification number, maiden name and mother's maiden name, and similar personal identifying information;

(4)(J) the following personal identifying information about a person other than a party or a victim or witness of a crime: residential address, personal email address, personal telephone number; date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information;

(4)(K) medical, psychiatric, or psychological records;

(4)(L) name of a minor, except that the name of a minor party is public in the following district and justice court proceedings:

(4)(L)(i) name change of a minor;

(4)(L)(ii) guardianship or conservatorship for a minor;

(4)(L)(iii) felony, misdemeanor or infraction;

(4)(L)(iv) child protective orders; and

(4)((L)(v) custody orders and decrees;

(4)(M) personnel file of a current or former court personnel or applicant for employment;

(4)(N) photograph, film or video of a crime victim;

(4)(O) record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5:

(4)(O)(i) permanently if the hearing is not traditionally open to the public and public access does not play a significant positive role in the process; or

(4)(O)(ii) if the hearing is traditionally open to the public, until the judge determines it is possible to release the record without prejudice to the interests that justified the closure;

(4)(P) record submitted by a senior judge or court commissioner regarding performance evaluation and certification;

(4)(Q) record submitted for in camera review until its public availability is determined;

(4)(R) reports of investigations by Child Protective Services;

(4)(S) victim impact statements;

(4)(T) name of a prospective juror summoned to attend court, unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;

(4)(U) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs filed pursuant to court order;

(4)(V) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure;

(4)(W) an addendum to an appellate brief filed in a case involving:

(4)(W)(i) adoption;

(4)(W)(ii) termination of parental rights;

(4)(W)(iii) abuse, neglect and dependency;

(4)(W)(iv) substantiation under Section 78A-6-323; or

(4)(W)(v) protective orders or dating violence protective orders;

(4)(X) other records as ordered by the court under Rule 4-202.04.

(5) The following court records are protected:

(5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the courts concerning litigation, privileged communication between the courts and an attorney representing, retained, or employed by the courts, and records prepared solely in anticipation of litigation or a judicial, quasi-judicial, or administrative proceeding;

(5)(B) records that are subject to the attorney client privilege;

(5)(C) bids or proposals until the deadline for submitting them has closed;

(5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(5)(E) budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the court's contemplated policies or contemplated courses of action;

(5)(F) court security plans;

(5)(G) investigation and analysis of loss covered by the risk management fund;

(5)(H) memorandum prepared by staff for a member of any body charged by law with performing a judicial function and used in the decision-making process;

(5)(I) confidential business records under Utah Code Section 63G-2-309;

(5)(J) record created or maintained for civil, criminal, or administrative enforcement purposes, audit or discipline purposes, or licensing, certification or registration purposes, if the record reasonably could be expected to:

(5)(J)(i) interfere with an investigation;

(5)(J)(ii) interfere with a fair hearing or trial;

(5)(J)(iii) disclose the identity of a confidential source; or

(5)(J)(iv) concern the security of a court facility;

(5)(K) record identifying property under consideration for sale or acquisition by the court or its appraised or estimated value unless the information has been disclosed to someone not under a duty of confidentiality to the courts;

(5)(L) record that would reveal the contents of settlement negotiations other than the final settlement agreement;

(5)(M) record the disclosure of which would impair governmental procurement or give an unfair advantage to any person;

(5)(N) record the disclosure of which would interfere with supervision of an offender's incarceration, probation or parole;

(5)(O) record the disclosure of which would jeopardize life, safety or property;

(5)(P) strategy about collective bargaining or pending litigation;

(5)(Q) test questions and answers;

(5)(R) trade secrets as defined in Utah Code Section 13-24-2;

(5)(S) record of a Children's Justice Center investigative interview before the conclusion of any legal proceedings;

(5)(T) presentence investigation report; and

(5)(U) other records as ordered by the court under Rule 4-202.04.

(6) The following are juvenile court social records:

(6)(A) correspondence relating to juvenile social records;

(6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations;

(6)(C) medical, psychological, psychiatric evaluations;

(6)(D) pre-disposition and social summary reports;

(6)(E) probation agency and institutional reports or evaluations;

(6)(F) referral reports;

(6)(G) report of preliminary inquiries; and

(6)(H) treatment or service plans.

(7) The following are juvenile court legal records:

(7)(A) accounting records;

(7)(B) discovery filed with the court;

(7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, decrees;

(7)(D) name of a party or minor;

(7)(E) record of a court hearing;

(7)(F) referral and offense histories

(7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.

(8) The following are safeguarded records:

(8)(A) upon request, location information, contact information and identity information other than name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a, Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;

(8)(B) upon request, location information, contact information and identity information other than name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the party

or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;

(8)(C) location information, contact information and identity information of prospective jurors on the master jury list or the qualified jury list;

(8)(D) location information, contact information and identity information other than name of a prospective juror summoned to attend court;

(8)(E) the following information about a victim or witness of a crime:

(8)(E)(i) business and personal address, email address, telephone number and similar information from which the person can be located or contacted;

(8)(E)(ii) date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information.

Rule 4-202.04. Request to access a record associated with a case; request to classify a record associated with a case.

Intent:

To establish the process for accessing a court record associated with a case.

Applicability:

This rule applies to court records associated with a case.

Statement of the Rule:

(1) A request to access a public court record shall be presented in writing to the clerk of the court unless the clerk waives the requirement. A request to access a non-public court record to which a person is authorized access shall be presented in writing to the clerk of the court. A written request shall contain the requester's name, mailing address, daytime telephone number and a description of the record requested. If the record is a non-public record, the person making the request shall present identification.

(2)(A) If a written request to access a court record is denied by the clerk of court, the person making the request may file a motion to access the record.

(2)(B) A person not authorized to access a non-public court record may file a motion to access the record. If the court allows access, the court may impose any reasonable conditions to protect the interests favoring closure.

~~(2)(C)~~ (3) A person with an interest in a court record may file a motion to classify the record as private, protected, ~~or~~ sealed, or safeguarded or to have information redacted from the record. If the court record is associated with a case over which the court no longer has jurisdiction, a person with an interest in the record may file a petition to classify the record as private, protected, sealed, or safeguarded or to have information redacted from the record. The court shall deny access to the record until the court enters an order ~~is entered~~.

(4) The court may classify the record as private, protected, ~~or~~ sealed, ~~if it~~ or safeguarded or redact information from the record if the record or information :

~~(2)(C)(i)~~ (4)(A) is ~~so~~ classified as private, protected, sealed, or safeguarded under Rule 4-202.02;

~~(2)(C)(ii)~~ (4)(B) is classified as private, controlled, or protected by a governmental entity and shared with the court under the Government Records Access and Management Act;

~~(2)(C)(iii)~~ (4)(C) is a record regarding the character or competence of an individual; or

~~(2)(C)(iv)~~ (4)(D) is a record containing information the disclosure of which constitutes an unwarranted invasion of personal privacy.

~~(2)(D) Motions~~ (5) As appropriate for the nature of the case with which the record is associated, the motion or petition shall be filed and proceedings shall be conducted under ~~Utah Rule of Civil Procedure 7 and served under Utah Rule of Civil Procedure 5~~ the rules of civil procedure, criminal procedure, juvenile procedure, or appellate procedure. The person filing the motion or petition shall serve any representative of the press who has requested notice in the case. The court shall conduct a closure hearing when a motion or petition to close a record is contested, when the press has requested notice of closure motions

or petitions in the particular case, or when the ~~judge~~ court decides public interest in the record warrants a hearing.

~~(3)~~ (6) In deciding whether to allow access to a court record or whether to classify a court record as private, protected, ~~or~~ sealed, or safeguarded or to redact information from the record, the court may consider any relevant factor, interest, or policy ~~presented by the parties~~, including but not limited to the interests described in Rule 4-202. In ruling on a motion or petition under this rule the ~~judge~~ court shall:

~~(3)(A)~~ (6)(A) make findings and conclusions about specific records;

~~(3)(B)~~ (6)(B) identify and balance the interests favoring opening and closing the record; and

~~(3)(C)~~ (6)(C) if the record is ordered closed, determine there are no reasonable alternatives to closure sufficient to protect the interests favoring closure.

(7)(A) If an appellate brief is sealed, the clerk of the court shall seal the brief under Rule 4-205. If an appellate brief is classified as private, protected, or safeguarded, the clerk of the court shall allow access only to persons authorized by Rule 4-202.03. If information is redacted from the brief, the clerk of the court shall obliterate the information and allow public access to the edited brief.

(7)(B) If the petitioner serves the order on the director of the State Law Library, the director shall comply with the order in the same manner as the clerk of the court under paragraph (7)(A).

(7)(C) The petitioner may serve the order on any person who has a copy of the brief, but the order is binding only on the court, the parties to the petition, and the state law library.

~~(4)~~ (8) A request under this rule is governed also by Rule 4-202.06. A motion or petition under this rule is not governed by Rule 4-202.06 or Rule 4-202.07.

Rule 4-202.09. Miscellaneous.

Intent:

To set forth miscellaneous provisions for these rules.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) The judicial branch shall provide a person with a certified copy of a record if the requester has a right to inspect it, the requester identifies the record with reasonable specificity, and the requester pays the fees.

(2)(A) The judicial branch is not required to create a record in response to a request.

(2)(B) Upon request, the judicial branch shall provide a record in a particular format if:

(2)(B)(i) it is able to do so without unreasonably interfering with its duties and responsibilities; and

(2)(B)(ii) the requester agrees to pay the additional costs, if any, actually incurred in providing the record in the requested format.

