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, March 6, 2014
12:00 p.m. to 1:30 p.m.

1.	Welcome, Introduction of Recording Secretary and Approval of Minutes (Tab 1)	Joan Watt
2.	Public Comment to Rules 3 and 8A (Tab 2)	Joan Watt
3.	Classification of Records Rule (Tab 3)	Alison Adams-Perlac
4.	Rule 11(e)(4) (Tab 4)	Clark Sabey
5.	Rule 1(f) (Tab 5)	Mary Westby
6.	Rule 35 (Tab 6)	Mary Westby
7.	Global Review of Rules (Tab 7)	Global Rules Subcommittee
8.	Other Business	
9.	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
Thursday, January 9, 2014
12:00 p.m. to 1:30 p.m.

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

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

Ms. Watt welcomed the committee to the meeting. The committee discussed the minutes from the previous meeting. Judge Voros stated that "Bridget" on page 5 should be changed to "Ms. Romano."

Judge Voros moved to approve the minutes from the January 9, 2014 meeting as amended. Ms. Decker seconded the motion and it passed unanimously.

2. Rules without Public Comment **Joan Watt**

The committee discussed whether rules that have been in the public comment period should come back to the committee even when no comments have been made. Judge Voros stated that the proposals should come back to the committee. He said that they could be sent around by email. Mr. Booher stated that reviewing these proposals would allow the committee to consider whether there

are other proposals for the committee's consideration that might be impacted by the proposal. The committee agreed that such proposals should come back to the committee so that the committee can give final approval prior to sending them to the Supreme Court.

In the future, Ms. Adams-Perlac will distribute proposals that have not received public comment to the committee by email. If committee members think there is an issue, they can request that the proposal be put on the next meeting's agenda for more in-depth discussion. If no concerns are raised, the proposals will be forwarded to the Supreme Court for its consideration.

3. Public Comment to Rule 9 **Joan Watt**

Two public comments were made to rule 9 as follows:

> 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

Judge Voros stated that Leslie Slaugh's comment is worth keeping in mind. Ms. Watt agreed, especially with regard to the word count issue. Judge Voros stated that he thinks it is a holdover, borrowed from the U.S. Supreme Court rule. He stated that jurisdiction is dealt with at the docketing statement stage. Ms. Watt stated that jurisdiction is either confirmed at that stage, or if jurisdiction is an issue, it will be briefed.

Judge Voros stated that he would suggest rethinking the brief format as a whole as a topic for the Appellate Judge Conference. He stated that Mr. Booher and Mr. Burke might want to consider looking at the brief format as part of the global rules revision.

Ms. Watt stated that the other public comment was positive. Judge Voros stated that he would like someone to review the proposal, read every word of all of them, and make sure that there are no typos, and that the committee did not say something they did not mean to say.

Mr. Shea stated that line 9 "serve a copy if required" is confusing. Mr. Parker suggested changing the language to "serve a copy, with any required attachments". Mr. Shea asked whether on line 25, the committee intended to limit it to the district court. He stated that the juvenile court is civil in nature, but the rule does not include the juvenile court. Mr. Sabey asked whether rule 9 applies to juvenile court. Ms. Westby stated that it would apply for delinquency cases, but not for child welfare cases. Mr. Shea stated that on line 161 there are consequences if a party is represented and other consequences if a party is not represented. Judge Voros stated that ordinarily the sanction

would be dismissal, but the committee was hesitant to dismiss a case if the real problem was that criminal defense counsel was not doing his or her job. If a criminal defense attorney does not file a docketing statement, the Court needs other options.

Ms. Romano moved to approve the proposal on rule 9 as amended, and to send it to the Supreme Court for its approval. Ms. Seppi seconded the motion and it passed unanimously.

Ms. Adams-Perlac will review each proposal when they are no longer in legislative format, to make sure that they say what the committee has intended, and that there are no typographical errors.

4. Rule 24(f) Mary Westby

Mr. Sabey discussed changes to rule 24(f). Mr. Sabey stated that the proposal came about as a concern expressed by the Supreme Court that proceedings before the appellate courts are presumed public, and there is a strong public interest in that transparency, but the practice of sealing briefs has been over-utilized. There may be cases where a portion of the argument or isolated references that are properly deemed to be non-public, but there is no reason to deem the rest of the brief to be non-public.

