

# 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  
Wednesday, September 25, 2013  
12:00 p.m. to 1:30 p.m.

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|--|---------------------|
| 1. Welcome and Approval of Minutes   | Joan Watt           |
| 2. Committee Note to Rule 24   | Judge Gregory Orme  |
| 3. Proposed Language Addressing<br>Addendums to Appellate Briefs (Rules 24 and 58) | Alison Adams-Perlac |
| 4. Global Review of Rules Update   | Troy Booher         |
| 5. Rule 8A   | Clark Sabey         |
| 6. Committee Note to Rule 44   | Clark Sabey         |
| 7. Rule 5  | Committee           |
| 8. 2014 Meeting Schedule   | Joan Watt           |
| 9. Other Business  |                     |
| 10. 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

Judicial Council Room  
Wednesday, August 14, 2013  
12:00 p.m. to 2:00 p.m.

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### **PRESENT**

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

### **EXCUSED**

Bridget Romano

### **1. Welcome and Introduction of Members**

**Joan Watt**

Ms. Watt welcomed the committee and introduced the new members of the committee, Alan Mouritsen and Rodney Parker. She thanked the other members for their continued service on the committee. She also introduced Alison Adams-Perlac, who is taking the place of Brent Johnson as staff to the committee.

### **2. Approval of Minutes**

**Joan Watt**

*Mr. Burke moved to approve the amendments from the June 16, 2013 meeting. Lori Seppi seconded the motion and it passed unanimously.*

**3. Discussion of Rule 11-101(4) of the  
Supreme Court Rules of Professional Practice**

**Joan Watt**

Ms. Watt discussed Rule 11-101(4) of the Supreme Court Rules of Professional Practice and addressed the changes to the rule providing that no lawyer may serve more than two consecutive terms on the committee unless appointed as chair or as an institutional or court representative. Judge Voros stated that the rule also requires members to disclose their legal practice at the first meeting of each year and at meetings when a new member first attends.

Committee members disclosed their legal practice. Ms. Decker stated that she works as an Assistant Attorney General in Criminal Appeals. Judge Orme stated his position on the Utah Court of Appeals. Mr. Mouritsen stated that he works as an Associate at Parsons Behle and Latimer and is working to create an appellate section there. Mr. Burke stated that he works at Ray Quinney Nebeker and his practice is focused on civil litigation. Mr. Booher stated that he works at the firm Zimmerman Jones and Booher and has an appellate practice. Ms. Seppi stated that she works at Salt Lake Legal Defenders Association. Mr. Parker stated that he works at Snow Christiansen and practices civil and appellate law. Ms. Taliaferro stated that she works at Brown Bradshaw and Moffitt and practices in the area of criminal appeals. Ms. Westby stated that she serves as staff attorney for the Utah Court of Appeals. Ms. Watt stated that she works at Salt Lake Legal Defenders Association and that her work focuses on appeals. Mr. Pattison stated that he works in civil litigation at Durham Jones and Pinegar. Mr. Sabey, Ms. Abegglen, and Ms. Romano were not present during the disclosures. She serves as the Appellate Court Administrator. Ms. Adams-Perlac serves as a staff attorney in the Administrative Office of the Courts.

**4. Public Comments to Proposed Changes on  
Rules 4, 24, and 58**

**Joan Watt**

Ms. Watt discussed the public comments to the committee's proposed changes to Rule 24. Ms. Adams-Perlac reminded the committee that there were two proposed revisions of Rule 24 that went out for public comment separately. Version one proposed numerous changes to the rule, while version two was proposed by Judge Orme to address addendums to appellate briefs. She stated that both versions of the rule will be consolidated, so that they go up to the Supreme Court at one time.

Ms. Watt discussed the concerns of one commenter that the proposed rule does not cover each type of hearing that should have a private addendum. Mr. Booher suggested that they include the case types that are classified as private on Exchange. Ms. Adams-Perlac stated that juvenile court records are classified differently, and that juvenile court records in most cases are not public. Judge Orme suggested that the rule refer to the rules governing access to records in the Code of Judicial Administration. He stated that the Policy and Planning Committee is considering a similar rule.

