

Agenda

Advisory Committee on Rules of Appellate Procedure

October 3, 2019
12:00 to 1:30 p.m.

Scott M. Matheson Courthouse
450 South State Street, Salt Lake City, UT
Judicial Council Room

ACTION: Welcome and approval of September 2019 minutes	Tab 1	Paul C. Burke, Chairman
DISCUSSION AND ACTION: Continue discussion of Rule 21(a) (incorporating Standing Order No. 11)	Tab 2	Lisa Collins, Mary Westby, Nancy Sylvester
DISCUSSION AND ACTION: Rule 5—designating the record for granted petitions for interlocutory appeal (defining the record without requiring the trial court to formally prepare a record on appeal).	Tab 3	Mary Westby
DISCUSSION: Advisory committee notes project		Judge Orme, Alan Mouritsen, Rodney Parker
DISCUSSION: Unrepresented litigants and the appellate rules	Tab 4	Lisa Collins, Mary Westby
DISCUSSION: Judicial Efficiency		Christopher Ballard, Mary Westby, Judge Pohlman, Troy Booher, Nathalie Skibine
DISCUSSION: Other business		Paul C. Burke

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

Meeting schedule:

November 7, 2019	April 2, 2020
December 5, 2019	May 7, 2020
January 2, 2020	June 4, 2020
February 6, 2020	July 2, 2020
March 5, 2020	August 6, 2020

September 3, 2020

October 1, 2020

November 5, 2020

December 3, 2020

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, September 6, 2019
12:00 p.m. to 1:30 p.m.

PRESENT

Christopher Ballard
Troy Booher-Emeritus Member
Paul Burke- Chair
Patrick Burt
Lisa Collins
Tyler Green (by phone)
R. Shawn Gunnarson
Adam Pace – Recording Secretary
Rodney Parker
Judge Jill Pohlman
Clark Sabey
Nathalie Skibine
Scarlet Smith
Nancy Sylvester- Staff

EXCUSED

Cathy Dupont- Staff
Judge Gregory Orme
Alan Mouritsen
Mary Westby

1. Welcome and approval of June 2019 minutes

Paul Burke

Mr. Burke welcomed the committee to the meeting and introduced new committee members Patrick Burt, Tyler Green, Nathalie Skibine, and Scarlet Smith. He also noted that the Supreme Court had given Troy Booher emeritus status. Mr. Burke invited each member to disclose a brief summary of their practice area in accordance with Rule 11-101(4) of the Supreme Court Rules of Professional Practice. They each did so. Mr. Burke then invited a motion to approve the minutes from the June 2019 meeting.

Judge Pohlman moved to approve the minutes from the June 2019 meeting. Mr. Parker seconded the motion and it passed unanimously.

**2. Discussion and Action: Finalize URAP 45 and 49
(no comments received)**

Nancy Sylvester

Ms. Sylvester reported that the proposed amendments to appellate rules 45 and 49 were sent out for public comment, and no comments were received. She asked the committee to approve sending the amendments to the Supreme Court for final action.

Mr. Parker moved to send the proposed amendments to Appellate Rules 45 and 49 to the Supreme Court for consideration. Mr. Ballard seconded the motion and it passed unanimously.

**3. Discussion and Action: Continue discussion on incorporating
Standing Order No. 11 in Rule 21(a) (removal of outdated
language in (a)(3))**

**Mary Westby
Lisa Collins**

The committee continued its discussion of the proposed revisions to Appellate Rule 21(a) to incorporate Standing Order No. 11. Ms. Collins introduced proposed revisions to subsection (a)(2) to remove outdated language in lines 12-13 (about a single justice accepting a motion and transmitting it to the clerk). There were no objections to this proposal.

Judge Pohlman proposed rewording subsections (a)(1) and (a)(2) to clarify the intended distinction between timely service of “documents” and “briefs.” The committee discussed various ways to rephrase these paragraphs and reached a consensus to create subsections (a)(1), (a)(2), and (a)(3), to address emailing documents other than briefs; hand delivering documents other than briefs; and emailing, hand delivering, and postmarking briefs. Ms. Sylvester offered to present a clean draft of these changes for further discussion at next month’s meeting.

Judge Pohlman moved to table discussion of this item until next month’s meeting. Ms. Collins seconded the motion and it passed unanimously.

**4. Discussion and Action: Finalize URAP 25A-removing
requirement of AG telling reasons for declining to file
amicus brief**

Christopher Ballard

Mr. Ballard introduced a revised draft of Appellate Rule 25A that incorporates his two proposed changes that were discussed at length in the May and June 2019 meetings: 1) requiring that the Attorney General does not have to provide notice of its intent to file an amicus brief until it sees a responsive brief to the constitutional challenge; and 2) eliminating the requirement for the Attorney General to explain its reasons for declining to file an amicus brief.

Mr. Burke invited further discussion about the revised draft of Rule 25A. Mr. Sabey reported that the court has no objection to removing the requirement for the Attorney General to explain its reasons for declining to file an amicus brief. Mr. Booher asked if the rule allows an appellee to respond an amicus brief that is filed after the appellee files its brief. Mr. Ballard said that the changes in lines 63-70 were intended to address that issue, by permitting a party to move for permission to file a supplemental brief.

Mr. Ballard moved to adopt the revised draft of Rule 25A. Mr. Green seconded the motion and it passed unanimously.

**5. Discussion: Advisory committee notes project;
Unrepresented litigants and the appellate rules;
Judicial efficiency**

All

Mr. Burke explained the purpose of the three subcommittees that were recently formed, and asked for an update from each subcommittee about its work.

Appellate Advisory Note Subcommittee

Mr. Sabey suggested that the committee wait to receive a report from Judge Orme at next month's meeting.

Self-Represented Litigant Subcommittee

Ms. Collins reported that the subcommittee has finished updating the pro se forms and guides and on the court's website, and is ready to present to the committee. Mr. Burke said he would add this item to the next agenda.

Judicial Efficiency

Judge Pohlman reported that the subcommittee has circulated proposed language for discussion and is planning to meet on September 26, 2019. She will have more to report at next month's meeting.

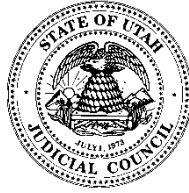
6. Other Business

Mr. Burke invited the committee members to email their ideas and suggestions about the appellate rules to him if they have any.

7. Adjourn

The meeting was adjourned. The next meeting will be held on October 3, 2019.

Tab 2



Administrative Office of the Courts

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

MEMORANDUM

Hon. Mary T. Noonan
Interim State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

To: Advisory Committee on the Utah Rules of Appellate Procedure
From: Nancy Sylvester *Nancy J. Sylvester*
Date: September 30, 2019
Re: Rule 21(a)

At our last meeting, the committee discussed ways to streamline the language of Rule 21, paragraphs (a)(1) and (a)(2). A proposal was made to create (a)(1), (a)(2), and (a)(3), which would address emailing documents other than briefs; hand delivering documents other than briefs; and emailing, hand delivering, and postmarking briefs. The committee decided to bring the rule back this month for further discussion after wordsmithing.

I started the wordsmithing process but the three paragraphs became a bit unruly in the process. So I've broken them down into two paragraphs with subparagraphs in each (addressing "papers other than briefs" and briefs). By the way, "papers" rather than "documents" seems to be a better term to use. Although I don't think the rules are always consistent, "papers" seems to refer to things that are filed with the court, whereas "documents" refer to exhibits or things of that nature.

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

Rule 21. Filing and service.

(a) **Filing.** Papers required or permitted to be filed by these rules ~~shall~~must be filed with the clerk of the appropriate court. Filing may be accomplished by mail addressed to the clerk, or by email sent to the appropriate court. Papers filed by email in the Supreme Court must be sent to supremecourt@utcourts.gov. Papers filed by email in the Court of Appeals must be sent to courtofappeals@utcourts.gov. Except as provided in paragraph (f):

(a)(1) papers other than briefs are timely if received:

(a)(1)(A) by 5 p.m. of the due date if hand delivered to the clerk; or

(a)(1)(B) by midnight of the due date if emailed to the appropriate court. ~~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.~~

(a)(2) briefs are timely if:

(a)(2)(A) postmarked by the due date;

(a)(2)(B) received by 5 p.m. of the due date if hand delivered to the clerk; or

(a)(2)(C) received by midnight of the due date if emailed to the appropriate court,

~~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~~must, 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~~must be made on counsel of record, or, if the party is not represented by counsel, upon the party at the last known address or email address provided to the appellate court. A copy of any paper required by these rules to be served on a party ~~shall~~must be filed with the court and accompanied by proof of service.

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

(d) **Proof of service.** Papers presented for filing ~~shall~~must 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.

32 The certificate of service may appear on or be affixed to the papers filed. If counsel of record is
33 served, the certificate of service ~~shall~~ must designate the name of the party represented by that
34 counsel.

35 (e) **Signature.** All papers filed in the appellate court ~~shall~~ must be signed by counsel of
36 record or by a party who is not represented by counsel. For papers filed by email, the sending of
37 the email is an electronic signature.

38 (f) **Filing by inmate.**

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

41 (f)(2) Papers filed by an inmate are timely filed if they are deposited in the institution's
42 internal mail system on or before the last day for filing. Timely filing may be shown by a
43 contemporaneously filed notarized statement or written declaration setting forth the date of
44 deposit and stating that first-class postage has been, or is being, prepaid, or that the inmate
45 has complied with any applicable requirements for legal mail set by the institution. Response
46 time will be calculated from the date the papers are received by the court.

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

53

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Tab 3

Rule 5. Discretionary appeals from interlocutory orders.

1. (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 filing of petition.* The petitioner must file with the clerk of the appellate court an original paper petition or an emailed petition, together with the fee required by statute. A petition filed by email in the Utah Supreme Court must be sent to supremecourt@utcourts.gov. A petition filed by email in the Utah Court of Appeals must be sent to courtofappeals@utcourts.gov. The petitioner must serve the petition on the opposing party and notice of the filing of the petition on the trial court. If an order is issued granting permission to appeal, the clerk of the appellate court will immediately give notice of the order by email or mail to the respective parties and will transmit a certified copy of the order, together with a copy of the petition, to the trial court where the petition and order will be filed instead of a notice of appeal.

(c) *Content of petition.*

(c)(1) The petition must 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" must 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.

(c)(3) The petitioner must 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 must not exceed 20 pages, excluding table of contents, if any, and the addenda.

42 (e) *Service in criminal and juvenile delinquency cases.* Any petition filed by a defendant in a
43 criminal case originally charged as a felony or by a juvenile in a delinquency proceeding must be
44 served on the Criminal Appeals Division of the Office of the Utah Attorney General.

