Agenda

Advisory Committee on Rules of Appellate Procedure

March 3, 2016

12:00 to 2:00 p.m.

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room

Administrative Office of the Courts, Suite N31

Welcome and approval of minutes.	Tab 1	Joan Watt
Linking to the trial court record		Penny Rainaldi
Consideration of comments to: Rule 4. Appeal as of right: when taken. Rule 28A. Appellate Mediation Office.	Tab 2	Tim Shea
Rule 4. Appeal as of right: when taken.	Tab 3	Tim Shea
Rule 2. Suspension of rules.	Tab 4	Clark Sabey
Rule 23D. Challenging the constitutionality of a statute or ordinance.	Tab 5	Tim Shea
Rule 37. Suggestion of mootness; voluntary dismissal.	Tab 6	Judge Voros
Rule 40. Attorney's or party's certificate; sanctions and discipline.	Tab 7	Tim Shea
Rule 52. Child welfare appeals.	Tab 8	Mary Westby

Committee Webpage: http://www.utcourts.gov/committees/appellate_procedure/

Meeting Schedule:

April 5, 2016

May 5, 2016

June 2, 2016

September 1, 2016

October 6, 2016

November 3, 2016

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, February 4, 2016
12:00 p.m. to 1:30 p.m.

PRESENT	**EXCUSED**
Rodney Parker- Acting Chair	Joan Watt- Chair
Troy Booher	Marian Decker
Paul Burke	Ann Marie Taliaferro
R. Shawn Gunnarson	
Alan Mouritsen	
Judge Gregory Orme	
Adam Pace – Recording Secretary	
Bridget Romano	
Clark Sabey	
Lori Seppi	
Tim Shea-Staff	
Judge Fred Voros	
Mary Westby	

1. Welcome and Approval of Minutes **Rodney Parker**

Mr. Parker served as acting chair in Ms. Watt's absence. He welcomed the committee to the meeting and invited a motion to approve the minutes from the January meeting. Ms. Romano noted that the minutes should be corrected to show that she was not present at the January meeting.

Mr. Burke moved to approve the January minutes with Ms. Romano's correction. Mr. Sabey seconded the motion and it passed unanimously.

2. Amendments to enable electronic filing **Committee**

Mr. Parker asked Mr. Shea to guide the committee's continued discussion of the proposed rule amendments to accommodate electronic filing.

Mr. Shea asked the committee to consider his previous proposal to have deadlines in the amended rules run from the date of service, rather than the date of filing, to accommodate self-represented parties who receive service by mail. Mr. Parker and Mr. Booher both expressed concern that this change would cause confusion over when the deadlines begin to run. The committee discussed the issue and agreed that the change should not be made.

Mr. Shea summarized the additional changes that he made to Rules 19 and 20 since the January meeting (relating to service of extraordinary writs and habeas petitions). Ms. Romano suggested changing the rule regarding personal service on judges to allow for service on someone else in their place. The committee members discussed this issue, and ultimately agreed to leave the rule unchanged for the time being.

The committee then resumed its discussion of the proposed changes to each rule, beginning where it left off in the January meeting with Rule 23. The committee approved the proposed changes to each rule, with comments and additional changes as noted below.

<u>Rule 23 and Rule 27 (discussed together).</u>

Mr. Shea pointed out the significant changes to the formatting of documents required in Rule 23(f), and in Rule 27. Mr. Shea asked the committee to consider whether Rule 23(f) could be deleted, because the formatting requirements in Rule 27 will now apply generally to all filings. The committee discussed and agreed that Rule 23(f) should not be deleted because it addresses the caption for motions, which are different than the cover pages for briefs and certain other filings. The committee agreed that the format requirements for cover pages in Rule 27(a)(12) should be moved to Rule 27(b), to make it clear that they only apply to briefs and certain other filings, and not motions. Mr. Booher commented that Rule 27(b) should be clarified to include all types of filings that require cover pages.

The committee discussed the choice of Georgia 12 point font. Mr. Parker explained that the subcommittee chose that font based on research indicating that it was one of the most readable fonts both on a screen and in print. Mr. Shea explained the new header requirements, and said that new forms will be made available on the court's website to assist individuals in complying with the new formatting requirements.

