Agenda

Advisory Committee on Rules of Appellate Procedure

September 6, 2018

12:00 to 1:30 p.m.

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room

Admin. Office of the Courts, Suite N31

ACTION: Welcome, and approval of June 7, 2018 Minutes	Tab 1	Paul C. Burke, Chairman
ACTION: Proposed amendment to Rule 48(e) and (f) and Rule 4. Discussion of history of amendments to Rule 48	Tab 2	Judge Jill M. Pohlman
INFORMATION: Report from Court Conference on Rule 24 and 24A. Approval to send amendments to Rules 23B, 25, 49, 50, and 51 out for public comment.	Tab 3	Judge Gregory K. Orme Cathy Dupont
INFORMATION: Report from work group on finality of orders		Paul C. Burke
Other Business		Paul C. Burke

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

Meeting schedule:

September 6, 2018

October 4, 2018

November 1, 2018

December 6, 2018

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, June 7, 2018
12:00 p.m. to 1:30 p.m.

PRESENT	**EXCUSED**
Christopher Ballard	R. Shawn Gunnarson
Troy Booher	Rodney Parker
Paul Burke- Chair	Bridget Romano
Lisa Collins	
Cathy Dupont-Staff	
Alan Mouritsen	
Judge Gregory Orme	
Judge Jill Pohlman	
Adam Pace – Recording Secretary	
Clark Sabey	
Lori Seppi	
Ann Marie Taliaferro	
Mary Westby	

1. Welcome and approval of minutes **Paul Burke**

Mr. Burke welcomed the committee to the meeting and invited a motion to approve the minutes from the May meeting.

Judge Orme moved to approve the minutes from the May meeting. Judge Pohlman seconded the motion and it passed unanimously.

2. URAP 23B and 2013 Supreme Court Order. **Clark Sabey**
Cathy Dupont

The committee continued its discussion of the proposal the amend Rule 23B to incorporate the contents of the Supreme Court's September 23, 2013 Revised Order Pertaining to Rule 23B. A draft of these proposed changes was included in Tab 2 of the meeting materials. Mr. Ballard proposed two additional substantive changes to Rule 23B(e): 1) stating that the trial court will enter conclusions of law in addition to findings of fact, and 2) stating that both the defendant and

the State are entitled to present evidence during the proceeding before the district court on remand.

Mr. Burke asked if everyone agreed that Rule 23B should, at a minimum, be changed to conform to the standing order. Everyone agreed. Mr. Burke proposed recommending those changes first, and then continuing the discussion of Mr. Ballard's proposal.

Mr. Ballard moved to adopt only the proposed changes to Rule 23B that conform to the standing order, and to continue the discussion of the two additional changes he proposed. Mr. Sabey second the motion and it passed unanimously.

Mr. Ballard explained his reasons for suggesting the additional changes are 1) to bring Rule 23B remand hearings in line with other hearings held by the district court; 2) to help appellate courts better resolve claims for ineffective assistance of counsel by providing more information; and 3) because trial courts are in the best position to judge both deficient performance and prejudice. Mr. Ballard said he recognizes that the Court of Appeals will make the ultimate legal conclusion, but he thinks the trial court's conclusions of law on those points should be entitled to some deference because it is a mixed question of fact and law.

Mr. Booher said that the limited purpose of Rule 23B is to address the problem that arises when there is an inadequate factual record for the Court of Appeals to rule on an ineffective assistance of counsel claim. He questioned whether it was wise to expand the scope of the proceedings beyond that discrete purpose. He also wondered what would happen if the trial court concluded that there had been ineffective assistance of counsel—would that result in the defendant's sentence being vacated?

Ms. Westby said there would be no effect on the sentence until the Court of Appeals ruled on the issue. Mr. Booher said, and Mr. Sabey agreed, that he thought that the reason that the trial court doesn't make conclusions of law in these Rule 23B remand hearings is out of caution for the effect it may have on the defendant. However, Mr. Sabey said he could see some value in letting the trial court make conclusions of law on whether there was prejudice or not, because the trial court may be in a better position to evaluate that.

Judge Orme agreed there would be some value to having the trial judge weigh in on whether there was prejudice, but only if it was the judge that actually tried the case. He said he would give some deference to that. However, if it is a different judge, there is no real value. Judge Orme also said that trial judges sometimes mislabel factual findings as conclusions of law and vice versa, and so may not include information in the findings that may have been helpful because he or she believed it is a conclusion of law. Judge Orme would rather have the benefit of the trial judge's thinking by allowing them to include the conclusions of law.

Ms. Seppi expressed several concerns. First, she said that when a trial judge is making conclusions of law, it should be based on the entire record and not just what is happening at the Rule 23B hearing. She said that judge may not remember the record well enough to make proper conclusions. In her experience, she thinks that judges who remember the record typically make conclusions anyway. This happens about half of the time. If it becomes a requirement for trial

judges to make conclusions of law, she feels she would need to ask the judge to review the entire record. Second, Ms. Seppi said that Rule 23B is a big mess with significant ramifications. She would prefer that no changes be made to it beyond the changes conforming the rule to the standing order. If the committee is thinking about making substantive changes, she asked that a subcommittee be reformed to carefully evaluate the effect they will have on defendants.

