



Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Paul C. Burke, Chair

Location: Webex (click [here](#) to join the meeting)
Date: November 5, 2020
Time: 12:00 to 1:30 p.m.

Action: Welcome and approval of October 1, 2020 minutes	Tab 1	Paul C. Burke, Chair
Discussion: Legislative update (Rule 4)	Tab 2	Paul C. Burke, Judge Jill Pohlman, Christopher Ballard
Action: Rule 11	Tab 3	Larissa Lee
Action: Rule 25A	Tab 4	Paul C. Burke, Larissa Lee
Discussion: Rules 52-59 (Child Welfare)	Tab 5	Larissa Lee, Judge Gregory Orme
Action: Rule 15	Tab 6	Christopher Ballard
Discussion: Old/new business		Paul C. Burke

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

Meeting schedule:

December 3, 2020 January 07, 2021 February 04, 2021 March 04, 2021

Tab 1

Minutes

Supreme Court's Advisory Committee on the Utah Rules of Appellate Procedure

Utah Supreme Court
450 South State Street
Salt Lake City, Utah 84114

Via Webex video conference
Thursday, October 1, 2020
12:00 pm to 1:30 pm

PRESENT

Christopher Ballard
Patrick Burt
Troy Booher—
Emeritus Member
Paul C. Burke—Chair
Lisa Collins
Tyler Green
R. Shawn Gunnarson
Larissa Lee—Staff

Alan Mouritsen
Judge Gregory Orme
Rodney Parker
Judge Jill Pohlman
Clark Sabey
Nathalie Skibine
Scarlet Smith
Mary Westby

EXCUSED

Michael Judd—
Recording Secretary
Sarah Roberts—Staff

GUESTS

Chris Williams—Office
of Legislative Research
& General Counsel

1. Welcome and approval of Sept. 2020 minutes

Paul C. Burke

Paul C. Burke welcomed the committee. Michael Judd had a conflict with today's meeting so Larissa Lee filled in for Mr. Judd as recording secretary. Mr. Burke thanked Mr. Judd for September's minutes and asked for a motion to approve.

Judge Jill Pohlman moved to approve the minutes from the September 2020 meeting. Rod Parker seconded the motion and it passed by unanimous consent.

2. Action: Arreguin-Leon & Rule 11

Chris Ballard & Larissa Lee

The committee returned to the proposed Rule 11 amendments. Because the Court of Appeals currently has a case under advisement involving Rule 11(h) (now proposed as Rule 11(g)), Judge Orme and Judge Pohlman did not participate in the discussion on this part of the rule.

Christopher Ballard explained the Supreme Court's three main concerns in the *Arreguin-Leon* decision: (1) inadequate definition of the record on appeal, (2) what is meant by "conforming to the truth" in Rule 11(h), and (3) what it means when something is omitted from the record by error or accident. Mr. Ballard emphasized that the issues arising in *Arreguin-Leon* may not be able to be resolved by rule change, because the documents at issue had been filed and were part of the record but they may not have been properly presented to the trial court.

The committee discussed how to ensure documents that may not have been formally filed in the trial court are still considered part of the record on appeal (e.g. discovery responses). The committee settled on defining the record on appeal as consisting "of the documents and exhibits filed in or considered by the trial court" The committee similarly amended 11(g)(1) to say "[t]he trial court will change the record to reflect what was filed in or considered by the trial court."

Rather than saying the record "truly discloses what occurred in the trial court" the committee recommended amending 11(g) to say "[i]f any dispute arises as to whether the record is complete and accurate..." The committee discussed 11(g) at length and how to best restructure it. Larissa Lee will work on this paragraph with other court committee members and will present at the next committee meeting.

Lisa Collins moved to table Rule 11. Mary Westby seconded the motion and it passed by unanimous consent.

3. Action: Rule 15

Paul C. Burke

The committee discussed whether statutory pin cites are necessary in 15(a) and 15(c) at its last meeting and tabled this item to discuss with tax attorneys. Paul Burke and

Shawn Gunnarson reached out to their colleagues and reached a consensus that the statutory pin cites are not necessary. Troy Booher raised a question regarding a potential ambiguity in cross-appeals when an appeal is filed both in the district court and appellate court. Chris Ballard agreed to review this question with the Tax Section of the Attorney General's Office and will bring a proposal to the next meeting.