The committee discussed the courtesy copy requirement. Judge Orme commented that this requirement may become obsolete in the future, but that for the time being there are still judges who prefer to read paper copies. Mr. Booher commented, and other members of the committee agreed, that if the court is going to be reviewing paper copies, practitioners would prefer to supply courtesy copies of those filings themselves.

Rule 23C.

Mr. Shea asked whether there are substantive issues with the proposed change to Rule 23(C)(d), addressing the timing for filing a response to a motion for emergency relief. Judge Voros said he did not see an issue, and others agreed. The committee agreed to delete the reference to "electronic transmission" in Rule 23C(b)(6). The committee also discussed that 23C(g) was deleted because it was already provided for in Rule 23. Mr. Sabey suggested that a comment should be included explaining that this deletion is not meant as a substantive change.

Rule 24.

Mr. Shea explained that the proposed changes to Rule 24 are related to e-filing only, and that a subcommittee is considering further substantive changes that will be proposed later. Mr. Parker commented that software is being developed which will enable parties to include the mandatory links to the record in their briefs.

Rule 26

Mr. Shea pointed out that the deadlines for filing briefs were left the same, and were not changed to the uniform "days are days" approach used for deadlines elsewhere in the rules.

Rule 29

Mr. Shea pointed out that the deadline in Rule 29(b)(2) was changed from 15 days to 14 days, in keeping with the "days are days" approach. This is one of the few instances where this change reduced the number of days for a deadline. The committee agreed with this change, and also agreed to change the 30 day deadline in Rule 29(b)(1) to 28 days.

Rule 34

Mr. Parker commented that with the proposed change, parties will not be able to claim $3 per page in costs for printing courtesy copies of their filings.

Rule 36

Mr. Shea asked whether the extension of filing time until midnight in Rule 22(a)(4) would adversely affect remittiturs under Rule 36. The committee agreed this is not an issue.

Rules 42 and 43

Mr. Shea commented that the deleted sections are no longer relevant due to electronic filing.

Rule 48

Mr. Shea commented that Rule 48(e)(1) should be amended to say "before" the expiration of time, instead of "not later than 30 days after." The committee agreed with this change.

Rule 50

The committee discussed whether to change the language in the title of Rule 50 from "brief in opposition" to "response to petition." Judge Voros suggested and others agreed that this issue should be added to a future agenda for discussion, and that the change should not be made to Rule 50 at this time.

Rule 51

The committee discussed and agreed to delete the unnecessary language "The order may be a summary disposition on the merits" in Rule 51(a).

Rule 53

The committee discussed and agreed to change Rule 53(c) to refer to the service methods that are now provided in Rule 21, instead of referring to Utah R. Civ. P. 5.

Rule 54

Mr. Shea noted the similarities between Rule 11 and Rule 54, and explained that there needs to be a separate rule to address child welfare appeals.

Rule 55

Mr. Booher asked whether petitions in child welfare proceedings required captions. The committee agreed they do not.

Rule 58 and 59

The committee agreed to change the titles of both these rules to include the language "in child welfare appeals," to be consistent with Rules 53-57.

Mr. Shea explained that the proposed rules need to be published for comment as soon as possible, in order to make the July 1, 2016 effective date as planned. He said he would make the revisions and circulate the finalized proposed rules to the committee right away. He requested committee members to contact him directly if they have additional comments about the revisions. Mr. Parker invited a motion approving the proposed amendments and this course of action.

Mr. Burke moved to approve the amendments to the rules as discussed. Mr. Gunnarson seconded the motion, and it passed unanimously

3. Adjourn

The meeting was adjourned at 1:40 p.m. The next meeting will be held on Thursday, March 3, 2016.

Tab 2

Timothy M. Shea
Appellate Court Administrator

Andrea R. Martinez
Clerk of Court

Supreme Court of Utah

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February 26, 2016

To: Appellate Rules Committee
From: Tim Shea
Re: Comments to Rule 4 and Rule 28A

We did not receive any comments to the proposed amendment of Rule 28A, and the rule is ready for your recommendation to the Supreme Court.

Neither did we receive any comments to the proposed amendment of Rule 4. It also is ready for your recommendation to the court. The amendments to Rule 4 are part of a package of civil and appellate rules designed to treat a motion for attorney fees the same as other post-trial motions: the time to appeal does not begin to run until the order disposing of the motion is entered.

