Agenda

Advisory Committee on Rules of Appellate Procedure

November 2, 2017

12:00 to 1:30 p.m.

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room

Administrative Office of the Courts, Suite N31

ACTION: Welcome and approval of September 7, 2017 minutes	Handout	Paul Burke
ACTION: *Logue* Subcommittee Report and Recommendations	Tab 1	Mark Field, Lori Seppi
ACTION: Proposed technical amendments to Rules 26(a) and 29(d)	Tab 2	Paul Burke
DISCUSSION: Next meeting		Paul Burke

Committee Webpage: https://www.utcourts.gov/utc/appellate-procedure/

Next meeting: December 7, 2017

Tab 1

Logue Subcommittee Conclusions

Final Draft

October 31, 2017

Subcommittee Members:

Nancy Sylvester (staff-URCP), Jeff Gray (URCrP), Mark Field (URAP), Jensie Anderson (URCrP), Lori Seppi (URAP), Kent Holmberg (URCP)

Rules at play: Criminal Rule 24(c), Civil Rule 60(b)(2), (c).

Background:

In *Logue v. Court of Appeals*, 2016 UT 44, the Utah Supreme Court stated, "It appears that criminal defendants, like Mr. Logue, who discover new evidence more than ninety days after sentencing must await the conclusion of their appeal before attempting to seek relief based on this evidence, even if it would likely entitle them to a new trial." It then directed the appropriate advisory committee on the rules of procedure to consider revising the rules so that they do not act as a categorical bar to motions for new trials.

The advisory committees for the rules of civil, criminal, and appellate procedure formed a joint subcommittee to consider revising the rules.

Conclusion:

The joint subcommittee has determined that no action should be taken at this time.

Reasoning:

The joint subcommittee considered adopting a provision for the rules of criminal procedure like that laid out in *White v. State*, 795 P.2d 648, and *Baker v. Western Sur. Co.*, 757 P.2d 878, which discuss Utah Rule of Civil Procedure 60(b) motions filed while a case is on appeal. Under Rule 60(b), you have 90 days to set aside a judgment based on newly discovered evidence. If the case is on appeal and it looks like the 60(b) motion is going to be granted, the parties notify the appellate court and the appellate court remands the case for a ruling on the 60(b) motion. In other words, while the appeal is pending, jurisdiction is not all or nothing. The district court retains some jurisdiction under Civil Rule 60.

The subcommittee decided that Utah Rule of Criminal Procedure 24 was the mostly likely place to adopt such a provision. Rule 24(c) currently says:

> (c) A motion for a new trial shall be made not later than 14 days after entry of the sentence, or within such further time as the court may fix before expiration of the time for filing a motion for new trial.

Mark Field and Jeff Gray prepared the first draft of the proposed amendment to rule 24 as follows:

> (c)**(1)** A motion for a new trial shall be made not later than 14 days after entry of the sentence, or within such further time as the court may fix before expiration of the **14-day period** for filing a motion for new trial.
>
> **(c)(2) Provided, however, a motion for new trial based solely on newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at trial, shall be made within 28 days of discovery, but no later than the date of oral argument if a direct appeal is pending in the case.**

Anticipated procedure: While a defendant's direct appeal is pending, if new evidence is discovered that could not have been discovered by the time of trial through the exercise of reasonable diligence, then the defendant may file a new trial motion with the trial court at any time up to the date of oral argument in the pending appeal.

1. The defendant is not required to seek permission from the appellate court to file the new trial motion. See *White v. State*, 795 P.2d 648, 649-50 (Utah 1990); *Baker v. Western Sur. Co.*, 757 P.2d 878, 880 (Utah Ct. App. 1988).
2. The appeal is not automatically stayed. A party may, however, request a stay.
3. The trial court has jurisdiction to consider the new trial motion. *See White*, 757 P.2d at 649; *Baker*, 757 P.2d at 880.
4. If the motion is denied, the defendant may file a separate appeal challenging the trial court's order. See *Baker*, 757 P.2d at 880.
5. If "the motion has merit, the trial court must so advise the appellate court, and the moving party may then request a remand." *White*, 795 P.2d at 650.
6. If the motion is granted, the State may file a separate appeal challenging the trial court's order. *See* Utah Code Ann. § 77-18a-1(3)(f).

Jensie Anderson and Lori Seppi disagreed with the procedure and timing requirements set forth in the first draft. They said that both parties—not just the state—should be permitted to appeal from the decision on the motion for new trial. They also stated that 28 days was too little time to conduct a newly discovered evidence investigation. They prepared a second draft as follows:

> (c)**(1)** A motion for a new trial shall be made not later than 14 days after entry of the sentence, or within such further time as the court may fix before expiration of the **14-day period** for filing a motion for new trial.
>
> **(c)(2) Provided, however, a motion for new trial based solely on newly discovered material evidence that could not, with reasonable diligence, have been discovered**

and produced at trial, may be made up to the date of oral argument if a direct appeal is pending in the case.