45 (f) *Response; no reply.* No petition will be granted in the absence of a request by the court for a
46 response. No response to a petition for permission to appeal will be received unless requested by
47 the court. Within 14 days after an order requesting a response, any other party may oppose or
48 concur with the petition. Any response to a petition for permission to appeal is subject to the
49 same page limitation set out in paragraph (d). An original paper response or an emailed response
50 must be filed in the appellate court. A response filed by email in the Utah Supreme Court must
51 be sent to supremecourt@utcourts.gov. A response filed by email in the Utah Court of Appeals
52 must be sent to courtofappeals@utcourts.gov. The respondent must serve the response on the
53 petitioner. The petition and any response will be submitted without oral argument unless
54 otherwise ordered. No reply in support of a petition for permission to appeal will be permitted
55 unless requested by the court.

56 (g) *Grant of permission.* An appeal from an interlocutory order may be granted only if it appears
57 that the order involves substantial rights and may materially affect the final decision or that a
58 determination of the correctness of the order before final judgment will better serve the
59 administration and interests of justice. The order permitting the appeal may set forth the
60 particular issue or point of law which will be considered and may be on such terms, including the
61 filing of a bond for costs and damages, as the appellate court may determine. The clerk of the
62 appellate court will immediately give the parties and trial court notice by mail or by email of any
63 order granting or denying the petition. If the petition is granted, the appeal will be deemed to

64 have been filed and docketed by the granting of the petition. All proceedings subsequent to the
65 granting of the petition shall be as, and within the time required, for appeals from final judgments
66 except that no docketing statement under Rule 9 is required unless the court otherwise orders, no
67 cross-appeal may be filed under rule 4(d), and no record will be prepared or transmitted under
68 rules 11 and 12.

69 (h) *Stays pending interlocutory review.* The appellate court will not consider an application for a
70 stay pending disposition of an interlocutory appeal until the petitioner has filed a petition for
71 interlocutory appeal.

72 (i) *Cross-petitions not permitted.* A cross-petition for permission to appeal a non-final order is
73 not permitted by this rule. All parties seeking to appeal from an interlocutory order must comply
74 with paragraph (a) of this rule.

75 (j) *Record on appeal.*

76 (j)(1) The record on appeal consists of the order appealed, any associated findings and
77 conclusions, memorandum decisions, or opinions, motions and memoranda leading to the order,
78 and transcripts of related hearings. The trial court will not prepare or transmit the record under
79 rule 11(b) or 12(b). Citations must identify documents by name and date. A short form may be
80 used after the first citation.

81 (j)(2) If a hearing was held regarding the order on appeal, within five days after the grant of
82 permission to appeal, the appellant must order the transcript of the hearing as provided in rule
83 11(e)(1).

84 (j)(3) Other parts of the trial court record to which the parties wish to direct the appellate court's
85 attention may be designated in a party's brief.

Tab 4



Guide to Appealing a Case

**Appealing a District Court or
Juvenile Court (except child welfare cases)
to the
Utah Supreme Court or
Utah Court of Appeals**

Utah Supreme Court

450 S State Street, 5th Floor
PO Box 140210
Salt Lake City, UT 84114-0210
801-578-3900
supremecourt@utcourts.gov

Utah Court of Appeals

450 S State Street, 5th Floor
PO Box 140230
Salt Lake City, UT 84114-0230
801-578-3900
courtofappeals@utcourts.gov

The Appellate Clerks' Office is open Monday – Friday, 8:00 a.m. to 5:00 p.m. The office is closed all state and federal holidays.

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The purpose of this guide

This guide is for cases that are being appealed from a district court or juvenile court case (except child welfare) to the Utah Court of Appeals or the Utah Supreme Court.

There are separate guides for:

- Appealing a child welfare case from juvenile court
- Appealing a decision from an administrative agency (Writ of Review)
- Petition for Writ of Certiorari to the Utah Supreme Court

Not all cases are appealed to the Supreme Court or Court of Appeals. Decisions from the justice court (misdemeanor criminal, traffic and small claims cases), for example, are appealed to the district court. Some administrative agency decisions are appealed to the district court. See our [Appeals web page](#) for more information about these kinds of appeals.

Overview

What is an appeal?

Appellate Rule 3

An appeal is a review by the supreme court or court of appeals to determine if the juvenile or district court made a legal mistake. An appeal is started by filing a Notice of Appeal with the clerk of the court that made the decision to be appealed.

This guide describes the process for appealing a case to one of Utah's two appellate courts: the **Utah Supreme Court** or the **Utah Court of Appeals**.

An appellate court does not retry the case, take evidence, or weigh the credibility of witnesses. The appeal must be based on the record created in the trial court, and the person who is appealing must show that the trial court made a mistake. If there was a mistake, it must have been important enough that it could have made a difference in the outcome of the case.

Who can appeal?

Only a party in the original case can appeal the decision of the trial court. A party can represent himself or herself, but cannot represent anyone else, such as another person or business. Only an attorney who is licensed to practice in Utah can represent someone in an appeal.

Final judgment or order

The final **judgment** or **order** is the final result in a case, and it ends all claims by all parties. There will be no more decisions from the judge.

The judgment or order must be in writing. Sometimes the judge makes an order on the record but there is no written order signed by the judge. A party must then prepare and submit to the trial court a written order for the judge to sign before the appeal can proceed.

Jurisdiction

The Utah Supreme Court and the Utah Court of Appeals have different jurisdiction – or authority – to hear appeals of different types of cases from different trial courts.

The Utah Supreme Court has the right to transfer many of its cases to the Utah Court of Appeals for decision. The appellant might file a case with the Supreme Court, which could then be transferred to the Court of Appeals. The process is sometimes called “pouring” a case. If a case is transferred, the Court of Appeals will be the court that reviews the appeal.

Fees

Appellate Rule 3

When the Notice of Appeal is filed, the appellant must pay a filing fee of \$225.00 and a cost bond of \$300.00 to the trial court. No filing fee or cost bond is required for criminal cases or juvenile court (except child welfare) cases.

The cost bond is like an insurance policy the appellant is buying to cover expenses the appellee might have to defend against the appeal. The appellant may ask the trial court to return the bond once the appeal is complete.

If the appellant can't pay the required fees, they can ask the trial court to waive the filing fee if they can show that they meet certain financial/income guidelines. The appellant must fill out and file a [Motion to Waive Fees](#) with the trial court. If the appellant also wants to waive the cost bond, they must specifically ask for that in their motion.

Even if a waiver of the filing fee and cost bond is approved by the trial court, the appellant will still have to pay other costs associated with the appeal. For example, if the appellant requests a transcript of the trial court proceedings, then they must pay the court reporter to prepare it. The appellate courts also charge for copies of documents.

Filing

Appellate Rule 21

To *file* a document means to give it to the Appellate Clerk's Office in Salt Lake City. Parties can file papers with the court in person or by mail. Parties may also file some documents by email, subject to the following rules:

- If a document other than a brief is delivered by email, a paper copy does not need to be delivered.
- If a brief is delivered by email, paper copies of the brief must be delivered to the court no more than 7 days after filing by email.
- Documents filed by email will be considered timely filed if the email is received before midnight on the last day for filing.
- If a party emails a document to the court as an attachment, an automatic response will be emailed as confirmation of receipt of the document.
- If a party emails a document to the court, the party assumes the risk for any problems that may occur.

Email Addresses:

supremecourt@utcourts.gov

courtofappeals@utcourts.gov

* The drop box outside the Matheson Courthouse is for the district court only. Do not put appellate court documents in that box.

Non-Public Information

Records are classified as public, private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social by Code of Judicial Administration Rule 4-202.02. The right of public access might also be restricted by Title 63G, Chapter 2, Government Records Access and Management Act, by other statutes, rules, or case law, or by court order.

If a filing, including an addendum, contains non-public information, the filer must also file a public version with all such information removed. Utah Rule of Appellate Procedure 21(g) requires the filer to file an un-redacted (complete) version for the court and a version for the public that does not contain the confidential information.

See the court's [Non-Public Records page](#) for more information about classification of court records.

Service

Appellate Rule 21

To *serve* a document means to give a copy of it to all other parties. Any document you file with the appellate court must also be served on all of the other parties in the appeal. If the other side has an attorney, the attorney must be served. If the other side does not have an attorney, the other party must be served at their last known address or email address provided to the appellate court.

Documents may be served by mail, hand delivery or email.

A Certificate of Service must be attached to all documents filed with the appellate court. The Certificate of Service tells the court when and how service was made, who was served, and where they were served. The court will not act on any document unless a Certificate of Service is attached to it.

- Copies of all documents filed with the appellate court must, at or before the time of filing, be served on all other parties to the appeal or review.
- A copy of any document required by the rules to be served on a party must be accompanied by a certificate of service when filed with the court.
- The time for filing a response to a document served by email runs from the date the document was emailed to the court.
- The time for filing a response to a document served by mail runs from the date of mailing listed on the certificate of service, and three days will be added to the time. Most often the total time for response to any motion served by mail will be 17 calendar days from the date of mailing.
- In an appeal of a criminal case, the prosecuting attorney must also be served. Misdemeanor appeals must be served on the city or county attorney. Felony appeals must be served on the attorney general:

Attorney General
Appeals Division
160 East 300 South
PO Box 140854
Salt Lake City, UT 84114-0854

There are special requirements for serving briefs. More information is provided in the **Briefs** section.

Asking for More Time (Motion for Extension of Time)

Appellate Rule 22(b)

In some situations, a party may ask the court for more time to meet a deadline by filing a Motion for Extension of Time. The Motion for Extension of Time is subject to the following requirements:

- The motion must be filed before the deadline.
- The motion must include:
 - a good reason for extending the deadline
 - whether extensions have been requested before, and if so, how many times and how long those extensions were
 - when the deadline is
 - what the party would like the new deadline to be

The appellate courts do not favor requests to extend a deadline by more than 30 days.

If the appellant wants to ask for more time to file the Notice of Appeal, they must file the request in the trial court. Only the trial court can extend the time to file the Notice of Appeal. To ask the trial court for more time, see the forms on the [Motions page](#) on the court's website.

Parties can agree to extend the deadline to file briefs. This agreement is called a "stipulation," and must be filed with the appellate court. A stipulation cannot extend the time by more than 30 days and will only be allowed if it is filed before the deadline expires.

Appellate Mediation

Appellate Rule 28A

Some cases filed with the Court of Appeals will be referred to the Appellate Mediation Office to see if it is possible to resolve the disputed issues through mediation. Resolving disputes using mediation is always less expensive than going to court, and parties are able to participate in the resolution process rather than have a resolution imposed on them. This is a free service of the court.