Mr. Sabey stated that he and Ms. Westby determined that the solution was to require the parties to provide a redacted copy of the brief for public availability. The proposal is a brand new subsection. Ms. Westby stated that it made sense to her to place it at (f), and move the other subsections down. Mr. Sabey stated that the Supreme Court also requested that parties be required to certify that the protected status designated in the court below is still maintained on appeal. Mr. Sabey said it may make sense to put it under rule 11. He stated that the appellate courts typically have adopted whatever status has been assigned below.

Ms. Romano stated that simply redacting information to protect an individual may not be as simple as redacting the name, since in context, the individual's identity may be clear. Mr. Booher asked if the presumption the proposal is talking about refers to all papers filed in the appellate courts. He said if all papers are presumptively valid, there should be a separate rule that explains that parties should use the least restrictive approach, and provide examples, and refer back to (24)(f) for how to handle the non-public information. Judge Voros stated that the rule should be narrowly tailored.

Mr. Booher stated that the intent to require only one redacted copy is not clear until (f)(2). Ms. Westby stated that briefs are the biggest issue, because they are kept in the library for public review. Mr. Booher stated that once we move to the electronic record, all records will be more available to the public.

Judge Voros asked whether the committee can give examples of what types of information are non-public. Mr. Shea stated that the concept of the proposal is sound. He stated that classification of records applies only to records. He stated that the document and the information in the document are classified. He stated that most of the records will be the trial court record on appeal and they will already be classified based on what the trial court did. He stated that there is already a provision that records from the trial court that are not public shall be bound in a separate addendum. He stated if the committee is going to classify the brief itself, the committee should consider why a public brief with a non-public addendum, or a redacted brief does not satisfy the privacy interests that need to be protected. Only when you get to it as the only alternative, do you classify a brief as something other than public. The issue may arise with records other than briefs, so it may be better to have the rule apply generally, rather than just to briefs.

Judge Orme stated that we should use the least restrictive alternative, but that we want the rule to be automatic and in broad categories, so that the appellate court and staff do not need to spend a lot of time making these determinations. Mr. Parker asked whether the federal rule might be considered in crafting a rule. Mr. Shea stated that the Court already has rules classifying records. If we want to classify briefs or other appellate record document as something other than public, we need to specify whether it is private, safe-guarded, etc. He stated that private would likely be adequate for all appellate records, since the parties can see them, but the public cannot.

Judge Voros suggested that Mr. Shea redraft the proposal. Ms. Watt stated that the proposal gets at the concerns Mr. Shea is expressing, but the way it is set up, it is almost backwards. If someone reads the first sentence, they may file a motion to seal the brief. She suggested working backwards. She stated that the concept is sound. Mr. Shea agreed.

Mr. Booher stated that the federal appellate courts in federal rule 25(a)(5) piggyback on what has happened before. All privacy protections governed by rules of criminal procedure, etc. are governed by those on appeal. Mr. Shea stated that the current Utah rules are similar. If a record is private at the district court level, it will be private on appeal. Judge Voros stated could a rule like the federal rule apply so that you could not put anything in the brief that is private. Ms. Watt stated that it would be very difficult to do this because some protected information is relevant to the issues on appeal. The committee agreed that the federal approach does not work in that caes.

Mr. Booher stated that there are two issues: 1) which documents are public and which are non-public, and we can use the current rules for this, and 2) how do you write a brief in the appellate court when you are relying on information that is non-public. He stated that the proposal seems more like practical suggestions of how to accomplish something, rather than determining what is public and non-public, which has already been done.

Mr. Sabey stated that this is a two-level problem. Typically, a party will have an addendum which has some sort of non-public classification, so the party will file the brief as non-public. This is solved by allowing parties to file a non-public addendum. The second piece is how to deal with information in the brief that is non-public. Ms. Watt stated that the proposal should extend beyond briefs, since non-public information may need to be discussed in these documents.

