Agenda

Advisory Committee on Rules of Appellate Procedure

March 7, 2019

12:00 to 1:30 p.m.

Scott M. Matheson Courthouse

450 South State Street

Executive Dining Room, W18A (inside the Café)

Administrative Office of the Courts, Suite N31

ACTION: Welcome and approval of November 2018 minutes	Tab 1	Paul C. Burke, Chairman
DISCUSSION: Word count analysis and Rules 24 and 24A (rule amendment proposal has been withdrawn)	Tab 2 and handout	Lisa Collins, Clark Sabey, Paul C. Burke
DISCUSSION: Manner of service in the appellate courts under Rule 21(c) (comparison to Civil Rule 5 and email service).	Tab 3	Mary Westby
DISCUSSION: Rule review for pro se parties (appointment of subcommittee)	Tab 4	Paul C. Burke
DISCUSSION: Other business.		Paul C. Burke

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

Meeting schedule:

April 4, 2019

May 2, 2019

June 6, 2019

July 11, 2019

August 1, 2019

September 5, 2019

October 3, 2019

November 7, 2019

December 5, 2019

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, November 1, 2018
12:00 p.m. to 1:30 p.m.

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

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

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

Judge Pohlman moved to approve the minutes from the October meeting. Ms. Romano seconded the motion and it passed unanimously.

2. Report from Finality of Judgment Work Group and discussion of proposed amendment to URCP 58A and URCP 73 **Paul Burke**
Alan Mouritsen
Judge Pohlman

Mr. Burke summarized the Finality Working Group's proposed solutions to the Court of Appeals' interpretation of Civil Rules 58A and 73 and Appellate Rule 4 in *McQuarrie v. McQuarrie*, 2017 UT App 209.

The Working Group's first proposal was to amend Civil Rule 73(b)(1) to state: "The motion must… specify the statute, rule, contract, *judgment*, or other basis entitling the party to the award…." (emphasis added). This makes a "judgment" one potential basis for attorney fees, rather than being a mandatory part of any motion for fees. Mr. Burke invited discussion of this proposal.

Mr. Ballard asked if there may still be a *McQuarrie* problem if parties make a claim for attorney's fees outside of Rule 73, such as asserting the claim in the complaint. Judge Pohlman said that she thought it would be easier to remove the reference to Rule 73 altogether, but the Working Group wanted to keep it. Mr. Mouritsen said that he thinks the proposed solution solves the problem. Mr. Burke asked if anyone had concerns about the new advisory note to Rule 73. No one did. Mr. Burke invited a motion.

Judge Pohlman moved for the committee to endorse the Civil Rules Committee's recommendation to amend Rule 73(b)(1) as proposed by the Working Group. Ms. Romano seconded the motion and it passed unanimously.

Mr. Burke summarized two other potential solutions to the *McQuarrie* problem that were discussed by the Working Group: 1) adopting the federal approach that motions for attorney fees never toll the time for appeal without leave of court; or 2) leaving Rules 58A and 4 in the default position of motions for attorney fees automatically tolling the time for appeal until the dispositive order on the motion is entered. The Working Group's proposal was to present the two options to the Court so it can make a policy decision between them.

Mr. Ballard asked if, under the first approach, a district court would make its decision whether to toll the time for appeal before the 30 day deadline to file a notice of appeal expires. The committee agreed that it would.

Mr. Ballard questioned whether Rule 58A(f) should be amended to include a claim for costs as a basis to toll the time for appeal. Mr. Burke said that this language mirrors the federal rule, and that there is not a lot of case law addressing disputes over this provision.

Ms. Westby said she doesn't think there is a problem that needs to be fixed here, and that she agreed with Mr. Booher's view on this. She asked if the federal approach will create a situation where two appeals are filed a few months apart that will just end up being consolidated.

After additional discussion, Mr. Sabey noted that the committee seemed to be favoring the second proposal to leave Rules 58A and 4 alone.