Rod Parker moved to table Rule 15. Shawn Gunnarson seconded the motion and it passed by unanimous consent.

4. Action: Rule 23B

Lisa Collins, Judge Jill Pohlman, Judge Greg Orme

The committee returned to Rule 23B discussions after tabling this rule at its last meeting and allowing the Court of Appeals judges time to discuss. Judge Jill Pohlman explained the bench discussed this internally and from a practical standpoint agreed not to issue decisions before the Rule 23B remand is decided. Judge Pohlman recommended not amending the rule.

Mary Westby moved to not amend Rule 23B. Chris Ballard seconded the motion and it passed by unanimous consent.

5. Action: Rule 34

Larissa Lee

Larissa Lee presented proposed amendments to this rule designed to conform the rule to Standing Order 11 (Regarding filing documents by email) and to clean up the language in accordance with the Supreme Court's style guide. Judge Jill Pohlman recommended changing paragraph (c) "expenses" to "costs" for consistency. Judge Pohlman also recommended removing "prevailing party" in paragraph (c) because the categories of allowable costs are defined in paragraph (a). The committee discussed whether vacated judgments should be treated the same as reversed judgments for determining costs and decided not to treat it the same because at times a judgment is vacated because there is no jurisdiction. Rod Parker recommended amending Rule 34(c)(1) to provide a flat \$3.00 per page for costs as opposed to determining the actual costs associated with copying the briefs.

Mary Westby moved to amend 34(c)(1) to a flat fee. Shawn Gunnarson seconded the motion and it passed by unanimous consent.

Clark Sabey recommended adding “the” before “appellant” in (a)(2) to be consistent with (a)(1) and (a)(3).

Judge Pohlman moved to recommend proposed amendments to Rule 34 to the Supreme Court for public comment. Rod Parker seconded the motion and it passed by unanimous consent.

6. Discussion: Old/New Business

Paul C. Burke

The committee discussed scheduling 2021 meetings. The committee decided to keep meeting at noon the first Thursday of every month.

7. Adjourn

Rod Parker moved to adjourn the meeting. Mary Westby seconded the motion and it passed by unanimous consent.

The meeting adjourned at 1:29 p.m. The committee is scheduled to meet again on November 5, 2020.

Tab 2



Larissa Lee <larissal@utcourts.gov>

Request for Consideration of URAP Rule 4 Re: reinstating time to file appeal

12 messages

Michael Drechsel <michaelcd@utcourts.gov>

Tue, Oct 6, 2020 at 3:35 PM

To: Larissa Lee <larissal@utcourts.gov>

Hi Larissa. Several weeks ago, I had a person reach out to me with a concern about how Rule 4 operates when a person is seeking reinstatement of the time to appeal. His name is Rhett Wilkinson. He had a civil case where he represented himself and things didn't go well. He didn't realize that he had a deadline for appeal. Almost exactly one year after the case had been dismissed, he requested reinstatement of the time to appeal. That request was denied by the assigned judge. The case number is 180400985 if you are interested.

In retrospect, Mr. Wilkinson thought it was strange that the same judge would decide both issues. He also worried about whether this was fair to the judge. I told him at that time that I would refer this to the rules committee to see if there is an issue here in the rule that needs to be addressed.

Since my conversation with Mr. Wilkinson, I've heard from two legislators that he has contacted about this same issue. They are interested in what if anything we are doing to address the concern (I don't get the sense they are pushing for any particular result . . . they are just following up on behalf of a constituent at this point).

To be clear, from everything I know, Mr. Wilkinson is not interested in this rule review because he hopes it will change the result of his case. His focus is on whether the rule should be adjusted to have motions to reinstate heard by a different judge, since the assigned judge may have personal incentives to not want to be appealed. And that, in my view, is the only actual relevant issue. Do you know if this issue has been considered by the advisory committee in the past? Would you be willing to ask the chair if this could be added to the agenda as a quick discussion item to see if there is committee interest in the issue?