Ms. Westby asked where the rule should be located. She asked whether all of these issues should be addressed in one confidentiality rule, but that all of the other rules, e.g. 5 and 24, should reference the confidentiality rule. Mr. Sabey stated that what Ms. Westby has proposed is a good starting point, but suggested that it may need to be restructured and placed in another location.

Ms. Westby, Mr. Shea, and Ms. Adams-Perlac will revise the proposal for the committee's review at the next meeting. The committee will consider where the rule should be referenced in the other rules after approving the confidentiality rule.

5. Rule 5 **Mary Westby**

Ms. Westby discussed a proposal to revise rule 5. She stated there was clean-up to do with the rule. Ms. Romano stated that this was based on her proposal to revise the rule. The committee reviewed the proposal and amended the rule to read as follows:

> (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. Other documents that may be relevant to determining whether to

grant permission to appeal may be referenced by identifying trial court docket entries of the documents.

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

(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~~Response; no reply. No response to a petition for permission to appeal will be received unless requested by the court. Within 10 days after an order requesting a response~~service of the petition~~, any other party may oppose or concur with the petition. ~~file an answer in opposition or concurrence. 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) .~~ Any response to a petition for permission to appeal shall be subject to the same page limitation set out in subsection (d). 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~~response on the petitioner. The petition and any ~~answer~~response shall be submitted without oral argument unless otherwise ordered. No reply in support of a petition for permission to appeal shall be permitted, unless requested. No petition will be granted in the absence of a request for a response.

(~~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 or by electronic service 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, and no cross-appeal may be filed under rule 4(d).

(~~g~~h) 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) of this rule.

Mr. Sabey moved to approve the proposal as amended. Mr. Booher seconded the motion and it passed unanimously.

6. Rule 37(b) Joan Watt

Ms. Watt discussed rule 37(b). She stated that in a criminal case, when all of the issues are moot, court-appointed counsel are required to obtain an affidavit from their client saying that the issues are moot and that they intend to waive their right to appeal. Ms. Watt stated that it is difficult to obtain these affidavits, and so there are cases that go forward, despite being moot, because there is no affidavit.

Ms. Westby suggested that the rule be amended as follows:

> (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.
>
> (c) If appellant has the right to effective assistance of counsel, a motion to dismiss for reasons other than mootness 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~~d) A suggestion of mootness or motion for voluntary dismissal shall be subject to the appellate court's approval.

Ms. Romano asked whether the rule should be modified to require an attorney to certify the issues as moot. Judge Orme suggested that there be a requirement to explain why the issues are moot. Ms. Watt stated her concerns about explaining why the issues are moot. Mr. Sabey stated that appellate court staff is very careful to make sure that mootness has been established in the motion.

Mr. Booher moved to approve the proposal as amended. Ms. Romano seconded the motion and it passed unanimously.

7. Global Review of Rules Troy Booher

Rule 5 was approved earlier in the meeting. Mr. Booher discussed rule 19. The proposal is amended to change references to 8A to 23C in line with renumbering rule 8A to 23C.

Judge Voros moved to approve the proposal to amend rule 19. Ms. Westby seconded the motion and it passed unanimously.

Judge Voros expressed concern with the language of 23(c) stating "the court shall not postpone action…" He stated that rules do not typically place restrictions or requirements on the courts. Mr. Sabey suggested changing the language from "shall" to "need not".

Rule 23 was amended as follows:

(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, but the court may rule on the motion without awaiting a reply. ~~The court shall not postpone action on the motion to await the reply.~~

Judge Voros moved to approve the proposal as amended. Judge Orme seconded the motion, and it passed unanimously.

Mr. Booher discussed the proposal to amend 24(k). He stated that this proposal is meant to address *Broderick*. Rule 24(k) appeared to be written in a way that suggested the things the court could do to address an inadequate brief, and suggesting that there were no other actions the court could take. He stated that the rule should advise attorneys that there are more consequences than just those listed. Judge Orme stated that the committee does not want to tie the court's hands, but wants to make parties aware that the court has a range of options if a brief is inadequate.