Ms. Westby asked if the federal approach had something to do with the difference between federal and Utah law regarding the appealability of collateral orders. Mr. Burke asked if adopting the federal model would create a need for Utah courts to adopt a similar collateral order doctrine. Mr. Mouritsen said that he didn't think there was a connection there.

Mr. Mouritsen moved to present the two options to the Court, and recommend the second option of leaving Rules 58A and 4 alone. Judge Pohlman seconded the motion, and it passed unanimously.

3. Discussion of comments to published amendments to Rules 46 And 49 and comment suggesting an amendment to Rule 47 **Paul Burke Clark Sabey**

The committee discussed several comments made by William Haines:

1) Proposed change to correct typo in Rule 23B
    a. This change has already been made.
2) Proposal to add "or procedural rule" to line 19 of Rule 46
    a. *Mr. Ballard moved to amend lines 19-20 of Rule 46 to read: "…constitutional provision, statute, or rule…." The committee felt that this change addressed the substance of the comment. Judge Pohlman seconded the motion and it passed unanimously.*
3) Proposal to keep the old subpart (3) in Rule 46 (referring to error correction as a potential bases for certiorari).
    a. Mr. Sabey objected to this proposal. He explained that the amendment was made to signal that error correction is not a bases for granting certiorari in most cases. The change does not prevent the court from taking the rare case of error correction if it wants to. Keeping the old subpart (3) would invite petitioners to continue to base their petitions on error correction.
    b. The committee agreed that the proposal to keep the old subpart (3) should be rejected.
4) Proposal to change ordering language in Rule 49 to allow practitioners flexibility in how they present the requested information
    a. Mr. Sabey said he has no objection to this suggestion.
    b. Mr. Burke appreciated the reference to the new revised Rule 24, he thought that was a good point.
    c. Ms. Romano said the change would improve readability.
    d. The committee discussed how best to reword the language of Rule 49 to accomplish the objective of the comment.
    e. Judge Pohlman moved to amend lines 46-50 of Rule 49 to read: "(a)(8) A statement of the case. The statement must indicate briefly the course of the proceedings and the disposition below. It must also include a statement of the facts relevant to the issues presented for review. All statements of fact and references to the proceedings below must be supported by citations to the record on appeal or to the opinion of the Court of Appeals." Ms. Collins seconded the motion and it passed unanimously, except for Judge Orme who abstained.
5) Proposal to change Rule 47(a)
    a. Mr. Burke said he thinks this proposal is beyond the scope of the public comments at issue here. It is a proposal to change a rule that the committee has not proposed to amend.
    b. Mr. Sabey agreed and suggested that the committee should discuss this suggestion at a later time.

The committee discussed whether to revise the punctuation separating subparts (1), (2), and (3) in Rule 46.

Mr. Ballard moved to amend lines 20, 23, and 27 by striking the periods at the end of the sentences, and replacing them with semicolons, and (per Judge Pohlman and Ms. Romano's suggestion) to add the word "or" on line 27 after the semicolon at the end of subpart (3). Ms. Taliaferro seconded the motion and it passed unanimously.

4. Update: Report on Supreme Court Conference action on Rules 23B, 25, 50 and 51 **Paul Burke**

Mr. Burke reported that Court accepted the committee's recommendations on Rules 23B, 25, 50, and 51. Mr. Burke thanked the committee for its work on those issues.

5. Other business

Judge Orme said that today's lunch was excellent (Greek from Roulas Café) and suggested that, budget permitting, the committee should order this for lunch every meeting.

Mr. Burke said there is a good chance that the December meeting will be canceled.

6. Adjourn

The meeting was adjourned. The next meeting will be held on January 3, 2018.

Tab 2

Rule 24. Principal and reply briefs.

(a) Principal briefs. Principal briefs must contain under appropriate headings and in the order indicated:

(a)(1) A list of current and former parties. The list of parties must include:

(a)(1)(A) all parties to the proceeding in the appellate court and their counsel; and

(a)(1)(B) listed separately, all parties to the proceeding in the court or agency whose judgment or order is under review that are not parties in the appellate court proceeding.