There were comments to civil rules 54, 58A, and 73, which are part of the package. The civil rules committee probably will address those comments on March 23. The appellate and civil rules need to be submitted to the court as a package because each depends on the other. I believe that any further amendments the civil rules committee might make will not affect the proposed change in policy.

The comments to the civil rules do not support, oppose, or tinker with the policy. For the most part, the comments request that the schedule of attorney fees for debt collection cases be increased.

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 dispositive 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 relief under Rule 60(b) of the Utah Rules of Civil Procedure if the motion is filed no later than 28 days after the judgment is entered;

(b)(1)(F) A motion or claim for attorney fees under Rule 73 of the Utah Rules of Civil Procedure; or

(b)(1)(G) 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~~ paragraph (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~~ paragraph (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) Motion for extension of time.

(e)(1) The trial court, upon a showing of good cause, may extend the time for filing a notice of appeal upon motion filed before the expiration of the time prescribed by paragraphs (a) and (b) of this rule. Responses to such motions for an extension of time are disfavored and the court may rule at any time after the filing of the motion. No extension shall exceed 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

(e)(2) The trial court, upon a showing of good cause or excusable neglect, 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 court may rule at any time after the filing of the motion. That a movant did not file a notice of appeal to which paragraph (c) would apply is not relevant to the determination of good cause or excusable neglect. No extension shall exceed 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

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

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

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

(g)(1)(A) The party seeking to appeal lacked actual notice of the entry of judgment at a time that would have allowed the party to file a timely motion under paragraph (e) of this rule;

(g)(1)(B) The party seeking to appeal exercised reasonable diligence in monitoring the proceedings; and

(g)(1)(C) The party, if any, responsible for serving the judgment under Rule 58A(d) of the Utah Rules of Civil Procedure did not promptly serve a copy of the signed judgment on the party seeking to appeal.

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

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

Advisory Committee Note

Paragraph (f) was adopted to implement the holding and procedure outlined in Manning v. State, 2005 UT 61, 122 P.3d 628.

Rule 28A. Appellate Mediation Office.

(a) Appellate Mediation Office; Purpose of Mediation Conference. The court may direct the attorneys for the parties and the parties to appear before a mediator appointed by the court for a mediation conference to explore the possibility of settlement and ~~such~~ any other matters ~~as~~ that may aid in the efficient management and disposition of the case.

~~**(b) Case referral.** When a case is referred to the Appellate Mediation Office, the clerk of the appellate court shall forthwith forward to the Appellate Mediation Office all filings in the case.~~ The court will advise the parties by order that the case has been referred to the Appellate Mediation Office. All decisions regarding conduct of the mediation conference ~~shall be~~ are within the sole discretion of the mediator ~~appointed by the court~~.

~~**(c) Transmittal of record on appeal.** The record will be transmitted by the clerk of the trial court to the clerk of the appellate court upon request. Following the mediation conference, the record will be returned to the clerk of the trial court.~~

~~**(d) Participation of Counsel and Parties.** Upon receipt of the order referred to in section (b), participation by counsel and clients in the mediation process or related discussions shall be mandatory.~~

~~**(e)** **(b)** **Confidentiality.** Unless contained in a written settlement agreement ~~as contemplated~~ under ~~section (i)~~ paragraph (f), statements and comments made during mediation conferences and in related discussions, and any record of those statements, are confidential and ~~shall~~ may not be disclosed by anyone (including the appellate mediation office, counsel, or the parties; and their agents or employees) to anyone not participating in the mediation process. Proceedings under this rule may not be recorded by counsel or the parties. ~~Pursuant to Utah Code Ann. § 78-2a-6, the records of the Appellate Mediation Office are protected as defined by Utah Code Ann. § 63-2-304 and may be disclosed only as provided by Utah Code Ann. § 63-2-202.~~ Mediators shall not be called as witnesses, and the information and records of the Appellate Mediation Office shall not be disclosed to judges, staff, or employees of any court.

~~**(f)** **(c)** **Continuances.** Mediation conferences will not be rescheduled or continued absent good cause as determined by the mediator ~~appointed by the court~~.