The subcommittee discussed both drafts and came up with a third draft that reached a middle ground as follows:

(c)**(1)** A motion for a new trial shall be made not later than 14 days after entry of the sentence, or within such further time as the court may fix before expiration of the **14-day period** for filing a motion for new trial.

(c)(2) A motion for new trial based solely on newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at trial, shall be made within 60 days of discovery or within such further time as the court may fix for good cause shown, but no later than up to the date of oral argument, or up to the date of disposition of the appeal if no oral argument is scheduled, if a direct appeal is pending in the case.

However, in discussing the merits of the third draft, the subcommittee turned to how the proposed rule change would affect cases in post-conviction. Mr. Field and Ms. Anderson, who both practice in post-conviction, stated that if the new rule is adopted it likely would create a procedural bar for post-conviction. In other words, the new rule would create a duty on the defendant's appellate counsel to conduct an investigation and file a motion for new trial due to newly discovered evidence.

Ms. Anderson and Ms. Seppi both expressed concern about such a rule change. The rule would permit a criminal defendant to raise newly discovered evidence while he still has a right to counsel. But appellate counsel is ill-equipped to conduct a full newly discovered evidence investigation. Appellate counsel—particularly appellate counsel for the indigent—lack the time, resources, and investigative tools necessary to fully investigate newly discovered evidence.

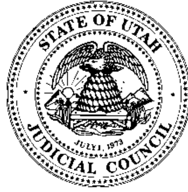
The subcommittee discussed how other jurisdictions handle newly-discovered evidence. Ms. Anderson explained that Utah is unique from the federal system and other states. In other states, motions for new trial based on newly discovered evidence can be brought at any time before the statute of limitations expires, whether immediately after conviction, during appeal, or in the post-conviction. For example, Wyoming has a 2-year statute of limitations to bring a motion for new trial based upon newly discovered evidence[1]; and Nevada has a tiered system of bringing it (1 year, 5 years with a rebuttable presumption of prejudice to the state, or 10 years in the interest of justice). In Utah, however, we have set up a system where newly discovered evidence is essentially limited to a post-conviction claim in the PCRA.

[1] During its next session, the Wyoming Legislature will consider a bill that removes the statute of limitations completely for a motion for new trial based upon newly discovered evidence.

The subcommittee also discussed the growing possibility that criminal defendants will receive the right to counsel in post-conviction or, at least, that trial courts will be encouraged to appoint counsel in many more post-conviction cases than they currently do. The Judicial Council recently met and voted to support such action. If criminal defendants will have better access to counsel in post-conviction, the argument that a defendant ought to be able to raise newly discovered evidence while he still has a right to counsel on appeal is less compelling.

In the end, Ms. Anderson, Ms. Seppi, Mr. Gray, and Mr. Field voted not to amend the rules to permit motions for newly discovered evidence on appeal. Judge Holmberg abstained.

Tab 2



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Appellate Rules Committee
From: Nancy Sylvester
Date: October 31, 2017
Re: Rules 26(a) and 29(d)

Paul Burke received the following email from Naomi Gloege about a cross-reference error to Rule 24(g) in Rule 26(a). With James Ishida's departure, I have prepared this memo and the accompanying materials on Paul's behalf :

> Dear Mr. Burke,
>
> It is my understanding that you currently serve as Chair of the Utah Supreme Court's Advisory Committee on the Rules of Appellate Procedure. As such, I am writing to you regarding URAP 26(a), to bring to your attention a discrepancy which will exist with the recently approved amendments to URAP 24 and 24A effective 11/1/17.
>
> As you know, URAP 24 was amended in part to remove URAP 24(g) relating to cross-appeals. Rules relating to briefs in cross-appeals were moved to the newly adopted URAP 24A.
>
> URAP 26(a) sets forth deadlines for filing and service of briefs. It states in pertinent part: "In cases involving cross-appeals, the appellant shall serve and file the second brief described in Rule 24(g) within 30 days after service of the appellee/cross-appellant's brief." (Emphasis added). With the amendments to URAP 24, Rule 24(g) no longer describes briefing in cross-appeals.
>
> To avoid confusion, I suggest that URAP 26(a) be amended to change the description of the brief and the reference to Rule 24(g), to be consistent with new URAP 24A. For example, URAP 26(a) could be revised to state: "In cases involving cross-appeals, the appellant shall serve and file appellant's reply brief described in Rule 24A(d) within 30 days after service of the appellee/cross-appellant's brief." (Emphasis added).