*Judge Orme moved that Ms. Adams-Perlac look at the proposed revisions to rule 24, and draft language to reference the Code of Judicial Administration as an alternative to delineating the types of cases that require a separately bound addendum. Ms. Decker seconded the motion and it passed unanimously.*

Ms. Watt discussed public comments about the page limitations on Capital briefs. She discussed the concern of limiting the page length. Mr. Booher stated that the committee will be ignoring the Supreme Court's recommendation if it does not change the rule to require a page limit. Judge Voros stated that the new rule actually expands the page limit, making it twice as long. Mr. Booher stated that there is still a concern if the rule provides that Capital briefs have the same page limits as other kinds of briefs. Judge Orme stated that the committee only increased the word limit, but that the Utah Supreme

Court really wanted a page limit. He also stated that the rule still provides an opportunity to request permission to file an over-length brief. Judge Voros stated that the standard for an over-length brief is higher in the proposed rule than it was before. Ms. Watt stated that limiting the length does not comport with the ABA guidelines. She stated that this rule does not foreclose longer briefs, but a longer brief has to be justified. Judge Voros suggested that the committee keep the proposed rule as written, and include the public comments and the concerns the committee discussed that 100 pages may not be enough in the information it sends to the Supreme Court.

*Mr. Boober moved to keep version 1 of Rule 24 as written, but to forward it to the Supreme Court with the public comments and the committee's concerns about the page limit. Ms. Decker seconded the motion and it passed unanimously.*

Ms. Watt discussed a public comment concerned with the “nature of the case” language under (a)(5). Ms. Taliaferro suggested changing the language to “Introduction”. Ms. Watt suggested changing “one paragraph” to “concise” or “short”. Mr. Parker stated that the point of this subsection should be to use only a sentence or two to describe the case. Judge Orme suggested changing “one paragraph” to “succinct introduction”. Mr. Parker suggested putting an example “nature of the case” statement in a committee note. Mr. Burke suggested changing “one paragraph” to “succinct” or “concise”. Judge Voros suggested changing the language to “a concise statement of the nature of the case and the crux of the dispute,” and removing the rest of the sentence. Ms. Watt discussed adding something to the committee notes to help people understand what the committee means. Judge Voros suggested revising the rule as he stated, and having Judge Orme draft a committee note with an example. Mr. Pattison suggested adding that it should be done “without argument”.

*Judge Voros moved to revise Rule 24(a)(5) at lines 18 and 19 as follows: “Nature of the case. ~~A one paragraph summary stating statement of the nature of the case, and the crux of the dispute, and the primary theme of the issues raised before the appellate court.~~” He also moved to add a committee note with an example by Judge Orme. Mr. Boober seconded the motion and it passed unanimously.*

Mr. Sabey and Ms. Abegglen joined the meeting.

Ms. Watt discussed public comments to Rule 4(g). One comment asked what happens under the rule if the judge prepares the judgment under subsection (g)(iii). Ms. Watt stated that the committee’s intention was that the prevailing party draft the judgment.

Ms. Watt stated that since Rule 4(g) is based on rule 58A(d) of the Utah Rules of Civil Procedure she or Ms. Adams-Perlac will refer R. 58A(d) to the Civil Procedure Rules Committee to inquire who would serve the judgment if the court prepares it.

Mr. Boohar stated that the committee is using URCP 58A for the timeline, but that under Rule 4(e), a motion is timely within 60 days. Ms. Seppi stated that the committee added “prompt” to avoid someone improperly delaying their motion. Judge Voros stated that both sets of rules should use the same language and that Rule 4(g) tracks URCP 58A. Ms. Watt stated that no one would consider 59 days as promptly served. Judge Voros stated that the bar is pretty high, requiring reasonable diligence, and that it be served promptly. Judge Voros suggested that the committee keep the language as written. Ms. Watt suggested changing the language to “prevailing party”, requiring the “prevailing party” to serve the judgment even if the court drafts it. Ms. Watt also stated that the benefits of Rule 4(g) will not apply if no party is responsible for service. Mr. Boohar suggested adding “and no party has served”. Judge Voros suggested changing the language to state, “the party, if any”.