(a)(2) A table of contents. The table of contents must list the sections of the brief with page numbers and the items in the addendum with the item number.

(a)(3) A table of authorities. The table of authorities must list all cases alphabetically arranged, rules, statutes, and other authorities cited, with references to the pages on which they are cited.

(a)(4) An introduction. The introduction should describe the nature and context of the dispute and explain why the party should prevail on appeal.

(a)(5) A statement of the issue. The statement of the issue must set forth the issue presented for review, including for each issue:

(a)(5)(A) the standard of appellate review with supporting authority; and

(a)(5)(B) citation to the record showing that the issue was preserved for review; or a statement of grounds for seeking review of an issue not preserved.

(a)(6) A statement of the case. The statement of the case must include, with citations to the record:

(a)(6)(A) the facts of the case, to the extent necessary to understand the issues presented for review;

(a)(6)(B) the procedural history of the case, to the extent necessary to understand the issues presented for review; and

(a)(6)(C) the disposition in the court or agency whose judgment or order is under review.

(a)(7) A summary of the argument. The summary of the argument must contain a succinct statement of the arguments made in the body of the brief.

(a)(8) An argument. The argument must explain, with reasoned analysis supported by citations to legal authority and the record, why the party should prevail on appeal.

(a)(9) A claim for attorney fees. A party seeking attorney fees for work performed on appeal must state the request explicitly and set forth the legal basis for an award.

(a)(10) A short conclusion. The conclusion may summarize the party's position and must state the specific relief sought on appeal.

(a)(11) A certificate of compliance. The filer must certify that the brief complies with:

(a)(11)(A) paragraph (g), governing the number of pages or words (the filer may rely on the word count of the word processing system used to prepare the brief); and

(a)(11)(B) Rule 21, governing public and private records.

(a)(12) An addendum. Subject to Rule 21(g), the addendum must contain a copy of:

(a)(12)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

(a)(12)(B) the order, judgment, opinion, or decision under review and any related minute entries, findings of fact, and conclusions of law; and

(a)(12)(C) materials in the record that are the subject of the dispute and that are of central importance to the determination of the issues presented for review, such as challenged jury instructions, transcript pages, insurance policies, leases, search warrants, or real estate purchase contracts.

(b) Reply brief. The appellant or petitioner may file a reply brief. A reply brief must be limited to responding to the facts and arguments raised in the appellee's or respondent's principal brief. The reply brief must include:

(b)(1) a table of contents, as required by paragraph (a)(2);

(b)(2) a table of authorities, as required by paragraph (a)(3);

(b)(3) an argument, as required by paragraph (a)(8);

(b)(4) a conclusion, as required by paragraph (a)(10); and

(b)(5) a certificate of compliance, as required by paragraph (a)(11).

(c) No further briefs; joining or adopting the brief of another party. No further briefs may be filed except with leave of the appellate court. More than one party may join in a single brief. Any party may adopt by reference any part of the brief of another.

(d) References in briefs to parties and others. Parties and other persons and entities should be referred to consistently by the term, phrase, or name most pertinent to the issues on appeal. These may include descriptive terms based on the person or entity's role in the dispute, or the designations used in the trial court or agency, or the names of parties. Unless germane to an issue on appeal, a party should not be described solely by the party's procedural role in the case. The identity of minors should be protected by use of descriptive terms, initials, or pseudonyms. In child welfare appeals, the surname of a minor must not be used nor may a surname of a minor's biological, adoptive, or foster parent be used.

(e) References to the record.

(e)(1) Statements of fact and references to proceedings in the court or agency whose judgment or order is under review must be supported by citation to the record. A citation must identify the page of the record as marked by the clerk.

