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, January 9, 2014
12:00 p.m. to 1:30 p.m.

1.	Welcome and Approval of Minutes (Tab 1)	Joan Watt
2.	Rules without Public Comment	Joan Watt
3.	Public Comment to Rule 9 (Tab 2)	Joan Watt
4.	Rule 24(f) (Tab 3)	Mary Westby
5.	Rule 37(b) (Tab 4)	Joan Watt
6.	Global Review of Rules (Tab 5)	Global Rules Subcommittee
7.	Other Business	
8.	Adjourn	

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

Education Room
Thursday, November 14, 2013
12:00 p.m. to 1:30 p.m.

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

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

Ms. Watt welcomed the committee to the meeting. Ms. Watt suggested that the minutes from the September 25, 2013 meeting be amended on page 4, the 4th paragraph from the bottom to read "an issue" instead of "a issue". She also suggested that the sentence in paragraph two attributed to her be deleted, since it does not reflect what she meant.

Mr. Burke moved to approve the minutes from the September 25, 2013 meeting as amended. Ms. Seppi seconded the motion and it passed unanimously.

2. Public Comment to Proposed Rules 29 and 11 **Joan Watt**

The committee discussed the public comments made to proposed rule 11. Ms. Watt stated that the first comment was favorable. She said that the second comment discussed "who pays", which is something that the committee discussed and decided to leave. Ms. Watt stated she recalled the committee previously discussing that the appellee can make the decision not to supplement the record,

and hope that the Court says that because the information is not there the appellant loses, or the appellee can choose to supplement the record. She said the discussion was to leave the rule as is.

Ms. Decker stated that she thinks the comment is wrong regarding the appellee's burden. Mr. Booher stated that he thinks the commenter is referring to the last sentence. He said that in the civil world, the appellee would see the statement of the issues and would say we might need these additional transcripts and would tell the appellant to pay for them. The appellate court would remand the issue to the trial court and the trial court would decide who pays for the transcripts. If the appellee decides the transcript needs to be ordered, the presumption in the rule is that the appellee would pay for it. He stated that if you point out a mechanism you have increased the chances that the mechanism will be invoked.

Ms. Decker moved to send rule 11 as written to the Supreme Court for approval. Mr. Sabey seconded the motion and it passed unanimously.

The committee discussed the public comments to rule 29. Ms. Watt stated that these comments were previously discussed. She stated with all due respect to the Attorney General's comments, these issues were already discussed. Ms. Decker stated that she agrees with the comments. Judge Voros stated that the Court has discretion to hear surrebuttal.

Mr. Booher moved to send rule 29 as written to the Supreme Court for approval. Ms. Seppi seconded the motion and it passed with Ms. Decker abstaining.

3. Proposed Language Addressing Addendums to Appellate Briefs (Rules 24, 58, and 27) **Alison Adams-Perlac**

Ms. Adams-Perlac discussed the proposed changes to rules 24, 58, and 57 requiring an addendum for non-public records. She stated that they should be called "non-public" addenda. Mr. Sabey expressed his concern that the color of the non-public addenda being different from the original brief because it could be confusing for the judges. Ms. Adams-Perlac stated that the different color was suggested to assist clerical staff in identifying non-public addenda. Judge Voros stated that he agrees that a different color should be used for non-public addenda.

Judge Voros stated that requiring a statement that a non-public addenda is unnecessary is a bit too onerous for individuals who do not have to submit a non-public addenda. Ms. Watt suggested requiring a statement only when a non-public addenda is included.

The committee discussed changing the color to pink instead of purple.

Mr. Booher moved to approve the rules as amended and discussed. Judge Voros seconded the motion and it passed unanimously. Ms. Adams-Perlac will send a copy of the proposal with amendments to the committee.

4. Rule 4(e) **Judge Fred Voros**

Judge Voros discussed his proposal on rule 4(e). He stated that it incorporates part of the Court of Appeals' reasoning in *Bennett vs. Bigelow and BOP*, 2013 UT App 180. He stated that the issue on appeal was in determining if there was good cause for extending the time for an appeal whether the trial court should look at whether an appellant had availed itself of filing a notice of appeal before final judgment was entered. The argument was that they did not exert reasonable efforts because they did not pre-file a notice of appeal. The Court said if they accepted that argument, they would be implying that litigants have a duty to file a premature notice of appeal or risk losing the relief available under rule 4(e). He stated that the proposal makes the Court's reasoning explicit. He stated that it goes further than the

opinion because the opinion says that it is not dispositive, but it is a factor the district court could consider.

Ms. Watt stated that it seems relevant if the opposite happens, if you do file a premature notice, if you filed an early one, and it did not have the effect of preserving your appeal rights. Mr. Sabey stated that it could be reworded to say "failure to file". Mr. Burke stated that using "failure" makes it sound like a requirement.

The committee agreed that trying and failing should count in favor of good cause, although they could not agree on the language.

Judge Voros moved to approve the proposal as amended to state that non-filing of a 4(c) motion is not relevant to a determination of excusable neglect for good cause under 4(e). Mr. Burke seconded the motion and it passed unanimously. Judge Voros will rework the language and send it to Ms. Adams-Perlac to circulate by email.

5. Revised Rule 24 "Nature of the Case" Language Troy Booher

Mr. Booher discussed changing rule 24 to allow parties to include an introduction. He stated that there are advantages to the reader and to the writer. He stated that writing it helps you frame the issues. He said it gives the reader an overview. He stated introductions are used in federal briefs, but the federal rules do not provide for it. Ms. Watt stated that she has reviewed briefs with introductions and has found the introductions to be helpful. However, she stated that she is concerned about introductions increasing the word limit. She stated that she thinks our rules allow for an introduction, but including it in rule 24 would make it a requirement, and that requirement could be overwhelming. Ms. Decker stated that she shares Ms. Watt's concerns.

Ms. Westby stated that she is not concerned if we call "nature of the case" "introduction," but they need the specific information the nature of the case can provide. Mr. Parker stated that the introductions he is familiar with are very repetitive.

Judge Voros stated that in many briefs it takes a long time to get to the point. Mr. Parker stated that some introductions are so lengthy that they require a response. Mr. Booher stated that there are problems with the antiquated format of the briefs. Judge Voros stated that he agrees and said that he would delete the "statement of the issue" if we were starting from scratch. He stated that if you have a table of contents, a statement of the issues section is unnecessary.

Ms. Westby stated that judges vary greatly in where they first turn in the brief. If we change the format of the briefs, it will change the format of how judges read them, but she expressed concern that it would be a major overhaul of the rule.

Ms. Watt stated that we may want to look at the form of briefs in the future, but we should discuss the issue with the judges before revising it. Ms. Watt suggested keeping the rule as written, and committee members can think about how the language providing for an introduction should be worded. She also stated that an introduction should be discretionary.

Mr. Booher stated that the appellate judges should consider the form of briefs at the next appellate conference. Ms. Westby asked whether the requirements for briefing change in a paperless world.

Judge Voros asked whether anyone would be willing to discuss this issue at the next appellate conference. Mr. Booher and Mr. Burke volunteered.