Mr. Ballard said he thinks there is a difference in the way the defense bar and the State view Rule 23B. The State doesn't see it just as an opportunity to supplement the record. He thinks it is more than that. It takes what would happen at the post-conviction stage and moves it to the direct appeal. He sees Rule 23B as essentially the same process litigating the claim of ineffective assistance of counsel as if it came up in a motion for new trial or in post-conviction proceedings.

Mr. Booher asked if the State would be open to amending Rule 23B to not only allow the trial court to make conclusions of law, but also to give the trial court all the authority it would have if it were ruling on a post-conviction petition or a Rule 24 motion? He pointed out that these proceedings are only the same in ways that make it so the defendant can't get immediate relief.

Ms. Taliaferro said that it is difficult for appellate attorneys to investigate the case and conduct the Rule 23B hearing in the time they are allowed. This is not enough time to do it properly.

Mr. Booher said that appellate counsel are under a lot of pressure to bring Rule 23B motions due to fear of procedural bars, because the State is going to argue in post-conviction proceedings that appellate counsel should have filed a Rule 23B motion. This puts appellate attorneys in a terrible position of having to review the entire record in the limited time available and make the motion, so that they don't foreclose post-conviction relief later. This is a complex problem, however, because there are resources available in the appellate process that make it possible to actually address the Rule 23B issues which are not available in post-conviction proceedings.

Ms. Westby proposed that there may be a way to narrow Rule 23B to allow only realistic chances of success, such as DNA evidence or alibi witnesses.

Mr. Burke commented that this discussion seemed to indicate that the Rule 23B subcommittee should be reformed to look into this further. He asked if the committee should vote on Mr. Ballard's proposal.

Mr. Ballard said that he did not intend to reopen a can of worms here with his proposal. He thinks the proposed change about letting the trial court make conclusions of law is the most controversial. He amended his proposal to omit that part, and just include the sentence that says that both the defendant and the state can present evidence at the Rule 23B hearing.

Ms. Seppi said she still opposes this change, because it will turn the Rule 23B hearing into a min-trial. She is concerned that Rule 23B motions are very rarely granted, and that when they are denied it creates a procedural bar to raising the argument later. Anything that makes it harder for a defendant to get relief than it already is not appropriate.

Judge Orme commented that the court needs to hear both sides of the story to evaluate the information. Judge Pohlman said it makes more sense to let the trial court evaluate what both sides have to say about the facts in a min-trial than to remand and find out for the first time in the new trial.

Mr. Ballard said that you can't evaluate prejudice to defendant if you don't see how the State would have responded to the new argument if it had been made at trial.

Ms. Seppi agreed with a point Mr. Booher made, saying that if the defendant has to present all of his/her evidence in the Rule 23B motion, the State should have to do likewise in its response memorandum, and provide all the facts and information it would present at the Rule 23B hearing. Judge Orme said this suggestion seems fair.

Ms. Seppi said she is open to considering this idea further. Mr. Ballard said he would need to think about it, and that the committee should discuss this further at another meeting if his proposal is going to be modified.

Mr. Ballard withdrew his proposal pending further discussion.

3. Rule 22(d) Timing. Alan Mouritsen

Mr. Mouritsen explained that standing order 11 allows parties to submit appellate documents electronically to the court, but still requires parties to file paper copies of briefs with the court. However, standing order 11 does not say anything about service. He presumes that Rule 21 still applies, which says that service may be personal or by mail. Mr. Mouritsen asked if it is still the court's standard practice to add the 3 extra days allowed under the mailbox rule (Rule 22(d)) when briefs are served on the opposing party by mail. He had a case recently where this wasn't done. Ms. Collins said that the Court is still doing that, and it was a mistake in the case where it wasn't done.

Mr. Ballard asked if Rule 21 should be amended to allow service by email. Mr. Booher pointed out that change is already included in the electronic filing rules that haven't been adopted yet.

4. Inquiry by Utah Supreme Court regarding URAP 4(b)(1)(f) and URCP 58A(f) as interpreted by *McQuarrie v. McQuarrie*, 2017 Paul Burke

The committee deferred discussion of this item to the next meeting.

5. URAP 50 Response; reply; statement of amicus curiae Clark Sabey

Mr. Sabey proposed amending Rule 50 to allow amicus curiae briefs concerning a petition for certiorari to be filed only after the petition is granted.

Mr. Burke proposed rewording the language of the proposal to state more clearly that the Court will not accept amicus curiae briefs concerning whether to grant the petition, and will only accept briefs on the merits after the petition is granted.

Mr. Booher commented that amicus participation is conceptually more important at the petition stage than the merits stage, and that it is odd to preclude it. He suggested allowing amicus to submit a proposed brief on whether to grant the petition with a motion for leave to file it. Mr. Burke agreed, and suggested tabling this issue for further discussion at the next meeting.

6. Other Business

Mr. Burke reported that the committee has been asked to reconvene a joint subcommittee to revisit the issue of finality of judgments in the context of attorney fee motions. This will be presented for discussion at a future meeting.

7. Adjourn

The meeting was adjourned at 1:30 p.m. The next meeting will be held on September 6, 2018.

Tab 2

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 that complies with Rule 35(a) 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.