(2)(C) The judicial branch need not fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

(3) If a person requests copies of more than 50 pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure, the judicial branch may provide the requester with the facilities for copying the requested records and require that the requester make the copies, or allow the requester to provide his own copying facilities and personnel to make the copies at the judicial branch's offices and waive the fees for copying the records.

(4) The judicial branch may not use the form in which a record is stored to deny or unreasonably hinder the rights of persons to inspect and receive copies of a record.

(5) Subpoenas and other methods of discovery under state or federal statutes or rules of procedure are not records requests under these rules. Compliance with discovery shall be governed by the applicable statutes and rules of procedure.

(6) If the judicial branch receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect, it shall allow access to the information in the record that the requester is entitled to inspect, and shall deny access to the information in the record the requester is not entitled to inspect.

(7) The Administrative Office shall create and adopt a schedule governing the retention and destruction of all court records.

(8) The courts will use their best efforts to ensure that access to court records is properly regulated, but assume no responsibility for accuracy or completeness or for use outside the court.

(9)(A) Non-public information in a public record. The person filing a public record shall omit ~~or redact~~ non-public information. ~~The~~ Unless filed with a motion under Rule 4-202.04 to classify a record as private, protected, sealed, or safeguarded, public records, even records containing non-public information, will be

accessible. The person filing the record shall certify that~~, upon information and belief, all non-public information has been omitted or redacted from the public record~~ the information in the record is public even though a law may classify some information as not public. The person filing a private, protected, ~~or~~ sealed, or safeguarded record shall identify the classification of the record at the top of the first page of a classified document or in a statement accompanying the record.

(9)(B) ~~If a person believes that a record qualifies as a non-public record, the person may file with the record a motion to classify the record as private, protected or sealed. Under Rule 4-202.04, the clerk shall deny access to the record until the motion is decided. Unless filed with a motion to classify as private, protected or sealed, public records, even with non-public information, will be accessible.~~ A party may move or a non-party interested in a record may petition to classify a record as private, protected, sealed, or safeguarded or to redact non-public information from a public record.

(9)(C) If the following non-public information is required in a public record, only the designated information shall be included:

(9)(C)(i) social security number: last four digits;

(9)(C)(ii) financial or other account number: last four digits;

(9)(C)(iii) driver's license number: state of issuance and last four digits;

(9)(C)(iv) address of a non-party: city, state and zip code;

(9)(C)(v) email address or phone number of a non-party: omit; and

(9)(C)(vi) minor's name: initials.

(9)(D) If it is necessary to provide the court with private personal identifying information, it must be provided on a cover sheet or other severable document, which is classified as private.

~~(10) A vendor or governmental agency that provides a court information technology support to gather, store, or make accessible court records is bound by rules 4-202 through 4-202.10.~~

Rule 4-205. Security of court records.

Intent:

To assure that the security and accuracy of court records are maintained.

To assure that authorized personnel have access to court records when appropriate.

To establish responsibility of court personnel for security of court records.

To establish the procedures for securing non-public records.

Applicability:

This rule shall apply to all courts of record and not of record.

Statement of the Rule:

(1) Court records restricted. All court records shall be kept in a restricted area of the court closed to public access.

(2) The clerk of the court may authorize, in writing, abstractors, credit bureau representatives, title company representatives and others who regularly research court records to have direct access to public court records. The clerk of the court shall ensure that persons to whom such authorization is granted are trained in the proper retrieval and filing of court records. The clerk of court may set reasonable restrictions on time and place for inspecting and copying records.

(3) Removal of records. Court records shall not be removed from their normal place of storage except by court personnel or by individuals obtaining the written authorization of the clerk of the court or the judge assigned to the case. Court records shall not be removed from the courthouse without permission of the court. Records removed from the courthouse shall be returned within two days, except that records removed for the purpose of an appeal shall be returned within such time as specified by the clerk of the court, unless otherwise ordered by the judge. Any person removing a record is responsible for the security and the integrity of the record.

(4) Management of non-public records.

(4)(A) Method of sealing and storage. Non-public records which are part of a larger public record shall be filed apart from the public record or in a manner that clearly distinguishes the record as not public. Sealed records shall be placed in an envelope which is securely sealed. The clerk of the court shall record the case number and record classification on the envelope and shall inscribe across the sealed part of the envelope the words "Not to be opened except upon permission of the court."

(4)(B) Expunged records.

(4)(B)(i) Upon entry of an order of expungement, the clerk of the court shall:

(4)(B)(i)(a) obliterate or destroy all reference to the expunged portion of the record in the paper copy of the index and maintain a separate index of expunged records not available to the public;

~~(4)(B)(ii)~~ (4)(B)(i)(b) cover, without obliterating or destroying, all entries in the paper copy of the register of actions, including case identifying information other than the court docket number; and

~~(4)(B)(iii)~~ (4)(B)(i)(c) place an entry in the computer record that restricts retrieval of case identifying information and the register of actions to court personnel with authorization to review such information. The security restriction shall not be removed except upon written order of the court.

(4)(B)(ii) Upon being served with an order of expungement, the clerk of an appellate court shall comply with paragraph (4)(B)(i). A brief will not be classified as private, protected, sealed, or safeguarded as the result of an expungement order, but only if a motion or petition to do so under Rule 4-202.04 is granted.

(4)(C) Record of event. The record of expunging or sealing a record shall be entered in the register of actions.

Rule 24. Briefs.

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order indicated:

(a)(1) A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties. The list should be set out on a separate page which appears immediately inside the cover.

(a)(2) A table of contents, including the contents of the addendum, with page references.

(a)(3) A table of authorities with cases alphabetically arranged and with parallel citations, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(a)(4) A brief statement showing the jurisdiction of the appellate court.

(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and

(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or

(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.

(a)(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.

(a)(7) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.

(a)(8) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.

(a)(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(a)(10) A short conclusion stating the precise relief sought.

(a)(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief

unreasonably thick. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

(a)(11)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

(a)(11)(B) in cases being reviewed on certiorari, a copy of the Court of Appeals opinion; in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and

(a)(11)(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction. Any part of the record on appeal of central importance to the determination of the appeal that is classified as private, protected, safeguarded, or sealed or that is a record of the juvenile court shall be in a separate addendum identified with a classification appropriate for the records it contains.

(b) Brief of the appellee. The brief of the appellee shall conform to the requirements of paragraph (a) of this rule, except that the appellee need not include:

(b)(1) a statement of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or

(b)(2) an addendum, except to provide material not included in the addendum of the appellant. The appellee may refer to the addendum of the appellant. Any part of the record on appeal of central importance to the determination of the appeal that is classified as private, protected, safeguarded, or sealed or that is a record of the juvenile court shall be in a separate addendum identified with a classification appropriate for the records it contains.

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule. No further briefs may be filed except with leave of the appellate court.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person,' "the taxpayer," etc.

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition

or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs.

(f)(1) Type-volume limitation.

(f)(1)(A) A principal brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000 words or it uses a monospaced face and contains no more than 650 lines of text.

(f)(1)(B) Headings, footnotes and quotations count toward the word and line limitations, but the table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the record as required by paragraph (a) of this rule do not count toward the word and line limitations.

(f)(1)(C) Certificate of compliance. A brief submitted under Rule 24(f)(1) must include a certificate by the attorney or an unrepresented party that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word processing system used to prepare the brief. The certificate must state either the number of words in the brief or the number of lines of monospaced type in the brief.

(f)(2) Page limitation. Unless a brief complies with Rule 24(f)(1), a principal briefs shall not exceed 30 pages, and a reply briefs shall not exceed 15 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) of this rule.

In cases involving cross-appeals, paragraph (g) of this rule sets forth the length of briefs.

(g) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant, unless the parties otherwise agree or the court otherwise orders. Each party shall be entitled to file two briefs.

(g)(1) The appellant shall file a Brief of Appellant, which shall present the issues raised in the appeal.

(g)(2) The appellee shall then file one brief, entitled Brief of Appellee and Cross-Appellant, which shall respond to the issues raised in the Brief of Appellant and present the issues raised in the cross-appeal.

(g)(3) The appellant shall then file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee, which shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant.

(g)(4) The appellee may then file a Reply Brief of Cross-Appellant, which shall reply to the Brief of Cross-Appellee.

(g)(5) Type-Volume Limitation.

(g)(5)(A) The appellant's Brief of Appellant is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(g)(5)(B) The appellee's Brief of Appellee and Cross-Appellant is acceptable if it contains no more than 16,500 words or it uses a monospaced face and contains no more than 1,500 lines of text.

(g)(5)(C) The appellant's Reply Brief of Appellant and Brief of Cross-Appellee is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(g)(5)(D) The appellee's Reply Brief of Cross-Appellant is acceptable if it contains no more than half of the type volume specified in Rule 24(g)(5)(A).

(g)(6) Certificate of Compliance.

A brief submitted under Rule 24(g)(5) must comply with Rule 24(f)(1)(C).

(g)(7) Page Limitation. Unless it complies with Rule 24(g)(5) and (6), the appellant's Brief of Appellant must not exceed 30 pages; the appellee's Brief of Appellee and Cross-Appellant, 35 pages; the appellant's Reply Brief of Appellant and Brief of Cross-Appellee, 30 pages; and the appellee's Reply Brief of Cross-Appellant, 15 pages.