(e)(2) A reference to an exhibit must set forth the exhibit number. If the reference is to evidence the admissibility of which is in controversy, the reference must set forth the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) References to legal authority. A reference to an opinion of the Utah Supreme Court or the Utah Court of Appeals issued on or after January 1, 1999, must include the universal citation (e.g., 2015 UT 99, ¶ 3; or 2015 UT App 320, ¶ 6).

(g) Length of briefs.

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

Type of brief	Page limit	Word limit
Legality of death sentence, principal brief	60	28,000
Legality of death sentence, reply brief	30	14,000
Other cases, principal brief	30	14,000
Other cases, reply brief	15	7,000

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

(h) Permission to file over length brief. Although over length briefs are disfavored, a party may file a motion for leave to file a brief that exceeds the page, or word limitations of this rule. The motion must state with specificity the issues to be briefed, the number of additional pages, or words requested, and good cause for granting the motion. A motion filed at least 7 days before the brief is due or seeking three or fewer additional pages, or 1,400 or fewer additional words need not be accompanied by a copy of the proposed brief. Otherwise, a copy of the proposed brief must accompany the motion. If the motion is granted, the responding party is entitled to an equal number of additional pages, or words without further order of the court. Whether the motion is granted or denied, the court will destroy the proposed brief.

(i) Sanctions. The court on motion or on its own initiative may strike or disregard a brief that contains burdensome, irrelevant, immaterial, or scandalous matters, and the court may assess an appropriate sanction including attorney fees for the violation.

(j) Notice of supplemental authorities. When authority of central importance to an issue comes to the attention of a party after briefing or oral argument but before decision, that party may file a notice of supplemental authority setting forth:

(j)(1) the citation to the authority;

(j)(2) a reference either to the page of the brief or to a point argued orally to which the authority applies; and

(j)(3) relevance of the authority. The body of the notice must not exceed 350 words. Any other party may file a response no later than 7 days after service of the notice. The body of the response must not exceed 350 words.

Advisory Committee Notes

2017 amendments

The 2017 amendments substantially change the organization and content of briefs. An important objective of the amendments is to present the party's case in logical order, in measured increments, and without unnecessary repetition. The principal brief of each party must meet the same requirements.

Paragraph (a)(4). A party's principal brief should include an introduction. The author should focus the introduction on the important features of the case. The introduction to one case may be only a few sentences, while a more complex case may require a few paragraphs or perhaps a few pages. The objective of the introduction is to give the reader a sense of the forest before detailing the trees.

Paragraph (a)(6). The statement of the case should describe the facts surrounding the dispute and procedural history of the litigation, but only to the extent that these are necessary to understand the issues. Describing a fact or circumstance or proceeding that has no bearing on the issues adds words of no value and distracts the reader. When stating a fact or describing a proceeding, a concise narrative is sometimes a better presentation than a numbered, itemized list. The party must cite to the places in the record that support the statement.

Paragraph (a)(8). The 2017 amendments remove the reference to marshaling. *State v. Nielsen*, 2014 UT 10, 326 P.3d 645, holds that the failure to marshal is not a technical deficiency resulting in default, but is a manner in which an appellant may carry its burden of persuasion when challenging a finding or verdict.

Paragraph (a)(11). The certificate of compliance is expanded to include not only compliance with the limit on the length of the brief, but also compliance with the public/private record requirements of Rule 21. Briefs, including the addendum containing trial court records, are public documents, increasingly available on the Internet. However, many trial court records are not public. If the author needs to include a non-public document in an addendum or non-public information in the body of the brief, Rule 21 requires that an identical, public brief be filed, but with the non-public information removed.

Paragraph (b). The purpose of a reply brief is to respond to the facts and arguments presented in an appellee's principal brief, not to reiterate points already made in the appellant's principal brief, nor to introduce new matters that should have been raised in that brief. Although not required, it is good practice to identify the point that is being responded to.

Paragraph (d). Describing the actors in a dispute and litigation presents a challenge to the author of a brief. Consistency promotes clarity; having chosen a term, phrase, name, or initials to define a party, person, or entity, the author should use it throughout a brief.