> Aderant CompuLaw is a software-based court rules publisher providing deadline information to firms practicing in the Utah courts. We greatly appreciate your time and consideration.
>
> Sincerely,
>
> Naomi J. Gloege
>
> Rules Attorney

In researching this issue, I noticed that a similar problem crops up in Rule 29(d). I have attached drafts of both rules. Because these are simply technical errors created by the adoption of new Rule 24A as of November 1, these amendments may be submitted to the Supreme Court and then updated online and with the publishers without the need for circulation to the Bar.

On a related note, I see that the numbering changes in Rule 24 will also affect Form 17, which is the Certificate of Compliance with Rule 24(f)(1). I will update the form and circulate it to the Standing Committee on Court Forms.

Rule 26. Filing and service of briefs.

(a) Time for service and filing briefs. Briefs shall be deemed filed on the date of the postmark if first-class mail is utilized. The appellant shall serve and file a brief within 40 days after date of notice from the clerk of the appellate court pursuant to Rule 13. If a motion for summary disposition of the appeal or a motion to remand for determination of ineffective assistance of counsel is filed after the Rule 13 briefing notice is sent, service and filing of appellant's brief shall be within 30 days from the denial of such motion. The appellee, or in cases involving a cross-appeal, the appellee/cross-appellant, shall serve and file a brief within 30 days after service of the appellant's brief. In cases involving cross-appeals, the appellant shall serve and file the appellant’s reply ~~second~~ brief described in ~~Rule 24(g)~~Rule 24A(d) within 30 days after service of the appellee/cross-appellant's brief. A reply brief may be served and filed by the appellant or the appellee/cross-appellant in cases involving cross-appeals. If a reply brief is filed, it shall be served and filed within 30 days after the filing and service of the appellee's brief or the appellant's second brief in cases involving cross-appeals. If oral argument is scheduled fewer than 35 days after the filing of appellee's brief, the reply brief must be filed at least 5 days prior to oral argument. By stipulation filed with the court in accordance with Rule 21(a), the parties may extend each of such periods for no more than 30 days. A motion for enlargement of time need not accompany the stipulation. No such stipulation shall be effective unless it is filed prior to the expiration of the period sought to be extended.

(b) Number of copies to be filed and served. For matters pending in the Supreme Court, ten copies of each brief, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court. For matters pending in the Court of Appeals, eight copies of each brief, one of which shall contain an original signature, shall be filed with the Clerk of the Court of Appeals. Two copies shall be served on counsel for each party separately represented.

(c) Consequence of failure to file briefs. If an appellant fails to file a brief within the time provided in this rule, or within the time as may be extended by order of the appellate court, an appellee may move for dismissal of the appeal. If an appellee fails to file a brief within the time provided by this rule, or within the time as may be extended by order of the appellate court, an appellant may move that the appellee not be heard at oral argument.

(d) Return of record to the clerk. Each party, upon the filing of its brief, shall return the record to the clerk of the court having custody pursuant to these rules.

Rule 29. Oral argument.

(a)(1) In cases before the Supreme Court. Oral argument will be held unless the Supreme Court determines that it will not aid the decisional process.

(a)(2) In cases before the Court of Appeals. Oral argument will be allowed in all cases in which the court determines that oral argument will significantly aid the decisional process.

(b)(1) Notice by Supreme Court; request for cancellation or continuance. Not later than 30 days prior to the date on which a case is calendared, the clerk shall give notice of the time and place of oral argument, and the time to be allowed each side. If all parties to a case believe oral argument will not benefit the court, they may file a joint motion to cancel oral argument not later than 15 days from the date of the clerk's notice. The court will grant the motion only if it determines that oral argument will not aid the decisional process. A motion to continue oral argument must be supported by (1) a stipulation of all parties or a statement that the movant was unable to obtain such a stipulation, and (2) an affidavit of counsel specifying the grounds for the motion. A motion to continue filed not later than 15 days from the date of the clerk's notice may be granted on a showing of good cause. A motion to continue filed thereafter will be granted only on a showing of exceptional circumstances.