(h) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the page, word, or line limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages, words, or lines requested, and the good cause for granting the motion. A motion filed at least seven days prior to the date the brief is due or seeking three or fewer additional pages, 1,400 or fewer additional words, or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion filed within seven days of the date the brief is due and seeking more than three additional pages, 1,400 additional words, or 130 lines of text shall be accompanied by a copy of the finished brief. If the motion is granted, the responding party is entitled to an equal number of additional pages, words, or lines without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(i) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after that party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the appellate court, by letter setting forth the citations. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall state the reasons for the supplemental citations.

The body of the letter must not exceed 350 words. Any response shall be made within seven days of filing and shall be similarly limited.

(k) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Advisory Committee Notes

Rule 24(a)(9) now reflects what Utah appellate courts have long held. See In re Beesley, 883 P.2d 1343, 1349 (Utah 1994); Newmeyer v. Newmeyer, 745 P.2d 1276, 1278 (Utah 1987). "To successfully appeal a trial court's findings of fact, appellate counsel must play the devil's advocate. 'Attorneys must extricate themselves from the client's shoes and fully assume the adversary's position. In order to properly discharge the marshalling duty..., the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists.'" ONEIDA/SLIC, v. ONEIDA Cold Storage and Warehouse, Inc., 872 P.2d 1051, 1052-53 (Utah App. 1994) (alteration in original)(quoting West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah App. 1991)). See also State ex rel. M.S. v. Salata, 806 P.2d 1216, 1218 (Utah App. 1991); Bell v. Elder, 782 P.2d 545, 547 (Utah App. 1989); State v. Moore, 802 P.2d 732, 738-39 (Utah App. 1990).

The brief must contain for each issue raised on appeal, a statement of the applicable standard of review and citation of supporting authority.

Tab 3

Rule 24. Briefs.

(a) Definitions. For purposes of this rule, the terms “appeal,” “cross-appeal,” “appellant,” and “appellee” include the equivalent elements of original proceedings filed in the appellate court.

(b) Brief of the appellant. The ~~b~~Brief of ~~the a~~Appellant shall contain under appropriate headings and in the order indicated:

(~~a~~b)(1) List of parties. A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties and except as provided in paragraph (e). The list should be set out on a separate page ~~which appears~~ immediately inside the cover.

(~~a~~b)(2) Table of contents. A table of contents ~~, including the contents of the addendum,~~ with page references to the items included in the brief, including page or tab references to items in the addendum.

(~~a~~b)(3) Table of authorities. A table of authorities including all ~~with~~ cases~~,~~ ~~alphabetically arranged and with parallel citations,~~ rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(~~a~~b)(4) Introduction. A ~~brief~~concise statement of the nature of the case, the contentions on appeal, and a summary of the arguments made in the body of the brief. ~~showing the jurisdiction of the appellate court.~~

~~(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and~~

~~(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or~~

~~(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.~~

~~(a)(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.~~

(~~a~~b)(~~7~~5) ~~A s~~Statement of the case. To the extent relevant to the contentions on appeal, a procedural history including the disposition(s) below, and a statement of the facts. Both the procedural history and statement of facts ~~The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below~~ shall be supported by citations to the record in accordance with paragraph (~~e~~f) of this rule.

~~(a)(8) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.~~

(~~a~~b)(~~9~~6) ~~An a~~Argument. For each ground for relief presented, ~~T~~the argument section shall contain the following under appropriate subheadings and in the order indicated:

(b)(6)(A) Contention statement. A statement of error that the appellant contends warrants relief on appeal. ~~contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first~~

~~marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.~~

(b)(6)(B) Preservation. A citation to the record in accordance with paragraph (f) of this rule showing that the contention was preserved in the trial court or administrative agency. An appellant contending that evidence was erroneously admitted or excluded shall identify the pages of the record where the evidence was identified, offered, and admitted or excluded. If the contention was not preserved, a statement of the grounds for seeking review of the unpreserved ~~claim~~contention of error.

(b)(6)(C) Standard of review. The standard of review governing the contention, with supporting authority.

(~~a~~b)(~~10~~6)(D) Relief sought. A statement of ~~short conclusion stating~~ the precise relief sought. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(b)(6)(E) Grounds for relief requested. An argument setting forth controlling legal authority together with reasoned analysis explaining why that authority requires reversal ~~of the order or verdict challenged on appeal~~. The legal citations shall conform to the public domain citation format and shall use italics. No text in a brief shall be bold, underlined or in ALL CAPS unless it is a quotation. References to the proceedings below shall be accompanied with citations to the relevant pages of the record. Where the appellant contends that a finding or verdict is not supported by sufficient evidence, the appellant should marshal the record evidence supporting the finding or verdict.

(b)(7) Conclusion. A brief conclusion.

(b)(8) Signature. A signature in compliance with Rule 21(e).

(b)(9) Proof of ~~S~~service. A proof of service in compliance with Rule 21(d).

(b)(10) Certificate of c~~C~~ompliance. If applicable, a certificate of compliance in accordance with paragraph (g)(1)(C) of this rule.

(~~a~~b)(11) Addendum. An addendum ~~to the brief or a statement that no addendum is necessary under this paragraph. The addendum~~ shall be bound as part of the brief unless doing so makes the brief unreasonably thick, in which case it shall be separately bound and contain a table of contents. ~~If the addendum is bound separately, the addendum shall contain a table of contents.~~ The addendum shall contain ~~a~~ copies~~y~~ of the following:

~~(a)(11)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;~~

(~~a~~b)(11)(~~B~~A) in cases ~~being reviewed~~ on certiorari, a copy of the decision of the Court of Appeals under review~~opinion~~; ~~in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and~~

(b)(11)(B) the text of any constitutional provision, statute, rule, or regulation whose interpretation is necessary to a resolution on the contentions set forth in the brief;

(b)(11)(C) the order or judgment appealed from or sought to be reviewed, together with any related minute entries, memorandum decisions, and findings of fact and conclusions of law; and

(~~a~~b)(11)(~~C~~D) ~~those~~other parts of the record necessary to an understanding of the issues on appeal such as jury instructions, insurance policies, leases, search warrants, real estate purchase contracts, and transcript pages. ~~that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum~~

~~decision, the transcript of the court's oral decision, or the contract or document subject to construction.~~

[(b)(12) Citation of decisions. Published decisions of the Supreme Court and the Court of Appeals, and unpublished decisions of the Court of Appeals issued on or after October 1, 1998, may be cited as precedent in all courts of the State. Other unpublished decisions may also be cited, so long as all parties and the court are supplied with accurate copies at the time all such decisions are first cited.]

(~~b~~c) Brief of the appellee. The ~~b~~Brief of ~~the a~~Appellee shall conform to the requirements of paragraph (~~a~~b) of this rule, except that the brief of appellee need not include:

(~~b~~c)(1) a contention statement, the standard of review, or a citation to the record showing that a contention was preserved unless the appellee is dissatisfied with those subsections of the brief of appellant; ~~of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or~~

(~~b~~c)(2) an addendum, except to provide relevant material not included in the addendum of the ~~appellant~~Brief of Appellant. ~~The appellee may refer to the addendum of the appellant.~~

(~~c~~d) Reply brief. The appellant may file a Reply ~~b~~Brief of Appellant, ~~in reply to the brief of the appellee,~~ and if the appellee has cross-appealed, the appellee may file a Reply Brief of Cross-Appellant.~~brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule.~~ No further briefs may be filed except with leave of the appellate court.

(d)(1) A reply shall conform to the requirements of paragraphs (b)(2), (3), (7), (8), (9), and (10) of this rule.

(d)(2) A reply brief shall be limited to addressing arguments raised in the Brief of Appellee or the Brief of Cross-Appellee. The beginning of each section of a reply brief shall specify those pages in the Brief of Appellee or the Brief of Cross-Appellee where the arguments being addressed appear.

(~~d~~e) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee~~.~~" or by initials. ~~It~~To promote~~s~~ clarity, counsel are encouraged to use the designations used in the lower court or in the agency proceedings~~,~~; ~~or the actual names of parties, or~~ descriptive terms such as "the employee," "the injured person,~~"~~ "the taxpayer~~,~~"; or the actual names of parties. Counsel shall avoid references by name to minors or to biological, adoptive, or foster parents in cases involving child abuse, neglect, or dependency, termination of parental rights, or adoption. With respect to the names of minors or parents in those cases, counsel are encouraged to use descriptive terms such as “child,” “the 11-year old,” “mother,” “adoptive parent,” and “foster father.”~~etc.~~

(~~e~~f) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. References to “Trial Transcript” or “Memorandum in

Support of Motion for Summary Judgment" do not comply with this rule unless accompanied by the relevant page numbers in the record on appeal.~~If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.~~

(~~f~~g) Length of briefs.

(~~f~~g)(1) Type-volume limitation.

(~~f~~g)(1)(A) In an appeal involving the legality of a death sentence, a principal brief is acceptable if it contains no more than 28,000 words or it uses a monospaced face and contains no more than 2,600 lines of text; and a reply brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text. In all other appeals, ~~A~~a principal brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000 words or it uses a monospaced face and contains no more than 650 lines of text.

(~~f~~g)(1)(B) Headings, footnotes and quotations count toward the word and line limitations, but the table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the record as required by paragraph (~~a~~b)(11) of this rule do not count toward the word and line limitations.