Mr. Shea stated that the rules are used to codify law, but they can be used to change the law. He suggested giving the court the opportunity to recognize its mistake and state that when a brief is inadequate, there are certain options. Ms. Romano stated that the Supreme Court will need to review the rule. Mr. Shea stated that the committee could propose an amendment and take it to the Supreme Court prior to public comment.

Judge Orme stated that the rule should reflect what the committee thinks is best practices, and *Broderick* should then be addressed in the committee note even to call attention to the fact that *Broderick* suggests that there may be additional sanctions. The note should point out conflict with the case law. Judge Voros asked whether *Broderick* has spawned any progeny. The committee suggested that it has not.

Ms. Watt suggested that the committee consider what to do about 24(k) and discuss it at the next meeting. Mr. Booher will consider whether the proposal should be amended.

8. Other Business

There was no other business discussed at the meeting.

9. Adjourn

The meeting was adjourned at 1:40 p.m. The next meeting will be held Thursday, March 6, 2014.

Tab 2

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.

Public Comments to URAP 3

A good change to the Rules. Please consider providing that service of briefs, etc., may be by electronic transmission.

Posted by J. Bogart November 30, 2013 08:59 AM

This is a conspicuous attempt to deprive rights by complicating the process, and it is in defiance of this state's parens patriae burden to protect children. If this passes, I will personally track how much money GALs make from this, and how helpful they are to parents who try to file these in the interests of children they supposedly represent.

Posted by Matthew Falkner January 6, 2014 06:03 PM

Overall, as appliccable to both rules, pioneering new rules, logistical or technical burdens or anything that may complicate or convolute the law, carries with it by nature of reason and natural duty, a very real and affirmative need to first remedy known harmful effects of existing misconstructions or logistical failures first, explicitly and dutifully justifying the need, and enacting, consolidating or repealing in conjunction, bridges that ensure the common person is not prejudiced by rules that tend to serve the government more than the People.

It applies to URAP 3 as follows:

An appeal as of right, (inherent to a right) indicates governmental burden to uphold and protect the right with fidelity. When there's a time window on the practical application of a right, and the application of the right is inadvertently petitioned in wrongful jurisdiction but in good faith, due government effort to preserve the practical access to the right, and not impose undue interference is affirmative. The appeal should either be forwarded to the most direct and rightful jurisdiction, with the Court seeking approval by the petitioner, or an extension of timeframe should be automatically granted with a template for making a correction.

Matthew Falkner, by email 1/15/2014.

Rule ~~8A~~23C. Motion for ~~E~~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. No emergency relief will be granted in the absence of a separately filed petition or notice that invokes the appellate jurisdiction of the court.

(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, ~~N~~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.

Public Comments to 8A (Renumbered to 23C)

WHY MAKE THE RULES SO COMPLICATED AND COMPLEX FOR TRUE EMERGENCY SITUATIONS? RULE 8A, RENUMBERED OR OTHERWISE, SHOULD BE DESIGNED TO ACCOMODATE THE NEED FOR EMERGENCY RELIF WITHOUT THE JURISDICTIONAL DEBATE AND NEED FOR SOME OTHER FILING. WHY NOT USE RULE 8A TO INVOKE JURISDICTION:

"There may be circumstances where limited provisional forms of relief (e.g., an emergency stay to preserve the status quo) can be obtained prior to the formal invocation of appellate jurisdiction,1 but rule 8A cannot be employed to independently invoke that jurisdiction." Snow, Christensen & Martineau, 2009 UT 72, ¶ 6.

"[W]e determine that we lack jurisdiction to take further action on the rule 8A petition because no invocation of our jurisdiction was accomplished by a separate pleading." ¶8.

Posted by ROBERT J. FULLER November 26, 2013 05:54 PM

This is a conspicuous attempt to deprive rights by complicating the process, and it is in defiance of this state's parens patriae burden to protect children. If this passes, I will personally track how much money GALs make from this, and how helpful they are to parents who try to file these in the interests of children they supposedly represent.