(e)(1) The Supreme Court, upon a showing of 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~~ before the expiration of the time prescribed by paragraph (a) or (c) of this rule. Responses to such motions are disfavored and the court may rule at any time after the filing of the motion. No extension shall exceed 30 days past the prescribed time or

14 days from the date of entry of the order granting the motion, whichever occurs later, and no more than one extension will be granted.

(e)(2) The Supreme Court, upon a showing of good cause ~~or~~ and excusable neglect, 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 a motion. No extension shall exceed 30 days past the prescribed time or 14 days from the date of entry of the order granting the motion, whichever occurs later, and no more than one extension will be granted.

(f) ~~Seven~~ Two 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 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, 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;

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

(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 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 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 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~~ and 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 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.

Posted Explanation for Rule 48, 2016 amendment:

Rules of Appellate Procedure

URAP 004. Appeal as of right; when taken. Amend. Clarifies the process for filing a motion for extension of time to file a notice of appeal based on good cause or based on good cause or excusable neglect.

URAP 021. Filing and service. Amend. Outlines the certifications an individual makes when filing papers in the appellate court.

URAP 021A. Appellate filings containing other than public information and records. New. Creates a new rule addressing the process for making appellate filings that contain information and records classified as other than public under Utah law.

URAP 048. Time for petitioning. Amend. Clarifies the process for filing a motion for extension of time to file a petition for writ of certiorari based on good cause or based on good cause or excusable neglect.

URAP 055. Petition on appeal. Amend. Requires that petitions on appeal comply with rule 21A.

URAP 056. Response to petition on appeal. Amend. Requires that responses to petitions on appeal comply with rule 21A.

No comments were submitted to Rule 48.

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~~ must be paid at the time of filing the petition.

(b) ~~Refusal~~ Rejection of untimely petition. The clerk will ~~refuse to receive~~ reject any untimely 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 that complies with Rule 35(a) 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~~ paragraphs (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~~ must 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.

(e)(1) The Supreme Court, upon a showing of 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~~ before the expiration of the time prescribed by paragraph (a) or (c)~~ of this rule~~. Responses ~~to such motions~~ are disfavored and the court may rule at any time after the filing of the motion. No extension ~~shall~~ may exceed 30 days past the prescribed time or 14 days from the date of entry of the order granting the motion, whichever occurs later, and no more than one extension will be granted.

(e)(2) The Supreme Court, upon a showing of good cause or excusable neglect, 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. No extension ~~shall~~ may exceed 30 days past the prescribed time or 14 days from the date of entry of the order granting the motion, whichever occurs later, and no more than one extension will be granted.

(f) Form of petition. ~~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.~~ The petition must comply with Rule 27.

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

Executive Dining Room
Thursday, June 11, 2014
12:00 p.m. to 1:30 p.m.

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

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

Ms. Watt welcomed the committee to the meeting. She asked for any comments on the minutes from the previous meeting. There were no comments.

Ms. Westby moved to approve the minutes from the meeting held on April 10, 2014. Mr. Booher seconded the motion and it passed unanimously.

2. Rules Without Comment **Alison Adams-Perlac**

The committee amended Rule 5 to read as follows:

Rule 5. Discretionary appeals from interlocutory orders.

(a) Petition for permission to appeal. An appeal from an interlocutory order may be sought by any party by filing a petition for permission to appeal from the interlocutory

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

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

(c) Content of petition.

(c)(1) The petition shall contain:

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

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

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

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

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

(c)(3) The petitioner shall attach a copy of the order of the trial court from which an appeal is sought and any related findings of fact and conclusions of law and opinion. 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 petition will be granted in the absence of a request by the court for a response. 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 by the court. (~~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.

Ms. Decker moved to approve Rule 5 as amended. Mr. Sabey seconded the motion, and it passed unanimously.

The committee amended Rule 37 to read as follows:

Rule 37. Suggestion of mootness; voluntary dismissal.

(a) Suggestion of mootness. It is the duty of each party at all times during the course of an appeal or other proceeding to inform the court of any circumstances which have transpired subsequent to the filing of the appeal or other proceeding which render moot

one or more of the issues raised. If a party determines that one or more, but less than all, of the issues have been rendered moot, the party shall promptly advise the court by filing a "suggestion of mootness" in the form of a motion under Rule 23. If all parties to an appeal or other proceeding agree as to the mootness of one or more, but less than all, of the issues raised, a stipulation to that effect shall be filed with the suggestion of mootness. If an appellant determines all issues raised in the appeal or other proceeding are moot, a motion for voluntary dismissal shall be filed pursuant to the provisions of paragraph (b) of this rule.

(b) Voluntary dismissal. At any time prior to the issuance of a decision an appellant may move to voluntarily dismiss an appeal or other proceeding. If all parties to an appeal or other proceeding agree that dismissal is appropriate, a stipulation to that effect shall be filed with the motion for voluntary dismissal. Any such stipulation shall specify the terms as to payment of costs, if applicable, and provide for payment of whatever fees are due.

(c) If appellant has the right to effective assistance of counsel, a motion to voluntarily 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.

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

Ms. Seppi moved to approve Rule 37 as amended. Mr. Booher seconded the motion, and it passed unanimously.

3. Rule 9 **Joan Watt**

The committee amended Rule 9 to read as follows:

Rule 9. Docketing statement.