The committee agreed that no changes to rule 24 were necessary at this time.

6. Global Review of Rules Update **Troy Booher**

Mr. Booher discussed the goals of the Global Review subcommittee including consistency and clearing up some ideas that need more clarity. He stated that another goal is to add standing orders into the rules. Judge Voros asked if there are any standing orders that should not be incorporated into the rules. He stated that standing orders that address practice should be incorporated into the rules because the Utah Constitution says the Supreme Court shall govern by rule. Ms. Watt suggested that the committee address the current proposals and then consider standing orders later.

Mr. Booher discussed proposed changes to rule 4(d). He stated that the purpose of the change was ambiguity since the current rule is not clear as to which court applies for purposes of the notice of appeal being docketed. He stated that it could be interpreted to mean the trial court or the appellate court.

Judge Voros moved to approve the change to rule 4(d). Ms. Watt seconded the motion and it passed unanimously.

Mr. Burke discussed proposed changes to rule 4(e). He expressed concern with the use of "ex parte" in the current rule. He stated that he would rework the proposal so that the second sentence comes first in the paragraph. Judge Voros stated that he thinks 4(e) is written backwards. Judge Voros stated that he is, however, hesitant to change rule 4(e) because of the appellate opinions that have been issued involving 4(e). Mr. Sabey suggested leaving the proposal as it is written.

Mr. Burke stated that the subcommittee started with the narrow issue of addressing the ex parte language. Mr. Sabey suggested being more explicit about stating that the trial court may rule without considering a response. Judge Voros asked whether there is a provision for a response or whether it is the motion rule that applies. Mr. Burke stated it is the motion rule that applies. He states that these motions are filed most often when a party is deciding whether to pursue the appeal or for settlement negotiations.

Mr. Parker stated that the way it is written it invites litigation that will not be resolved in the first or second 30 days. Mr. Burke stated that the "ex parte" process in the current rule is concerning. Mr. Pattison stated that with efiling nothing is really ex parte, because everyone gets notice. Mr. Booher stated that the term "ex parte" is misleading, because everyone is aware and gets notice, but the other party does not have an opportunity to respond.

Mr. Sabey stated that the case law places more emphasis on excusable neglect with respect to after the prescribed time and good cause before that time. Mr. Burke agreed.

Ms. Watt suggested that Mr. Burke revise the proposal based on the committee's agreement that the ex parte language should be removed, and that a judge can rule without a response. She also suggested that it include good cause and excusable neglect in the second thirty days, but only good cause in the first 30 days. Judge Voros suggested that Mr. Burke research whether this rule tracks the federal rule.

Mr. Burke will revise the proposal for discussion at the next meeting. He will see if it tracks the federal rule.

Mr. Booher discussed proposed rule 5(d). He stated that "appendix" should be probably be changed to "addenda". Judge Voros stated that it should be "addenda". Mr. Sabey suggested "any addenda". Mr. Burke stated that, "if any" is unnecessary. Mr. Parker suggested stating "not to exceed 20 pages" instead of "as short as possible." Ms. Watt stated that she agreed, as otherwise the rule suggests that it is negative if a person uses all 20 pages. Ms. Westby agreed, but said she does not want anyone to feel compelled to take 20 pages.

Judge Voros asked whether it is worth giving guidance on what should be included in the addenda. Mr. Parker asked how much access the appellate court has to the underlying case. Mr. Sabey stated that if the case is electronically filed, they can access it, although it is a judge is more likely to

review the information in an addendum than to read it online. Judge Voros stated that the addenda can be quite large. Mr. Parker asked how the addenda can be constructed to make it more easy for the judge to find the relevant information.

Ms. Watt stated that with addenda on interlocutory appeal, practitioners include everything to show the court that these things actually happened because there is no transcript. She suggested clarifying what would be helpful to include in an addenda. Mr. Sabey stated that he would want the Supreme Court to look at the rule before we approve it.

Ms. Watt stated that we may want to hold off on addressing what is included in addenda because electronic records may change everything. Mr. Sabey stated that the committee should go with the current proposal with a view toward changing it as the electronic record allows.

Proposed rule 5(d) was revised as follows:

> (d) Page limitation. A petition for permission to appeal may not exceed 20 pages, excluding the table of contents and any addenda.

Mr. Sabey moved to approve rule 5(d) as amended. Mr. Burke seconded the motion and it passed unanimously.

Mr. Booher stated that the top part of 5(f) was previously addressed with Bridget's proposal. That proposal was addressed and approved at a previous meeting. He stated that Ms. Westby suggested that a reply is not helpful in this instance, so the proposal provides that a reply shall not be permitted.

He stated that these petitions can delay a case for three months. Mr. Sabey stated that most of the time no concurrence will be filed.

This proposal was tabled until the next meeting.

7. Other Business

Ms. Watt stated that she would like the committee to discuss rule 37(b) at an upcoming meeting, specifically with regard to the requirement that there be a motion to dismiss accompanied by an affidavit from the client voluntarily dismissing the appeal if all issues are moot.

8. Adjourn

Mr. Booher moved to adjourn the meeting. Mr. Burke seconded the motion, and it passed unanimously.

Tab 2

Public Comment to Rule 9

Deletion of the language in (f) -- that an issue not listed in the docketing statement may nevertheless be raised in appellant's opening brief -- is helpful in efforts to mediate. The appellee is given a better sense of what issues are actually being appealed at time of mediation.

Posted by Jon V. Harper December 18, 2013 03:10 PM

Where jurisdiction is addressed thoroughly in the docketing statement, the committee should consider eliminating the requirement of Rule 24(a)(4) that jurisdiction be revisited in the briefs.

Posted by Leslie Slaugh November 1, 2013 09:33 AM

Rule 9. Docketing statement.

(a) Purpose. A docketing statement has two principal purposes: (1) to demonstrate that the appellate court has jurisdiction over the appeal, and (2) to identify at least one substantial issue for review. The docketing statement is a document used for jurisdictional and screening purposes. It should not include argument.

(b) Time for filing. Within 21 days after a notice of appeal, cross-appeal, or a petition for review of an administrative order is filed, the appellant, cross-appellant, or petitioner shall file an original and two copies of a docketing statement with the clerk of the appellate court and serve a copy with attachments, if required, on all parties. The Utah Attorney General shall be served in any appeal arising from a crime charged as a felony or a juvenile court proceeding.

~~(b) Interlocutory appeals. When a petition for interlocutory review is granted under Rule 5, a docketing statement shall not be filed, unless otherwise ordered.~~

(c) Content of docketing statement in a civil case. The docketing statement in an appeal arising from a civil case shall include ~~contain the following information~~:

(c)(1) A concise statement of the nature of the proceeding and the effect of the order appealed, and the district court case number, e.g., "This appeal is from a final judgment ~~or decree~~ of the First District Court granting summary judgment in case number 001900055." ~~or "This petition is from an order of the Utah State Tax Commission."~~

~~(c)(2) The statutory provision that confers jurisdiction on the appellate court.~~

(c)(~~3~~2) The following dates relevant to a determination of the timeliness of the notice of appeal and the jurisdiction of the appellate court:

(c)(2~~3~~)(i~~A~~) The date of entry of the final judgment or order from which the appeal is taken.