The appellate court mediator schedules parties to a mediation conference either in person or by phone. The mediator will explain the process and identify the issue and the interests and needs to each party.

The mediator will then meet privately with each party to discuss the strengths and weaknesses of the case, the risks of proceeding with the appeal, and options for settlement. Following these discussions, the participants will review options for resolution and begin negotiating settlement. If an agreement is reached, the mediator will meet with the participants to discuss the details of settlement.

More information about appellate mediation is available on the court's website:
<http://www.utcourts.gov/mediation/med-coa.html>

Procedures

Notice of Appeal Timeline

Notice of Appeal	Due 30 days after final order of trial court. (Some appeals are due earlier than 30 days.) Filed with the trial court.
Transcript Request	Due 10 days after filing of Notice of Appeal. Filed with the appellate court.
Docketing Statement	Due 21 days after filing of Notice of Appeal. Filed with the appellate court.
Record/Record Index	Prepared by District Court and filed with the appellate court.
Appellant's Brief	Due 40 days after District Court's filing of record/record index. Notice will be sent to the parties by mail or email with the record index and due date for the brief.
Appellee's Brief	Due 30 days after filing of appellant's brief.
Appellant's Reply Brief	Optional, due 30 days after filing of appellee's brief.
Placed on Court's Calendar	Court will notify parties if it schedules oral argument.
Under Advisement	Court is preparing its decision.
Opinion/Decision Filed	Court issues written opinion or decision.
Petition for Rehearing	Optional, due 14 days after the decision is issued. (URAP 35)
Petition for Writ of Certiorari	Optional, due 30 days after the decision is issued. (URAP 45) (To the Utah Supreme Court from a decision of the Utah Court of Appeals)

Remittitur

Generally issued 15 days after the opinion is filed in the Supreme Court and 35 days after opinion is filed in the Court of Appeals

Notice of Appeal

Appellate Rule 3 and 4

The appeal process starts when someone files a Notice of Appeal within the time allowed to appeal. The party filing the Notice of Appeal is called the **appellant**, and the party the appeal is against is called the **appellee**.

The Notice of Appeal is filed with the trial court. If the case was heard in district court, the Notice of Appeal is filed with the district court. If the case was heard in juvenile court, the Notice of Appeal is filed with the juvenile court.

In most cases, the appellant must file the Notice of Appeal with the clerk of the trial court within 30 days after the date of entry of the final judgment or order being appealed.

Some appeals must be filed sooner than 30 days. For example, when an order is entered in an eviction case, the notice of appeal must be filed within 10 days after the date of entry.

If the appellant wants to ask for more time to file the Notice of Appeal, they must file the request in the trial court. Only the trial court can extend the time to file the Notice of Appeal. To ask the trial court for more time, see the forms on the [Motions page](#) on the court's website. URAP 4(e).

The appellant must also pay a filing fee and a cost bond to the trial court, or ask to have those costs waived as described in the **Fees** section above.

After the Notice of Appeal is filed

After the Notice of Appeal is filed and the filing fee and cost bond have been paid to the trial court, the trial court will certify a copy of the Notice of Appeal to the appellate court.

Once the Appellate Clerks' Office receives the Notice of Appeal, it will send a notice to the appellant that will include the appellate case number and the filing deadlines for the required documents. The appellee(s) will also receive a copy of the notice.

Transcripts

Appellate Rule 11(e)(1)

Within 10 days of filing the Notice of Appeal, the appellant must ask for the transcript to be prepared.

A transcript is a word-for-word typing of everything that was said on the record during a hearing or the trial held in the trial court. It is **not** the audio recording of a hearing or trial. A transcript is important because it is what the appellate court uses to review the trial court proceedings.

The appellant must request a transcript using the [online request form](#), unless they are incarcerated or otherwise unable to use the online form, in which case they may use a print form to make the request.

The appellant must serve a copy of the automated response from the online transcript request (or a copy of the transcript request form, if using the print form) on the other party by mail, email, or hand delivery.

The appellant must also fill out a Certificate of Service form and file it with the court. The certificate of service tells the court when and how the other party was served with the document, and the name(s) and address(es) of whoever was served.

Cost of Transcripts

The appellant must pay a certified court transcriber the estimated cost of the transcript, and must serve a copy of the transcript on the appellee(s). The cost of transcripts is set by Utah Code Section 78A-2-408 at the following rates:

- \$4.50/page for regular service (within 30 days) Approximately \$250.00/court hour
- \$6.75/page for 1-3 day service
- \$9.00/page for 24 hour service

If the appellant **can't afford the cost of preparing** a transcript, or if a transcript is unavailable, it is possible for the appellant to prepare their own transcript of a court proceeding. The appellant must follow the procedures described in URAP 11(g):

- Appellant prepares a statement of evidence or proceedings. If an audio recording is available, they can use it to put the statement together.
- Appellant must serve the statement on the appellee, who may object or propose amendments within 10 days.
- The statement and any objections or proposed amendments must be submitted to the trial court for approval. If the judge approves, the statement will be sent to the appellate court as a record of the proceedings.

If the appellant is an **indigent prisoner**, the prosecuting agency in the trial court proceeding is responsible for the cost of transcripts in any first appeal of right in a criminal case. See Utah Code Section 77-32-305.

In very rare cases the appellant **does not need a transcript** for the appeal. For example, maybe there was no hearing or trial in the case. If the appellant believes that a transcript is not necessary for the appeal, they must file a Certificate that Transcript is Not Requested with the appellate court. Remember, the transcript is what the appellate court uses to review the lower court's decision. If it is not provided to the appellate court, the chances of winning on appeal drop dramatically.

Docketing Statement

Appellate Rule 9

The Docketing Statement is the document the appellant uses to show the appellate court that it has jurisdiction to consider the appeal. It is also how the appellant identifies at least one substantial issue for review.

A “substantial issue” is a legal mistake the appellant believes the trial court made. The appellant is focusing the appellate court’s attention on a specific and significant error that the trial court made.

Here are two examples of simplified statements of substantial issues in a divorce case:

- The trial court made a mistake in setting the amount of child support.
- The trial court made a mistake in dividing the marital property.

The Docketing Statement is not the place for an explanation of *why* something was a mistake. That should be saved for the briefing stage, which is described later in this guide. Instead, this is where the appellant identifies *what* the mistake was that the appellate court should review.

The appellant must file a Docketing Statement (original and two copies) with the appellate court within 21 days from the filing of the Notice of Appeal.

The appellant must also serve a copy of the Docketing Statement on the appellee(s). Failure to file the docketing statement may result in dismissal of the appeal.

After the Docketing Statement is filed

The appellate court will review the Docketing Statement. If the court determines it has jurisdiction and that there are appealable issues, then the case will proceed to the briefing stage.

Motion for Summary Disposition

Appellate Rule 10

The appellate court may send to the parties a Motion for Summary Disposition which says that the court is considering dismissing or denying the appeal for one or both of these reasons:

- It appears that the appellate court does not have jurisdiction
- It needs clarification about the issue(s) on appeal. URAP 10(e) says the court may dismiss an appeal if there is no “substantial” issue presented.

The parties may each file a response (sometimes called a “memorandum”) explaining why they think the court should – or should not – dismiss or deny the appeal. The court will tell the parties when the response is due and how many copies must be filed with the court.

The court will review the response(s). If the court determines that it does not have jurisdiction or that the appeal is without merit, it will issue a written decision without further proceedings.

Briefing Process

Appellate Rules 24, 26 & 27

The briefs are the single most important part of the appellate process. Briefs are the written arguments of parties stating the reasons why the appellate court should rule in their favor. This may be the only time the parties will make their argument to the court, so it's important that the parties make their briefs clear and persuasive.

Appellant's Brief

The appellant's brief is what the appellant uses to persuade the appellate court that the trial court made a specific error or errors in law, fact, or procedure that affected the outcome of the case. The brief should focus on the law and the facts, and should explain how the law should apply to the facts. Rule 24 explains what should be included in a brief and how it should be organized.

The appellant may also provide an addendum which includes materials the appellant believes are of central importance to the appeal.

Appellee's Brief

The appellee's brief is due 30 days after the appellant's brief is filed. The appellee can respond to the arguments made by the appellant and explain why the decision in the trial court was correct.

The appellee's brief must comply with most of the same rules as the appellant's brief, except that it does not have to include a statement of the issues unless the appellee does not feel the appellant's statement is complete or correct.

Reply Brief

The appellant may file a reply brief in answer to the appellee's brief. This optional brief must be filed within 30 days after the appellee's brief is served. See Appellate Rule 24(c) for the requirements of this brief. The reply should be limited to answering any new matters set forth in the appellee's brief.

Example Briefs

Parties can review Utah appellate court briefs to see how they are constructed. Briefs are available in print at the Utah State Law Library, the BYU Howard W. Hunter Law Library and the University of Utah James E. Faust Law Library.

Number of copies and service

Multiple briefs must be filed with the court and served on the other party:

Court of Appeals: One brief with original signature and 7 copies.

Supreme Court: One brief with original signature and 9 copies.

Briefs are considered **filed** on the date of the postmark if first-class mail is used.

Two copies of the brief must be served on the other party. The briefs must include a Certificate of Service showing how copies were served on the other party. See the Checklist for Briefs for more information about briefing requirements.

Oral Argument

Appellate Rule 29

After the briefs are filed, the appellate court will set the case on the next available calendar for consideration and decision. The court will either make its decision based on the briefs, or will schedule oral argument.

- Most **Court of Appeals** cases are decided solely on the briefs. Oral argument is held only if the court determines that oral argument will significantly help the decision process.

- In cases before the **Supreme Court**, oral argument will be held unless the court decides it will not help the decision process.

The parties use oral argument to present their arguments in person to the judges and to respond to any questions the judges may have.

The appellate judges have read the briefs filed in the case and will be familiar with the facts, issues and law on the case. Parties should not use their argument time to simply repeat what they have written in the briefs. Instead, parties should focus on the legal question(s) that the appellate court has agreed to review.

- In the **Court of Appeals**, the total time for all arguments is 30 minutes. The appellant and the appellee each get 15 minutes.
- In the **Supreme Court**, the total time for all arguments is 40 minutes. The appellant and the appellee each get 20 minutes.

To prepare for oral argument in the Supreme Court, parties may want to review the [Supreme Court Practitioner's Guide to Oral Argument](#).

Oral arguments are public. Anyone may observe them in person or listen to archived recordings of previous arguments on the courts' website to get an idea of the procedure.