(~~f~~g)(1)(C) Certificate of compliance. A brief submitted under Rule 24(~~f~~g)(1) must include a certificate by the attorney or an unrepresented party that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word processing system used to prepare the brief. The certificate must state either the number of words in the brief or the number of lines of monospaced type in the brief.

(~~f~~g)(2) Page limitation. Unless a brief complies with Rule 24(~~f~~g)(1), a principal brief~~s~~ shall not exceed 30 pages, and a reply brief~~s~~ shall not exceed 15 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (~~a~~b)(11) of this rule. In cases involving cross-appeals, paragraph (~~g~~h) of this rule sets forth the length of briefs.

(~~g~~h) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant, unless the parties otherwise agree or the court otherwise orders. Each party shall be entitled to file two briefs.

(~~g~~h)(1) Brief of appellant. The appellant shall file a Brief of Appellant~~, which shall present the issues raised in the appeal~~ in compliance with paragraph (b) of this rule.

(~~g~~h)(2) Brief of appellee and cross-appellant. The appellee shall then file one brief, entitled Brief of Appellee and Cross-Appellant.~~,~~ The brief ~~which~~ shall respond to the ~~issues raised in the~~ Brief of Appellant and present the issues raised in the cross-appeal and shall comply with the relevant provisions in paragraphs (b) and (c) of this rule.

(~~g~~h)(3) Reply brief of appellant and brief of cross-appellee. The appellant shall then file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee.~~,~~ The brief ~~which~~ shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant and shall comply with the relevant provisions in paragraphs (c) and (d) of this rule.

(~~g~~h)(4) Reply brief of cross-appellant. The appellee may then file a Reply Brief of Cross-Appellant, which shall reply to the Brief of Cross-Appellee. The brief shall comply with paragraph (d) of this rule.

(~~g~~h)(5) Type-Volume Limitation.

(~~g~~h)(5)(A) The ~~appellant's~~ Brief of Appellant is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(~~g~~h)(5)(B) The ~~appellee's~~ Brief of Appellee and Cross-Appellant is acceptable if it contains no more than 16,500 words or it uses a monospaced face and contains no more than 1,500 lines of text.

(~~g~~h)(5)(C) The ~~appellant's~~ Reply Brief of Appellant and Brief of Cross-Appellee is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(~~g~~h)(5)(D) The ~~appellee's~~ Reply Brief of Cross-Appellant is acceptable if it contains no more than half of the type volume specified in Rule 24(~~g~~h)(5)(A).

(~~g~~h)(6) Certificate of Compliance. A brief submitted under Rule 24(~~g~~h)(5) must comply with Rule 24(~~f~~g)(1)(C).

(~~g~~h)(7) Page Limitation. Unless it complies with Rule 24(~~g~~h)(5) and (6), the ~~appellant's~~ Brief of Appellant must not exceed 30 pages; the ~~appellee's~~ Brief of Appellee and Cross-Appellant, 35 pages; the ~~appellant's~~ Reply Brief of Appellant and Brief of Cross-Appellee, 30 pages; and the ~~appellee's~~ Reply Brief of Cross-Appellant, 15 pages.

(~~h~~i) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the page, word, or line limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages, words, or lines requested, and the good cause for granting the motion. A motion filed at least seven days prior to the date the brief is due or seeking three or fewer additional pages, 1,400 or fewer additional words, or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion filed within seven days of the date the brief is due and seeking more than

three additional pages, 1,400 additional words, or 130 lines of text shall be accompanied by a copy of the finished brief. If the motion is granted, the responding party is entitled to an equal number of additional pages, words, or lines without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(~~i~~j) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(~~j~~k) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after briefing or ~~that party's brief has been filed, or after~~ oral argument but before decision, ~~a~~that party may promptly advise the clerk of the appellate court, by letter ~~setting forth the citations~~. The letter shall identify the authority, indicate the page of the brief or point argued orally to which it pertains, and briefly state its relevance. Any other party may respond by letter within seven days of the filing of the original letter. The body of any letter filed pursuant to this rule may not exceed 350 words. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. ~~There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall state the reasons for the supplemental citations. The body of the letter must not exceed 350 words. Any response shall be made within seven days of filing and shall be similarly limited.~~

(~~k~~l) Compliance with Rule 21A. Any filing made under this rule that contains information or records classified as other than public shall comply with Rule 21A.

(m) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs ~~which~~ that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Advisory Committee Notes

Paragraph (a) clarifies that in briefs governed by this rule the parties should use the terms "appellant" and "appellee" rather than "petitioner" and respondent."

The 2014 amendments eliminate, add, and change a number of requirements. The rule eliminates the statement of jurisdiction, the setting forth of determinative provisions, the nature of the case, and the summary of the argument. The rule adds to what must be included in the addendum, an introduction that replaces some of the eliminated requirements, and a citation requirement at the beginning of each section of a reply brief. And the rule changes the statement of issues to contention statements and moves the contention statements, standards of review, and preservation requirements to the argument section of the brief.

The rule reflects the marshaling requirement articulated in *State v. Nielsen*, 2014 UT 10, ___ P.3d ___, which holds that the failure to marshal is no longer a technical deficiency that will result in default, but is the manner in which an appellant carries its burden of persuasion when challenging a finding or verdict based upon evidence.

Briefs that do not comply with the technical requirements of this rule are subject to Rule 27(e).

Examples of the public domain citation format referenced in paragraph (b)(6)(E) are as follows:

Before publication in Utah Advanced Reports:

Smith v. Jones, 1999 UT 16.

Smith v. Jones, 1999 UT App 16.

Before publication in Pacific Reporter but after publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, 380 Utah Adv. Rep. 24.

Smith v. Jones, 1999 UT App 16, 380 Utah Adv. Rep. 24.

After publication in Pacific Reporter:

Smith v. Jones, 1999 UT 16, 998 P.2d 250.

Smith v. Jones, 1999 UT App 16, 998 P.2d 250.

Examples of a pinpoint citation to a Utah Supreme Court opinion or a Utah Court of Appeals opinion issued on or after January 1, 1999, would be as follows:

Before publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, ¶ 21.

Smith v. Jones, 1999 UT App 16, ¶ 21.

Smith v. Jones, 1999 UT App 16, ¶¶ 21-25.

Before publication in Pacific Reporter but after publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, ¶ 21, 380 Utah Adv. Rep. 24.

Smith v. Jones, 1999 UT App 16, ¶ 21, 380 Utah Adv. Rep. 24.

After publication in Pacific Reporter:

Smith v. Jones, 1999 UT 16, ¶ 21, 998 P.2d 250.

Smith v. Jones, 1999 UT App 16, ¶ 21, 998 P.2d 250.

If the immediately preceding authority is a post-January 1, 1999, opinion, cite to the paragraph number:

Id. ¶ 15.

~~Rule 24(a)(9) now reflects what Utah appellate courts have long held. See In re Beesley, 883 P.2d 1343, 1349 (Utah 1994); Newmeyer v. Newmeyer, 745 P.2d 1276, 1278 (Utah 1987). "To successfully appeal a trial court's findings of fact, appellate counsel must play the devil's advocate. 'Attorneys must extricate themselves from the client's shoes and fully assume the adversary's position. In order to properly discharge the marshalling duty..., the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists.'" ONEIDA/SLIC, v. ONEIDA Cold Storage and Warehouse, Inc., 872 P.2d 1051, 1052-53 (Utah App. 1994)(alteration in original)(quoting West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah App. 1991)). See also State ex rel. M.S. v. Salata, 806 P.2d 1216, 1218 (Utah App. 1991); Bell v. Elder, 782 P.2d 545, 547 (Utah App. 1989); State v. Moore, 802 P.2d 732, 738-39 (Utah App. 1990).~~

~~The brief must contain for each issue raised on appeal, a statement of the applicable standard of review and citation of supporting autho~~

Rule 24. Briefs.

(a) Definitions. For purposes of this rule, the terms “appeal,” “cross-appeal,” “appellant,” and “appellee” include the equivalent elements of original proceedings filed in the appellate court. (b) Brief of the appellant. The Brief of Appellant shall contain under appropriate headings and in the order indicated:

(b)(1) List of parties. A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties and except as provided in paragraph (e). The list should be set out on a separate page immediately inside the cover.

(b)(2) Table of contents. A table of contents with page references to the items included in the brief, including page or tab references to items in the addendum.

(b)(3) Table of authorities. A table of authorities including all cases, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(b)(4) Introduction. A concise statement of the nature of the case, the contentions on appeal, and a summary of the arguments made in the body of the brief.

(b)(5) Statement of the case. To the extent relevant to the contentions on appeal, a procedural history including the disposition(s) below, and a statement of the facts. Both the procedural history and statement of facts shall be supported by citations to the record in accordance with paragraph (f) of this rule.

(b)(6) Argument. For each ground for relief presented, the argument section shall contain the following under appropriate subheadings and in the order indicated:

(b)(6)(A) Contention statement. A statement of error that the appellant contends warrants relief on appeal.

(b)(6)(B) Preservation. A citation to the record in accordance with paragraph (f) of this rule showing that the contention was preserved in the trial court or administrative agency. An appellant contending that evidence was erroneously admitted or excluded shall identify the pages of the record where the evidence was identified, offered, and admitted or excluded. If the contention was not preserved, a statement of the grounds for seeking review of the unpreserved contention of error.