(c)(2~~3~~)(ii~~B~~) The date the notice of appeal ~~or petition for review~~ was filed in the district court.

(c)(2~~3~~)(iii~~C~~) If the notice of appeal was filed after receiving an extension of the time to file pursuant to Rule 4(e), the date the motion for an extension was granted.

(c)(2)(iv) If any motions listed in Rule 4(b) were filed, the date such motion was filed in the trial court and the date of entry ~~The date of any motions filed pursuant to Rules~~

~~50(b), 52(b), or 59, Utah Rules of Civil Procedure, or Rule 24, Utah Rules of Criminal Procedure, and the date and effect~~ of any order~~s~~ disposing of such motion~~s~~.

(c)(2)(v) If the appellant is an inmate confined in an institution and is invoking Rule 21(f), the date the notice of appeal was deposited in the institution's internal mail system.~~a statement to that effect.~~

(c)(2~~5~~)(vi) If a motion to reinstate the time to appeal was filed pursuant to Rule 4(g), the date of the order disposing of such motion.

(c)(3) If the ~~an~~ appeal is taken from an order ~~in a multiple-party or a multiple-claim case, and the judgment has been~~ certified as ~~a~~ final ~~judgment by the trial court~~ pursuant to Rule 54(b) of the~~,~~ Utah Rules of Civil Procedure~~,~~: a statement of what claims and parties remain before the trial court for adjudication, and a statement of whether the facts underlying the appeal are sufficiently related to the facts underlying the claims remaining before the trial court to constitute res judicata on those claims.

~~(c)(5)(A) a statement of what claims and parties remain before the trial court for adjudication, and~~

~~(c)(5)(B) a statement of whether the facts underlying the appeal are sufficiently similar to the facts underlying the claims remaining before the trial court to constitute res judicata on those claims~~.

(c)(4~~6~~) A statement of at least one substantial issue appellant intends to assert on appeal. An issue not raised in the docketing statement may nevertheless be raised in the brief of the appellant; conversely, an issue raised in the docketing statement does not have to be included in the brief of the appellant.

(c)(5) A concise summary of the facts necessary to provide context for the issues presented.

(c)(6) A reference to all related or prior appeals in the case, with case numbers and citations.

~~If the case is criminal,~~

~~(c)(6)(A) the charges of which the defendant was convicted or, if the defendant is not convicted, the dismissed or pending charges;~~

~~(c)(6)(B) any sentence imposed; and~~

~~(c)(6)(C) whether the defendant is currently incarcerated.~~

~~(c)(7) A statement of the issues appellant intends to assert on appeal, including, for each issue,~~

~~(c)(7)(A) citations to determinative statutes, rules, or cases;~~

~~(c)(7)(B) the applicable standard of appellate review, with supporting authority.~~

~~(c)(8) A succinct summary of facts material to a consideration of the issues presented.~~

~~(c)(9) If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, and the appellant advocates or opposes such an assignment, a succinct statement of reasons why the Supreme Court should or should not assign the case. The Supreme Court may, for example, consider whether the case presents or involves one or more of the following:~~

~~(c)(9)(A) a novel constitutional issue;~~

~~(c)(9)(B) an important issue of first impression;~~

~~(c)(9)(C) a conflict in Court of Appeals decisions;~~

~~(c)(9)(D) any other persuasive reason why the Supreme Court should or should not resolve the issue.~~

~~(c)(10) A reference to all related or prior appeals in the case, with case numbers and citations~~

(d) Content of a docketing statement in a criminal case. The docketing statement in an appeal arising from a criminal case shall include:

(d)(1) A concise statement of the nature of the proceeding, including the highest degree of any of the charges in the trial court, and the district court case number, e.g., "This appeal is from a judgment of conviction and sentence of the Third District Court on a third degree felony charge in case number 001900055."

(d)(2) The following dates relevant to a determination of the timeliness of the appeal and the jurisdiction of the appellate court:

(d)(2)(i) The date of entry of the final judgment or order from which the appeal is taken.

(d)(2)(ii) The date the notice of appeal was filed in the district court.

(d)(2)(iii) If the notice of appeal was filed after receiving an extension of the time to file pursuant to rule 4(e), the date the motion for an extension was granted.

(d)(2)(iv) If a motion pursuant to Rule 24 of the Utah Rules of Criminal Procedure was filed, the date such motion was filed in the trial court and the date of entry of any order disposing of such motion.

(d)(2)(v) If a motion to reinstate the time to appeal was filed pursuant to Rule 4(f), the date of the order disposing of such motion.

(d)(2)(vi) If the appellant is an inmate confined to an institution and is invoking Rule 21(f), the date the notice of appeal was deposited in the institution's internal mail system.

(d)(3) The charges of which the defendant was convicted, and any sentence imposed; or, if the defendant was not convicted, the dismissed or pending charges.

(d)(4) A statement of at least one substantial issue appellant intends to assert on appeal. An issue not raised in the docketing statement may nevertheless be raised in the brief of the appellant; conversely, an issue raised in the docketing statement does not have to be included in the brief of the appellant.

(d)(5) A concise summary of the facts necessary to provide context for the issues presented. If the conviction was pursuant to a plea, the statement of facts should include whether a motion to withdraw the plea was made prior to sentencing, and whether the plea was conditional.

(d)(6) A reference to all related or prior appeals in the case, with case numbers and citations.

~~(d) Necessary attachments. Copies of the following must be attached to each copy of the docketing statement:~~

~~(d)(1) The final judgment or order from which the appeal is taken;~~

~~(d)(2) Any rulings or findings of the trial court or administrative tribunal included in the judgment from which the appeal is taken;~~

~~(d)(3) In appeals arising from an order of the Public Service Commission, any application for rehearing filed pursuant to Utah Code Section 54-7-15;~~

~~(d)(4) The notice of appeal and any order extending the time for the filing of a notice of appeal.~~

~~(d)(5) Any notice of claim.~~

~~(d)(6) Any motions filed pursuant to Rules 50(b), 52(b), 54(b), or 59, Utah Rules of Civil Procedure, or Rule 24, Utah Rules of Criminal Procedure, and orders disposing of such motions; and~~

~~(d)(7) If the appellant is an inmate confined in an institution and is invoking Rule 4(g), the notarized statement or written declaration required by that provision.~~

(e) Content of a docketing statement in a review of an administrative order. The docketing statement in a case arising from an administrative proceeding shall include:

(e)(1) A concise statement of the nature of the proceedings and the effect of the order appealed, e.g., "This petition is from an order of the Workforce Appeals Board denying reconsideration of the denial of benefits."

(e)(2) The statutory provision that confers jurisdiction on the appellate court.

(e)(3) The following dates relevant to a determination of the timeliness of the petition for review:

(e)(3)(i) The date of entry of the final order from which the petition for review is filed.

(e)(3)(ii) The date the petition for review was filed.

(e)(4) A statement of at least one substantial issue petitioner intends to assert on review. An issue not raised in the docketing statement may nevertheless be raised in the brief of petitioner; conversely, an issue raised in the docketing statement does not have to be included in the brief of petitioner.