- [Oral argument calendars](#)
- [Supreme Court oral argument recordings](#)
- [Court of Appeals oral argument recordings](#)

Appellate Court Decision

Appellate Rule 30

The appellate court will issue a written decision in every case, regardless of whether oral argument was held. The decision may be an opinion, a memorandum opinion, a *per curiam* (by the court as a whole) decision, or an order.

The decision of the court does not have to be unanimous, but a majority must agree on the outcome. Sometimes judges will write opinions separate from the majority opinion:

- Dissenting opinion – the authoring judge disagrees with the majority opinion.
- Concurring opinion – the authoring judge agrees with the majority opinion, but for different reasons.

Court staff have no way of knowing when a decision will be issued. Depending on the complexity of the case, the decision process takes some time, which means it could be months before a decision is issued. The judges need time to research and debate the issues and write the opinion. The written opinion affects the individuals involved in the case, but it may also have a broader impact on the law in Utah.

The appellate court could make one of the following decisions in a case, or a combination of these decisions (such as reversed in part and affirmed in part):

- Affirm – the court has concluded that the trial court was correct, and its decision stands.
- Remand – the court is returning the case to the trial court to make a finding of fact in one or more aspects of the case.
- Reverse – the court has decided that the trial court's decision was in error, and has undone the decision of the trial court.

[Appellate court opinions](#) are available on the court's website.

Options After the Written Decision is Issued

Once the Court of Appeals has issued its decision, the parties have several options:

- Accept the decision of the Court of Appeals
- File a Petition for Rehearing
- File a Petition for Writ of Certiorari with Utah Supreme Court

Once the Supreme Court has issued its decision, the parties have two options:

- Accept the decision of the Supreme Court
- File a Petition for Rehearing

Petition for Rehearing

Appellate Rule 35

If one of the parties believes the appellate court made an error in its written decision, they can ask the court to reconsider its decision by filing a Petition for Rehearing.

The petition should not simply repeat the arguments already made. It must include the points of law or fact the party thinks the court has overlooked or misunderstood. A Petition for Rehearing must be made in good faith; it cannot be made for delay. See URAP 27 for format requirements.

The petition must be filed with the clerk within 14 days after the court's decision is entered. The court will not accept the Petition for Rehearing if it is not filed by the

deadline. The court will not accept more than one Petition for Rehearing. Most petitions for rehearing are not granted.

Petition for Writ of Certiorari in the Utah Supreme Court

Appellate Rule 49

If a party's Petition for Rehearing is denied by the Court of Appeals the party may file a Petition for Writ of Certiorari in the Utah Supreme Court.

A party may also file the Petition for Writ of Certiorari directly after the Court of Appeals decision is entered– they do not have to first file a Petition for Rehearing in the Court of Appeals.

The Petition for Writ of Certiorari must be filed in the Supreme Court within 30 days of the final decision of the Court of Appeals. See our separate [Guide to Filing a Petition for Writ of Certiorari](#) on the courts' website for more information.

The Supreme Court is the court of last resort in Utah. If a party's Petition for Writ of Certiorari is denied by the Utah Supreme Court, there are no more appeals available in the Utah State Courts.

Remittitur

Appellate Rule 36

Once the case is completely finished in the appellate court, the appellate court returns the record to the trial court and gives up its jurisdiction. This process is called remittitur.

The Supreme Court generally issues the remittitur 15 days after the decision is filed. The Court of Appeals generally issues the remittitur 35 days after the decision is filed.

Appellate Rules

The Utah Rules of Appellate Procedure (also called Appellate Rules or URAP) govern appeals cases. The Appellate Rules specify the documents which are required, deadlines for filing documents, document format, etc. This guide explains some of the basic rules that you must follow in an appeal, but it does not explain all of them. You are responsible for familiarizing yourself with the Appellate Rules and following them.

The current [Utah Rules of Appellate Procedure](#) are available on the courts' website. The Appellate Rules are also available in print at the law libraries listed below, and at some public libraries.

Utah State Law Library

450 S. State Street, Rm. W-13

Salt Lake City

801-238-7990
www.utcourts.gov/lawlibrary/
Brigham Young University
Howard W. Hunter Law Library

801-422-3593
http://lawlib.byu.edu/
University of Utah

James E. Faust Law Library
383 S. University Street
801-581-6184
www.law.utah.edu/library/

Other Resources

General information about Appeals is available on the court's [Appeals web page](#).

Representing Yourself in an Appeal

People who represent themselves in court without the help of an attorney are called *pro se* or self-represented parties. Self-represented parties are responsible for learning about and following the rules and procedures that govern the court process.

The appellate process is very detailed and can be confusing. The appellate courts highly recommend that parties get the help of an attorney.

Appellate clerks' staff can provide general information about court rules and procedures, but they cannot draft documents or participate directly or indirectly in any court action. Court staff cannot provide advice about what the law is or how it applies to someone's situation.

A self-represented party can only represent himself or herself. They may not represent another person, company, or entity such as a club or association that includes other individuals.

See the court's [Finding Legal Help web page](#) for information about ways to get the help of an attorney.



Guide to Filing a Petition for Review

Appealing a Government Agency Decision to the Utah Supreme Court or Utah Court of Appeals

Utah Supreme Court

450 S State Street, 5th Floor
PO Box 140210
Salt Lake City, UT 84114-0210
801-578-3900
supremecourt@utcourts.gov

Utah Court of Appeals

450 S State Street, 5th Floor
PO Box 140230
Salt Lake City, UT 84114-0230
801-578-3900
courtofappeals@utcourts.gov

The Appellate Clerks' Office is open Monday – Friday, 8:00 a.m. to 5:00 p.m. The office is closed all state and federal holidays.

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The purpose of this guide

This guide is for cases that are being appealed from a government agency decision to the Utah Court of Appeals or the Utah Supreme Court. For example, an appeal from a final decision of the Workforce Appeals Board would be under this guide.

There are separate guides for:

- Appealing a decision from the district or juvenile court to the Court of Appeals or Supreme Court
- Appealing a child welfare case from juvenile court
- Petition for Writ of Certiorari to the Utah Supreme Court

Not all cases are appealed to the Supreme Court or Court of Appeals. Some administrative agency decisions are appealed to the district court. See our [Appeals web page](#) for more information about these kinds of appeals.

Overview

What is a Petition for Review?

A petition for review is the review of a final decision or order of a governmental agency. “Agency” includes agencies, boards, commissions, committees or officers. If you think the agency made a legal mistake in its decision, in appropriate cases you can file an appeal in the form of a petition for review. The petition for review is filed in the appellate court.

An appeal is a review by the supreme court or court of appeals to determine if the administrative agency made a legal mistake.

This guide describes the process for appealing an agency decision to one of Utah’s two appellate courts: the **Utah Supreme Court** or the **Utah Court of Appeals**.

An appellate court does not retry the case, take evidence, or weigh the credibility of witnesses. The appeal must be based on the record created in the agency hearing, and the person who is appealing must show that the agency made a mistake. If there was a mistake, it must have been important enough that it could have made a difference in the outcome of the case.

Jurisdiction

The Utah Supreme Court and the Utah Court of Appeals have different jurisdiction – or authority – to hear appeals in different types of cases from different agencies.

Figuring out which court can hear the appeal from an administrative agency proceeding is often difficult and confusing. The best source of information is the letter you receive from the agency that comes with its decision. Many agencies will tell you which court can hear your appeal and how much time you have to file the appeal. Sometimes you can find that information on an agency's website.

An appeal of an agency decision from a **formal** proceeding goes to either the Utah Court of Appeals or the Utah Supreme Court.

Court of Appeals

Utah Code [Section 63G-4-403](#) and [Section 78A-4-103](#)

Appeal from **formal** proceedings of

- Career Service Review Board
- Department of Employment Security
- Industrial Commission
- [Labor Commission](#)
- [Workforce Services](#)
- Other state agencies not already reserved for the Supreme Court or the Juvenile Court

Supreme Court

Utah Code [Section 63G-4-403](#) and [Section 78A-3-102](#)

Appeal from **formal** proceedings of

- [Board of Oil, Gas, and Mining](#)
- Executive Director of the [Department of Natural Resources](#) reviewing actions of the [Division of Forestry, Fire, and State Lands](#)
- [Public Service Commission](#)
- [School and Institutional Trust Lands Board of Trustees](#)
- State Engineer
- [State Tax Commission](#)

An appeal of an agency decision from an **informal** proceeding is a new hearing (called a de novo review) in the district or juvenile court. Utah Code [Section 63G-4-402\(2\)](#) governs the content of complaint. See our web page [Appealing an Administrative Agency Decision](#) for information about appeals to the district or juvenile court.

The Utah Supreme Court has the right to transfer many of its cases to the Utah Court of Appeals for decision. The petitioner might file a case with the Supreme Court, which could then be transferred to the Court of Appeals. The process is sometimes called

“pouring” a case. If a case is transferred, the Court of Appeals will be the court that reviews the appeal.

Fees

Appellate Rule 3

The filing fee for a Petition for Review is \$360, and is paid to the appellate court. If the petitioner is seeking review of a decisions by Workforce Services regarding unemployment benefits, there is no filing fee.

If the petitioner can't pay the required fees, they can ask the court to waive the filing fee if they can show they meet certain financial/income guidelines. The petitioner must fill out and file a [Motion to Waive Fees](#).

Even if a waiver of the filing fee is approved, the petitioner will still have to pay other costs associated with the appeal. The appellate courts also charge for copies of documents.

Filing

Appellate Rule 21

To *file* a document means to give it to the Appellate Clerk's Office in Salt Lake City. Parties can file papers with the court in person or by mail. Parties may also file some documents by email, subject to the following rules:

- If a document other than a brief is delivered by email, a paper copy does not need to be delivered.
- If a brief is delivered by email, paper copies of the brief must be delivered to the court no more than 7 days after filing by email.
- Documents filed by email will be considered timely filed if the email is received before midnight on the last day for filing.
- If a party emails a document to the court as an attachment, an automatic response will be emailed as confirmation of receipt of the document.
- If a party emails a document to the court, the party assumes the risk for any problems that may occur.

Email Addresses:

supremecourt@utcourts.gov

courtofappeals@utcourts.gov

* The drop box outside the Matheson Courthouse is for the district court only. Do not put appellate court documents in that box.

Non-Public Information

Records are classified as public, private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social by Code of Judicial Administration Rule 4-202.02. The right of public access might also be restricted by Title 63G, Chapter 2, Government Records Access and Management Act, by other statutes, rules, or case law, or by court order.