*Judge Voros moved to add “if any” after “party” on line 56 of Rule 4(g)(iii), and to otherwise leave the rule as written with formatting changes based on the suggestions made in public comment. Mr. Boohar seconded the motion, and it passed unanimously. The committee requested that Ms. Adams-Perlac add the new language, make formatting changes, and recirculate the proposed rule to the committee.*

*The committee discussed public comments to Rule 58. The committee requested that Ms. Adams-Perlac include a reference to the Code of Judicial Administration as with Rule 24, and recirculate the rule for the next meeting.*

## **5. Rule 24(j)**

### **Judge Fred Voros**

Judge Voros discussed proposed changes to Rule 24(j). He stated that the changes are not meant to be substantive, but to make the rule clearer. Mr. Burke questioned whether the letter discussed in Rule 24(j) is actually a letter or a pleading. Judge Voros asked the committee if “letter” should be changed to “a notice”. Mr. Sabey noted that such a change may provoke parties to file a response to it. Mr. Burke suggested changing “letter” to “a notice”. Judge Voros discussed how Rule 24(j) allows parties to withdraw a devastating confession or to provide other important information. Mr. Sabey stated that expanding the rule would open the door to supplemental materials being filed. Ms. Watt stated that she prefers “letter”, because calling it “a notice” would expand what is filed. Mr. Parker noted that “letter” makes the most sense. Mr. Burke indicated his disagreement. Ms. Abegglen noted that “identfy” on line 6 should be changed to “identify”.

*Mr. Burke motioned to adopt the proposed change to Rule 24(j) with the change to line 6. Judge Voros seconded the motion, and it passed unanimously. The committee requested that Ms. Adams-Perlac make the requested changes and send it out for public comment.*

## **6. Rule 9**

### **Mary Westby**

Ms. Westby discussed proposed changes to Rule 9. Mr. Booher suggested that the statement of the case be removed from (c)(3)(D). Mr. Parker suggested changing the language of (a) to “not include persuasive argument” to (c)(3)(D). Ms. Westby stated that the language should include “state at least one issue that is legally reviewable in the docketing statement” and to “not include argument” instead of “not a persuasive argument.” Judge Voros stated that the main purpose of a docketing statement is to determine whether the appellant filed a notice of appeal on time and whether there is something to consider on appeal. Mr. Parker stated that he likes the language of (c)(1)(A) with the example and suggested that a similar example be used for the committee note Judge Orme will draft for Rule 24. Mr. Mouritsen questioned why (c)(9) in the current version was deleted. Ms. Westby stated that she deleted (c)(9) because the Supreme Court sends out a letter addressing these issues. Mr. Sabey stated that he could ask the Supreme Court if they will formalize their procedure in the rules. Otherwise, Mr. Mourtsen will look at the rules to see if there is a better place to put Rule 9(c)(9). Judge Voros suggested that Rule 9 may benefit from more headings. Ms. Westby stated that she will try to add headings. Mr. Booher suggested a few changes including changing “establish” to “identify” in (a), citing to Rule 10 after “review” in (a), and deleting “is not a persuasive document” in (a). Mr. Booher also suggested inserting “petition for review of administrative order” throughout (c), and under “brief of appellant” inserting the name of the document so the section is consistent with other rules. He also asked the committee whether “final judgment” is necessary in Rule 14 cases. Mr. Booher also suggested taking out “annotated” based on the Supreme Court’s decision to cite only to the Utah Code.

*Ms. Westby will make changes to the proposal and recirculate it to the committee. The committee will vote on the proposal by email.*

## **7. Rule 5**

### **Committee**

The committee discussed tabling the discussion of Rule 5, particularly in light of the global review subcommittee which is also looking at this rule. Mr. Booher stated that he thought the committee agreed on proposed changes to Rule 5 at the last meeting. Ms. Watt asked if the proposal could be approved as to substance. Mr. Parker stated that the proposed changes make sense, but he suggested that “writing well” be removed. Ms. Watt agreed, expressing a concern that something could be denied if it is inelegantly written. Mr. Sabey stated that he should look at whether Rule 5(g) is consistent with his Rule 8A proposal.