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

(b) Time for filing. Within 21 days after a notice of appeal, cross-appeal, or a petition for review of an administrative order is filed, the appellant, cross-appellant, or

petitioner shall file an original and two copies of a docketing statement with the clerk of the appellate court and serve a copy with any required attachments on all parties. The Utah Attorney General shall be served in any appeal arising from a crime charged as a felony or a juvenile court proceeding.

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

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

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

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

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

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

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

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

(c)(2)(iv) If any motions listed in Rule 4(b) were filed, the date such motion was filed in the trial court and the date of entry ~~The date of any motions filed pursuant to Rules 50(b), 52(b), or 59, Utah Rules of Civil Procedure, or Rule 24, Utah Rules of Criminal Procedure, and the date and effect~~ of any order~~s~~ disposing of such motion~~s~~.

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

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

(c)(3) If the ~~an~~ appeal is taken from an order ~~in a multiple-party or a multiple-claim case, and the judgment has been~~ certified as ~~a~~ final ~~judgment by the trial court~~ pursuant to Rule 54(b) of the~~,~~ Utah Rules of Civil Procedure,~~:~~ a statement of what claims and parties remain before the trial court for adjudication.~~(c)(5)(A) a statement of what claims and parties remain before the trial court for adjudication, and~~

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

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

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

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

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

~~(c)(6)(B) any sentence imposed;(c)(6)(C) whether the defendant is currently incarcerated.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Advisory Committee Notes

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

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

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

Mr. Booher moved to approve Rule 9 as amended. Mr. Mouritsen seconded the motion, and it passed unanimously.

4. Rule 23B **Joan Watt**

Ms. Watt stated that, at the last meeting, the committee tabled consideration of Rule 23B pending communication with Laura Dupaix regarding circumstances where an appellee might want to file a motion for a 23B remand. She stated that Ms. Decker was the committee member who had communicated with Ms. Dupaix on this issue.

Ms. Decker stated that Ms. Dupaix told her about an instance in which the Attorney General's office (AG) had moved for a 23B remand. She explained that, in that case, the appellant claimed that trial counsel was ineffective due to a conflict of interest. She stated that the State

wanted a remand to establish on the record that there was in fact no conflict of interest. She stated that the AG's motion was denied in that case. Ms. Decker stated the AG might also move for a 23B remand is if it was concerned that the appellate court might construe a record gap against the State.

Mr. Booher raised a concern that if the appellee could successfully move for a 23B remand, the appellant's brief, which would have been filed already, would not address the facts found on remand. Ms. Decker and Ms. Romano stated that the court, in its discretion, could order supplemental briefing. Mr. Booher asked whether supplemental briefing would be available in this circumstance. Mr. Sabey stated that the rule should make clear that the court has discretion to order supplemental briefs or replacement briefs. Ms. Watt stated that, in that circumstance, she would file a motion for leave to file a replacement brief pursuant to Rule 23B and Rule 2. Ms. Watt stated that most cases would only call for supplemental briefing, but in the rare case that the facts found on remand pervasively affect the arguments raised on appeal, she would hope the appellate court would allow a replacement brief. Ms. Decker stated that the AG would probably not oppose a motion to allow a replacement brief in those circumstances.

Mr. Sabey said he would defer to the appellate attorneys who file motions for 23B remands. Ms. Seppi stated that it would be a very rare situation to need to file a replacement brief after a 23B remand. Mr. Sabey stated that he agreed with Ms. Watt that a party could always file a motion for a replacement brief pursuant to Rules 23B and 2. He stated he does not see a downside to leaving the Rule the way it is because an appellate court would probably always grant leave to file a replacement brief if it was requested. Ms. Watt agreed. She stated that the Rule could provide for supplemental or replacement briefs, but her concern is that if it did, then parties would routinely move to file replacement briefs, even where unnecessary, and filing replacement briefs significantly slows down the appellate process. Ms. Westby agreed.

Ms. Seppi stated that the committee could add a line to (b)(1) that says something about if the facts found on remand affect the opening brief, there's an opportunity to file a new brief. She stated that such a line would not be necessary, however, because the decision on whether to remand would not come until after the reply brief is filed. Mr. Booher and Mr. Sabey agreed, and stated that the Rule should remain as is.

Mr. Booher stated he had one cosmetic change in subsection (c), at lines 38-39. He stated he would change that sentence to: "The motion shall be accompanied by admissible evidence, including affidavits." He said that affidavits contain evidence, so it is funny to say "alleging facts." Ms. Seppi stated that the subcommittee had a difficult time with this sentence. Ms. Westby stated that affidavits presented to the appellate court are not evidence because an appellate court cannot take evidence. Judge Orme suggested saying, "The motion shall be accompanied by affidavits or admissible evidence." He stated that an affidavit would be superfluous for a self-authenticating document. Mr. Booher stated that appellate courts do take evidence, because evidence is defined as things a court takes judicial notice of. Ms. Westby said that does not constitute taking evidence.

Ms. Watt stated that language requiring affidavits was intended to account for the fact that there is no subpoena power on appeal; it was designed to set a threshold for obtaining a 23B remand but not make it so high that it is impossible to meet. Mr. Shea stated that the distinction between an

affidavit and other facts likely to be admissible is not important if an appellate court cannot receive evidence. He also that there is a statute providing that if a court rule requires an affidavit, a declaration under penalty of perjury is sufficient. He suggested that the Rule should inform parties that something less than an affidavit will suffice.