(e)(5) A concise summary of the facts necessary to provide context for the issues presented.

(e)(6) If applicable, a reference to all related or prior petitions for review in the same case.

(e)(7) Copies of the following documents must be attached to each copy of the docketing statement:

(e)(7)(i) The final order from which the petition for review is filed.

(e)(7)(ii) In appeals arising from an order of the Public Service Commission, any application for rehearing filed pursuant to Utah Code section 54-7-15.

~~(e) Appellee's statement regarding assignment. If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, an appellee may within 10 days of service of the docketing statement file a succinct statement of reasons why the appeal should or should not be assigned.~~

(f) Consequences of failure to comply. Failure to file a ~~D~~docketing statement~~s~~ within the time period provided in subsection (b) ~~which fail to comply with this rule will not be accepted. Failure to comply~~ may result in dismissal of a civil ~~the~~ appeal or ~~the~~ a petition for review. Failure to file a docketing statement within the time period provided in subsection (b) in a criminal case may result in a finding of contempt or other sanction if appellant is represented by counsel, and may result in dismissal of the appeal if appellant is not represented by counsel. ~~An issue not listed in the docketing statement may nevertheless be raised in appellant's opening brief.~~

(g) Appeals from interlocutory orders. When a petition for permission to appeal from an interlocutory order is granted under Rule 5, a docketing statement shall not be filed unless otherwise ordered.

Advisory Committee Notes

The content of the docket statement has been slightly reordered to first state information governing the jurisdiction of the court.

The docket statement and briefs contain a new section requiring a statement of the applicable standard of review, with citation of supporting authority, for each issue presented on appeal.

The content of the docket statement has been reordered and brought into conformity with revised Rule 4, Utah Rules of Appellate Procedure. This rule is satisfied by a docketing statement in compliance with form 7.

Tab 3

Rule 24(f) Motions to classify the briefs as non-public.

(f)(1)Briefs are classified as public documents. A party may request a brief to be classified as non-public if the issues on appeal require the disclosure of records classified as other than public. Any motion to classify a brief non-public must show that the party is unable to make an argument on appeal without the disclosure of records classified as non-public under Utah Rule of Judicial Administration 4-202.02. A party must redact non-public material from a brief or addendum copy of a record if possible, thereby preserving the public classification of the brief. A motion to classify a brief as non-public will be granted only where a non-public record is integral to the issues on appeal and cannot otherwise be protected from disclosure. A party shall file a private addendum pursuant to section (a)(12) of this rule, and must show why the brief should be classified as non-public as well. The party making the motion must certify that the brief and addenda are properly classified and must identify the classification under rule 4-202.02.

(f)(2) Where a brief is not classified as non-public but contains some specific and distinct material that is non-public, the party filing the brief shall provide one copy of the brief with the non-public material redacted. That copy will be identified as the public brief. The other copies will be designated for the use of the court and shall not be redacted and shall not be made public.

Advisory Committee Note:

Motions to classify a brief as non-public should establish that the non-public material so permeates the argument that it is not feasible to redact or otherwise separate out non-public material. For example, if the issue on appeal regards the enforcement of a confidential settlement agreement, it is likely that the protected material is so integral to the argument that it cannot be protected on appeal without classifying the brief as non-public as well. In contrast, if a brief contains a few lines of a non-public document that are not integrated into the entire argument, the brief may remain classified as public with the redaction of those few lines.

Tab 4

Rule 37. Suggestion of mootness; voluntary dismissal.

(a) Suggestion of mootness. It is the duty of each party at all times during the course of an appeal or other proceeding to inform the court of any circumstances which have transpired subsequent to the filing of the appeal or other proceeding which render moot one or more of the issues raised. If a party determines that one or more, but less than all, of the issues have been rendered moot, the party shall promptly advise the court by filing a "suggestion of mootness" in the form of a motion under Rule 23. If all parties to an appeal or other proceeding agree as to the mootness of one or more, but less than all, of the issues raised, a stipulation to that effect shall be filed with the suggestion of mootness. If an appellant determines all issues raised in the appeal or other proceeding are moot, a motion for voluntary dismissal shall be filed pursuant to the provisions of paragraph (b) of this rule.

(b) Voluntary dismissal. At any time prior to the issuance of a decision an appellant may move to voluntarily dismiss an appeal or other proceeding. If all parties to an appeal or other proceeding agree that dismissal is appropriate, a stipulation to that effect shall be filed with the motion for voluntary dismissal. Any such stipulation shall specify the terms as to payment of costs, if applicable, and provide for payment of whatever fees are due. If appellant has the right to effective assistance of counsel, a motion to dismiss shall be accompanied by appellant's personal affidavit demonstrating that appellant's decision to dismiss the appeal is voluntary and made with knowledge of the right to an appeal and an understanding of the consequences of voluntary dismissal.

(c) A suggestion of mootness or motion for voluntary dismissal shall be subject to the appellate court’s approval.

Advisory Committee Note. Criminal defendants have a constitutional right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); State v. Arguelles, 921 P.2d 439, 441 (Utah 1996). Parties in juvenile court proceedings have a statutory right to effective assistance of counsel. State ex rel. E.H. v. A.H., 880 P.2d 11, 13 (Utah App. 1994); see Utah Code Ann. § 78-3a-913(1)(a)(Supp. 1998). To protect these rights and the right to appeal, Utah Code Ann. § 77-18a-1(1)(Supp. 1998); id. § 78-3a-909(1)(1996), the last sentence was added to rule 37(b) to assure that the

decision to abandon an appeal is an informed choice made by the appellant, not unilaterally by appellant's attorney.

Tab 5

Rule 4. Appeal as of right: when taken.

(a) *Appeal from final judgment and order*. In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. However, when a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(b) *Time for appeal extended by certain motions*.

(b)(1) If a party timely files in the trial court any of the following motions, the time for all parties to appeal from the judgment runs from the entry of the order disposing of the motion:

(b)(1)(A) a motion for judgment under Rule 50(b) of the Utah Rules of Civil Procedure;

(b)(1)(B) a motion to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, under Rule 52(b) of the Utah Rules of Civil Procedure;

(b)(1)(C) a motion to alter or amend the judgment under Rule 59 of the Utah Rules of Civil Procedure;

(b)(1)(D) a motion for a new trial under Rule 59 of the Utah Rules of Civil Procedure; or

(b)(1)(E) a motion for a new trial under Rule 24 of the Utah Rules of Criminal Procedure.

(b)(2) A notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any motion listed in Rule 4(b), shall be treated as filed after entry of the order and on the day thereof, except that such a notice of appeal is effective to appeal only from the underlying judgment. To appeal from a final order disposing of any motion listed in Rule 4(b), a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order.