(b)(6)(C) Standard of review. The standard of review governing the contention, with supporting authority. (b)(6)(D) Relief sought. A statement of the precise relief sought. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(b)(6)(E) Grounds for relief requested. An argument setting forth controlling legal authority together with reasoned analysis explaining why that authority requires reversal. The legal citations shall conform to the public domain citation format and shall use italics. No text in a brief shall be bold, underlined or in ALL CAPS unless it is a quotation. References to the proceedings below shall be accompanied with citations to the relevant pages of the record. Where the appellant contends that a finding or verdict is not supported by sufficient evidence, the appellant should marshal the record evidence supporting the finding or verdict.

(b)(7) Conclusion. A brief conclusion.

(b)(8) Signature. A signature in compliance with Rule 21(e).

(b)(9) Proof of service. A proof of service in compliance with Rule 21(d).

(b)(10) Certificate of compliance. If applicable, a certificate of compliance in accordance with paragraph (g)(1)(C) of this rule.

(b)(11) Addendum. An addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick, in which case it shall be separately bound and contain a table of contents. The addendum shall contain copies of the following:

(b)(11)(A) in cases on certiorari, a copy of the decision of the Court of Appeals under review; (b)(11)(B) the text of any constitutional provision, statute, rule, or regulation whose interpretation is necessary to a resolution on the contentions set forth in the brief;

(b)(11)(C) the order or judgment appealed from or sought to be reviewed, together with any related minute entries, memorandum decisions, and findings of fact and conclusions of law; and

(b)(11)(D) other parts of the record necessary to an understanding of the issues on appeal such as jury instructions, insurance policies, leases, search warrants, real estate purchase contracts, and transcript pages. [(b)(12) Citation of decisions. Published decisions of the Supreme Court and the Court of Appeals, and unpublished decisions of the Court of Appeals issued on or after October 1, 1998, may be cited as precedent in all courts of the State. Other unpublished decisions may also be cited, so long as all parties and the court are supplied with accurate copies at the time all such decisions are first cited.]

(c) Brief of the appellee. The Brief of Appellee shall conform to the requirements of paragraph (b) of this rule, except that the brief of appellee need not include:

(c)(1) a contention statement, the standard of review, or a citation to the record showing that a contention was preserved unless the appellee is dissatisfied with those subsections of the brief of appellant;

(c)(2) an addendum, except to provide relevant material not included in the addendum of the Brief of Appellant. (d) Reply brief. The appellant may file a Reply Brief of Appellant, and if the appellee has cross-appealed, the appellee may file a Reply Brief of Cross-Appellant. No further briefs may be filed except with leave of the appellate court.

(d)(1) A reply shall conform to the requirements of paragraphs (b)(2), (3), (7), (8), (9), and (10) of this rule.

(d)(2) A reply brief shall be limited to addressing arguments raised in the Brief of Appellee or the Brief of Cross-Appellee. The beginning of each section of a reply brief shall specify those pages in the Brief of Appellee or the Brief of Cross-Appellee where the arguments being addressed appear.

(e) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee" or by initials. To promote clarity, counsel are encouraged to use the designations used in the lower court or in the agency proceedings; descriptive terms such as "the employee," "the injured person," "the taxpayer"; or the actual names of parties. Counsel shall avoid references by name to minors or to biological, adoptive, or foster parents in cases involving child abuse, neglect, or dependency, termination of parental rights, or adoption. With respect to the names of minors or parents in those cases, counsel are encouraged to use descriptive terms such as “child,” “the 11-year old,” “mother,” “adoptive parent,” and “foster father.”

(f) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages

of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. References to “Trial Transcript” or “Memorandum in Support of Motion for Summary Judgment” do not comply with this rule unless accompanied by the relevant page numbers in the record on appeal.(g) Length of briefs.

(g)(1) Type-volume limitation.

(g)(1)(A) In an appeal involving the legality of a death sentence, a principal brief is acceptable if it contains no more than 28,000 words or it uses a monospaced face and contains no more than 2,600 lines of text; and a reply brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text. In all other appeals, a principal brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000 words or it uses a monospaced face and contains no more than 650 lines of text.

(g)(1)(B) Headings, footnotes and quotations count toward the word and line limitations, but the table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the record as required by paragraph (b)(11) of this rule do not count toward the word and line limitations.

(g)(1)(C) Certificate of compliance. A brief submitted under Rule 24(g)(1) must include a certificate by the attorney or an unrepresented party that the

brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word processing system used to prepare the brief. The certificate must state either the number of words in the brief or the number of lines of monospaced type in the brief.

(g)(2) Page limitation. Unless a brief complies with Rule 24(g)(1), a principal brief shall not exceed 30 pages, and a reply brief shall not exceed 15 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (b)(11) of this rule. In cases involving cross-appeals, paragraph (h) of this rule sets forth the length of briefs.

(h) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant, unless the parties otherwise agree or the court otherwise orders. Each party shall be entitled to file two briefs.

(h)(1) Brief of appellant. The appellant shall file a Brief of Appellant in compliance with paragraph (b) of this rule.

(h)(2) Brief of appellee and cross-appellant. The appellee shall then file one brief, entitled Brief of Appellee and Cross-Appellant. The brief shall respond to the Brief of Appellant and present the issues raised in the cross-appeal and shall comply with the relevant provisions in paragraphs (b) and (c) of this rule.

(h)(3) Reply brief of appellant and brief of cross-appellee. The appellant shall then file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee. The brief shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant and shall comply with the relevant provisions in paragraphs (c) and (d) of this rule.

(h)(4) Reply brief of cross-appellant. The appellee may then file a Reply Brief of Cross-Appellant, which shall reply to the Brief of Cross-Appellee. The brief shall comply with paragraph (d) of this rule.

(h)(5) Type-Volume Limitation.

(h)(5)(A) The Brief of Appellant is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(h)(5)(B) The Brief of Appellee and Cross-Appellant is acceptable if it contains no more than 16,500 words or it uses a monospaced face and contains no more than 1,500 lines of text.

(h)(5)(C) The Reply Brief of Appellant and Brief of Cross-Appellee is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(h)(5)(D) The Reply Brief of Cross-Appellant is acceptable if it contains no more than half of the type volume specified in Rule 24(h)(5)(A).

(h)(6) Certificate of Compliance. A brief submitted under Rule 24(h)(5) must comply with Rule 24(g)(1)(C).

(h)(7) Page Limitation. Unless it complies with Rule 24(h)(5) and (6), the Brief of Appellant must not exceed 30 pages; the Brief of Appellee and Cross-Appellant, 35 pages; the Reply Brief of Appellant and Brief of Cross-Appellee, 30 pages; and the Reply Brief of Cross-Appellant, 15 pages.

(i) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the page, word, or line limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages, words, or lines requested, and the good cause for granting the motion. A motion filed at least seven days prior to the date the brief is due or seeking

three or fewer additional pages, 1,400 or fewer additional words, or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion filed within seven days of the date the brief is due and seeking more than three additional pages, 1,400 additional words, or 130 lines of text shall be accompanied by a copy of the finished brief. If the motion is granted, the responding party is entitled to an equal number of additional pages, words, or lines without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(j) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(k) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after briefing or oral argument but before decision, that party may promptly advise the clerk of the appellate court, by letter. The letter shall identify the authority, indicate the page of the brief or point argued orally to which it pertains, and briefly state its relevance. Any other party may respond by letter within seven days of the filing of the original letter. The body of any letter filed pursuant to this rule may not exceed 350 words. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. (l) Compliance with Rule 21A. Any filing made under this rule that contains information or records classified as other than public shall comply with Rule 21A.(m) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters.

Briefs that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Advisory Committee Notes

Paragraph (a) clarifies that in briefs governed by this rule the parties should use the terms "appellant" and "appellee" rather than "petitioner" and respondent."

The 2014 amendments eliminate, add, and change a number of requirements. The rule eliminates the statement of jurisdiction, the setting forth of determinative provisions, the nature of the case, and the summary of the argument. The rule adds to what must be included in the addendum, an introduction that replaces some of the eliminated requirements, and a citation requirement at the beginning of each section of a reply brief. And the rule changes the statement of issues to contention statements and moves the contention statements, standards of review, and preservation requirements to the argument section of the brief.

The rule reflects the marshaling requirement articulated in *State v. Nielsen*, 2014 UT 10, __ P.3d __, which holds that the failure to marshal is no longer a technical deficiency that will result in default, but is the manner in which an appellant carries its burden of persuasion when challenging a finding or verdict based upon evidence.

Briefs that do not comply with the technical requirements of this rule are subject to Rule 27(e).

Examples of the public domain citation format referenced in paragraph (b)(6)(E) are as follows:

Before publication in Utah Advanced Reports:

Smith v. Jones, 1999 UT 16.

Smith v. Jones, 1999 UT App 16.

Before publication in Pacific Reporter but after publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, 380 Utah Adv. Rep. 24.

Smith v. Jones, 1999 UT App 16, 380 Utah Adv. Rep. 24.

After publication in Pacific Reporter:

Smith v. Jones, 1999 UT 16, 998 P.2d 250.

Smith v. Jones, 1999 UT App 16, 998 P.2d 250.

Examples of a pinpoint citation to a Utah Supreme Court opinion or a Utah Court of Appeals opinion issued on or after January 1, 1999, would be as follows:

Before publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, ¶ 21.

Smith v. Jones, 1999 UT App 16, ¶ 21.

Smith v. Jones, 1999 UT App 16, ¶¶ 21-25.

Before publication in Pacific Reporter but after publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, ¶ 21, 380 Utah Adv. Rep. 24.