~~**(g)** **(d)** **Extensions/Tolling.** The time for filing briefs~~, or motions for summary disposition ~~or~~ and for other appellate proceedings is not automatically tolled pending a mediation conference. ~~In cases in which a mediation conference has been scheduled, counsel~~ The parties may seek an extension by motion or stipulation as provided in Rule 22~~, Utah Rules of Appellate Procedure~~.

~~**(h)** **(e)** **Request for Mediation Conference by a Party.**~~

(e)(1) For cases pending in the Supreme Court, the parties may request a mediation conference by stipulated motion filed with the Court. The Court will determine whether the case will be referred to mediation. If a mediation conference is ordered, the mediation will be conducted in accordance with this rule.

(e)(2) ~~Counsel~~ For cases pending in the Court of Appeals, the parties may request a mediation conference ~~either~~ by motion, letter, or confidential request. The Chief Appellate Mediator ~~shall~~ will

determine whether a mediation conference will be conducted. The decision of the Chief Appellate Mediator is final and not subject to ~~further~~ review. If a mediation conference is ~~scheduled~~ ordered, the mediation ~~shall~~ will be conducted in accordance with ~~the provisions in~~ this rule.

(e)(3) The denial of a mediation request will not prevent the parties from engaging in private settlement negotiations or private mediation.

~~(i)~~ (f) Settlement/Termination. In appeals settled in whole or in part pursuant to this rule, the court will enter an appropriate order upon written stipulation of all parties, or in the case of voluntary dismissal by the appellant pursuant to these rules, and send ~~notice of~~ the order to the parties. In appeals not settled and terminated from mediation, the court ~~shall~~ will enter an appropriate order and send ~~notice of~~ the order to the parties. A motion to enforce a settlement agreement will be considered only if the alleged agreement is in writing. The motion and related documents shall be filed under seal.

~~(j)~~ (g) Sanctions. The court may impose sanctions, including costs, fees or dismissal, for the failure of counsel or a party to comply with the provisions of this rule or with orders entered pursuant to this rule.

Advisory Committee Note

2016 Amendments

Although former paragraph (d), requiring the participation of parties and counsel when mediation is ordered, has been repealed, parties and counsel will still be required to participate under the court order.

Tab 3

Timothy M. Shea
Appellate Court Administrator

Andrea R. Martinez
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Supreme Court of Utah

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February 26, 2016

To: Appellate Rules Committee
From: Tim Shea
Re: Rule 4.

In Ralphs v. Mc Clellan the Supreme Court held that Rule 4(f) encompasses appeals from the justice court to the district court in the form of a trial *de novo*, and, since there is no deadline in Rule 4(f) for a motion to reinstate an appeal, the motion could be filed at any time. The court also asked this committee to consider an appropriate limit on the time for a motion and indicated its "inclination to amend the rule prospectively to add a time limitation going forward."

I have proposed a deadline of one year from the entry of the judgment since that is the time permitted for reinstating a civil appeal in paragraph (g). Please see the highlighted amendment of Rule 4 behind tab 2. This amendment has not yet been published for comment.

Tab 4

Rule 2. Suspension of ~~R~~rules.

In the interest of expediting a decision, the appellate court, on its own motion or for extraordinary cause shown, may, except as to the provisions of Rules 4(a), 4(b), 4(e), 5(a), 14(a), 48, 52, and 59, suspend the requirements or provisions of any of these rules in a particular case and may order proceedings in that case in accordance with its direction.

Advisory Committee Note

~~Rule~~ 4(b) ~~is added to the list of those rules that the appellate court may not suspend.~~ The ~~former list of~~ rules that the appellate court ~~could~~ may not suspend concern~~ed~~ procedures and time limits that confer jurisdiction ~~up~~on the court. ~~Under~~ Rule 4(b)~~,~~ lists the post-judgment motions ~~listed~~ that must be filed in a timely manner in the trial court. If the motions are not timely filed ~~in a timely manner~~, the appellant may not take advantage of Rule 4(b), ~~that~~ which allows 30 days from the disposition of the motion to file the appeal. ~~Both appellate courts treat the f~~Failure to file post-judgment motions in a timely manner ~~as~~ is a jurisdictional defect. Burgers v. Meredith, 652 P.2d 1320 (Utah 1982).