(c) *Filing prior to entry of judgment or order*. A notice of appeal filed after the announcement of a decision, judgment, or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(d) *Additional or cross-appeal*. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal is docketed in the court in which it was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule, whichever period last expires. **4(d) Approved 11/14/2013.**

(e) *Extension of time to appeal*. The trial court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by paragraphs (a) and (b) of this rule. The trial court may rule at any time after the filing of those motions made before the expiration of the prescribed time. ~~A motion filed before expiration of the prescribed time may be ex parte unless the trial court otherwise requires. Notice of a motion filed after expiration of the prescribed time shall be given to the other parties in accordance with the rules of practice of the trial court.~~ No extension shall exceed 30 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

Rule 5. Discretionary appeals from interlocutory orders.

(a) Petition for permission to appeal. An appeal from an interlocutory order may be sought by any party by filing a petition for permission to appeal from the interlocutory order with the clerk of the appellate court with jurisdiction over the case within 20 days after the entry of the order of the trial court, with proof of service on all other parties to the action. A timely appeal from an order certified under Rule 54(b), Utah Rules of Civil Procedure, that the appellate court determines is not final may, in the discretion of the appellate court, be considered by the appellate court as a petition for permission to appeal an interlocutory order. The appellate court may direct the appellant to file a petition that conforms to the requirements of paragraph (c) of this rule.

(b) Fees and copies of petition. For a petition presented to the Supreme Court, the petitioner shall file with the Clerk of the Supreme Court an original and five copies of the petition, together with the fee required by statute. For a petition presented to the Court of Appeals, the petitioner shall file with the Clerk of the Court of Appeals an original and four copies of the petition, together with the fee required by statute. The petitioner shall serve the petition on the opposing party and notice of the filing of the petition on the trial court. If an order is issued authorizing the appeal, the clerk of the appellate court shall immediately give notice of the order by mail to the respective parties and shall transmit a certified copy of the order, together with a copy of the petition, to the trial court where the petition and order shall be filed in lieu of a notice of appeal.

(c) Content of petition.

(c)(1) The petition shall contain:

(c)(1)(A) A concise statement of facts material to a consideration of the issue presented and the order sought to be reviewed;

(c)(1)(B) The issue presented expressed in the terms and circumstances of the case but without unnecessary detail, and a demonstration that the issue was preserved in the trial court. Petitioner must state the applicable standard of appellate review and cite supporting authority;

(c)(1)(C) A statement of the reasons why an immediate interlocutory appeal should be permitted, including a concise analysis of the statutes, rules or cases believed to be determinative of the issue stated; and

(c)(1)(D) A statement of the reason why the appeal may materially advance the termination of the litigation.

(c)(2) If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, the phrase "Subject to assignment to the Court of Appeals" shall appear immediately under the title of the document, i.e. Petition for Permission to Appeal. Appellant may then set forth in the petition a concise statement why the Supreme Court should decide the case in light of the relevant factors listed in Rule 9(c)(9).

(c)(3) The petitioner shall attach a copy of the order of the trial court from which an appeal is sought and any related findings of fact and conclusions of law and opinion.

(d) Page limitation. A petition for permission to appeal may not exceed 20 pages, excluding the table of contents and any addenda. **5(d) Approved 11/14/2013.**

(e) Service in criminal and juvenile delinquency cases. Any petition filed by a defendant in a criminal case originally charged as a felony or by a juvenile in a delinquency proceeding shall be served on the Criminal Appeals Division of the Office of the Utah Attorney General.

(~~e~~f) Answer; no reply. No answer to a petition for permission to appeal will be received unless requested by the court. Within 10 days after ~~service of the petition~~ the entry of an order requesting it, any other party may file an answer in opposition or concurrence to the petition. Any answer to a petition for permission to appeal shall be subject to the same page limitation set out in subsection (d) above. If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, the answer may contain a concise response to the petitioner's contentions under Rule 5(c) . An original and five copies of the answer shall be filed in the Supreme Court. An original and four copies shall be filed in the Court of Appeals. The respondent shall serve the answer on the petitioner. The petition and any answer shall be submitted without oral argument unless otherwise ordered. No reply in support of a petition for permission to appeal shall be permitted. No petition will be granted in the absence of a request for an answer or before the period of time to answer expires.

(~~f~~g) Grant of permission. An appeal from an interlocutory order may be granted only if it appears that the order involves substantial rights and may materially affect the final decision or that a determination of the correctness of the order before final judgment will better serve the administration and interests of justice. The order permitting the appeal may set forth the particular issue or point of law which will be considered and may be on such terms, including the filing of a bond for costs and damages, as the appellate court may determine. The clerk of the appellate court shall immediately give the parties and trial court notice by mail of any order granting or denying the petition. If the petition is granted, the appeal shall be deemed to have been filed and docketed by the granting of the petition. All proceedings subsequent to the granting of the petition shall be as, and within the time required, for appeals from final judgments except that no docketing statement shall be filed under Rule 9 unless the court otherwise orders.

(h~~g~~) Stays pending interlocutory review. The appellate court will not consider an application for a stay pending disposition of an interlocutory appeal until the petitioner has filed a petition for interlocutory appeal.

(i) Cross-petitions not permitted. A cross-petition for permission to appeal a non-final order is not permitted by this rule. All parties seeking to appeal from an interlocutory order must comply with subsection (a) above.

Rule 19. Extraordinary writs.

(a) Petition for extraordinary writ to a judge or agency; petition; service and filing. An application for an extraordinary writ referred to in Rule 65B, Utah Rules of Civil Procedure, directed to a judge, agency, person or entity shall be made by filing a petition with the clerk of the appellate court. Service of the petition shall be made on the respondent judge, agency, person, or entity and on all parties to the action or case in the trial court or agency. In the event of an original petition in the appellate court where no action is pending in the trial court or agency, the petition shall be served personally on the respondent judge, agency, person or entity and service shall be made by the most direct means available on all persons or associations whose interests might be substantially affected.

(b) *Contents of petition and filing fee*. A petition for an extraordinary writ shall contain the following:

(b)(1) A statement of all persons or associations, by name or by class, whose interests might be substantially affected;

(b)(2) A statement of the issues presented and of the relief sought;

(b)(3) A statement of the facts necessary to an understanding of the issues presented by the petition;

(b)(4) A statement of the reasons why no other plain, speedy, or adequate remedy exists and why the writ should issue;

(b)(5) Except in cases where the writ is directed to a district court, a statement explaining why it is impractical or inappropriate to file the petition for a writ in the district court;

(b)(6) Copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition;

(b)(7) A memorandum of points and authorities in support of the petition; and

(b)(8) The prescribed filing fee, unless waived by the court.

(b)(9) Where emergency relief is sought, the petition must comply with Rule ~~8A~~ 23C(b), including any additional requirements set forth by that subpart.

(b)(10) Where the subject of the petition is an interlocutory order, the petition must state whether a petition for interlocutory appeal has been filed and, if so, summarize its status or, if not, state why interlocutory appeal is not a plain, speedy or adequate remedy.

(c) *Response to petition* . The judge, agency, person, or entity and all parties in the action other than the petitioner shall be deemed respondents for all purposes. Two or more respondents may respond jointly. If any respondent does not desire to appear in the proceedings, that respondent may advise the clerk of the appellate court and all parties by letter, but the allegations of the petition shall not thereby be deemed admitted. Where emergency relief is sought, Rule ~~8A~~ 23C(d) shall apply. Otherwise, within seven days after service of the petition, any respondent or any other party may file a response in opposition or concurrence, which includes supporting authority.