Judge Orme proposed using some of the language from Rule 56 of the Utah Rules of Civil Procedure. He stated that there ought to be an umbrella term that avoids the admissible evidence question.

Ms. Watt stated that the point is to create an achievable threshold for obtaining a 23B remand. Mr. Sabey stated that the goal is to strike a balance between the extremes of speculation and proof. Mr. Booher stated that the rule does not establish an evidentiary threshold; it only tells parties what they must submit to obtain a 23B remand. He stated that, accordingly, it may be more appropriate for a committee note. He asked if there was a case from which the proposed affidavit requirement was derived. Ms. Decker stated that the AG regularly cites to *Johnson* to support the proposition that an appellant must supply supporting affidavits. Mr. Booher suggested adding a committee note alerting parties to *Johnson*. Ms. Seppi volunteered to revise lines 38-39 and draft a committee note on *Johnson*.

Judge Orme suggested cross-referencing Rule 56 of the Utah Rules of Civil Procedure and providing a list of acceptable documentation. Mr. Shea suggested that the Rule should require that a response be due within 30 days, rather than require the court to set a time within 30 days.

The committee tabled Rule 23B until the next meeting, where Ms. Seppi will present her proposed revision to lines 38-39 and a draft of a committee note on Johnson.

5. Rule 4(e) and 48 **Paul Burke**

The committee amended Rules 4 and 48 to read as follows:

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, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule, whichever period last expires.

(e) Motion for ~~E~~extension of time ~~to appeal~~.

(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 ~~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. ~~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.~~ 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 subsection (c) would apply is not relevant to the determination of good cause or excusable neglect. No extension shall exceed 30 days ~~past~~ beyond the prescribed time or 14~~0~~ days ~~from~~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 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

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

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 that complies with Rule 35(a) 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.

(e)(1) The Supreme Court, upon a showing of good cause, may extend the time for filing a petition or a cross-petition for a writ of certiorari upon motion filed before the expiration of the time prescribed by paragraph (a) or (c) of this rule. Responses to such motions are disfavored and the court may rule at any time after the filing of the motion. No extension shall exceed 30 days past the prescribed time or 14 days from the date of entry of the order granting the motion, whichever occurs later, and no more than one extension will be granted.

(e)(2) The Supreme Court, upon a showing of good cause or 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. ~~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 14~~0~~ days from the date of entry of the order granting the motion, whichever occurs later, and no more than one extension will 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.

Mr. Burke moved to approve Rules 4 and 48 as amended. Mr. Booher seconded the motion, and it passed unanimously.

6. Nonpublic Records—Rules 21, 21A, 55, and 56 Alison Adams-Perlac

The committee proposed or amended Rules 21, 21A, 55, and 56 to read as follows:

Rule 21. Filing and service.

(a) Filing. Papers required or permitted to be filed by these rules shall be filed with the clerk of the appropriate court. Filing may be accomplished by mail addressed to the clerk. Except as provided in subpart (f), filing is not considered timely unless the papers are received by the clerk within the time fixed for filing, except that briefs shall be deemed filed on the date of the postmark if first class mail is utilized. If a motion requests relief which may be granted by a single justice or judge, the justice or judge may accept the motion, note the date of filing, and transmit it to the clerk.

(b) Service of all papers required. Copies of all papers filed with the appellate court shall, at or before the time of filing, be served on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel of record, or, if the party is not represented by counsel, upon the party at the last known address. A copy of any paper required by these rules to be served on a party shall be filed with the court and accompanied by proof of service.

(c) Manner of service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of service. Papers presented for filing shall contain an acknowledgment of service by the person served or a certificate of service in the form of a statement of the date and manner of service, the names of the persons served, and the addresses at which they were served. The certificate of service may appear on or be affixed to the papers filed. If counsel of record is served, the certificate of service shall designate the name of the party represented by that counsel.

(e) Signature. All papers filed in the appellate court shall be signed by counsel of record or by a party who is not represented by counsel.

(f) Papers filed by an inmate confined in an institution are timely filed if they are deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a notarized statement or written declaration setting forth the date of deposit and stating that first-class postage has been prepaid.

(g) Representations to court. By filing papers in the appellate court, an attorney or unrepresented party is certifying that to the best of the person's knowledge formed after an inquiry reasonable under the circumstances:

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

(g)(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;

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

(g)(4) the filing complies with Rule 21A and Rule 4-202.02 of the Utah Code of Judicial Administration.

Advisory Committee Notes

Paragraph (e) is added to Rule 21 to consolidate various signature provisions formerly found in other sections of the rules.

Rule 21A. Appellate filings containing other than public information and records.

(a) Record on appeal. All parts of the record on appeal retain the same classification as in the trial court or administrative agency unless otherwise classified by the appellate court.

(b) Appellate filings. If any appellate filing contains information or records classified as other than public, the filing party shall also file a copy with all non-public information redacted accompanied by a certification that identifies the appropriate

classification, including a citation to the statute, rule or order that supports that classification.

Advisory Committee Notes

Rule 4-202.02 of the Utah Code of Judicial Administration classifies judicial records generally.

Rule 11 defines "record on appeal."

Rule 55. Petition on appeal.