Happy to help however I can.

Thanks!

=====
MICHAEL C. DRECHSEL • Assistant State Court Administrator • Legislative Liaison
Administrative Office of the Courts • 450 S State St • SLC, UT 84114
michaelcd@utcourts.gov • (801) 578-3821
=====

Larissa Lee <larissal@utcourts.gov>

Tue, Oct 6, 2020 at 4:42 PM

To: Michael Drechsel <michaelcd@utcourts.gov>

Thanks, Michael. I'll bring this to the Chair's attention.

On Oct 6, 2020, at 15:35, Michael Drechsel <michaelcd@utcourts.gov> wrote:

Hi Larissa. Several weeks ago, I had a person reach out to me with a concern about how Rule 4 operates when a person is seeking reinstatement of the time to appeal. His name is Rhett Wilkinson. He had a civil case where he represented himself and things didn't go well. He didn't realize that he had a deadline for appeal. Almost exactly one year after the case had been dismissed, he requested reinstatement of the time to appeal. That request was denied by the assigned judge. The case number is 180400985 if you are interested.

[Quoted text hidden]

Michael Drechsel <michaelcd@utcourts.gov>
To: Larissa Lee <larissal@utcourts.gov>

Tue, Oct 6, 2020 at 4:52 PM

I appreciate it Larissa!

[Quoted text hidden]

Larissa Lee <larissal@utcourts.gov>
To: "Paul C. Burke" <pburke@rqn.com>
Cc: Sarah Roberts <sarahr@utcourts.gov>

Wed, Oct 7, 2020 at 8:41 AM

Hi Paul,

Michael forwarded me this question on URAP 4(g). The rule doesn't say it has to be the same judge in the underlying case, but that is typically the practice. What do you think about raising this at our next meeting? My gut reaction is that this kind of thing happens all the time--you get the same judge on remand or when there's a motion for a new trial and these circumstances present similar questions about incentives. But it may be good for the committee to discuss as part of our legislative liaisoning or as a whole group.

Let me know how you'd like to proceed.

Thanks,
Larissa

[Quoted text hidden]

Larissa Lee <larissal@utcourts.gov>
To: "Paul C. Burke" <pburke@rqn.com>
Cc: Sarah Roberts <sarahr@utcourts.gov>

Wed, Oct 14, 2020 at 8:00 AM

Hi Paul,

Just wanted to follow up on this.

Thanks,
Larissa

[Quoted text hidden]

Paul C. Burke <pburke@rqn.com>
To: Larissa Lee <larissal@utcourts.gov>, Sarah Roberts <sarahr@utcourts.gov>

Fri, Oct 16, 2020 at 10:50 AM

I don't think the Committee has addressed this topic specifically. Given that this topic has been raised by our friends in the legislature, I would suggest that we demonstrate comity between the branches of government at our upcoming meeting. My thought would be to include this topic near the top of our agenda during the legislative update section. I would be happy to describe the issue to the committee. I don't think we need to offer any proposal and I don't contemplate spending more than a couple of minutes on the subject, but I don't think it would hurt to take the committee's temperature and doing so would enable you to report some action back to the legislative contacts.

PCB

Paul C. Burke | General Counsel | Ray Quinney & Nebeker P.C.

36 South State Street, Suite 1400 | Salt Lake City, Utah 84111

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www.rqn.com | vCard | <https://rqn.com/attorney/paul-c-burke/>

This email is from a law firm and may contain privileged or confidential information. Any unauthorized disclosure, distribution, or other use of this email and its contents is prohibited. If you are not the intended recipient, please contact the sender and delete this email. Thank you.

From: Larissa Lee [mailto:larissal@utcourts.gov]
Sent: Wednesday, October 14, 2020 8:00 AM
To: Paul C. Burke
Cc: Sarah Roberts; Docket
Subject: Re: Request for Consideration of URAP Rule 4 Re: reinstating time to file appeal

CAUTION: EXTERNAL EMAIL

[Quoted text hidden]

Larissa Lee <larissal@utcourts.gov>
To: "Paul C. Burke" <pburke@rqn.com>
Cc: Sarah Roberts <sarahr@utcourts.gov>

Sun, Oct 18, 2020 at 4:02 PM

Would you like to discuss this with the legislative subcommittee first?