If a filing, including an addendum, contains non-public information, the filer must also file a public version with all such information removed. Utah Rule of Appellate Procedure 21(g) requires the filer to file an un-redacted (complete) version for the court and a version for the public that does not contain the confidential information.

See the court's [Non-Public Records page](#) for more information about classification of court records.

Service

Appellate Rule 21

To *serve* a document means to give a copy of it to all other parties. Any document you file with the appellate court must also be served on all of the other parties in the appeal. If the other side has an attorney, the attorney must be served. If the other side does not have an attorney, the other party must be served at their last known address or email address provided to the appellate court.

Documents may be served by mail, hand delivery or email. The time for filing a response to a document filed by email runs from the date the document was emailed to the court.

A Certificate of Service must be attached to all documents filed with the appellate court. The Certificate of Service tells the court when and how service was made, who was served, and where they were served. The court will not act on any document unless a Certificate of Service is attached to it.

- Copies of all documents filed with the appellate court must, at or before the time of filing, be served on all other parties to the appeal or review.
- A copy of any document required by the rules to be served on a party must be accompanied by a certificate of service when filed with the court.
- The time for filing a response to a document served by email runs from the date the document was emailed to the court.

- The time for filing a response to a document served by mail runs from the date of mailing listed on the certificate of service, and three days will be added to the time. Most often the total time for response to any motion served by mail will be 17 calendar days from the date of mailing.

There are special requirements for serving briefs. More information is provided in the **Briefs** section.

Asking for More Time (Motion for Extension of Time)

Appellate Rule 22(b)

In some situations, a party may ask the court for more time to meet a deadline by filing a Motion for Extension of Time. The Motion for Extension of Time is subject to the following requirements:

- The motion must be filed before the deadline.
- The motion must include:
 - a good reason for extending the deadline
 - whether extensions have been requested before, and if so, how many times and how long those extensions were
 - when the deadline is
 - what the party would like the new deadline to be

The appellate courts do not favor requests to extend a deadline by more than 30 days.

Parties can agree to extend the deadline to file briefs. This agreement is called a “stipulation,” and must be filed with the appellate court. A stipulation cannot extend the time by more than 30 days and will only be allowed if it is filed before the deadline expires.

Appellate Mediation

Appellate Rule 28A

Some cases filed with the Court of Appeals will be referred to the Appellate Mediation Office to see if it is possible to resolve the disputed issues through mediation. Resolving disputes using mediation is always less expensive than going to court, and parties are able to participate in the resolution process rather than have a resolution imposed on them. This is a free service of the court.

The appellate court mediator schedules parties to a mediation conference either in person or by phone. The mediator will explain the process and identify the issue and the interests and needs to each party.

The mediator will then meet privately with each party to discuss the strengths and weaknesses of the case, the risks of proceeding with the appeal, and options for

settlement. Following these discussions, the participants will review options for resolution and begin negotiating settlement. If an agreement is reached, the mediator will meet with the participants to discuss the details of settlement.

More information about appellate mediation is available on the court's website:
<http://www.utcourts.gov/mediation/med-coa.html>

Procedures

Petition for Review Timeline

Petition for Review	Due 30 days after final order of agency. (Or within the time prescribed by statute.)
Transcript Request	Due 10 days after filing of Petition for Review except for Workforce Services appeals
Docketing Statement	Due 21 days after filing of Petition for Review.
Record/Record Index	Prepared by agency and filed with the appellate court.
Petitioner's Brief	Due 40 days after court notifies petitioner that briefs are required.
Respondent's Brief	Due 30 days after filing of petitioner's brief.
Petitioner's Reply Brief	Optional, due 30 days after filing of respondent's brief.
Case at Issue, Ready to Calendar	
Oral Argument	Court will notify parties if it decides to schedule oral argument.
Under Advisement	Court is preparing its decision.
Opinion/Decision Filed	Court issues written opinion or decision.
Petition for Rehearing	Optional, due 14 days after the decision is issued. (URAP 35)
Remittitur	Generally issued 15 days after the opinion is filed in the Supreme Court and 35 days after opinion is filed in the Court of Appeals

Petition for Review

Appellate Rule 14

The process for appealing an administrative agency decision starts when someone files a Petition for Review with the Utah Supreme Court or Utah Court of Appeals within the time allowed to appeal. The party filing the Petition for Review is called the **petitioner**, and the party the appeal is against is called the **respondent**.

The petitioner must file the Petition for Review within the time prescribed by statute. If there is no statute, the appeal must be filed within 30 days after the date of entry of the final judgment or order being appealed.

The petitioner must also pay a filing fee, or ask to have those costs waived as described in the **Fees** section above.

Transcripts

Appellate Rule 11(e)(1)

A transcript is a word-for-word typing of everything that was said on the record during an administrative hearing. It is **not** the audio recording of a hearing or trial. A transcript is important because it is what the appellate court uses to review the agency proceedings.

Within 10 days of filing the Petition for Writ of Review, the petitioner must request a transcript from the agency. A copy of the request must also be mailed to the clerk of the appellate court. Each agency sets its own pricing for transcripts. Note: Workforce Services prepares their transcripts automatically, so it is not necessary to request a transcript if the appeal involves that agency.

The appellant must serve a copy of the transcript request on the other party by mail, email, or hand delivery. The appellant must also fill out a Certificate of Service form and file it with the court. The certificate of service tells the court when and how the other party was served with the document, and the name(s) and address(es) of whoever was served.

In very rare cases the petitioner **does not need a transcript** for the appeal. For example, maybe there was no hearing in the case. If the petitioner believes that a transcript is not necessary for the appeal, they must file a Certificate that Transcript is Not Requested with the appellate court. Remember, the transcript is what the appellate court uses to review the agency's decision. If it is not provided to the appellate court, the chances of winning on appeal drop dramatically.

Docketing Statement

Appellate Rule 9

The Docketing Statement is the document the petitioner uses to show the appellate court that it has jurisdiction to consider the appeal. It is also how the petitioner identifies at least one substantial issue for review.

A “substantial issue” is a legal mistake the petitioner believes the agency made. The petitioner is focusing the appellate court’s attention on a specific and significant error that the agency made.

The Docketing Statement is not the place for an explanation of *why* something was a mistake. That should be saved for the briefing stage, which is described later in this guide. Instead, this is where the petitioner identifies *what* the mistake was that the appellate court should review.

The petitioner must file a Docketing Statement (original and two copies) with the appellate court within 21 days from the filing of the Petition for Review. Failure to file the docketing statement may result in dismissal of the appeal.

The petitioner must also serve a copy of the Docketing Statement on the respondent(s).

After the Docketing Statement is filed

The appellate court will review the Docketing Statement. If the court determines it has jurisdiction and that there are appealable issues, then the case will proceed to the briefing stage.

Motion for Summary Disposition

Appellate Rule 10

The appellate court may send to the parties a Motion for Summary Disposition which says that the court is considering dismissing or denying the appeal for one or both of these reasons:

- It appears that the appellate court does not have jurisdiction
- It needs clarification about the issue(s) on appeal. URAP 10(e) says the court may dismiss an appeal if there is no “substantial” issue presented.

The parties may each file a response (sometimes called a “memorandum”) explaining why they think the court should – or should not – dismiss or deny the appeal. The court will tell the parties when the response is due and how many copies must be filed with the court.

The court will review the response(s). If the court determines that it does not have jurisdiction or that the appeal is without merit, it will issue a written decision without further proceedings

Briefing Process

Appellate Rules 24, 26 & 27

The briefs are the single most important part of the appellate process. Briefs are the written arguments of parties stating the reasons why the appellate court should rule in their favor. This may be the only time the parties will make their argument to the court, so it's important that the parties make their briefs clear and persuasive.

Petitioner's Brief

The petitioner's brief is what the petitioner uses to persuade the appellate court that the agency made a specific error or errors in law, fact, or procedure that affected the outcome of the case. The brief should focus on the law and the facts, and should explain how the law should apply to the facts. Rule 24 explains what should be included in a brief and how it should be organized.

The petitioner may also provide an addendum which includes materials the petitioner believes are of central importance to the appeal. For agency appeals, the addendum should include at least a copy of the final agency order being appealed.

Respondent's Brief

The respondent's brief is due 30 days after the petitioner's brief is filed. The respondent can respond to the arguments made by the petitioner and explain why the decision in the agency was correct.

The respondent's brief must comply with most of the same rules as the petitioner's brief, except that it does not have to include a statement of the issues unless the respondent does not feel the petitioner's statement is complete or correct.

Reply Brief

The petitioner may file a reply brief in answer to the respondent's brief. This optional brief must be filed within 30 days after the respondent's brief is served. See Appellate Rule 24(c) for the requirements of this brief. The reply should be limited to answering any new matters set forth in the respondent's brief.

Example Briefs

Parties can review Utah appellate court briefs to see how they are constructed. Briefs are available in print at the Utah State Law Library, the BYU Howard W. Hunter Law Library and the University of Utah James E. Faust Law Library.

Number of copies and service

Multiple briefs must be filed with the court and served on the other party:

Court of Appeals: One brief with original signature and 7 copies.

Supreme Court: One brief with original signature and 9 copies.

Briefs are considered **filed** on the date of the postmark if first-class mail is used.

Two copies of the brief must be served on the other party. The briefs must include a Certificate of Service showing how copies were served on the other party. See the Checklist for Briefs for more information about briefing requirements.

Oral Argument

Appellate Rule 29

After the briefs are filed, the appellate court will set the case on the next available calendar for consideration and decision. The court will either make its decision based on the briefs, or will schedule oral argument.

- Most **Court of Appeals** cases are decided solely on the briefs. Oral argument is held only if the court determines that oral argument will significantly help the decision process.
- In cases before the **Supreme Court**, oral argument will be held unless the court decides it will not help the decision process.

The parties use oral argument to present their arguments in person to the judges and to respond to any questions the judges may have.

The appellate judges have read the briefs filed in the case and will be familiar with the facts, issues and law on the case. Parties should not use their argument time to simply repeat what they have written in the briefs. Instead, parties should focus on the legal question(s) that the appellate court has agreed to review.

- In the **Court of Appeals**, the total time for all arguments is 30 minutes. The petitioner and the respondent each get 15 minutes.
- In the **Supreme Court**, the total time for all arguments is 40 minutes. The petitioner and the respondent each get 20 minutes.

To prepare for oral argument, parties may want to review the [Supreme Court Practitioner's Guide to Oral Argument](#).

Oral arguments are public. Anyone may observe them in person or listen to archived recordings of previous arguments on the courts' website to get an idea of the procedure.