(d) *Review and disposition of petition*. The court shall render a decision based on the petition and any timely response, or it may require briefing or the submission of further information, and may hold oral argument at its discretion. If additional briefing is required, the briefs shall comply with Rules 24 and 27. Rule ~~8A~~ 23C(f) applies to requests for hearings in emergency matters. With regard to emergency petitions submitted under Rule ~~8A~~ 23C, and where consultation with other members of the court cannot be timely obtained, a single judge or justice may grant or deny the petition, subject to review by the court at the earliest possible time. With regard to all petitions, a single judge or justice may deny the petition if it is frivolous on its face or fails to materially comply with the requirements of this rule or Rule 65B, Utah Rules of Civil Procedure. The denial of a petition by a single judge or justice may be reviewed by the appellate court upon specific request filed within seven days of notice of disposition, but such request shall not include any additional argument or briefing.

(e) *Transmission of record*. In reviewing a petition for extraordinary writ, the appellate court may order the record, or any relevant portion thereof, to be transmitted.

(f) *Number of copies*. For a petition presented to the Supreme Court, petitioner shall file with the clerk of the court an original and five copies of the petition. For a petition pending in the Supreme Court, respondent shall file with the clerk of the court an original and five copies of the response. For a petition presented to the Court of Appeals, petitioner shall file with the clerk of the court an original and four copies of the petition. For a petition pending in the Court of Appeals, respondent shall file with the clerk of the court an original and four copies of the response.

(g) *Issuance of extraordinary writ by appellate court sua sponte*. The appellate court, in aid of its own jurisdiction in extraordinary cases, may issue a writ of certiorari sua sponte directed to a judge, agency, person, or entity. A copy of the writ shall be served on the named respondents in the manner and by an individual authorized to accomplish personal service under Rule 4, Utah Rules of Civil Procedure. In addition, copies of the writ shall be transmitted by the clerk of the appellate court, by the most direct means available, to all persons or associations whose interests might be substantially affected by the writ. The respondent and the persons or associations whose interests are substantially affected may, within four days of the issuance of the writ, petition the court to dissolve or amend the writ. The petition shall be accompanied by a concise statement of the reasons for dissolution or amendment of the writ.

Rule 23. Motions.

(a) *Content of motion*. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by the following:

(1) A specific and clear statement of the relief sought;

(2) A particular statement of the factual grounds;

(3) If the motion is for other than an enlargement of time, a memorandum of points and authorities in support; and

(4) Affidavits and papers, where appropriate.

(b) *Response*. Any party may file a response ~~in opposition~~ to a motion within 10 days after service of the motion; however, the court may, for good cause shown, dispense with, shorten or extend the time for responding to any motion.

(c) *Reply*. The moving party may file a reply only to answer new matter raised in the response. A reply, if any, may be filed no later than 5 days after service of the response. The court shall not postpone action on the motion to await the reply.

(d) *Determination of motions for procedural orders*. Notwithstanding the provisions of paragraph (a) of this rule as to motions generally, motions for procedural orders which do not substantially affect the rights of the parties or the ultimate disposition of the appeal, including any motion under Rule 22(b), may be acted upon at any time, without awaiting a response or reply. Pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. The court may review a disposition by the clerk upon motion of a party or upon its own motion.

(e) *Power of a single justice or judge to entertain motions*. In addition to the authority expressly conferred by these rules or by law, a single justice or judge of the court may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single justice or judge may not dismiss or otherwise determine an appeal or other proceeding, and except that the court may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single justice or judge may be reviewed by the court.

(f) *Form of papers; number of copies*.

(1) Only the original of a motion to enlarge time shall be filed. The number of required copies of motions for summary disposition shall be governed by Rule 10(b). For other motions presented to the Supreme Court, the movant shall file with the clerk of the court an original and three copies. For other motions pending in the Supreme Court, the respondent shall file an original and three copies of the response. For a motion presented to the Court of Appeals, the movant shall file with the clerk of the court an original and four copies. For a motion pending in the Court of Appeals, the respondent shall file an original and four copies of the response.

(2) Motions and other papers shall be typewritten on opaque, unglazed paper 81/2 by 11 inches in size. Paper may be recycled paper, with or without deinking. The text shall be in type not smaller than ten characters per inch. Lines of text shall be double spaced and shall be upon one side of the paper only. Consecutive sheets shall be attached at the upper left margin.

(3) A motion or other paper shall contain a caption setting forth the name of the court, the title of the case, the docket number, and a brief descriptive title indicating the purpose of the paper. The attorney shall sign all papers filed with the court with his or her individual name. The attorney shall give his or her business address, telephone number, and Utah State Bar number in the upper left hand corner of the first page of every paper filed with the court except briefs. A party who is not represented by an attorney shall sign any paper filed with the court and state the party's address and telephone number.

Rule 24. Briefs.

(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~~ The filing of a brief that is not in compliance is a ground for any action the court deems appropriate, including striking the brief, disregarding the brief, or an assessment of attorney fees. ~~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(k) now reflects the court's authority to fashion remedies for inadequate briefing as recognized in *Broderick v. Apartment Mgmt. Consultants, L.L.C.*, 2012 UT 17, ¶¶ 19-21, 279 P.3d 391.

Rule 25. Brief of an amicus curiae or guardian ad litem.

A brief of an amicus curiae or of a guardian ad litem representing a minor who is not a party to the appeal may be filed only by leave of court granted on motion or at the request of the court. The motion for leave may be accompanied by a proposed amicus brief, provided it complies with applicable rules and the number of copies specified by Rule 26(b) are submitted to the court. A motion for leave shall identify the interest of the ~~applicant~~ movant and shall state the reasons why a brief of an amicus curiae or the guardian ad litem is desirable. Except for a motion for leave to participate in support of, or in opposition to, a petition for writ of certiorari filed pursuant to Rule 50(f), ~~The~~ the motion for leave shall be filed at least ~~twenty-one~~21 days prior to the date on which the brief of the party whose position as to affirmance or reversal the amicus curiae or guardian ad litem will support is due, unless the court for cause shown otherwise orders. Parties to the proceeding may indicate their support for, or opposition to, the motion. Any response of a party to a motion for leave shall be filed within seven days of service of the motion. If leave is granted, an amicus curiae or guardian ad litem shall file its brief within ~~seven~~ 7 days of the time allowed the party whose position the amicus curiae or guardian ad litem will support, unless the order granting leave otherwise indicates. The time for responsive briefs under Rule 26(a) shall run from the timely service of the amicus or guardian ad litem brief or from the timely service of the brief of the party whose position the amicus curiae or guardian ad litem supports, whichever is later. A motion of an amicus curiae or guardian ad litem to participate in the oral argument will be granted when circumstances warrant in the court's discretion.

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*. Either a proportionally spaced or monospaced typeface in a plain, roman style may be used. A proportionally spaced typeface 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; and 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~~. All brief covers shall be of heavy cover stock. There shall be adequate contrast between the printing and the color of the cover.

(e) *Contents of 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~~f) *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.