The name of a minor is often a private record and caution should be used to avoid including other names or information from which a minor might be identified. A minor's surname should be used only with the informed consent of a mature minor. The author may file a private brief for the parties and the court using the minor's name while simultaneously filing an otherwise identical public brief with the minor's name omitted, redacted, reduced to initials, or substituted with a placeholder name. A minor may be

referred to by a descriptive term such as "the child," "the 11-year old," or "the sister." The biological, adoptive, or foster parents of minors may be referred to by their relation to the minor, such as "mother," "adoptive parent," or "foster father."

While the name of an adult is usually a public record, the author should recognize the intrusion into the lives of victims, witnesses, and others who are not principals in the dispute caused by a brief published on the Internet. Also, the use of names is disfavored when clarity and discretion can be promoted by use of a reference based on the person's role in the dispute or the case. Parties and other persons and entities should generally be referred to by their role in the dispute, such as "employee," "Defendant Employer," or "the Taxpayer." Descriptions such as "witness" or "neighbor" can also be useful while respecting the interests of non-parties. The reference chosen should be the one most relevant to the matters on appeal.

Paragraph (g). Because of the increasing rarity of monospaced font, the 2017 amendments eliminated the number of lines as a measure of a brief's length. And to improve the clarity of Rule 24, the 2017 amendments moved the requirements for briefs in a cross-appeal to Rule 24A.

Effective November 1, 2017

Rule 24A. Briefs in cross-appeals.

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

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

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

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

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

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

(g) Length of briefs.

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

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

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

(h) Applicability of Rule 24. Except as provided in this rule, Rule 24 applies to briefs in a cross-appeal.

Effective November 1, 2017

Tab 3

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) Filing by inmate.

(f)(1) For purposes of this paragraph (f), an inmate is a person confined to an institution or committed to a place of legal confinement.

(f)(2) Papers filed by an inmate 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 contemporaneously filed notarized statement or written declaration setting forth the date of deposit and stating that first-class postage has been, or is being, prepaid, or that the inmate has complied with any applicable requirements for legal mail set by the institution. Response time will be calculated from the date the papers are received by the court.

(g) Filings containing other than public information and records. If a filing, including an addendum, contains non-public information, the filer must also file a version with all such information removed. Non-public information means information classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social, or any other information to which the right of public access is restricted by statute, rule, order, or case law.

Effective May 1, 2018

Rule 5. Service and filing of pleadings and other papers.

(a) When service is required.

(a)(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:

(a)(1)(A) a judgment;

(a)(1)(B) an order that states it must be served;

(a)(1)(C) a pleading after the original complaint;

(a)(1)(D) a paper relating to disclosure or discovery;

(a)(1)(E) a paper filed with the court other than a motion that may be heard ex parte; and

(a)(1)(F) a written notice, appearance, demand, offer of judgment, or similar paper.

(a)(2) Serving parties in default. No service is required on a party who is in default except that:

(a)(2)(A) a party in default must be served as ordered by the court;

(a)(2)(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);

(a)(2)(C) a party in default for any reason must be served with notice of any hearing to determine the amount of damages to be entered against the defaulting party;

(a)(2)(D) a party in default for any reason must be served with notice of entry of judgment under Rule 58A(d); and

(a)(2)(E) a party in default for any reason must be served under Rule 4 with pleadings asserting new or additional claims for relief against the party.

(a)(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is or need be named as defendant, any service required before the filing of an answer, claim or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

(b)(1) Whom to serve. If a party is represented by an attorney, a paper served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if:

(b)(1)(A) an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers being served relate to a matter within the scope of the Notice; or

(b)(1)(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a paper was last served on the attorney.