(b)(2) Notice by Court of Appeals; waiver of argument; continuance. Not later than 30 days prior to the date on which a case is calendared, the clerk shall give notice to all parties that oral argument is to be permitted, the time and place of oral argument, and the time to be allowed each side. Any party may waive oral argument by filing a written waiver with the clerk not later than 15 days from the date of the clerk's notice. If one party waives oral argument and any other party does not, the party waiving oral argument may nevertheless present oral argument. A request to continue oral argument or for additional argument time must be made by motion. A motion to continue oral argument must be supported by (1) a stipulation of all parties or a statement that the movant was unable to obtain such a stipulation, and (2) an affidavit of counsel specifying the grounds for the motion. A motion to continue filed not later than 15 days from the date of the clerk's notice may be granted on a showing of good cause. A motion to continue filed thereafter will be granted only on a showing of exceptional circumstances.

(c) Order of argument. The appellant shall argue first and the appellee shall respond. The appellant may reply to the appellee's argument if appellant reserved part of appellant's time for this purpose. Such argument in reply shall be limited to responding to points made by appellee in appellee's oral argument and answering any questions from the court.

(d) Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a separate appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument. Unless otherwise agreed by the parties, in cases involving a cross-appeal the appellant, as determined pursuant to ~~Rule 24(g)~~Rule 24A, shall open the argument and present only the issues raised in the appellant's opening brief. The appellee/cross-appellant shall then present an argument which answers the appellant's issues and addresses original issues raised by the cross-appeal. The appellant shall then present an argument which replies to the appellee/cross-appellant's answer to the appellant's issues and answers the issues raised on the cross-appeal. The appellee/cross-appellant may then present an argument which is confined to a reply to the appellant's answer to the issues raised by the cross-appeal. The court shall grant reasonable requests, for good cause shown, for extended argument time.

(e) Non-appearance of parties. If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if present. If neither party appears, the case may be decided on the briefs, or the court may direct that the case be rescheduled for argument.

(f) Submission on briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) Use of physical exhibits at argument; removal. If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the argument. After the argument, counsel shall remove the exhibits from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

Advisory Committee Notes

The 2013 amendments to rules 29(a) and (b) reflect current practices. The amendment to Rule 29(c) clarifies that this provision is not intended to place any limitation on the scope or timing of the questions posed by an appellate court during argument.

1 **Rule 24A. Briefs in cross-appeals.**

2 **(a) Party designation.** The party first filing a notice of appeal is the appellant.
3 The party filing a second or subsequent notice of appeal is the cross-appellant. The
4 parties may change the designation of parties by stipulation filed with the court, or the
5 court may order a different designation of parties. Each party is entitled to file two briefs.

6 **(b) Appellant's principal brief.** The appellant must file a principal brief that presents
7 the issues raised in the appeal.

8 **(c) Cross-appellant's principal brief.** The cross-appellant must then file one brief,
9 that first responds to the appellant's issues raised in the appeal and then, in the same
10 brief, presents the issues raised in the cross-appeal. The brief may include a single
11 introduction, statement of the issue, statement of the case, and conclusion.

12 **(d) Appellant's reply brief.** The appellant may then file one brief that first replies to
13 the cross-appellant's response to the issues raised in the appeal and then responds to the
14 issues raised in the cross-appeal.

15 **(e) Cross-appellant's reply brief.** The cross-appellant may file a reply brief that replies
16 to the appellant's response to the issues raised in cross-appeal.

17 **(f) No further briefs.** No further briefs may be filed except with leave of the appellate
18 court.

19 **(g) Length of briefs.**

20 **(g)(1)** Unless a brief complies with the following page limits, it must comply
21 with the following word limits:

22

Type of brief	Page limit	Word limit
Appellant's principal brief	30	14,000
Cross-appellant's principal brief	45	21,000
Appellant's reply brief	30	14,000
Cross-appellant's reply brief	15	7,000

23
24
25

26 **(g)(2)** Headings, footnotes, and quotations count toward the page or word limit,
27 but the table of contents, table of authorities, and addendum do not.

28 **(h) Applicability of Rule 24**. Except as provided in this rule, Rule 24 applies to

29 <u>briefs in a cross-appeal.</u>

Effective November 1, 2017

Rule 24. Briefs.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a)(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

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

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

(a)(11)(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.

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

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

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

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply

brief shall conform to the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule. No further briefs may be filed except with leave of the appellate court.

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

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs.

(f)(1) Type-volume limitation.

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

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

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

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

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

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

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

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

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

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

(g)(5) Type-Volume Limitation.

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

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

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

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

(g)(6) Certificate of Compliance.

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

(g)(7) Page Limitation.

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

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

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

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

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

Advisory Committee Notes

The rule reflects the marshaling requirement articulated in *State v. Nielsen*, 2014 UT 10, 326 P.3d 645, which holds that the failure to marshal is no longer a technical deficiency that will result in default, but is the manner in which an appellant carries its burden of persuasion when challenging a finding or verdict based upon evidence.

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

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