Tab 5

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February 26, 2016

To: Appellate Rules Committee
From: Tim Shea
Re: Rule 23D

The Supreme Court asked me to draft a rule requiring the parties to serve their briefs on the AG (or the county or municipal attorney, as the case may be) if a party challenges the constitutionality of a statute (or ordinance). The attached draft includes that scenario, as well as one in which the trial court has already ruled that a statute or ordinance is unconstitutional.

The proposal requires the AG to notify the court of his intent and allows the AG to then file an amicus brief without following the process described in Rule 25.

The court could "call for the views" of the AG, in the form of an amicus brief, and require the AG to address particular issues.

Rule 23D. Challenging the constitutionality of a statute or ordinance.

(a) Notice to the attorney general or the county or municipal attorney; penalty for failure to give notice.

(a)(1) If any party presents for review the constitutionality of a statute or ordinance in its brief, every party must serve its brief on the attorney general or the county or municipal attorney, as appropriate, and file proof of service with the court.

(a)(2) If a party fails to serve its brief as required by this rule, the party is liable for costs, expenses, and attorney fees caused by the failure.

(b) Notice by the attorney general or county or municipal attorney; amicus brief. No later than 7 days after service of the appellee's brief under paragraph (a), the attorney general or the county or municipal attorney must file notice of whether it intends to file an amicus brief. Without further leave of the court, the attorney general or the county or municipal attorney may file an amicus brief no later than 14 days after the appellee's brief.

(c) Call for the views of the attorney general or county or municipal attorney. If a party presents for review the constitutionality of a statute or ordinance, the appellate court may call for the views of the attorney general or the county or municipal attorney and set a schedule for an amicus brief. The attorney general or the county or municipal attorney must address any issues identified by the court.

Tab 6

Rule 37. Suggestion of mootness; voluntary dismissal.

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

(b) Voluntary dismissal. At any time ~~prior to~~ before 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~~ must be filed with the motion ~~for voluntary dismissal~~. ~~Any such~~ The stipulation shall specify the terms as to payment of costs and attorney fees, if applicable~~, and provide for payment of whatever fees are due~~. If all parties stipulate in writing that a case be dismissed, specifying the terms for payment of applicable costs and attorney fees, and pay any fees then due the court, the clerk of the court will enter an order dismissing the appeal or other proceeding.

(c) When affidavit or declaration is required. If the appellant has the right to effective assistance of counsel, a motion ~~to voluntarily dismiss~~ for voluntary dismissal for reasons other than mootness ~~shall~~ must be accompanied by appellant's personal affidavit or declaration under Section 78B-5-705 demonstrating that the 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. If an attorney representing the appellant has lost communication with the appellant, the motion must be accompanied by the attorney's affidavit or declaration to that effect and stating the basis of the motion.

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

Advisory Committee Notes

Criminal defendants have a constitutional right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); State v. Arguelles, 921 P.2d 439, 441 (Utah 1996). Parties in juvenile court proceedings have a statutory right to effective assistance of counsel. State ex rel. E.H. v. A.H., 880 P.2d 11, 13 (Utah App. 1994)~~; see Utah Code Ann. § 78-3a-913(1)(a)(Supp. 1998)~~. ~~To protect these rights and the right to appeal, Utah Code Ann. § 77-18a-1(1)(Supp. 1998); id. § 78-3a-909(1)(1996), the last sentence was added to Rule 37(b) to~~ Paragraph (c) assures that the decision to abandon an appeal is an informed choice made by the appellant, not ~~unilaterally~~ by the appellant's attorney.

Tab 7

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Supreme Court of Utah

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February 26, 2016

To: Appellate Rules Committee
From: Tim Shea
Re: Rule 40

The Supreme Court asked me to draft amendments to Rule 40 to better describe the grounds for sanctions imposed by the court, the process, and what those sanctions might be. I've been through the rules of a few other jurisdictions to develop the attached proposal.

Rule 40. Attorney's or party's signature; representations to the court; sanctions and discipline.

(a) Attorney's or party's signature. Every motion, brief, and other document must be signed by at least one attorney of record who is an active member in good standing of the Bar of this state or by a party who is self-represented. A person may sign a document using any form of signature recognized by law as binding.