(a) Filing; dismissal for failure to timely file. The appellant shall file with the clerk of the Court of Appeals an original and four copies of the petition on appeal. The petition on appeal must be filed with the appellate clerk within 15 days from the filing of the notice of appeal or the amended notice of appeal. If the petition on appeal is not timely filed, the appeal shall be dismissed. It shall be accompanied by proof of service. The petition shall be deemed filed on the date of the postmark if first-class mail is utilized. The appellant shall serve a copy on counsel of record of each party, including the Guardian ad Litem, or, if the party is not represented by counsel, then on the party at the party's last known address, in the manner prescribed in Rule 21(c).

(b) Preparation by trial counsel. The petition on appeal shall be prepared by appellant's trial counsel. Trial counsel may only be relieved of this obligation by the juvenile court upon a showing of extraordinary circumstances. Claims of ineffective assistance of counsel do not constitute extraordinary circumstances but should be raised by trial counsel in the petition on appeal.

(c) Format. All petitions on appeal shall substantially comply with the Petition on Appeal form that accompanies these rules. The petition shall not exceed 15 pages, excluding the attachments required by Rule 55(d)(6). The petition 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 ½ inches wide and 11 inches long. 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. 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. Examples are CG Times, Times New Roman, New Century, Bookman and Garamond. A monospaced typeface may not contain more than ten characters per inch for both text and footnotes. Examples are Pica and Courier.

(d) Contents. The petition on appeal shall include all of the following elements:

(d)(1) A statement of the nature of the case and the relief sought.

(d)(2) The entry date of the judgment or order on appeal.

(d)(3) The date and disposition of any post-judgment motions.

(d)(4) A concise statement of the material adjudicated facts as they relate to the issues presented in the petition on appeal.

(d)(5) A statement of the legal issues presented for appeal, how they were preserved for appeal, and the applicable standard of review. The issue statements should be concise in nature, setting forth specific legal questions. General, conclusory statements

such as "the juvenile court's ruling is not supported by law or the facts" are not acceptable.

(d)(6) The petition should include supporting statutes, case law, and other legal authority for each issue raised, including authority contrary to appellant's case, if known.

(d)(7) The petition on appeal shall have attached to it:

(d)(7)(A) a copy of the order, judgment, or decree on appeal;

(d)(7)(B) a copy of any rulings on post-judgment motions.

(e) Compliance with Rule 21A. Petitions made under this rule that contain information or records classified as other than public shall comply with Rule 21A.

Rule 56. Response to petition on appeal.

(a) Filing. Any appellee, including the Guardian ad Litem, may file a response to the petition on appeal. An original and four copies of the response must be filed with the clerk of the Court of Appeals within 15 days after service of the appellant's petition on appeal. It shall be accompanied by proof of service. The response shall be deemed filed on the date of the postmark if first-class mail is utilized. The appellee shall serve a copy on counsel of record of each party, including the Guardian ad Litem, or, if the party is not represented by counsel, then on the party at the party's last known address, in the manner prescribed in Rule 21(c).

(b) Format. A response shall substantially comply with the Response to Petition on Appeal form that accompanies these rules. The response shall not exceed 15 pages, excluding any attachments, and shall comply with Rule 27(a) and (b), except that it may be printed or duplicated on one side of the sheet.

(c) Compliance with Rule 21A. Responses made under this rule that contain information or records classified as other than public shall comply with Rule 21A.

Mr. Booher moved to approve Rules 21, 21A, 55, and 56 as proposed or amended. Mr. Burke seconded the motion, and it passed unanimously.

7. **Rules 24 and 27** **Troy Booher**

Mr. Booher stated that some of the changes have been discussed or even approved by the committee, but have never been out for public comment. He stated that other changes are the product of a subcommittee that discussed global changes to briefs and how they are structured. He stated that the subcommittee decided that briefs ought to be structured as appellate judges read them. He stated almost all of the changes were presented at a conference of appellate judges, and there was almost no resistance to the changes among the judges. He stated there was a lot of support for streamlining briefs. He said that one of the primary goals of the changes is to eliminate redundancy in briefs.

The committee members will review the proposed changes to Rules 24 and 27 for discussion at the next meeting.

8. Rule 24 and *State v. Nielsen* **Joan Watt**

The committee did not discuss Rule 24 and *State v. Nielsen*.

9. Other Business

There was no other business discussed at the meeting.

10. Adjourn

The meeting was adjourned at 1:45 p.m. The next meeting will be held Thursday, September 4, 2014.

Tab 3

Rule 23B. Motion to remand for findings necessary to determination of ineffective assistance of counsel claim.

(a) Grounds for motion; time. A party to an appeal in a criminal case may move the court to remand the case to the trial court for entry of findings of fact, necessary for the appellate court's determination of a claim of ineffective assistance of counsel. The motion ~~shall~~ will be available only upon a nonspeculative allegation of facts, not fully appearing in the record on appeal, which, if true, could support a determination that counsel was ineffective.

The motion ~~shall~~ must be filed ~~prior to~~ before or at the time of the filing of the appellant's brief. Upon a showing of good cause, the court may permit a motion to be filed after the filing of the appellant's brief. ~~In no event shall the court permit a motion to be filed after oral argument. Nothing in this rule shall prohibit the court from remanding the case under this rule~~ After the appeal is taken under advisement, a remand pursuant to this rule is available only on the court's own motion ~~at any time~~ and only if the claim has been raised and the motion would have been available to a party.