Posted by Matthew Falkner January 6, 2014 06:03 PM

Overall, as appliccable to both rules, pioneering new rules, logistical or technical burdens or anything that may complicate or convolute the law, carries with it by nature of reason and natural duty, a very real and affirmative need to first remedy known harmful effects of existing misconstructions or logistical failures first, explicitly and dutifully justifying the need, and enacting, consolidating or repealing in conjunction, bridges that ensure the common person is not prejudiced by rules that tend to serve the government more than the People.

It applies to URAP 8A as follows:

1) The People are guaranteed equal due process protections under the law. These micromanaged rules of process for identical natures of claim between courts imposes unnecessary, unequal, and wasteful burdens on both the courts and the People.

2) Courts are already logistically burdened in a manner that inadvertently deprives the People of the right to a speedy trial. To wit: Litigation extending beyond timeframes. Unnecessary rule enforcement aggravates and perpetuates prolonged litigation, causing furtherance of the overriding logistical rights issue. When existing burdens prove overwhelming to the point of harm, reason and responsible rule-making dictate that consolidation, simplification, and repeal evidencing efficacy to remove harm are in pre-requisite order to pioneering new grounds of burden.

Considering the 2004 case of judge Anderson, such burden expands the risk of removal for judicial officers.

The pleadings in conflict are by nature, emergency pleadings involving the rights of victims and witnesses. They are designed to be a form of relief free from legal and technical burdens that tend to prejudice due and necessary emergent relief.

It is the policy of this state that it has a parens patriae burden to protect children. If a child is forced to endure prolonged abuse because a civically minded person used the wrong template to file a protective order, and spent the day learning that there are arbitrary rules that need to be files, and one but an attorney can advise them on them, now the civic ally minded person is remanded to finding short notice adequate representation, and an attorney profits on the fight for a constitutional right being deprived to the extent of irreparable harm.

Matthew Falkner, by email 1/15/2014.

Tab 3

Classification of Records on Appeal; Motion to Classify Filing as Non-Public

(a) Briefs and other appellate filings are generally classified as public under Utah Code of Judicial Administration 4-202.02. Unless otherwise classified by the appellate court, trial court records and non-public information maintain the same classification as they had in the trial court. 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.

(b) Where an appellate filing contains some specific and distinct information that is classified as something other than public under Utah Code of Judicial Administration 4-202.02, a party shall file an extra copy of the filing, with all non-public information redacted, with the court. The party must show why the information should be redacted and identify the classification under rule 4-202.02. The redacted copy will be identified as the public copy. All other copies will be designated for the use of the court and shall not be redacted and shall not be made public.

(c) Where an appellate filing includes records classified as something other than public under Utah Code of Judicial Administration 4-202.02, the party shall file a separately bound, non-public addendum, including only those records which require protection. The party submitting the addendum must certify that the addendum is properly classified and must identify the classification under rule 4-202.02. Non-public addenda will be designated for the use of the court and shall not be made public.

(d) A party may request a brief or other appellate filing to be classified as non-public if the issues on appeal require the disclosure of records classified as something other than public under Utah Code of Judicial Administration 4-202.02. Any motion to classify a filing as non-public must show that the party is unable to make an argument on appeal without the disclosure of non-public

records. The party making the motion must certify that a non-public classification is necessary and must identify the appropriate classification under rule 4-202.02. A motion to classify a brief or other appellate filing 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 as provided in subsection (b) and (c).

Advisory Committee Notes

Motions to classify a brief or other filing 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 11. The record on appeal.

(a) Composition of the record on appeal. The original papers and exhibits filed in the trial court, including the presentence report in criminal matters, the transcript of proceedings, if any, the index prepared by the clerk of the trial court, and the docket sheet, shall constitute the record on appeal in all cases. A copy of the record certified by the clerk of the trial court to conform to the original may be substituted for the original as the record on appeal. Only those papers prescribed under paragraph (d) of this rule shall be transmitted to the appellate court.

(b) Pagination and indexing of record.

(b)(1) Immediately upon filing of the notice of appeal, the clerk of the trial court shall securely fasten the record in a trial court case file, with collation in the following order:

(b)(1)(A) the index prepared by the clerk;

(b)(1)(B) the docket sheet;

(b)(1)(C) all original papers in chronological order;

(b)(1)(D) all published depositions in chronological order;

(b)(1)(E) all transcripts prepared for appeal in chronological order;

(b)(1)(F) a list of all exhibits offered in the proceeding; and

(b)(1)(G) in criminal cases, the presentence investigation report.