Rule 35. Petition for rehearing.

(a) *Petition for rehearing permitted*. A petition for rehearing may be filed in cases that have received plenary review and the court has issued as an opinion, memorandum decision, or per curiam decision. No petitions for rehearing will be considered regarding the denial of a petition for permission to appeal an interlocutory order, the denial of a petition for writ of certiorari, the denial of a motion for remand pursuant to rule 23B, or the grant or denial of any motion for summary disposition pursuant to rule 10.

(b)*Time for filing*~~; contents; answer; oral argument not permitted~~. A rehearing will not be granted in the absence of a petition for rehearing. A petition for rehearing may be filed with the clerk within 14 days after the entry of the decision of the court, unless the time is shortened or enlarged by order.

(c) *Contents of petition*. The petition shall state with particularity the points of law or fact which the petitioner claims the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires. Counsel for petitioner must certify that the petition is presented in good faith and not for delay.

(d) *Oral argument*. Oral argument in support of the petition will not be permitted.

(e) *Response*. No ~~answer~~ response to a petition for rehearing will be received unless requested by the court. ~~The~~ Any ~~answer~~ response ~~to the petition for rehearing~~ shall be filed within 14 days after the entry of the order requesting the ~~answer~~response, unless otherwise ordered by the court. A petition for rehearing will not be granted in the absence of a request for a response~~n answer~~.

(~~b~~f) *Form of petition*~~; length~~. The petition shall be in a form prescribed by Rule 27 and shall include a copy of the decision to which it is directed.

(g). *Number of copies to be filed and served*. An original and ~~six~~ 6 copies shall be filed with the court. Two copies shall be served on counsel for each party separately represented.

(h) *Length*. Except by order of the court, a petition for rehearing and any response requested by the court shall not exceed 15 pages.

(i) *Color of cover*. The cover of a petition for rehearing shall be tan; that of any response to a petition for rehearing filed by a party, white; and that of any response filed by an amicus curiae, green.

(~~c~~j) *Action by court if granted*. If a petition for rehearing is granted, the court may make a final disposition of the cause without reargument, or may restore it to the calendar for reargument or resubmission, or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(~~d~~k) *Untimely or consecutive petitions*. Petitions for rehearing that are not timely presented under this rule and consecutive petitions for rehearing will not be received by the clerk.

(~~e~~l) *Amicus curiae*. An amicus curiae may not file a petition for rehearing but may file a~~n answer~~ response to a petition if the court has requested a~~n answer~~ response under subparagraph (~~a~~e) of this rule.

Rule 47. ~~Certification and~~ Transmission of record; joint and separate petitions; cross-petitions; parties.

(a) Joint and separate petitions; cross-petitions. Parties interested jointly, severally, or otherwise in a decision may join in a petition for a writ of certiorari; any one or more of them may petition separately; or any two or more of them may join in a petition. When two or more cases are sought to be reviewed on certiorari and involve identical or closely related questions, it will suffice to file a single petition for a writ of certiorari covering all the cases. A cross-petition for writ of certiorari shall not be joined with any other filing.

(b) Parties. All parties to the proceeding in the Court of Appeals shall be deemed parties in the Supreme Court, unless the petitioner notifies the Clerk of the Supreme Court in writing of the petitioner's belief that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served on all parties to the proceeding below, and a party noted as no longer interested may remain a party by notifying the clerk, with service on the other parties, that the party has an interest in the petition.

(c) ~~Motion for certification and~~ Transmission of record. ~~A party intending to file a petition for certiorari, prior to filing the petition or at any time prior to action by the Supreme Court on the petition, may file a motion for an order to have the Clerk of the Court of Appeals or the clerk of the trial court certify the record, or any part of it, and provide for its transmission to the Supreme Court. Motions to certify the record prior to action on the petition by the Supreme Court should rarely be made, only when the record is essential to the Supreme Court's proper understanding of the petition or the brief in opposition and such understanding cannot be derived from the contents of the petition or the brief in opposition, including the appendix. If a motion is appropriate, it shall be made to the Supreme Court after the filing of a petition but prior to action by the Supreme Court on the petition. In the case of a stay of execution of a judgment of the Court of Appeals, such a motion may be made before the filing of the petition. Thereafter, the Clerk of the Supreme Court or any party to the case may request that additional parts of the record be certified and transmitted to the Supreme Court.~~ When a petition for writ of certiorari is granted, the Clerk of the Supreme Court shall notify the Clerk of the Court of Appeals to transmit the record on appeal to the Supreme Court.

Rule 48. Time for petitioning.

(a) Timeliness of petition. A petition for a writ of certiorari must be filed with the Clerk of the Supreme Court within 30 days after the entry of the final decision by the Court of Appeals. The docket fee shall be paid at the time of filing the petition.

(b) Refusal of petition. The clerk will refuse to receive any petition for a writ of certiorari which is beyond the time indicated in paragraph (a) of this rule or which is not accompanied by the docket fee.

(c) Effect of petition for rehearing. The time for filing a petition for a writ of certiorari runs from the date the decision is entered by the Court of Appeals, not from the date of the issuance of the remittitur. If a petition for rehearing is timely filed by any party, the time for filing the petition for a writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or of the entry of a subsequent decision entered upon the rehearing.

(d) Time for cross-petition.

(d)(1) A cross-petition for a writ of certiorari must be filed:

(d)(1)(A) within the time provided in Subdivisions (a) and (c) of this rule; or

(d)(1)(B) within 30 days of the filing of the petition for a writ of certiorari.

(d)(2) Any cross-petition timely only pursuant to paragraph (d)(1)(B) of this rule will not be granted unless a timely petition for a writ of certiorari of another party to the case is granted.

(d)(3) The docket fee shall be paid at the time of filing the cross-petition. The clerk shall refuse any cross-petition not accompanied by the docket fee.

(d)(4) A cross-petition for a writ of certiorari may not be joined with any other filing. The clerk of the court shall refuse any filing so joined.

(e) Extension of time. The Supreme Court, upon a showing of excusable neglect or good cause, may extend the time for filing a petition or a cross-petition for a writ of certiorari upon motion filed not later than 30 days after the expiration of the time prescribed by paragraph (a) or (c) of this rule, whichever is applicable. The court may rule at any time after the filing of those motions made before the expiration of the prescribed time. ~~Any such motion which is filed before expiration of the prescribed time may be ex parte, unless the Supreme Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties.~~ No extension shall exceed 30 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later, and only one extension may be granted.

~~(f) Seven copies of the petition for a writ of certiorari, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court.~~

Rule 49. Petition for writ of certiorari.

(a) Contents. The petition for a writ of certiorari shall contain, under appropriate headings and in the order indicated:

(a)(1) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed, except where the caption of the case in the Supreme Court contains the names of all parties.

(a)(2) A table of contents with page references.

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

(a)(4) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise and should not be argumentative or repetitious. General conclusions, such as "the decision of the Court of Appeals is not supported by the law or facts," are not acceptable. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the Supreme Court.

(a)(5) A reference to the official and unofficial reports of any opinions issued by the Court of Appeals.