(b) Content of motion~~; response; reply~~. The content of the motion ~~shall~~ must conform to the requirements of Rule 23. The motion ~~shall~~ must include or be accompanied by affidavits alleging facts not fully appearing in the record on appeal that show the claimed deficient performance of the attorney. The affidavits ~~shall~~ must also allege facts that show the claimed prejudice suffered by the appellant as a result of the claimed deficient performance. The motion shall also be accompanied by a proposed order or remand that identifies the ineffectiveness claims and specifies the factual issues relevant to each such claim to be addressed on remand.

~~A response shall be filed within 20 days after the motion is filed. The response shall include a proposed order of remand that identifies the ineffectiveness claims and specifies the factual issues relevant to each such claim to be addressed by the trial court in the event remand is granted, unless the responding party accepts that proposed~~

~~by the moving party. Any reply shall be filed within 10 days after the response is served.~~

(c) Order<u>s</u> of the court<u>; response; reply</u>. <u>If a motion under this rule is filed at the same time as appellant's principal brief, any response and reply must be filed within the time for the filing of the parties' respective briefs on the merits, unless otherwise specified by the court. If a motion is filed before appellant's brief, the court may elect to defer ruling on the motion or decide the motion prior to briefing.</u>

<u>(c)(1) If the court defers the motion, the time for filing any response or reply will be the same as for a motion filed at the same time as appellant's brief, unless otherwise specified by the court.</u>

<u>(c)(2) If the court elects to decide the motion prior to briefing, it will issue a notice that any response must be filed within 30 days of the notice or within such other time as the court may specify. Any reply in support of the motion must be filed within 20 days after the response is served or within such other time as the court may specify.</u>

<u>(c)(3)</u> If the requirements of parts (a) and (b) of this rule have been met, the court may order that the case be temporarily remanded to the trial court ~~for the purpose of entry of~~ <u>to enter</u> findings of fact relevant to a claim of ineffective assistance of counsel. The order of remand ~~shall~~ <u>will</u> identify the ineffectiveness claims and specify the factual issues relevant to each such claim to be addressed by the trial court. The order ~~shall~~ <u>will</u> also direct the trial court to complete the proceedings on remand within 90 days of issuance of the order of remand, absent a finding by the trial court of good cause for a delay of reasonable length.

<u>(c)(4)</u> If it appears to the appellate court that the appellant's attorney of record on the appeal faces a conflict of interest upon remand, the court ~~shall~~ <u>will</u> direct that counsel withdraw and that new counsel for the appellant be appointed or retained.

(d) Effect on appeal. ~~Oral argument and the deadlines for briefs shall be vacated upon~~

~~the filing of a motion to remand under this rule.~~ If a motion is filed at the same time as appellant's brief, ~~Other procedural steps required by these rules shall~~ the briefing schedule will not be stayed ~~by a motion for remand,~~ unless ~~a stay is~~ ordered by the court ~~upon stipulation or motion of the parties or upon the court's motion~~. If a motion is filed before appellant's brief, the briefing schedule will be automatically stayed until the court issues notice of whether it will defer the motion or decide the motion before briefing.

(e) Proceedings before the trial court. Upon remand the trial court ~~shall~~ will promptly conduct hearings and take evidence as necessary to enter the findings of fact necessary to determine the claim of ineffective assistance of counsel. Any claims of ineffectiveness not identified in the order of remand ~~shall~~ will not be considered by the trial court on remand, unless the trial court determines that the interests of justice or judicial efficiency require consideration of issues not specifically identified in the order of remand. Evidentiary hearings ~~shall~~ will be conducted without a jury and as soon as practicable after remand. The burden of proving a fact ~~shall~~ will be upon the proponent of the fact. The standard of proof ~~shall~~ will be a preponderance of the evidence. The trial court ~~shall~~ will enter written findings of fact concerning the claimed deficient performance by counsel and the claimed prejudice suffered by appellant as a result, in accordance with the order of remand. Proceedings on remand ~~shall~~ must be completed within 90 days of entry of the order of remand, unless the trial court finds good cause for a delay of reasonable length.

(f) Preparation and transmittal of the record. At the conclusion of all proceedings before the trial court, the clerk of the trial court ~~and the court reporter shall~~ will immediately prepare the record of the supplemental proceedings as required by these rules. If the record of the original proceedings before the trial court has been transmitted to the appellate court, the clerk of the trial court ~~shall~~ will immediately transmit the record of the supplemental proceedings upon preparation of the supplemental record. If the record of the original proceedings before the trial court has not been transmitted to the

appellate court, the clerk of the court ~~shall~~ will transmit the record of the supplemental proceedings upon the preparation of the entire record.

(g) Appellate court determination. ~~Upon receipt of the record from the trial court, the clerk of the court shall notify the parties of the new schedule for briefing or oral argument under these rules.~~ Errors claimed to have been made during the trial court proceedings conducted pursuant to this rule are reviewable under the same standards as the review of errors in other appeals. The findings of fact entered pursuant to this rule are reviewable under the same standards as the review of findings of fact in other appeals.

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 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)~~(e),the motion for leave shall be filed at least 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 7 days of service of the motion. If leave is granted, an amicus curiae or guardian ad litem shall file its brief within 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 46. Considerations governing review of certiorari.