(b) Representations to court. The signature of an attorney or self-represented party certifies that to the best of the person's knowledge formed after an inquiry reasonable under the circumstances:

(b)(1) the filing is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b)(2) the legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(b)(3) the factual contentions are supported by the record on appeal; and

(b)(4)(A) the filing contains no information or records classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social or any other information or records to which the right of public access is restricted by statute, rule, order, or caselaw; or

(b)(4)(B) a filing required by Rule 21(g) that does not contain information or records classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social or any other information or records to which the right of public access is restricted by statute, rule, order, or caselaw is being filed simultaneously.

(c) Sanctions and discipline of attorneys and parties.

(c)(1) The court may~~, after reasonable notice and an opportunity to show cause to the contrary, and upon hearing, if requested, take appropriate action~~ enter a discipline order against ~~any~~ an attorney or ~~person~~ a self-represented party who ~~practices~~ appears before it for ~~inadequate representation of a client,~~ conduct unbecoming ~~a member of the Bar or a person allowed to appear before the court,~~ an attorney or a self-represented party or for failure to comply with these rules or a court order ~~of the court~~. In addition the court may enter a discipline order against an attorney for inadequate representation of a client.

(c)(2) When alleged conduct constituting grounds for discipline comes to the attention of the court, the court may enter an order to show cause why a discipline order should not be entered. The order to show cause will describe the alleged conduct, and the clerk of the court will send the order to the attorney or self-represented party.

(c)(3) No later than 14 days after receiving the order the self-represented party or attorney may file a memorandum showing cause why a discipline order should not be entered and may request a hearing.

(c)(4) If the self-represented party or attorney fails to show cause why a discipline order should not be entered, the court may enter the order, which may include suspension from practice before the

court for a definite or indefinite term; reprimand; financial penalty; or any other appropriate sanction other than disbarment or suspension from the practice of law.

(c)(5) A financial penalty is the personal responsibility of the person disciplined, and may not be reimbursed by a client. A person suspended from practice before the court for a definite term is automatically reinstated at the end of the term. A person suspended from practice before the court for an indefinite term may be reinstated only by order of the court. A person suspended from practice before the court who represents clients before the court must promptly notify the clients of the term of the suspension.

(c)(6) ~~Any action to suspend or disbar a member of the Utah State Bar shall be referred~~ If the person disciplined is an attorney, the clerk of the court will promptly send the discipline order to the Office of Professional Conduct of the Utah State Bar.

(d) Rule does not affect contempt power. This rule does not limit or impair the court's inherent and statutory contempt powers.

(e) Appearance of counsel pro hac vice. An attorney who is licensed to practice before the bar of another state or a foreign country but who is not a member of the Bar of this state, may appear, pro hac vice upon motion, filed pursuant to Rule 14-806 of the Rules Governing the Utah State Bar. A separate motion is not required in the appellate court if the attorney has previously been admitted pro hac vice in the trial court or agency, but the attorney shall file in the appellate court a notice of appearance pro hac vice to that effect.

Advisory Committee Notes

Records are classified as public, private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social by Code of Judicial Administration Rule 4-202.02. The right of public access might also be restricted by Title 63G, Chapter 2, Government Records Access and Management Act, by other statutes, rules, or caselaw, or by court order. If a filing contains information or records that are not public, Rule 21(g) requires the filer to file an unredacted version for the court and a version for the public that does not contain the confidential information.

Tab 8

Rule 52. Child welfare appeals.

(a) Time for appeal. A notice of appeal from an order in a child welfare proceeding, as defined in Rule 1(f), must be filed within 15 days of the entry of the order appealed from. ~~If a timely post judgment motion is filed pursuant to Utah Rules of Civil Procedure 50(b), 52(b), or 59, the time for appeal shall run from the entry of the order disposing of the motion.~~

(b) Time for appeal extended by certain motions.

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

(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; or

(b)(1)(D) A motion for a new trial under Rule 59 of the Utah Rules of Civil 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 paragraph (b), will be treated as filed after entry of the order and on the day thereof, except that the notice of appeal is effective to appeal only from the underlying judgment. To appeal from a final order disposing of any motion listed in paragraph (b)(1), 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.

~~(b)~~ (c) Time for cross-appeal. ~~A notice of cross appeal may be filed within the 15 days for filing a notice of appeal or~~ If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 5 days ~~after a notice of appeal is filed~~ 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.

~~(c)~~ (d) Appeals of interlocutory orders. Appeals from interlocutory orders are governed by Rule 5.