*Judge Voros moved to adopt the amendments in substance, without (b), subject to global changes and Mr. Sabey’s 8A proposal. Mr. Parker seconded the motion, and it passed unanimously.*

## **8. Rule 23B Update**

**Joan Watt**

Ms. Watt is participating on the Rule 23B subcommittee and she provided an update to the committee. She stated that the committee had recommended repeal of Rule 23B. The Rule 23B subcommittee is working in conjunction with the Habeas subcommittee, and recent United States Supreme Court decisions have impacted their discussions. The 23B subcommittee will be meeting again on September 24, 2013.

## **9. Rule 29**

**Clark Sabey**

Mr. Sabey discussed developments with Rule 29. He stated that the Supreme Court approved the proposed rule with the committee’s recommendations and passed it on an emergency basis. He stated that the proposed rule is out for public comment now.

## **10. Rule 8A**

**Clark Sabey**

This item was tabled for discussion at the next meeting.

## **11. Rule 44 (Committee Note)**

**Clark Sabey**

This item was tabled for discussion at the next meeting.

## **12. Global Review of Rules Update**

**Troy Booher**

This item was tabled for discussion at the next meeting.

## **13. Juvenile Record on Appeal Rule Changes**

**Judge Gregory Orme**

This item was discussed during the Rule 24 discussion at item 4 above.

## **14. Other Business**

Judge Orme expressed a concern about having multiple copies of the agenda item being printed and going to waste since many committee members print their own copy. The committee requested that Ms. Adams-Perlac provide an electronic meeting packet in advance of each meeting, and each present member indicated that they would not need a hard copy of the materials. Ms. Adams-Perlac will

bring 2-3 copies of the meeting packet to the meeting, but will not provide paper copies for every member. If she sends out an updated packet, she will note in the email which pages are different from the original packet.

The next meeting will be held on September 25, 2013 at 12:00 p.m. in the Judicial Council room.

## **15. Adjourn**

The meeting was adjourned.

# TAB 2

DRAFT FOR DISCUSSION

GKO note: Only one of the three options, below, should be included as the committee's example in an advisory committee note. How much or how little detail we wish to encourage is a judgment call for the committee—thus the three options.

Proposed Advisory Committee Note, Rule 24

The succinct statement of the nature of the case called for in Rule 24(a)(5) is intended to provide a brief explanation of the nature of the case for the purpose of orienting the reader as to the general context in which the appeal arises. It is not the place to identify all the issues on appeal, to detail the procedural history, or to make arguments. An example of what is contemplated follows.

This case involves a dispute between two neighbors about the location of the boundary dividing their backyards in a residential subdivision. Defendants convinced the jury that the boundary had shifted to the line following a fence that Defendants' predecessors constructed in the 1950s. Plaintiffs appeal, believing that the trial court misapprehended the requirements for boundary by acquiescence, in particular the pivotal role of the permissive use doctrine, and thus erred in making several evidentiary rulings and in instructing the jury.

—or—

This case involves a dispute between two neighbors about the location of the boundary dividing their backyards. Defendants prevailed on a theory of boundary by acquiescence. Plaintiffs appeal, contending that the record boundary should be enforced, essentially pursuant to the doctrine of permissive use.

—or—

This is a boundary by acquiescence case. Key to its resolution is the proper scope of the permissive use doctrine.

# TAB 3

## **Rule 24**

### Option 1:

(a)(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. ~~The~~ Except in cases where an addendum includes records that are classified as sealed, private, protected, juvenile court social records, or juvenile court legal records under the Utah Code of Judicial Administration, rule 4-202.02, the addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. In cases where an addendum includes records that are sealed, private, protected, juvenile court social records, or juvenile court legal records, the addendum shall be bound separately. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

### Option 2:

(a)(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. ~~The~~ Except in cases where an addendum includes records that are classified as something other than public under the Utah Code of Judicial Administration, rule 4-202.02, the addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. In cases where an addendum includes records that are classified as something other than public, the addendum shall be bound separately. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

## **Rule 58(a)**

### Option 1:

(a) After reviewing the petition on appeal, any response, and the record, the Court of Appeals may rule by opinion or memorandum decision. The Court of Appeals may issue a decision or may set the case for full briefing under rule 24. Subsections (a)(11) and (d) of rule 24 have particular applicability to cases involving records classified as sealed, private, protected, juvenile court social records, or juvenile court legal records under the Utah Code of Judicial Administration, rule 4-202.02. The Court of Appeals may order an expedited briefing schedule and specify which issues shall be briefed. If the issue to be briefed is ineffective assistance of counsel, the Court of Appeals may order the juvenile court to appoint conflict counsel within 15 days for briefing and argument.