[Quoted text hidden]

Paul C. Burke <pburke@rqn.com>
To: Larissa Lee <larissal@utcourts.gov>, Sarah Roberts <sarahr@utcourts.gov>

Mon, Oct 19, 2020 at 10:04 AM

Let's circulate the email thread to the subcommittee to invite thoughts, including about whether to do anything other than raise the subject to the full committee.

[Quoted text hidden]

Larissa Lee <larissal@utcourts.gov>
To: "Paul C. Burke" <pburke@rqn.com>, Judge Jill Pohlman <jpohlman@utcourts.gov>, Chris Ballard <cballard@agutah.gov>
Cc: Sarah Roberts <sarahr@utcourts.gov>

Mon, Oct 19, 2020 at 10:16 AM

Dear Appellate Rules Legislative Outreach Subcommittee:

Paul asked that we reach out to you to review the below request and solicit your feedback before discussing this with the committee as a whole.

Thanks,
Larissa

[Quoted text hidden]

Paul C. Burke <pburke@rqn.com>
To: Larissa Lee <larissal@utcourts.gov>

Mon, Oct 19, 2020 at 10:18 AM

Thanks!

[Quoted text hidden]

Judge Jill Pohlman <jpohlman@utcourts.gov>
To: Larissa Lee <larissal@utcourts.gov>
Cc: "Paul C. Burke" <pburke@rqn.com>, Chris Ballard <cballard@agutah.gov>, Sarah Roberts <sarahr@utcourts.gov>

Mon, Oct 19, 2020 at 10:25 AM

For the reasons mentioned, I think it makes sense to discuss as a full committee in our next meeting. Depending on the reaction, we can decide then whether our subcommittee needs to do anything further. Thanks Larissa!

[Quoted text hidden]

Christopher Ballard <cballard@agutah.gov>
To: Larissa Lee <larissal@utcourts.gov>, "Paul C. Burke" <pburke@rqn.com>, Judge Jill Pohlman <jpohlman@utcourts.gov>
Cc: Sarah Roberts <sarahr@utcourts.gov>

Mon, Oct 19, 2020 at 10:50 AM

I agree that this is something that we should put on the agenda for discussion at the next committee meeting. Perhaps we could invite Mr. Drechsel to join us for that part of the discussion to enlighten us on any aspect of the issue that we might be overlooking and also because he is the Court's official legislative liaison. He would then be better equipped to report to those legislators who raised the issue.

As to the substance of the issue, I believe that there are far more benefits than drawbacks to having the same judge who heard the trial proceedings rule on a motion to reinstate under rules 4(f) & 4(g). The trial proceedings can have a significant impact on the credibility of a party's claim that they were denied their right to appeal through no fault of their own, or were reasonably diligent in pursuing their appeal. The decision can turn on inferences that are not apparent from a cold record. Assigning a new judge to these motions would often require that new judge to review significant portions of the trial record.

I believe that these same efficiency concerns explain why motions for new trial or to arrest judgment are heard by the same judge who presided over the trial proceedings, even though those motions specifically identify areas where that judge erred. In contrast, a motion under rule 4 suggests that the court erred in only some nonspecific way. We also rightly expect that judges can set aside any feelings that may arise from a party's direct or indirect criticism of their rulings.