- [Oral argument calendars](#)
- [Supreme Court oral argument recordings](#)
- [Court of Appeals oral argument recordings](#)

Appellate Court Decision

Appellate Rule 30

The appellate court will issue a written decision in every case, regardless of whether oral argument was held. The decision may be an opinion, a memorandum opinion, a *per curiam* (by the court as a whole) decision, or an order.

The decision of the court does not have to be unanimous, but a majority must agree on the outcome. Sometimes judges will write opinions separate from the majority opinion:

- Dissenting opinion – the authoring judge disagrees with the majority opinion.
- Concurring opinion – the authoring judge agrees with the majority opinion, but for different reasons.

Court staff have no way of knowing when a decision will be issued. Depending on the complexity of the case, the decision process takes some time, which means it could be months before a decision is issued. The judges need time to research and debate the issues and write the opinion. The written opinion affects the individuals involved in the case, but it may also have a broader impact on the law in Utah.

The appellate court could make one of the following decisions in a case, or a combination of these decisions (such as reversed in part and affirmed in part):

- Affirm – the court has concluded that the agency was correct, and its decision stands.
- Remand – the court is returning the case to the agency to make a finding of fact in one or more aspects of the case.
- Reverse – the court has decided that the agency's decision was in error, and has undone the decision of the agency.

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Once the Court of Appeals has issued its decision, the parties have several options:

- Accept the decision of the Court of Appeals
- File a Petition for Rehearing
- File a Petition for Writ of Certiorari with Utah Supreme Court

Once the Supreme Court has issued its decision, the parties have two options:

- Accept the decision of the Supreme Court
- File a Petition for Rehearing

Petition for Rehearing

Appellate Rule 35

If one of the parties believes the appellate court made an error in its written decision, they can ask the court to reconsider its decision by filing a Petition for Rehearing.

The petition should not simply repeat the arguments already made. It must include the points of law or fact the party thinks the court has overlooked or misunderstood. A Petition for Rehearing must be made in good faith; it cannot be made for delay. See URAP 27 for format requirements.

The petition must be filed with the clerk within 14 days after the court's decision is entered. The court will not accept the Petition for Rehearing if it is not filed by the deadline. The court will not accept more than one Petition for Rehearing. Most petitions for rehearing are not granted.

Petition for Writ of Certiorari in the Utah Supreme Court

Appellate Rule 49

If a party's Petition for Rehearing is denied by the Court of Appeals the party may file a Petition for Writ of Certiorari in the Utah Supreme Court.

A party may also file the Petition for Writ of Certiorari directly after the Court of Appeals decision is entered— they do not have to first file a Petition for Rehearing in the Court of Appeals.

The Petition for Writ of Certiorari must be filed in the Supreme Court within 30 days of the final decision of the Court of Appeals. See our separate [Guide to Filing a Petition for Writ of Certiorari](#) on the courts' website for more information.

The Supreme Court is the court of last resort in Utah. If a party's Writ of Certiorari is denied by the Utah Supreme Court, there are no more appeals available in the Utah State Courts.

Remittitur

Appellate Rule 36

Once the case is completely finished in the appellate court, the appellate court returns the record to the agency and gives up its jurisdiction. This process is called remittitur.

The Supreme Court generally issues the remittitur 15 days after the decision is filed. The Court of Appeals generally issues the remittitur 35 days after the decision is filed.

Appellate Rules

The Utah Rules of Appellate Procedure (also called Appellate Rules or URAP) govern appeals cases. The Appellate Rules specify the documents which are required, deadlines for filing documents, document format, etc. This guide explains some of the basic rules that you must follow in an appeal, but it does not explain all of them. You are responsible for familiarizing yourself with the Appellate Rules and following them.

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University of Utah
James E. Faust Law Library
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www.law.utah.edu/library/

Other Resources

General information about Appeals is available on the court's [Appeals web page](#).

Representing Yourself in an Appeal

People who represent themselves in court without the help of an attorney are called *pro se* or self-represented parties. Self-represented parties are responsible for learning about and following the rules and procedures that govern the court process.

The appellate process is very detailed and can be confusing. The appellate courts highly recommend that parties get the help of an attorney.

Appellate clerks' staff can provide general information about court rules and procedures, but they cannot draft documents or participate directly or indirectly in any court action. Court staff cannot provide advice about what the law is or how it applies to someone's situation.

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Guide to Appealing a Child Welfare Case

Appealing a Juvenile Court Child Welfare Case to the Utah Court of Appeals

Utah Supreme Court

450 S State Street, 5th Floor
PO Box 140210
Salt Lake City, UT 84114-0210
801-578-3900
supremecourt@utcourts.gov

Utah Court of Appeals

450 S State Street, 5th Floor
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Salt Lake City, UT 84114-0230
801-578-3900
courtofappeals@utcourts.gov

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The purpose of this guide

This guide is for child welfare cases that are being appealed from the juvenile court to the Utah Court of Appeals. Child welfare cases are defined by Utah Rule of Appellate Procedure 1(f) as those cases related to abuse, neglect, dependency, termination of parental rights, and adoption.

There are separate guides for:

- Appealing a decision from the district court or non child welfare decisions of the juvenile court to the Court of Appeals or Supreme Court
- Appealing a decision from an administrative agency (Writ of Review)
- Petition for Writ of Certiorari to the Utah Supreme Court

Not all cases are appealed to the Supreme Court or Court of Appeals. Decisions from the justice court (misdemeanor criminal, traffic and small claims cases), for example, are appealed to the district court. Some administrative agency decisions are appealed to the district court. See our [Appeals web page](#) for more information about these kinds of appeals.

Overview

What is an appeal?

An appeal is a review by the Court of Appeals to determine if the juvenile court made a legal mistake. A child welfare appeal is started by filing a notice of appeal in the juvenile court within 15 days of the juvenile court's order.

The Court of Appeals does not retry the case, take evidence, or weigh the credibility of witnesses. The appeal must be based on the record created in the trial court, and the person who is appealing must show that the trial court made a mistake. If there was a mistake, it must have been important enough that it could have made a difference in the outcome of the case.

Who can appeal?

Only a party in the original case can appeal the decision of the juvenile court. A party can represent himself or herself, but cannot represent anyone else, such as another person or business. Only an attorney who is licensed to practice in Utah can represent someone in an appeal.

Final judgment or order

The final **judgment** or **order** is the final result in a stage of a child welfare case. Usually, adjudication orders, orders terminating parental rights, or other orders ending the juvenile court's jurisdiction are the final orders in a child welfare proceeding. The judgment or order must be in writing. Sometimes the judge makes an order on the record but there is no written order signed by the judge. A party must then prepare and submit to the trial court a written order for the judge to sign before the appeal can proceed.

Fees

Appellate Rule 3

When the Notice of Appeal is filed, the appellant must pay a filing fee of \$225.00 and a cost bond of \$300.00 to the juvenile court. There is no fee for Child Welfare cases if the appellant has appointed counsel.

The cost bond is like an insurance policy the appellant is buying to cover expenses the appellee might have to defend against the appeal. The appellant may ask the trial court to return the bond once the appeal is complete.

If the appellant can't pay the required fees, they can ask the juvenile court to waive the filing fee if they can show that they meet certain financial/income guidelines. The appellant must fill out and file a [Motion to Waive Fees](#) with the juvenile court. If the appellant also wants to waive the cost bond, they must specifically ask for that in their motion.

Even if a waiver of the filing fee and cost bond is approved by the juvenile court, the appellant will still have to pay other costs associated with the appeal. For example, if the appellant requests a transcript of the juvenile court proceedings, then they must pay the court reporter to prepare it. The appellate courts also charge for copies of documents.

Filing

Appellate Rule 21

To *file* a document means to give it to the Appellate Clerk's Office in Salt Lake City. Parties can file papers with the court in person or by mail. Parties may also file some documents by email, subject to the following rules:

- If a document other than a brief is delivered by email, a paper copy does not need to be delivered.
- If a brief is delivered by email, paper copies of the brief must be delivered to the court no more than 7 days after filing by email.

- Documents filed by email will be considered timely filed if the email is received before midnight on the last day for filing.
- If a party emails a document to the court as an attachment, an automatic response will be emailed as confirmation of receipt of the document.
- If a party emails a document to the court, the party assumes the risk for any problems that may occur.

Email Addresses:

supremecourt@utcourts.gov

courtappeals@utcourts.gov

* The drop box outside the Matheson Courthouse is for the district court only. Do not put appellate court documents in that box.

Non-Public Information

Records from child welfare cases on appeal are classified as private by Code of Judicial Administration Rule 4-202.02. These classifications restrict access to the records. The right of public access might also be restricted by Title 63G, Chapter 2, Government Records Access and Management Act, by other statutes, rules, or case law, or by court order.

In a child welfare appeal, the briefs may be public documents. If a brief, including an addendum, contains non-public information, the filer must also file a public version with all such information removed. Utah Rule of Appellate Procedure 21(g) requires the filer to file an un-redacted (complete) version for the court and a version for the public that does not contain the confidential information.

See the court's [Non-Public Records page](#) for more information about classification of court records.

Service

Appellate Rule 21

To *serve* a document means to give a copy of it to all other parties. Any document you file with the appellate court must also be served on all of the other parties in the appeal. If the other side has an attorney, the attorney must be served. If the other side does not have an attorney, the other party must be served at their last known address.

Documents may be served by mail, hand delivery or email. The time for filing a response to a document filed by email runs from the date the document was received by the court.

A Certificate of Service must be attached to all documents filed with the appellate court. The Certificate of Service tells the court when and how service was made, who was served, and where they were served. The court will not act on any document unless a Certificate of Service is attached to it.

- Copies of all documents filed with the appellate court must, at or before the time of filing, be served on all other parties to the appeal or review.
- A copy of any document required by the rules to be served on a party must be accompanied by a certificate of service when filed with the court.
- The time for filing a response to a document served by email runs from the date the document was emailed to the court.
- The time for filing a response to a document served by mail runs from the date of mailing listed on the certificate of service, and three days will be added to the time. Most often the total time for response to any motion served by mail will be 17 calendar days from the date of mailing.

There are special requirements for serving briefs. More information is provided in the **Briefs** section.

Asking for More Time (Motion for Extension of Time)

Appellate Rules 22(b) and 59

In some situations, a party may ask the court for more time to meet a deadline by filing a Motion for Extension of Time. The Motion for Extension of Time is subject to the following requirements:

- The motion must be filed before the deadline.
- The motion must include:
 - a good reason for extending the deadline
 - whether extensions have been requested before, and if so, how many times and how long those extensions were
 - when the deadline is

If the appellant wants to ask for more time to file the Notice of Appeal, they must file the request in the trial court. Only the trial court can extend the time to file the Notice of Appeal. To ask the trial court for more time, see the forms on the [Motions page](#) on the court's website.