(a) Review by a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for special and important reasons. The primary consideration is whether a decision on the question presented is likely to have significant precedential value. The possibility of an error in the Court of Appeals' or another tribunal's decision, without more, ordinarily will not justify review. The following, while neither controlling nor wholly measuring the Supreme Court's discretion, indicate the character of reasons that typically will be considered:

~~(1) When a panel of the Court of Appeals has rendered a decision in conflict with a decision of another panel of the Court of Appeals on the same issue of law;~~

~~(2) When a panel of the Court of Appeals has decided a question of state or federal law in a way that is in conflict with a decision of the Supreme Court;~~

~~(3) When a panel of The Court of Appeals has rendered a decision that has so far departed from the accepted and usual course of judicial proceedings or has so far sanctioned such a departure by a lower court as to call for an exercise of the Supreme Court's power of supervision.~~

(1) The petition presents a question regarding the proper interpretation of, or ambiguity in, a constitutional or statutory provision that is likely to affect future cases.

(2) The petition presents a legal question of first impression in Utah that is likely to recur in future cases.

(3) The petition provides an opportunity to resolve confusion or inconsistency in a legal standard set forth in a decision of the Court of Appeals, or in a prior decision of the Supreme Court, that is likely to affect future cases.

(4) ~~When~~ The petition challenges a decision of the Court of Appeals with regard to a legal issue that has not been addressed ~~has decided an important question~~

~~of municipal, state, or federal law which has not been, but should be, settled~~ by the Supreme Court and that is likely to recur in future cases.

(b) After a petition for certiorari has been filed, the panel that issued the opinion of the Court of Appeals may issue a minute entry recommending that the Supreme Court grant the petition. Parties shall not request such a recommendation by motion or otherwise.

Rule 49. Petition for writ of certiorari.

(a) Contents. The petition for a writ of certiorari shall contain, 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~~ may 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. The petition for a writ of certiorari shall comply with the form of a brief as specified in Rule 27.

(c) No separate ~~brief~~ memorandum. 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~~ memorandum 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; reply ~~brief~~; brief of amicus curiae.

(a) ~~Brief in Opposition~~ Response. Within 30 days after service of a petition, ~~the respondent shall~~ any other party may file a response to the petition ~~an opposing brief~~. If satisfaction of a petitioner's obligation to pay a required filing fee or to obtain a waiver of that fee is accomplished after service, then the time for response shall run from the date of satisfaction of that obligation. ~~Such brief~~ The response shall comply with Rule~~s~~ 27 and, as applicable, Rule 49. Seven copies of the response ~~brief in opposition~~, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court. A party opposing or a party supporting a petition may so indicate by letter in lieu of a formal response, but the letter shall not include any argument or analysis.

(b) Page limitation. A ~~brief in opposition~~ response 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 ~~writ of certiorari~~ petition may be included in the ~~brief in opposition~~ response.

~~(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 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 the cross-respondent, the expiration of the time allowed therefor, or express waiver of the right to file.~~

~~(e)~~ (d) Reply ~~brief~~. A reply ~~brief~~ addressed to arguments first raised in the ~~brief in opposition~~ response may be filed by any petitioner within fourteen days after service of

the response, but distribution ~~under paragraph (d) of this rule~~ of the petition and response to the court ordinarily will not be delayed pending the filing of any such ~~brief~~ reply unless the response includes a new request for relief, such as an award of attorney fees for the response. ~~Such brief~~ The reply shall be as short as possible, but may not exceed five pages, ~~Such brief~~ and shall comply with Rule 27. The number of copies to be filed shall be as described in Rule 50(a).

~~(f)~~ (e) Brief of amicus curiae. A brief of an amicus curiae 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. 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 days of service of the motion. 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.

Rule 51. Disposition of petition for writ of certiorari.

(a) Order after consideration. ~~After consideration of the documents distributed pursuant to Rule 50,~~ The Supreme Court will enter an order denying the petition or granting the petition in whole or in part. The order shall be decided summarily, shall be without oral argument, and shall not constitute a decision on the merits. The clerk shall not issue a formal writ unless directed by the Supreme Court.

(b) Grant of petition.

(b)(1) Whenever an order granting a petition for a writ of certiorari is entered, the Clerk of the Supreme Court forthwith shall notify the Clerk of the Court of Appeals and counsel of record.

(b)(2) If the record has not previously been filed, the Clerk of the Supreme Court shall request the clerk of the court with custody of the record to certify it and transmit it to the Supreme Court.

(b)(3) The clerk shall file the record and give notice to the parties of the date on which it was filed and the date on which petitioner's brief is due.

(b)(4) Rules 24 through 31 shall govern briefs, argument, and disposition of the petition for writ of certiorari. In applying Rules 24 through 31, the petitioner shall stand in the place of the appellant and the respondent in the place of the appellee. In lieu of providing the citation or statements required by Rules 24(a)(5)(A) and (B), the statement of the issues presented for review as required by Rule 24(a)(5) shall include, for each issue, a statement and citation showing that the issue was presented in the petition for certiorari or fairly included therein.

(c) Denial of petition. Whenever a petition for a writ of certiorari is denied, an order to that effect will be entered, and the Clerk of the Supreme Court forthwith will notify the Court of Appeals and counsel of record.