### Option 2:

(a) After reviewing the petition on appeal, any response, and the record, the Court of Appeals may rule by opinion or memorandum decision. The Court of Appeals may issue a decision or may set the case for full briefing under rule 24. Subsections (a)(11) and (d) of rule 24 have

particular applicability to cases involving records that are classified as something other than public under the Utah Code of Judicial Administration, rule 4-202.02. The Court of Appeals may order an expedited briefing schedule and specify which issues shall be briefed. If the issue to be briefed is ineffective assistance of counsel, the Court of Appeals may order the juvenile court to appoint conflict counsel within 15 days for briefing and argument.

Option 2 may be the best solution in both cases, to prevent future additions or changes to record categories, e.g., “safeguarded” records.

# TAB 4

### **Rule 3. Appeal as of right: how taken.**

(a) *Filing appeal from final orders and judgments.* An appeal may be taken from a district or juvenile court to the appellate court with jurisdiction over the appeal from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or other sanctions short of dismissal, as well as the award of attorney fees.

(b) *Joint or consolidated appeals.* If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may join in an appeal of another party after filing separate timely notices of appeal. Joint appeals may proceed as a single appeal with a single appellant. Individual appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties to the separate appeals.

(c) *Designation of parties.* The party taking the appeal shall be known as the appellant and the adverse party as the appellee. The title of the action or proceeding shall not be changed in consequence of the appeal, except where otherwise directed by the appellate court. In original proceedings in the appellate court, the party making the original application shall be known as the petitioner and any other party as the respondent.

(d) *Content of notice of appeal.* The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order, or part thereof, appealed from; shall designate the court from which the appeal is taken; and shall designate the court to which the appeal is taken.

(e) *Service of notice of appeal.* The party taking the appeal shall give notice of the filing of a notice of appeal by serving ~~personally or mailing a copy thereof to counsel of record of each party to the judgment or order in accordance with the requirements of the court from which the appeal is taken;~~ or, if the party is not represented by counsel, then on the party at the party's last known address. ~~A certificate evidencing such service shall be filed with the notice of appeal. If counsel of record is served, the certificate of service shall designate the name of the party represented by that counsel.~~

(f) *Filing fee in civil appeals.* At the time of filing any notice of separate, joint, or cross appeal in a civil case, the party taking the appeal shall pay to the clerk of the trial court the filing fee established by law. The clerk of the trial court shall accept a notice of appeal regardless of whether the filing fee has been paid. Failure to pay the filing fee within a reasonable time may result in dismissal.

(g) *Docketing of appeal.* Upon the filing of the notice of appeal, the clerk of the trial court shall immediately transmit a certified copy of the notice of appeal, showing the date of its filing, and a statement by the clerk indicating whether the filing fee was paid and whether the cost bond required by Rule 6 was filed. Upon receipt of the copy of the notice of appeal, the clerk of the appellate court shall enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the trial court, with the appellant identified as such, but if the title does not contain the name of the appellant, such name shall be added to the title.

#### **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~~ stayed until after the entry of the order and on the day thereof, except that such a notice of appeal and, upon the lifting of the stay, -is-will be 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.

(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 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 8 1/2 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 answer.~~

~~(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.

(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.

~~(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.

(l) Amicus curiae. An amicus curiae may not file a petition for rehearing but may file an ~~answer-response~~ to a petition if the court has requested an ~~answer-response~~ under subparagraph ~~(k)~~ 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~~(ba).

(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.

# TAB 5

Rule 8A 23C. Motion for Emergency relief.