Smith v. Jones, 1999 UT App 16, ¶ 21, 380 Utah Adv. Rep. 24.

After publication in Pacific Reporter:

Smith v. Jones, 1999 UT 16, ¶ 21, 998 P.2d 250.

Smith v. Jones, 1999 UT App 16, ¶ 21, 998 P.2d 250.

If the immediately preceding authority is a post-January 1, 1999, opinion, cite to the paragraph number:

264 Id. ¶ 15.

265

Rule 24. Briefs.

(a) Definitions. For purposes of this rule, the terms “appeal,” “cross-appeal,” “appellant,” and “appellee” include the equivalent elements of original proceedings filed in the appellate court.

(b) Brief of the appellant. The ~~b~~Brief of ~~the a~~Appellant shall contain under appropriate headings and in the order indicated:

(~~a~~b)(1) List of parties. A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties and except as provided in paragraph (e). The list should be set out on a separate page ~~which appears~~ immediately inside the cover.

(~~a~~b)(2) Table of contents. A table of contents ~~, including the contents of the addendum,~~ with page references to the items included in the brief, including page or tab references to items in the addendum.

(~~a~~b)(3) Table of authorities. A table of authorities including all ~~with~~ cases~~,~~ ~~alphabetically arranged and with parallel citations,~~ rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(~~a~~b)(4) Introduction. A ~~brief~~concise statement of the nature of the case, the contentions on appeal, and a summary of the arguments made in the body of the brief. ~~showing the jurisdiction of the appellate court.~~

~~(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and~~

~~(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or~~

~~(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.~~

~~(a)(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.~~

(~~a~~b)(~~7~~5) ~~A s~~Statement of the case. To the extent relevant to the contentions on appeal, a procedural history including the disposition(s) below, and a statement of the facts. Both the procedural history and statement of facts ~~The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below~~ shall be supported by citations to the record in accordance with paragraph (~~e~~f) of this rule.

~~(a)(8) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.~~

(~~a~~b)(~~9~~6) ~~An a~~Argument. For each ground for relief presented, ~~T~~the argument section shall contain the following under appropriate subheadings and in the order indicated:

(b)(6)(A) Contention statement. A statement of error that the appellant contends warrants relief on appeal. ~~contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first~~

~~marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.~~

(b)(6)(B) Preservation. A citation to the record in accordance with paragraph (f) of this rule showing that the contention was preserved in the trial court or administrative agency. An appellant contending that evidence was erroneously admitted or excluded shall identify the pages of the record where the evidence was identified, offered, and admitted or excluded. If the contention was not preserved, a statement of the grounds for seeking review of the unpreserved ~~claim~~contention of error.

(b)(6)(C) Standard of review. The standard of review governing the contention, with supporting authority.

(~~a~~b)(~~10~~6)(D) Relief sought. A statement of ~~short conclusion stating~~ the precise relief sought. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(b)(6)(E) Grounds for relief requested. An argument setting forth controlling legal authority together with reasoned analysis explaining why that authority requires reversal ~~of the order or verdict challenged on appeal~~. The legal citations shall conform to the public domain citation format and shall use italics. No text in a brief shall be bold, underlined or in ALL CAPS unless it is a quotation. References to the proceedings below shall be accompanied with citations to the relevant pages of the record. Where the appellant contends that a finding or verdict is not supported by sufficient evidence, the appellant should marshal the record evidence supporting the finding or verdict.

(b)(7) Conclusion. A brief conclusion.

(b)(8) Signature. A signature in compliance with Rule 21(e).

(b)(9) Proof of ~~S~~service. A proof of service in compliance with Rule 21(d).

(b)(10) Certificate of c~~C~~ompliance. If applicable, a certificate of compliance in accordance with paragraph (g)(1)(C) of this rule.

(~~a~~b)(11) Addendum. An addendum ~~to the brief or a statement that no addendum is necessary under this paragraph. The addendum~~ shall be bound as part of the brief unless doing so makes the brief unreasonably thick, in which case it shall be separately bound and contain a table of contents. ~~If the addendum is bound separately, the addendum shall contain a table of contents.~~ The addendum shall contain ~~a~~ copies~~y~~ of the following:

~~(a)(11)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;~~

(~~a~~b)(11)(~~B~~A) in cases ~~being reviewed~~ on certiorari, a copy of the decision of the Court of Appeals under review~~opinion~~; ~~in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and~~

(b)(11)(B) the text of any constitutional provision, statute, rule, or regulation whose interpretation is necessary to a resolution on the contentions set forth in the brief;

(b)(11)(C) the order or judgment appealed from or sought to be reviewed, together with any related minute entries, memorandum decisions, and findings of fact and conclusions of law; and

(~~a~~b)(11)(~~C~~D) ~~those~~other parts of the record necessary to an understanding of the issues on appeal such as jury instructions, insurance policies, leases, search warrants, real estate purchase contracts, and transcript pages. ~~that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum~~

~~decision, the transcript of the court's oral decision, or the contract or document subject to construction.~~

[(b)(12) Citation of decisions. Published decisions of the Supreme Court and the Court of Appeals, and unpublished decisions of the Court of Appeals issued on or after October 1, 1998, may be cited as precedent in all courts of the State. Other unpublished decisions may also be cited, so long as all parties and the court are supplied with accurate copies at the time all such decisions are first cited.]

(~~b~~c) Brief of the appellee. The ~~b~~Brief of ~~the a~~Appellee shall conform to the requirements of paragraph (~~a~~b) of this rule, except that the brief of appellee need not include:

(~~b~~c)(1) a contention statement, the standard of review, or a citation to the record showing that a contention was preserved unless the appellee is dissatisfied with those subsections of the brief of appellant; ~~of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or~~

(~~b~~c)(2) an addendum, except to provide relevant material not included in the addendum of the ~~appellant~~Brief of Appellant. ~~The appellee may refer to the addendum of the appellant.~~

(~~c~~d) Reply brief. The appellant may file a Reply ~~b~~Brief of Appellant, ~~in reply to the brief of the appellee,~~ and if the appellee has cross-appealed, the appellee may file a Reply Brief of Cross-Appellant.~~brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule.~~ No further briefs may be filed except with leave of the appellate court.

(d)(1) A reply shall conform to the requirements of paragraphs (b)(2), (3), (7), (8), (9), and (10) of this rule.

(d)(2) A reply brief shall be limited to addressing arguments raised in the Brief of Appellee or the Brief of Cross-Appellee. The beginning of each section of a reply brief shall specify those pages in the Brief of Appellee or the Brief of Cross-Appellee where the arguments being addressed appear.

(~~d~~e) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee~~.~~" or by initials. ~~It~~To promote~~s~~ clarity, counsel are encouraged to use the designations used in the lower court or in the agency proceedings~~,~~; ~~or the actual names of parties, or~~ descriptive terms such as "the employee," "the injured person,~~"~~ "the taxpayer~~,~~"; or the actual names of parties. Counsel shall avoid references by name to minors or to biological, adoptive, or foster parents in cases involving child abuse, neglect, or dependency, termination of parental rights, or adoption. With respect to the names of minors or parents in those cases, counsel are encouraged to use descriptive terms such as “child,” “the 11-year old,” “mother,” “adoptive parent,” and “foster father.”~~etc.~~

(~~e~~f) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. References to “Trial Transcript” or “Memorandum in

Support of Motion for Summary Judgment" do not comply with this rule unless accompanied by the relevant page numbers in the record on appeal.~~If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.~~

(~~f~~g) Length of briefs.

(~~f~~g)(1) Type-volume limitation.

(~~f~~g)(1)(A) In an appeal involving the legality of a death sentence, a principal brief is acceptable if it contains no more than 28,000 words or it uses a monospaced face and contains no more than 2,600 lines of text; and a reply brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text. In all other appeals, ~~A~~a principal brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000 words or it uses a monospaced face and contains no more than 650 lines of text.

(~~f~~g)(1)(B) Headings, footnotes and quotations count toward the word and line limitations, but the table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the record as required by paragraph (~~a~~b)(11) of this rule do not count toward the word and line limitations.

(~~f~~g)(1)(C) Certificate of compliance. A brief submitted under Rule 24(~~f~~g)(1) must include a certificate by the attorney or an unrepresented party that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word processing system used to prepare the brief. The certificate must state either the number of words in the brief or the number of lines of monospaced type in the brief.

(~~f~~g)(2) Page limitation. Unless a brief complies with Rule 24(~~f~~g)(1), a principal brief~~s~~ shall not exceed 30 pages, and a reply brief~~s~~ shall not exceed 15 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (~~a~~b)(11) of this rule. In cases involving cross-appeals, paragraph (~~g~~h) of this rule sets forth the length of briefs.

(~~g~~h) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant, unless the parties otherwise agree or the court otherwise orders. Each party shall be entitled to file two briefs.

(~~g~~h)(1) Brief of appellant. The appellant shall file a Brief of Appellant~~, which shall present the issues raised in the appeal~~ in compliance with paragraph (b) of this rule.

(~~g~~h)(2) Brief of appellee and cross-appellant. The appellee shall then file one brief, entitled Brief of Appellee and Cross-Appellant.~~,~~ The brief ~~which~~ shall respond to the ~~issues raised in the~~ Brief of Appellant and present the issues raised in the cross-appeal and shall comply with the relevant provisions in paragraphs (b) and (c) of this rule.