(b)(2)(A) The clerk shall mark the bottom right corner of every page of the collated index, docket sheet, and all original papers as well as the cover page only of all published depositions and the cover page only of each volume of transcripts constituting the record with a sequential number using one series of numerals for the entire record.

(b)(2)(B) If a supplemental record is forwarded to the appellate court, the clerk shall collate the papers, depositions, and transcripts of the supplemental record in the same order as the original record and mark the bottom right corner of each page of the collated original papers as well as the cover page only of all published depositions and the cover page only of each volume of transcripts constituting the supplemental record with a sequential number beginning with the number next following the number of the last page of the original record.

(b)(3) The clerk shall prepare a chronological index of the record. The index shall contain a reference to the date on which the paper, deposition or transcript was filed in the trial court and the starting page of the record on which the paper, deposition or transcript will be found.

(b)(4) Clerks of the trial and appellate courts shall establish rules and procedures for checking out the record after pagination for use by the parties in preparing briefs for an appeal or in preparing or briefing a petition for writ of certiorari.

(c) Duty of appellant. After filing the notice of appeal, the appellant, or in the event that more than one appeal is taken, each appellant, shall comply with the provisions of paragraphs (d) and (e) of this rule and shall take any other action necessary to enable the clerk of the trial court to assemble and transmit the record. A single record shall be transmitted.

(d) Papers on appeal.

(d)(1) Criminal cases. All of the papers in a criminal case shall be included by the clerk of the trial court as part of the record on appeal.

(d)(2) Civil cases. Unless otherwise directed by the appellate court upon sua sponte motion or motion of a party, the clerk of the trial court shall include all of the papers in a civil case as part of the record on appeal.

(d)(3) Agency cases. Unless otherwise directed by the appellate court upon sua sponte motion or motion of a party, the agency shall include all papers in the agency file as part of the record.

(e) The transcript of proceedings; duty of appellant to order; notice to appellee if partial transcript is ordered.

(e)(1) Request for transcript; time for filing. Within 10 days after filing the notice of appeal, the appellant shall, order the transcript(s) online at www.utcourts.gov, specifying the entire proceeding or parts of the proceeding to be transcribed that are not already on file. If the appellant desires a transcript in a compressed format, appellant shall include the request for a compressed format within the request for transcript. If no such parts of the proceedings are to be requested, within the same period the appellant shall file a certificate to that effect with the clerk of the appellate court.

(e)(2) Transcript required of all evidence regarding challenged finding or conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Neither the court nor the appellee is obligated to correct appellant's deficiencies in providing the relevant portions of the transcript.

(e)(3) Statement of issues; cross-designation by appellee. Unless the entire transcript is to be included, the appellant shall, within 10 days after filing the notice of appeal, file a statement of the issues that will be presented on appeal and shall serve on the appellee a copy of the request or certificate and a copy of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 10 days after the service of the request or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has requested such parts and has so notified the appellee, the appellee may within the following 10 days either request the parts or move in the trial court for an order requiring the appellant to do so.

(e)(4). Sealed records.

(e)(4)(A) Except records ordered sealed by the trial court under Rule 4-202.04, the records specified in Code of Judicial Administration Rule 4-202.02 as sealed shall remain sealed during an appeal unless otherwise ordered by the court.

(e)(4)(B) Records ordered sealed by the trial court under Rule 4-202.04 are public during an appeal unless otherwise ordered by the appellate court upon motion of a party.

(f) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in paragraph (a) of this rule, the parties may prepare and sign a statement of the case, showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the trial court may consider

necessary fully to present the issues raised by the appeal, shall be approved by the trial court. The clerk of the trial court shall transmit the statement to the clerk of the appellate court within the time prescribed by Rule 12(b)(2). The clerk of the trial court shall transmit the index of the record to the clerk of the appellate court upon approval of the statement by the trial court.