(b)(2) When to serve. If a hearing is scheduled 7 days or less from the date of service, a party must serve a paper related to the hearing by the method most likely to be promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

(b)(3) Methods of service. A paper is served under this rule by:

(b)(3)(A) except in the juvenile court, submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account;

(b)(3)(B) emailing it to

(b)(3)(B)(i) the most recent email address provided by the person to the court under Rule 10(a)(3) or Rule 76, or

(b)(3)(B)(ii) to the email address on file with the Utah State Bar~~, if the person has agreed to accept service by email or has an electronic filing account~~;

(b)(3)(C) mailing it to the person's last known address;

(b)(3)(D) handing it to the person;

(b)(3)(E) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(b)(3)(F) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(b)(3)(G) any other method agreed to in writing by the parties.

(b)(4) When service is effective. Service by mail or electronic means is complete upon sending.

(b)(5) Who serves. Unless otherwise directed by the court:

(b)(5)(A) every paper required to be served must be served by the party preparing it; and

(b)(5)(B) every paper prepared by the court will be served by the court.

(c) Serving numerous defendants. If an action involves an unusually large number of defendants, the court, upon motion or its own initiative, may order that:

(c)(1) a defendant's pleadings and replies to them do not need to be served on the other defendants;

(c)(2) any cross-claim, counterclaim avoidance or affirmative defense in a defendant's pleadings and replies to them are deemed denied or avoided by all other parties;

(c)(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all other parties; and

(c)(4) a copy of the order must be served upon the parties.

(d) Certificate of service. A paper required by this rule to be served, including electronically filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not apply to papers required to be served under paragraph (b)(5)(B**)** when service to all parties is made under paragraph (b)(3)(A).

(e) Filing. Except as provided in Rule 7(j) and Rule 26(f), all papers after the complaint that are required to be served must be filed with the court. Parties with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer may:

(f)(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code Section 46-1-16(7);

(f)(2) electronically file a scanned image of the affidavit or declaration;

(f)(3) electronically file the affidavit or declaration with a conformed signature; or

(f)(4) if the filer does not have an electronic filing account, present the original affidavit or declaration to the clerk of the court, and the clerk will electronically file a scanned image and return the original to the filer.

The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for inspection upon request until the action is concluded, including any appeal or until the time in which to appeal has expired.

84 **Advisory Committee Notes**

Tab 4

Supreme Court of Utah
450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Appellate Clerks' Office
Telephone 801-578-3900
Email:supremecourt@utcourts.gov

Catherine J. Dupont
Appellate Court Administrator

Nicole J. Gray
Clerk of Court

June 27, 2018

Dear Advisory Committee Chairs,

We are contacting each Supreme Court advisory committee to inform you of two initiatives we are requesting each advisory committee to undertake.

Our first request concerns our efforts to try to make the judicial system more accessible to unrepresented individuals who often find our rules and processes confusing and daunting. In the course of reviewing your committee's rules and proposed amendments, we want to challenge your committee to consider the impact of the rule on the unrepresented party and whether there is a simpler process or clearer language that can be recommended. When you submit a proposed rule or amendment to the Court for approval, we are interested in hearing from you about your consideration of how the rule may impact the unrepresented party. We acknowledge that this additional inquiry creates work for the committee, however, we believe that the goal of improving access to the courts is compelling.

Our second initiative concerns a change to the Advisory Committee Notes published with the rules. We request that each advisory committee review their Advisory Committee Notes to determine the following:

- Are the advisory notes accurate based on existing case law? Should an advisory note be eliminated or revised based on case law or other reasons?
- Does the advisory note explain the intent of the rule? If so, can the language of the rule be clarified so that a note regarding intent is not necessary?
- Does the advisory note provide historical context for the rule or an example that explains the application of the rule? If not, what is the purpose of the advisory note?

We recognize that each advisory committee is working on many projects and there are limited resources for undertaking the evaluation of advisory committee notes.

Please discuss this project with your committee and create a plan for the evaluation that works for your committee, and then report back to us regarding the committee's plan.

Finally, we want to express our gratitude to the advisory committee members for the hours of dedicated work provided by them to the courts.

Respectfully,

Matthew B. Durrant
Chief Justice