(~~g~~h)(3) Reply brief of appellant and brief of cross-appellee. The appellant shall then file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee.~~,~~ The brief ~~which~~ shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant and shall comply with the relevant provisions in paragraphs (c) and (d) of this rule.

(~~g~~h)(4) Reply brief of cross-appellant. The appellee may then file a Reply Brief of Cross-Appellant, which shall reply to the Brief of Cross-Appellee. The brief shall comply with paragraph (d) of this rule.

(~~g~~h)(5) Type-Volume Limitation.

(~~g~~h)(5)(A) The ~~appellant's~~ Brief of Appellant is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(~~g~~h)(5)(B) The ~~appellee's~~ Brief of Appellee and Cross-Appellant is acceptable if it contains no more than 16,500 words or it uses a monospaced face and contains no more than 1,500 lines of text.

(~~g~~h)(5)(C) The ~~appellant's~~ Reply Brief of Appellant and Brief of Cross-Appellee is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(~~g~~h)(5)(D) The ~~appellee's~~ Reply Brief of Cross-Appellant is acceptable if it contains no more than half of the type volume specified in Rule 24(~~g~~h)(5)(A).

(~~g~~h)(6) Certificate of Compliance. A brief submitted under Rule 24(~~g~~h)(5) must comply with Rule 24(~~f~~g)(1)(C).

(~~g~~h)(7) Page Limitation. Unless it complies with Rule 24(~~g~~h)(5) and (6), the ~~appellant's~~ Brief of Appellant must not exceed 30 pages; the ~~appellee's~~ Brief of Appellee and Cross-Appellant, 35 pages; the ~~appellant's~~ Reply Brief of Appellant and Brief of Cross-Appellee, 30 pages; and the ~~appellee's~~ Reply Brief of Cross-Appellant, 15 pages.

(~~h~~i) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the page, word, or line limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages, words, or lines requested, and the good cause for granting the motion. A motion filed at least seven days prior to the date the brief is due or seeking three or fewer additional pages, 1,400 or fewer additional words, or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion filed within seven days of the date the brief is due and seeking more than

three additional pages, 1,400 additional words, or 130 lines of text shall be accompanied by a copy of the finished brief. If the motion is granted, the responding party is entitled to an equal number of additional pages, words, or lines without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(~~i~~j) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(~~j~~k) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after briefing or ~~that party's brief has been filed, or after~~ oral argument but before decision, ~~a~~that party may promptly advise the clerk of the appellate court, by letter ~~setting forth the citations~~. The letter shall identify the authority, indicate the page of the brief or point argued orally to which it pertains, and briefly state its relevance. Any other party may respond by letter within seven days of the filing of the original letter. The body of any letter filed pursuant to this rule may not exceed 350 words. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. ~~There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall state the reasons for the supplemental citations. The body of the letter must not exceed 350 words. Any response shall be made within seven days of filing and shall be similarly limited.~~

(~~k~~l) Compliance with Rule 21A. Any filing made under this rule that contains information or records classified as other than public shall comply with Rule 21A.

(m) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs ~~which~~ that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Advisory Committee Notes

Paragraph (a) clarifies that in briefs governed by this rule the parties should use the terms "appellant" and "appellee" rather than "petitioner" and respondent."

The 2014 amendments eliminate, add, and change a number of requirements. The rule eliminates the statement of jurisdiction, the setting forth of determinative provisions, the nature of the case, and the summary of the argument. The rule adds to what must be included in the addendum, an introduction that replaces some of the eliminated requirements, and a citation requirement at the beginning of each section of a reply brief. And the rule changes the statement of issues to contention statements and moves the contention statements, standards of review, and preservation requirements to the argument section of the brief.

The rule reflects the marshaling requirement articulated in *State v. Nielsen*, 2014 UT 10, ___ P.3d ___, which holds that the failure to marshal is no longer a technical deficiency that will result in default, but is the manner in which an appellant carries its burden of persuasion when challenging a finding or verdict based upon evidence.

Briefs that do not comply with the technical requirements of this rule are subject to Rule 27(e).

Examples of the public domain citation format referenced in paragraph (b)(6)(E) are as follows:

Before publication in Utah Advanced Reports:

Smith v. Jones, 1999 UT 16.

Smith v. Jones, 1999 UT App 16.

Before publication in Pacific Reporter but after publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, 380 Utah Adv. Rep. 24.

Smith v. Jones, 1999 UT App 16, 380 Utah Adv. Rep. 24.

After publication in Pacific Reporter:

Smith v. Jones, 1999 UT 16, 998 P.2d 250.

Smith v. Jones, 1999 UT App 16, 998 P.2d 250.

Examples of a pinpoint citation to a Utah Supreme Court opinion or a Utah Court of Appeals opinion issued on or after January 1, 1999, would be as follows:

Before publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, ¶ 21.

Smith v. Jones, 1999 UT App 16, ¶ 21.

Smith v. Jones, 1999 UT App 16, ¶¶ 21-25.

Before publication in Pacific Reporter but after publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, ¶ 21, 380 Utah Adv. Rep. 24.

Smith v. Jones, 1999 UT App 16, ¶ 21, 380 Utah Adv. Rep. 24.

After publication in Pacific Reporter:

Smith v. Jones, 1999 UT 16, ¶ 21, 998 P.2d 250.

Smith v. Jones, 1999 UT App 16, ¶ 21, 998 P.2d 250.

If the immediately preceding authority is a post-January 1, 1999, opinion, cite to the paragraph number:

Id. ¶ 15.

~~Rule 24(a)(9) now reflects what Utah appellate courts have long held. See In re Beesley, 883 P.2d 1343, 1349 (Utah 1994); Newmeyer v. Newmeyer, 745 P.2d 1276, 1278 (Utah 1987). "To successfully appeal a trial court's findings of fact, appellate counsel must play the devil's advocate. 'Attorneys must extricate themselves from the client's shoes and fully assume the adversary's position. In order to properly discharge the marshalling duty..., the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists.'" ONEIDA/SLIC, v. ONEIDA Cold Storage and Warehouse, Inc., 872 P.2d 1051, 1052-53 (Utah App. 1994)(alteration in original)(quoting West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah App. 1991)). See also State ex rel. M.S. v. Salata, 806 P.2d 1216, 1218 (Utah App. 1991); Bell v. Elder, 782 P.2d 545, 547 (Utah App. 1989); State v. Moore, 802 P.2d 732, 738-39 (Utah App. 1990).~~

~~The brief must contain for each issue raised on appeal, a statement of the applicable standard of review and citation of supporting authority.~~

Tab 4

State offers two lines of response. First it asks us to stop short of reaching the merits in light of Nielsen's purported failure to marshal the evidence—specifically, his failure to present, "in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists." *Chen v. Stewart*, 2004 UT 82, ¶ 77, 100 P.3d 1177 (internal quotation marks omitted). Second, and alternatively, the State challenges Nielsen's position on the merits, identifying evidence in the record that it sees as sufficient to sustain an inference that Trisha was taken against her will.

¶32 We reject the State's first point but agree with its second. Before addressing the merits of Nielsen's challenge to the sufficiency of the evidence, we first consider the State's marshaling argument—acknowledging some dicta in our prior cases that appears to support it, but refining and clarifying the standard going forward.

1. Marshaling

¶33 Our rules of appellate procedure prescribe standards for the form, organization, and content of a brief on appeal. *See* UTAH R. APP. P. 24. Some of the standards in rule 24 are sufficiently clear and objective that the failure to follow them may result in the rejection of a noncompliant brief by our clerk's office. A brief that exceeds the rule's limits on length, for example, would be rejected by our clerk's office, as would a brief that fails to include a table of contents or statement of the standard of review. *See id.* 24(a)(2), (5). Typically a party filing a noncompliant brief would be given an opportunity to correct these sorts of deficiencies. But failure to do so theoretically could result in our failure to reach the merits on the basis of the party's procedural default under rule 24.

¶34 Other standards in rule 24 are more subjective, and not susceptible to rejection by the clerk's office or to procedural default by the court. Such standards are often an outgrowth of a party's burden of persuasion on appeal. Thus, rule 24 requires the appellant's brief to set forth "the contentions and reasons of the appellant with respect to the issues presented . . . with citations to the authorities, statutes, and parts of the record relied on." *Id.* 24(a)(9). Our clerk's office makes no attempt to police this rule at the outset. That assessment is left to the court. And we perform it not as a matter of gauging procedural compliance with the rule, but as a necessary component of our evaluation of the case on its

merits, as viewed through the lens of the applicable standard of review. *See State v. Thomas*, 961 P.2d 299, 305 (Utah 1998) ("While failure to cite to pertinent authority may not always render an issue inadequately briefed, it does so when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court."); *Salt Lake Cnty. v. Butler, Crockett & Walsh Dev. Corp.*, 2013 UT App 30, ¶ 37 n.5, 297 P.3d 38 (holding that the appellant "has not met its burden of persuasion on appeal by adequately briefing a plausible claim").

¶35 Historically, our marshaling requirement was understood to fall into the latter category. For many years, we conceived of the responsibility to marshal the evidence supporting a challenged factual finding as a mere component of an appellant's broader burden of overcoming the weighty deference granted to factual determinations in the trial court. Thus, when a party failed to marshal and distinguish evidence supportive of a challenged verdict or finding of fact, our response was not to decline to reach the merits as a matter of default, but simply to affirm on the ground that the appellant had failed to carry its heavy burden of persuasion.