(g) Statement of evidence or proceedings when no report was made or when transcript is unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, or if the appellant is impecunious and unable to afford a transcript in a civil case, the appellant may prepare a statement of the evidence or proceedings from the best available means, including recollection. The statement shall be served on the appellee, who may serve objections or propose amendments within 10 days after service. The statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval and, as settled and approved, shall be included by the clerk of the trial court in the record on appeal.

(h) Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated, the parties by stipulation, the trial court, or the appellate court, either before or after the record is transmitted, may direct that the omission or misstatement be corrected and if necessary that a supplemental record be certified and transmitted. The moving party, or the court if it is acting on its own initiative, shall serve on the parties a statement of the proposed changes. Within 10 days after service, any party may serve objections to the proposed changes. All other questions as to the form and content of the record shall be presented to the appellate court.

Advisory Committee Notes

The rule is amended to make applicable in the Supreme Court a procedure of the Court of Appeals for preparing a transcript where the record is maintained by an electronic recording device. The rule is modified slightly from the former Court of

Appeals rule to make it the appellant's responsibility, not the clerk's responsibility to arrange for the preparation of the transcript.

Tab 5

Rule 1. Scope of rules.

(a) Applicability of rules. These rules govern the procedure before the Supreme Court and the Court of Appeals of Utah in all cases. Applicability of these rules to the review of decisions or orders of administrative agencies is governed by Rule 18. When these rules provide for a motion or application to be made in a trial court or an administrative agency, commission, or board, the procedure for making such motion or application shall be governed by the Utah Rules of Civil Procedure, Utah Rules of Criminal Procedure, and the rules of practice of the trial court, administrative agency, commission, or board.

(b) Reference to "court." Except as provided in Rule 43, when these rules refer to a decision or action by the court, the reference shall include a panel of the court. The term "trial court" means the court or administrative agency, commission, or board from which the appeal is taken. The term "appellate court" means the court to which the appeal is taken.

(c) Procedure established by statute. If a procedure is provided by state statute as to the appeal or review of an order of an administrative agency, commission, board, or officer of the state which is inconsistent with one or more of these rules, the statute shall govern. In other respects, these rules shall apply to such appeals or reviews.

(d) Rules not to affect jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the Supreme Court or Court of Appeals as established by law.

(e) Title. These rules shall be known as the Utah Rules of Appellate Procedure and abbreviated Utah R. App. P.

(f) Rules for appeals in child welfare proceedings. Appeals taken from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings are governed by Title VIII, Rules 52 through 59, except for orders related to substantiation proceedings under Section 78-3a-320. Rules 9, 10(a)(2)(A) and 23B do not apply, but the other appellate rules apply if not inconsistent with Rules 52 through 59.

Tab 6

Rule 35. Petition for rehearing.

(a) Petition permitted. A petition for rehearing may be filed in cases which have been reviewed on the merits and have been 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 certiorari, the denial of a motion for remand pursuant to rule 23B, or the disposition by order of any motion for summary disposition pursuant to rule 10 or a petition for extraordinary relief pursuant to rule 19.

(~~a~~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. 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. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court. The answer to the petition for rehearing shall be filed within 14 days after the entry of the order requesting the answer, unless otherwise ordered by the court. A petition for rehearing will not be granted in the absence of a request for an answer.

(~~b~~c) 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. An original and six copies shall be filed with the court. Two copies shall be served on counsel for each party separately represented. Except by order of the court, a petition for rehearing and any response requested by the court shall not exceed 15 pages.

(~~c~~d) 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~~e~~) 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~~f~~) Amicus curiae. An amicus curiae may not file a petition for rehearing but may file an answer to a petition if the court has requested an answer under subparagraph (~~a~~b) of this rule.

Tab 7

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 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~~ that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer, but a party does not satisfy its burden of persuasion on appeal by another party's failure to file a brief in compliance.

Advisory Committee Notes

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

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

Rule 24(k) now reflects that Utah appellate courts will no longer grant relief to the Appellant under the circumstances described in *Broderick v. Apartment Mgmt. Consultants, L.L.C.*, 2012 UT 17, ¶ 19, 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.