Procedures

Child Welfare Appeal Timeline

Notice of Appeal	Due 15 days after final order of Juvenile Court. Filed with Juvenile Court. (must be signed by appellant and their attorney (if they are represented by an attorney))
Transcript Request	Due 4 days after filing of Notice of Appeal. Filed with the appellate court.
Appellant's Petition on Appeal	Due 15 days after filing of Notice of Appeal. Filed with the appellate court.
Appellee's Response to Petition	Due 15 days after filing of Appellant's Petition on Appeal.
Record Filed	Prepared by Juvenile Court as soon as transcript is complete (if requested)
Review	Court of Appeals reviews the documents to determine if a decision can be issued.



If the court **does** issue an opinion:

Petition for Rehearing
Optional, due 14 days after the decision is issued. (URAP 35)

Petition for Writ of Certiorari
Optional, due 30 days after the decision is issued. (URAP 45)
(To the Utah Supreme Court from a decision of the Utah Court of Appeals)

Remittitur
Generally issued 35 days after opinion is filed

If the court **does not** issue an opinion:

Appellant's Brief

Appellee's Brief

Appellant's Reply Brief
Optional.

Calendared
Court will notify parties if it schedules oral argument.

Under Advisement
Court is preparing its decision.

Opinion/Decision Filed
Court issues written opinion or decision.

Petition for Rehearing
Optional, due 14 days after the decision is issued. (URAP 35)

Petition for Writ of Certiorari
Optional, due 30 days after the decision is issued. (URAP 45)
(To the Utah Supreme Court from a decision of the Utah Court of Appeals)

Remittitur
Generally issued 15 days after the opinion is filed in the Supreme Court and 35 days after opinion is filed in the Court of Appeals

Notice of Appeal

Appellate Rule 52 and 53

The appeal process starts when someone files a Notice of Appeal within the time allowed to appeal. The party filing the Notice of Appeal is called the **appellant**, and the party the appeal is against is called the **appellee**.

The Notice of Appeal is filed with the juvenile court. The appellant must file the Notice of Appeal with the clerk of the juvenile court within 15 days after the date of entry of the final judgment or order being appealed.

If the appellant wants to ask for more time to file the Notice of Appeal, they must file the request in the juvenile court. Only the juvenile court can extend the time to file the Notice of Appeal. To ask the juvenile court for more time, see the forms on the [Motions page](#) on the court's website. URAP 59(a).

The appellant must also pay a filing fee and a cost bond to the trial court, or ask to have those costs waived as described in the **Fees** section above.

After the Notice of Appeal is filed

After the Notice of Appeal is filed and the filing fee and cost bond have been paid to the trial court, the juvenile court will certify a copy of the Notice of Appeal to the appellate court.

Once the Appellate Clerks' Office receives the Notice of Appeal, it will send a notice to the appellant that will include the appellate case number and the filing deadlines for the required documents. The appellee(s) will also receive a copy of the notice.

Transcripts

Appellate Rule 11(e)(1)

The appellant must request the transcript to be prepared within 4 days of filing the Notice of Appeal.

A transcript is a word-for-word typing of everything that was said on the record during a hearing or the trial held in the juvenile court. It is **not** the audio recording of a hearing or trial. A transcript is important because it is what the appellate court uses to review the juvenile court proceedings.

The appellant must request a transcript using the [online request form](#), unless they are incarcerated or otherwise unable to use the online form, in which case they may use a print form to make the request.

The appellant must serve a copy of the automated response from the online transcript request (or a copy of the transcript request form, if using the print form) on the other party by mail, email, or hand delivery.

The appellant must also fill out a Certificate of Service form and file it with the court. The certificate of service tells the court when and how the other party was served with the document, and the name(s) and address(es) of whoever was served.

Cost of Transcripts

Unless the juvenile court determines that the appellant is indigent, the appellant must pay a certified court transcriber the estimated cost of the transcript, and must serve a copy of the transcript on the appellee(s). The cost of transcripts is set by Utah Code Section 78A-2-408 at the following rates:

- \$4.50/page for regular service (within 30 days) Approximately \$250.00/court hour
- \$6.75/page for 1-3 day service
- \$9.00/page for 24 hour service

If the appellant **can't afford the cost of preparing** a transcript, or if a transcript is unavailable, it is possible for the appellant to prepare their own transcript of a court proceeding. The appellant must follow the procedures described in URAP 11(g):

- Appellant prepares a statement of evidence or proceedings. If an audio recording is available, they can use it to put the statement together.
- Appellant must serve the statement on the appellee, who may object or propose amendments within 10 days.
- The statement and any objections or proposed amendments must be submitted to the trial court for approval. If the judge approves, the statement will be sent to the appellate court as a record of the proceedings.

If the appellant is an **indigent parent**, the county in which the trial was held is usually responsible for the cost of transcripts in any first appeal of right in a child welfare case. See Utah Code Section 77-32-305.

In very rare cases the appellant **does not need a transcript** for the appeal. For example, maybe there was no hearing or trial in the case. If the appellant believes that a transcript is not necessary for the appeal, they must file a Certificate that Transcript is Not Requested with the appellate court. Remember, the transcript is what the appellate court uses to review the lower court's decision. If it is not provided to the appellate court, the chances of winning on appeal drop dramatically.

Petition on Appeal

Appellate Rule 55

The Petition on Appeal is the document the appellant uses to identify the legal issues presented for appeal.

The appellant must file Petition on Appeal (original and four copies) with the appellate court within 15 days of the filing of the Notice of Appeal. Failure to file may result in dismissal of the appeal.

The appellant must also serve a copy of the Petition on Appeal on the appellee(s).

Response to Petition on Appeal

Appellate Rule 56

The appellee has 15 days after being served with the Petition of Appeal to file a Response (original and four copies).

After the Petition on Appeal and Response have been Filed

Appellate Rule 58

The appellate court will review the Petition on Appeal, response, and the record. The court will decide whether it will issue a written decision based on that review, or ask the parties to file briefs.

Motion for Summary Disposition

Appellate Rule 10

The appellate court may send to the parties a Motion for Summary Disposition which says that the court is considering dismissing the appeal because it appears that the appellate court does not have jurisdiction.

The parties may each file a response (sometimes called a “memorandum”) explaining why they think the court should – or should not – dismiss the appeal. The court will tell the parties when the response is due and how many copies must be filed with the court.

The court will review the response(s). If the court determines that it does not have jurisdiction, it will issue a written decision dismissing the appeal. If the court determines that it does have jurisdiction, it will withdraw the motion for summary disposition and issue a decision on the merits at a later time.

Briefing Process

Appellate Rules 24, 26 & 27

If the court does not issue a written decision after reviewing the Petition on Appeal and the Response, the case moves on to briefing. The briefing schedule is established by order of the court.

The briefs are the single most important part of the appellate process. Briefs are the written arguments of parties stating the reasons why the appellate court should rule in their favor. This may be the only time the parties will make their argument to the court, so it’s important that the parties make their briefs clear and persuasive.

Appellant’s Brief

The appellant’s brief is what the appellant uses to persuade the appellate court that the juvenile court made a specific error or errors in law, fact, or procedure that affected the outcome of the case. The brief should focus on the law and the facts, and should explain how the law should apply to the facts. Rule 24 explains what should be included in a brief and how it should be organized.

The appellant may also provide an addendum which includes materials the appellant believes are of central importance to the appeal.

Appellee’s Brief

The appellee can respond to the arguments made by the appellant and explain why the decision in the trial court was correct.

The appellee’s brief must comply with most of the same rules as the appellant’s brief, except that it does not have to include a statement of the issues unless the appellee does not feel the appellant’s statement is complete or correct.

Reply Brief

The appellant may file a reply brief in answer to the appellee’s brief. See Appellate Rule 24(c) for the requirements of this brief. The reply should be limited to answering any new matters set forth in the appellee’s brief.

Example Briefs

Parties can review Utah appellate court briefs to see how they are constructed. Briefs are available in print at the Utah State Law Library, the BYU Howard W. Hunter Law Library and the University of Utah James E. Faust Law Library.

Number of copies and service

One brief with original signature and 7 copies must be filed with the court.

Briefs are considered **filed** on the date of the postmark if first-class mail is used.

Two copies of the brief must be served on the other party. The briefs must include a Certificate of Service showing how copies were served on the other party. See the Checklist for Briefs for more information about briefing requirements.

Oral Argument

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After the briefs are filed, the appellate court will set the case on the next available calendar for consideration and decision. The court will either make its decision based on the briefs, or will schedule oral argument.

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The decision of the court does not have to be unanimous, but a majority must agree on the outcome. Sometimes judges will write opinions separate from the majority opinion:

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If one of the parties believes the appellate court made an error in its written decision, they can ask the court to reconsider its decision by filing a Petition for Rehearing.

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The petition must be filed with the clerk within 14 days after the court's decision is entered. The court will not accept the Petition for Rehearing if it is not filed by the deadline. The court will not accept more than one Petition for Rehearing. Most petitions for rehearing are not granted.

Petition for Writ of Certiorari in the Utah Supreme Court

Appellate Rule 49

If a party's Petition for Rehearing is denied by the Court of Appeals the party may file a Petition for Writ of Certiorari in the Utah Supreme Court.

A party may also file the Petition for Writ of Certiorari directly after the Court of Appeals decision is entered— they do not have to first file a Petition for Rehearing in the Court of Appeals.

The Petition for Writ of Certiorari must be filed in the Supreme Court within 30 days of the final decision of the Court of Appeals. See our separate [Guide to Filing a Petition for Writ of Certiorari](#) on the courts' website for more information.

The Supreme Court is the court of last resort in Utah. If a party's Petition for Writ of Certiorari is denied by the Utah Supreme Court, there are no more appeals available in the Utah State Courts.

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Once the case is completely finished in the appellate court, the appellate court returns the record to the trial court and gives up its jurisdiction. This process is called remittitur.

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<http://lawlib.byu.edu/>

University of Utah
James E. Faust Law Library
383 S. University Street
801-581-6184
www.law.utah.edu/library/

Other Resources

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People who represent themselves in court without the help of an attorney are called *pro se* or self-represented parties. Self-represented parties are responsible for learning about and following the rules and procedures that govern the court process.

The appellate process is very detailed and can be confusing. The appellate courts highly recommend that parties get the help of an attorney.