¶36 This version of the marshaling principle was announced in our cases as early as 1961. *See Charlton v. Hackett*, 360 P.2d 176, 176 (Utah 1961). We followed this approach consistently for several decades thereafter. *See, e.g., Nyman v. Cedar City*, 361 P.2d 1114, 1115 (Utah 1961); *Egbert & Jaynes v. R.C. Tolman Constr. Co.*, 680 P.2d 746, 747 (Utah 1984). We coined the term "marshal[ing]" in 1985, *see Scharf v. BMG Corp.*, 700 P.2d 1068, 1070 (Utah 1985), but still continued to view marshaling as part of the overall burden necessary to meet the clear error standard of review on appeal. *See, e.g., IFG Leasing Co. v. Gordon*, 776 P.2d 607, 616–17 (Utah 1989).

¶37 Over time our caselaw occasionally has migrated in the other direction—toward the hard-and-fast *default* notion of a procedural rule. Instead of noting an appellant's failure to marshal as a step toward concluding that it had failed to establish clear error, we sometimes have identified a marshaling deficiency as a ground for an appellant's procedural default—citing a lack of marshaling as a basis for not reaching the merits. *See, e.g., United Park City Mines Co. v. Stichting Mayflower Mountain Fonds*, 2006 UT 35, ¶¶ 38, 41, 140 P.3d 1200.

¶38 Over a similar span of time, we also added some additional teeth to the rule. Thus, while rule 24(a)(9) itself (adopted in 1999) speaks only of "marshal[ing] all record evidence that supports the challenged finding," our caselaw has sometimes extended this principle to require an appellant to "present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists," and to do so in a manner in which he "temporarily remove[s] [his] own prejudices and fully embrace[s] the adversary's position" by assuming the role of "devil's advocate." *Chen*, 2004 UT 82, ¶¶ 77–78 (internal quotation marks omitted).

¶39 Our commitment to the hard-and-fast default notion of the marshaling rule has been less than complete. Sometimes we have openly overlooked a failure to marshal and proceeded to the merits. *See, e.g., State v. Green*, 2005 UT 9, ¶¶ 12–13, 108 P.3d 710. In many other cases, moreover, we have reverted to our earlier conception of marshaling, and disposed of the case on its merits despite an alleged failure to marshal "every scrap" of contrary evidence. And in all events we have declined to state a limiting principle, leaving the question of whether to treat marshaling as a basis for a default or instead as a component of the burden of persuasion purely a matter of our discretion. *See Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-day Saints*, 2007 UT 42, ¶¶ 19–20, 164 P.3d 384 (noting that parties risk forfeiting their challenges to factual questions when they fail to marshal but sustaining the court of appeals' choice to resolve the case on its merits because "[t]he reviewing court . . . retains discretion to consider independently the whole record and determine if the decision below has adequate factual support").

¶40 The time has come to reconcile and regularize our cases in this field. In so doing, we recognize and reiterate the importance of the requirement of marshaling. It is a boon to both judicial economy and fairness to the parties. *See Chen*, 2004 UT 82, ¶ 79. Thus, an appellant who seeks to prevail in challenging the sufficiency of the evidence to support a factual finding or a verdict on appeal should follow the dictates of rule 24(a)(9), as a party who fails to identify and deal with supportive evidence will never persuade an appellate court to reverse under the deferential standard of review that applies to such issues. That said, we now conclude that the hard-and-fast default notion of marshaling is more problematic than helpful—particularly when compounded by the heightened requirements of our caselaw (to present "every scrap" of evidence and to play "devil's advocate") and our retention of

discretion to disregard a marshaling defect where we deem it appropriate.

¶41 We therefore repudiate the default notion of marshaling sometimes put forward in our cases and reaffirm the traditional principle of marshaling as a natural extension of an appellant's burden of persuasion. Accordingly, from here on our analysis will be focused on the ultimate question of whether the appellant has established a basis for overcoming the healthy dose of deference owed to factual findings and jury verdicts—and not on whether there is a technical deficiency in marshaling meriting a default.

¶42 In so holding, we do not mean to minimize the significance of our longstanding requirement of marshaling. Instead we aim only to clarify it and put it in proper perspective. Thus, we reiterate that a party challenging a factual finding or sufficiency of the evidence to support a verdict will almost certainly fail to carry its burden of persuasion on appeal if it fails to marshal. Our point is only that that will be the question on appeal going forward. The focus should be on the merits, not on some arguable deficiency in the appellant's duty of marshaling.

¶43 Too often, the appellee's brief is focused on this latter point, and not enough on the ultimate merits of the case. To encourage the latter and discourage the former, we also hereby repudiate the requirements of playing "devil's advocate" and of presenting "every scrap of competent evidence" in a "comprehensive and fastidious order." *Supra* ¶ 38. That formulation is nowhere required in the rule. And its principal impact on briefing has been to incentivize appellees to conduct a fastidious review of the record in the hope of identifying a scrap of evidence the appellant may have overlooked. That is not the point of the marshaling rule, and will no longer be an element of our consideration of it.

¶44 Under this standard as now clarified, we reject the State's request that we treat Nielsen's failure to marshal every scrap of evidence supporting the jury's verdict as a stand-alone basis for rejecting his challenge to his kidnapping conviction. We proceed instead to the merits of Nielsen's argument, while emphasizing that our assessment of his claim on appeal is certainly affected (and greatly undermined) by the overbroad assertions in his brief regarding the absence of evidence in the record and by his general failure to identify and deal with that evidence.

Tab 5

Rule 27. Form of briefs.

(a) Paper size; printing margins. Briefs shall be typewritten, printed or prepared by photocopying or other duplicating or copying process that will produce clear, black and permanent copies equally legible to printing, on opaque, unglazed paper 8 1/2 inches wide and 11 inches long, and shall be securely bound along the left margin. Paper may be recycled paper, with or without deinking. The printing must be double spaced, except for matter customarily single spaced and indented. Margins shall be at least one inch on the top, bottom and sides of each page. Page numbers may appear in the margins.

(b) ~~Typeface~~Font. All briefs shall use one of the following fonts: Book Antiqua or Garamond. ~~Either a proportionally spaced or monospaced typeface in a plain, roman style may be used. A proportionally spaced typeface~~All text must be 13-point or larger ~~for both text and footnotes. A monospaced typeface may not contain more than ten characters per inch for both text and footnotes~~.

(c) Binding. Briefs shall be printed on both sides of the page, and bound with a compact-type binding so as not unduly to increase the thickness of the brief along the bound side. Coiled plastic and spiral-type bindings are not acceptable.

(d) Color of cover; contents of cover. The cover of the opening brief of appellant shall be blue; that of appellee, red; that of intervenor, guardian ad litem, or amicus curiae, green; that of any reply brief, or in cases involving a cross-appeal, the appellant's second brief, gray; that of any petition for rehearing, tan; that of any response to a petition for rehearing, white; that of a petition for certiorari, white; that of a response to a petition for certiorari, orange; and that of a reply to the response to a petition for certiorari, yellow. The cover of an addendum shall be the same color as the brief with which it is

filed. All brief covers shall be of heavy cover stock. There shall be adequate contrast between the printing and the color of the cover. The cover of all briefs shall set forth in the caption the full title given to the case in the court or agency from which the appeal was taken, as modified pursuant to Rule 3(g), as well as the designation of the parties both as they appeared in the lower court or agency and as they appear in the appeal. In addition, the covers shall contain: the name of the appellate court; the number of the case in the appellate court opposite the case title; the title of the document (e.g., Brief of Appellant); the nature of the proceeding in the appellate court (e.g., Appeal, Petition for Review); the name of the court and judge, agency or board below; and the names and addresses of counsel for the respective parties designated as attorney for appellant, petitioner, appellee, or respondent, as the case may be. The names of counsel for the party filing the document shall appear in the lower right and opposing counsel in the lower left of the cover. In criminal cases, the cover of the defendant's brief shall also indicate whether the defendant is presently incarcerated in connection with the case on appeal and if the brief is an Anders brief.

(e) Effect of non-compliance with rules. The clerk shall examine all briefs before filing. If they are not prepared in accordance with these rules, they will not be filed but shall be returned to be properly prepared. The clerk shall retain one copy of the non-complying brief and the party shall file a brief prepared in compliance with these rules within 5 days. The party whose brief has been rejected under this provision shall immediately notify the opposing party in writing of the lodging. The clerk may grant additional time for bringing a brief into compliance only under extraordinary circumstances. This rule is not intended to permit significant substantive changes in briefs.

Advisory Committee Note

~~The change from the term "pica size" to "ten characters per inch" is intended to accommodate the widespread use of word processors. The definition of pica is print of approximately ten characters per inch. The amendment is not intended to prohibit proportionally spaced printing.~~

An Anders brief is a brief filed pursuant to Anders v. California, 386 U.S. 793, 97 S.Ct. 1396 (1967), in cases where counsel believes no nonfrivolous appellate issues exist. In order for an Anders-type brief to be accepted by either the Utah Court of Appeals or the Utah Supreme Court, counsel must comply with specific requirements that are more rigorous than those set forth in Anders. See, e.g. State v. Wells, 2000 UT App 304, 13 P.3d 1056 (per curiam); In re D.C., 963 P.2d 761 (Utah App. 1998); State v. Flores, 855 P.2d 258 (Utah App. 1993) (per curiam); Dunn v. Cook, 791 P.2d 873 (Utah 1990); and State v. Clayton, 639 P.2d 168 (Utah 1981).