(a)(6) A concise statement of the grounds on which the jurisdiction of the Supreme Court is invoked, showing:

(a)(6)(A) the date of the entry of the decision sought to be reviewed;

(a)(6)(B) the date of the entry of any order respecting a rehearing and the date of the entry and terms of any order granting an extension of time within which to petition for certiorari;

(a)(6)(C) reliance upon Rule 47(c), where a cross-petition for a writ of certiorari is filed, stating the filing date of the petition for a writ of certiorari in connection with which the cross-petition is filed; and

(a)(6)(D) the statutory provision believed to confer jurisdiction on the Supreme Court.

(a)(7) Controlling provisions of constitutions, statutes, ordinances, and regulations set forth verbatim with the appropriate citation. If the controlling provisions involved are lengthy, their citation alone will suffice and their pertinent text shall be set forth in the appendix referred to in subparagraph (10) of this paragraph.

(a)(8) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and its disposition in the lower courts. There shall follow a statement of the facts relevant to the issues presented for review. All statements of fact and references to the proceedings below shall be supported by citations to the record on appeal or to the opinion of the Court of Appeals.

(a)(9) With respect to each question presented, a direct and concise argument explaining the special and important reasons as provided in Rule 46 for the issuance of the writ.

(a)(10) An appendix containing, in the following order:

(a)(10)(A) copies of all opinions, including concurring and dissenting opinions, and all orders, including any order on rehearing, delivered by the Court of Appeals in rendering the decision sought to be reviewed;

(a)(10)(B) copies of any other opinions, findings of fact, conclusions of law, orders, judgments, or decrees that were rendered in the case or in companion cases by the Court of Appeals and by other courts or by administrative agencies and that are relevant to the questions presented. Each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of its entry; and

(a)(10)(C) any other judicial or administrative opinions or orders that are relevant to the questions presented but were not entered in the case that is the subject of the petition.

If the material that is required by subparagraphs (7) and (10) of this paragraph is voluminous, they may be separately presented.

(b) *Form of petition; number of copies*. The cover of the petition for a writ of certiorari shall be white and shall otherwise comply with the form of a brief as specified in Rule 27. Seven copies of the petition, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court.

(c) No separate brief. All contentions in support of a petition for a writ of certiorari shall be set forth in the body of the petition, as provided in subparagraph (a)(9) of this rule. The petitioner shall not file a separate brief in support of a petition for a writ of certiorari. If the petition is granted, the petitioner will be notified of the date on which the brief in support of the merits of the case is due.

(d) Page limitation. The petition for a writ of certiorari shall be as short as possible, but may not exceed 20 pages, excluding the subject index, the table of authorities, any verbatim quotations required by subparagraph (a)(7) of this rule, and the appendix.

(e) Absence of accuracy, brevity, and clarity. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

Rule 50. ~~Brief in opposition~~Response to the petition; reply brief; brief of amicus curiae.

(a) *~~Brief in opposition~~Response to petition*. Within 30 days after service of a petition the respondent ~~shall~~ may file a response to the petition~~n opposing brief~~, disclosing any matter or ground ~~why~~ concerning whether the case should ~~not~~ be reviewed by the Supreme Court. The cover of the response shall be orange and ~~Such brief~~ shall otherwise comply with Rules 27 and, as applicable, 49. The number of copies to be filed shall be as described in Rule 49(b). ~~Seven copies of the brief in opposition, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court.~~

(b) *Page limitation.* A ~~brief in opposition~~response to the petition shall be as short as possible and may not, in any single case, exceed 20 pages, excluding the subject index, the table of authorities, any verbatim quotations required by Rule 49(a)(7), and the appendix.

(c) *Objections to jurisdiction*. No motion by a respondent to dismiss a petition for a writ of certiorari will be received. Objections to the jurisdiction of the Supreme Court to grant the petition for writ of certiorari may be included in the response~~brief in opposition~~.

(d) *Distribution of filings.* Upon the filing of a ~~brief in opposition~~response, the expiration of the time allowed therefor, or express waiver of the right to file, the petition and the response~~brief in opposition~~, if any, will be distributed by the clerk for consideration. However, if a cross-petition for a writ of certiorari has been filed, distribution of both it and the petition for a writ certiorari will be delayed until the filing of a ~~brief in opposition by~~response to the cross-~~respondent~~petition, the expiration of the time allowed therefor, or express waiver of the right to file.

(e) *~~Reply brief~~*. A reply ~~brief~~ addressed to arguments first raised in the response ~~brief in opposition~~ may be filed by any petitioner no later than 5 days after service of the response, but distribution under paragraph (d) of this rule will not be delayed pending the filing of any ~~such brief~~reply. ~~Such brief~~A reply shall be as short as possible, but may not exceed five pages. ~~Such brief~~The cover of the reply shall be yellow and shall otherwise comply with Rule 27. The number of copies to be filed shall be as described in Rule 49~~50~~(b~~a~~).

(f) ~~Brief~~ *Motion of amicus curiae relating to petition*. A motion for leave to participate as ~~brief of~~ an amicus curiae in support of, or in opposition to, a petition for writ of certiorari shall be filed within 5 days ~~concerning a petition for certiorari may be filed only by leave of the Supreme Court granted on motion or at the request of the Supreme Court. The motion for leave shall be accompanied by a proposed amicus brief, not to exceed 20 pages, excluding the subject index, the table of authorities, any verbatim quotations required by Rule 49(a)(7), and the appendix. The proposed amicus brief shall comply with Rule 27, and, as applicable, Rule 49. The number of copies of the proposed amicus brief submitted to the Supreme Court shall be the same as dictated by Rule 48(f). A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. The motion for leave shall be filed on or before the date~~ of the filing of the timely petition or response of the party whose position the amicus curiae will support, unless the Supreme Court for cause shown otherwise orders. A motion for leave shall identify the interest of the movant, shall explain why the petition for writ of certiorari should or should not be granted, and shall explain the benefit that would be provided to the Supreme Court by a brief of amicus curiae on the merits if the petition is granted. Parties to the proceeding in the Court of Appeals may indicate their support for, or opposition to, the motion. Any response of a party to a motion for leave shall be filed within ~~seven~~ 7 days of service of the motion. The Supreme Court may elect to consider the motion in conjunction with its review of the petition for writ of certiorari. If the petition is granted and leave to participate as amicus curiae on the merits is granted, the timing for the filing of the brief of amicus curiae on

the merits and for any responsive brief of a party is governed by Rule 25.~~If leave is granted, the proposed amicus brief will be accepted as filed and, unless the order granting leave otherwise indicates, amicus curiae also will be permitted to submit a brief on the merits, provided it is submitted in compliance with the briefing schedule of the party the amicus curiae supports. Denial of a motion for leave to file brief of an amicus curiae concerning a petition for certiorari shall not preclude a subsequent amicus motion relating to the merits after a grant of certiorari. All motions for leave to file brief of an amicus curiae on the merits after a grant of certiorari are governed by Rule 25.~~

(g) *Motion of amicus curiae filed after grant of petition.* All motions for leave to participate as an amicus curiae on the merits filed after a grant of a petition for writ of certiorari are governed by Rule 25.