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Guide to Filing a Petition for Writ of Certiorari

Appealing a Court of Appeals Decision to the Utah Supreme Court

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The purpose of this guide

This guide is for appealing a Utah Court of Appeals decision to the Utah Supreme Court by filing a Petition for Writ of Certiorari.

There are separate guides for:

- Appealing a decision from the district or juvenile court to the Court of Appeals or Supreme Court
- Appealing a child welfare case from juvenile court
- Appealing a decision from an administrative agency (Writ of Review)

Not all cases are appealed to the Supreme Court or Court of Appeals. Decisions from the justice court (misdemeanor criminal, traffic and small claims cases), for example, are appealed to the district court. Some administrative agency decisions are appealed to the district court. See our [Appeals web page](#) for more information about these kinds of appeals.

Overview

What is a Petition for Writ of Certiorari?

A Petition for Writ of Certiorari is a request to the Utah Supreme Court to review a decision of the Utah Court of Appeals. The Supreme Court can choose to grant or deny the petition. If the petition is denied, the decision of the Court of Appeals stands.

Fees

Appellate Rule 3

The filing fee for a Petition for Writ of Certiorari is \$225.00.

If the petitioner can't pay the required fees, they can ask the court to waive the filing fee if they can show they meet certain financial/income guidelines. The petitioner must fill out and file a [Motion to Waive Fees](#).

Even if a waiver of the filing fee and cost bond is approved, the petitioner will still have to pay other costs associated with the appeal. For example, if additional transcripts are needed, they must pay the transcriber to prepare those. The appellate courts also charge for copies of documents.

Filing

Appellate Rule 21

To *file* a document means to give it to the Appellate Clerk's Office in Salt Lake City. Parties can file papers with the court in person or by mail. Petitions for Writ of Certiorari may not be filed by email.

* The drop box outside the Matheson Courthouse is for the district court only. Do not put appellate court documents in that box.

Non-Public Information

Records are classified as public, private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social by Code of Judicial Administration Rule 4-202.02. The right of public access might also be restricted by Title 63G, Chapter 2, Government Records Access and Management Act, by other statutes, rules, or case law, or by court order.

If a filing, including an addendum, contains non-public information, the filer must also file a public version with all such information removed. Utah Rule of Appellate Procedure 21(g) requires the filer to file an unredacted version for the court and a version for the public that does not contain the confidential information.

See the court's [Non-Public Records page](#) for more information about classification of court records.

Service

Appellate Rule 21

To *serve* a document means to give a copy of it to all other parties. Any document you file with the appellate court must also be served on all of the other parties in the appeal. If the other side has an attorney, the attorney must be served. If the other side does not have an attorney, the other party must be served at their last known address.

Documents may be served by mail, hand delivery or email (as allowed by the policy described in the **Filing** section).

A Certificate of Service must be attached to all documents filed with the appellate court. The Certificate of Service tells the court when and how service was made, who was served, and where they were served. The court will not act on any document unless a Certificate of Service is attached to it.

There are special requirements for serving briefs. More information is provided in the **Briefs** section.

Asking for More Time (Motion for Extension of Time)

Appellate Rule 22(b)

In some situations, a party may ask the court for more time to meet a deadline by filing a Motion for Extension of Time. The Motion for Extension of Time is subject to the following requirements:

- The motion must be filed before the deadline.
- The motion must include:
 - a good reason for extending the deadline
 - whether extensions have been requested before, and if so, how many times and how long those extensions were
 - when the deadline is
 - what the party would like the new deadline to be

The appellate courts do not favor requests to extend a deadline by more than 30 days.

Parties can agree to extend the deadline to file briefs. This agreement is called a “stipulation,” and must be filed with the appellate court. A stipulation cannot extend the time by more than 30 days and will only be allowed if it is filed before the deadline expires.

Procedures

Writ of Certiorari Timeline

Petition for Writ of Certiorari	Due 30 days after the decision is issued. (URAP 45) (To the Utah Supreme Court from a decision of the Utah Court of Appeals)
Response to Petition for Writ of Certiorari	Due 30 days after the Petition is filed in the Supreme Court. (URAP 45)
Petition is Taken Under Advisement	A reply to the response may be filed, but the court will not delay processing the petition to wait for a reply.
If the Petition is Denied ...	The case is closed.
If the Petition is Granted ...	The clerk’s office will issue a writ directing the record to be sent to the Supreme Court. The case proceeds under URAP 24-30.
Petitioner’s Brief (blue)	Due 40 days after the record is filed. The court will send notice of the due date.
Respondent’s Brief (red)	Due 30 days after petitioner’s brief is filed.

Case is Now at Issue	The case is set for the next available oral argument date.
Petitioner's Reply Brief (gray)	Optional, due 30 days after the filing of respondent's brief.
Oral Argument	
Case Taken Under Advisement	
Court Issues Opinion	
Petition for Rehearing	Optional, due 14 days after the decision is issued. (URAP 35)
Remittitur	Issued no earlier than 14 days after the opinion is issued, or if a Petition for Rehearing is filed, no earlier than 5 days after the Petition for Rehearing is resolved.

Petition for Writ of Certiorari

Appellate Rules 45 - 51

Either of the parties in a Court of Appeals case can petition the Supreme Court for a writ of certiorari to review the decision of the Court of Appeals.

Appellate Rule 49 specifies the contents of the Petition.

This review is at the discretion of the Supreme Court, and will be granted only for "special and important reasons," according to URAP 46(a).

The petition must be filed within 30 days of the entry of the final decision of the Court of Appeals. If a party wants to ask for more time to file the petition, they must file a Motion for Extension of Time with the Supreme Court before the 30 day deadline has passed. URAP 48(e).

The party filing the petition must also pay a filing fee or ask to have those costs waived as described in the **Fees** section above.

Response to Petition for Writ of Certiorari

Appellate Rule 50

The respondent must file an opposing brief 30 days after they are served with the petitioner's brief to say why the case should not be reviewed by the Supreme Court.

Briefing Process

Appellate Rules 24 - 31 and 51

The Supreme Court will notify the parties whether the petition has been granted. If it is granted, the parties move on to the briefing stage. URAP 24-31 govern briefs, but in the case of a Petition for Writ of Certiorari, the word “petitioner” is used instead of “appellant,” and “respondent” is used instead of “appellee.”

Petitioner’s Brief

The petitioner’s brief is used to persuade the Supreme Court that the Court of Appeals made specific error or errors in law, fact, or procedure that affected the outcome of the case. The brief should focus on the law and the facts, and should explain how the law should apply to the facts.

Respondent’s Brief

The respondent’s brief is due 30 days after the petitioner’s brief is filed. The respondent can respond to the arguments made by the petitioner and explain why the decision in the Court of Appeals was correct.

Reply Brief

The petitioner may file a reply brief in answer to the respondent’s brief. This optional brief must be filed within 30 days after the respondent’s brief is served. See Appellate Rule 24(c) for the requirements of this brief. The reply should be limited to answering any new matters set forth in the respondent’s brief.

Number of copies and service

One brief with original signature and 9 copies must be filed with the Supreme Court.

Two copies of the brief must be served on the other party. The briefs must include a Certificate of Service showing how copies were served on the other party.

Briefs are considered **filed** on the date of the postmark if first-class mail is used.

Oral Argument

Appellate Rule 29

After the briefs are filed, the Supreme Court will schedule the case for oral argument. To prepare for oral argument, parties may want to review the [Supreme Court Practitioner’s Guide to Oral Argument](#).

Oral arguments are public. Anyone may observe them in person or listen to archived recordings of previous arguments on the courts’ website to get an idea of the procedure.

- [Oral argument calendars](#)

- [Supreme Court oral argument recordings](#)
- [Court of Appeals oral argument recordings](#)

Supreme Court Decision

Appellate Rule 30

Court staff have no way of knowing when a decision will be issued. Depending on the complexity of the case, the decision process takes some time, which means it could be months before a decision is issued. The judges need time to research and debate the issues and write the opinion. The written opinion affects the individuals involved in the case, but it may also have a broader impact on the law in Utah.

[Appellate court opinions](#) are available on the court's website.

Options After the Written Decision is Issued

Once the Supreme Court has issued its decision, the parties have two options:

- Accept the decision of the Supreme Court
- File a Petition for Rehearing

Petition for Rehearing

Appellate Rule 35

If one of the parties believes the Supreme Court made an error in its written decision, they can ask the court to reconsider its decision by filing a Petition for Rehearing.

The petition should not simply repeat the arguments already made. It must include the points of law or fact the party thinks the court has overlooked or misunderstood. A Petition for Rehearing must be made in good faith; it cannot be made for delay. See URAP 27 for format requirements.

The petition must be filed with the clerk within 14 days after the court's decision is entered. The court will not accept the Petition for Rehearing if it is not filed by the deadline. The court will not accept more than one Petition for Rehearing. Most petitions for rehearing are not granted.

Remittitur

Appellate Rule 36

Once the case is completely finished in the appellate court, the appellate court returns the record to the trial court and gives up its jurisdiction. This process is called remittitur.

The Supreme Court generally issues the remittitur 15 days after the decision is filed.

Appellate Rules

The Utah Rules of Appellate Procedure (also called Appellate Rules or URAP) govern appeals cases. The Appellate Rules specify the documents which are required, deadlines for filing documents, document format, etc. This guide explains some of the basic rules that you must follow in an appeal, but it does not explain all of them. You are responsible for familiarizing yourself with the Appellate Rules and following them.

The current [Utah Rules of Appellate Procedure](#) are available on the courts' website. The Appellate Rules are also available in print at the law libraries listed below, and at some public libraries.

Utah State Law Library
450 S. State Street, Rm. W-13
Salt Lake City
801-238-7990
www.utcourts.gov/lawlibrary/

Brigham Young University
Howard W. Hunter Law Library
801-422-3593
<http://lawlib.byu.edu/>

University of Utah
James E. Faust Law Library
383 S. University Street
801-581-6184
www.law.utah.edu/library/

Other Resources

General information about Appeals is available on the court's [Appeals web page](#).

Representing Yourself in an Appeal

People who represent themselves in court without the help of an attorney are called *pro se* or self-represented parties. Self-represented parties are responsible for learning about and following the rules and procedures that govern the court process.

The appellate process is very detailed and can be confusing. The appellate courts highly recommend that parties get the help of an attorney.

Appellate clerks' staff can provide general information about court rules and procedures, but they cannot draft documents or participate directly or indirectly in any court action. Court staff cannot provide advice about what the law is or how it applies to someone's situation.

A self-represented party can only represent himself or herself. They may not represent another person, company, or entity such as a club or association that includes other individuals.

See the court's [Finding Legal Help web page](#) for information about ways to get the help of an attorney.