(a) Emergency relief; exception. Emergency relief is any relief sought within a time period shorter than specified by otherwise applicable rules. A motion for emergency relief filed under this Rule is not sufficient to invoke the jurisdiction of the appellate court. A separately filed petition or notice that invokes the appellate jurisdiction of the court under another provision of these rules must have preceded the motion for emergency relief or must be contemporaneously filed with that motion.

(b) Content of ~~petition~~ motion. A party seeking emergency relief shall file with the appellate court a ~~petition~~ motion for emergency relief containing under appropriate headings and in the order indicated ~~the following~~:

(b)(1) a specification of the order from which relief is sought;

(b)(2) a copy of any written order at issue;

(b)(3) a specific and clear statement of the relief sought;

(b)(4) a statement of the factual and legal grounds entitling the party to relief;

(b)(5) a statement of the facts justifying emergency action; and

(b)(6) a certificate that all papers filed with the court have been served upon all parties by overnight mail, hand delivery, ~~or~~ facsimile, or electronic transmission.

The ~~petition~~ motion shall not exceed fifteen pages, exclusive of any addendum containing statutes, rules, regulations, or portions of the record necessary to decide the matter. It also shall not seek relief beyond that necessitated by the emergency circumstances justifying the motion.

(c) Service in criminal and juvenile delinquency cases. Any ~~petition~~ motion 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 Appeals Division of the Office of the Utah Attorney General.

(d) Response; no reply. Any party may file a response to the ~~petition~~ motion within three days after service of the ~~petition~~ motion or whatever shorter time the appellate court may fix. The response shall not exceed fifteen pages, exclusive

of any addendum containing statutes, rules, regulations, or portions of the record necessary to decide the matter. No reply shall be permitted. Unless the appellate court is persuaded that an emergency circumstance justifies and requires a temporary stay of a lower tribunal's proceedings prior to the opportunity to receive or review a response, no ~~petition~~ motion shall be granted before the response period expires.

(e) Form of papers and number of copies. Papers filed pursuant to this rule shall comply with the requirements of Rule 23(f).

(f) Hearing. A hearing on the ~~petition~~ motion will be granted only in exceptional circumstances. No ~~petition~~ motion for emergency relief will be heard without the presence of an adverse party except on a showing that the party (1) was served with reasonable notice of the hearing, and (2) cannot be reached by telephone.

(g) Power of a single justice or judge to entertain ~~petitions~~ motions. A single justice or judge may act upon a ~~petition~~ motion for emergency relief to the extent permitted by Rule 19(d) where the relief sought is an extraordinary writ and by Rule 23(e) in all other cases.

# TAB 6

Rule 44. Transfer of improperly pursued appeals.

If a notice of appeal, a petition for permission to appeal from an interlocutory order, or a petition for review is filed in a timely manner but is pursued in an appellate court that does not have jurisdiction in the case, the appellate court, either on its own motion or on motion of any party, shall transfer the case, including the record on appeal, all motions and other orders, and a copy of the docket entries, to the court with appellate jurisdiction in the case. The clerk of the transferring court shall give notice to all parties and to the clerk of the trial court of the order transferring the case. The time for filing all papers in a transferred case shall be calculated according to the time schedule of the receiving court.

Advisory Committee Note. - ~~Rule 4C is renumbered as Rule 44. It is amended to permit the transfer of an appeal that is timely but improperly filed not only between the Supreme Court and Court of Appeals but also to the District Court. Under the Administrative Procedures Act, It also permits transfer of improperly filed petitions for review of informal adjudicative proceedings of administrative agencies from an appellate court to the a District Court that has jurisdiction to review informal adjudicative those proceedings of administrative agencies. The Supreme Court and Court of Appeals have jurisdiction over the review of formal adjudicative proceedings. Provided that all parties have notice of the intent to seek judicial review, the same policy considerations that permit the transfer of the improperly filed appeal between the Supreme Court and the Court of Appeals should permit the transfer of such a case to the District Court.~~

# TAB 7

## **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 shall be as short as possible, but may not exceed 20 pages, excluding the table of contents, if any, and the appendix.

(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.

(ef) 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 nor before the period of time to answer expires.

(fg) 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.

(hg) 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.