[Quoted text hidden]

Tab 3

1 **Rule 11. The record on appeal.**

2 (a) **Composition of the record on appeal.** The record on appeal consists of the original papers
3 documents and exhibits filed in or considered by~~in~~ the trial court, including the presentence
4 report in criminal matters, the transcript of proceedings, if any, and the record index, ~~prepared by~~
5 ~~the clerk of the trial court, and the docket sheet, shall constitutes the record on appeal in all~~
6 ~~cases. A copy of the record certified by the clerk of the trial court to conform to the original may~~
7 ~~be substituted for the original as the record on appeal. Only those papers prescribed under~~
8 ~~paragraph (d) of this rule shall be transmitted to the appellate court. The record must include all~~
9 ~~of these items, unless the appellate court directs otherwise on its own motion or on granting a~~
10 ~~party's motion to amend or supplement the record.~~

11 (b) **Preparing, paginationg, and indexing ofthe record.**

12 (1) Preparing the record. ~~Immediately upon filing of the notice of appeal~~On the appellate
13 court's request, the clerk of the trial court clerk shall will securely fasten the record in a
14 ~~trial court case file, with collation~~prepare the record in the following order:

- 15 (A) the record index ~~prepared by the clerk~~;
- 16 ~~(B) the docket sheet~~;
- 17 ~~(C)~~ all original papers documents in chronological order;
- 18 ~~(D)~~ all published depositions in chronological order;
- 19 ~~(E)~~ all transcripts prepared for appeal in chronological order;
- 20 ~~(F)~~ a list of all exhibits offered in the proceeding; and
- 21 ~~(G)~~ in criminal cases, the presentence investigation report.

22 (2) Pagination.

23 (A) ~~The clerk shall mark the bottom right corner of every page of the collated~~
24 ~~index, docket sheet, and all original papers as well as~~ Using bates numbering, the
25 entire record must be paginated, except that only the cover pages must be
26 paginated ~~only ofn~~ all published depositions and ~~and the cover page only of each~~
27 ~~volume of~~ transcripts prepared for appeal ~~constituting the record with a sequential~~
28 ~~number using one series of numerals for the entire record.~~

29 (B) If the appellate court requests a supplemental record ~~is forwarded to the~~
30 ~~appellate court~~, the ~~clerk shall collate~~ same procedures as in (b)(2)(A) apply,
31 continuing bates numbering from the last page number of the original record.~~the~~
32 ~~papers, depositions, and transcripts of the supplemental record in the same order~~
33 ~~as the original record and mark the bottom right corner of each page of the~~
34 ~~collated original papers as well as the cover page only of all published depositions~~
35 ~~and the cover page only of each volume of transcripts constituting the~~
36 ~~supplemental record with a sequential number beginning with the number next~~
37 ~~following the number of the last page of the original record.~~

38 (3) Index. ~~The clerk shall prepare a~~A chronological index of the record must accompany
39 the record on appeal. For each document, deposition, or transcript, ~~T~~the index shall must
40 ~~contain a reference to the date~~ of filing and starting page of the record ~~on which the paper,~~
41 ~~deposition or transcript was filed in the trial court and the starting page of the record on~~
42 ~~which the paper, deposition or transcript will be found.~~

43 (4) Examining the record. ~~Clerks of the trial and a~~Appellate courts clerks shall will
44 ~~establish rules and procedures for~~ parties to ~~checking~~ ing out the record after pagination, ~~for~~
45 ~~use by the parties in preparing briefs for an appeal or in preparing or briefing a petition~~
46 ~~for writ of certiorari.~~

47 (c) **Duty of appellant.** ~~After filing the notice of appeal,~~ ~~t~~The appellant, or in the event that more
48 than one appeal is taken, each appellant, ~~shall~~ must comply with ~~the provisions of paragraphs (d)~~
49 ~~and (ed) of this rule~~ and ~~shall~~ must take any other action necessary to enable ~~the clerk of~~ the trial
50 court clerk to assemble and transmit the record. ~~A single record shall be transmitted.~~

51 ~~(d) Papers on appeal.~~

52 ~~(1) Criminal cases. All of the papers in a criminal case shall be included by the clerk of~~
53 ~~the trial court as part of the record on appeal.~~

54 ~~(2) Civil cases. Unless otherwise directed by the appellate court upon sua sponte motion~~
55 ~~or motion of a party, the clerk of the trial court shall include all of the papers in a civil~~
56 ~~case as part of the record on appeal.~~

~~(3) Agency cases. Unless otherwise directed by the appellate court upon sua sponte motion or motion of a party, the agency shall include all papers in the agency file as part of the record.~~

(e) The transcript of proceedings; duty of appellant to order; notice to appellee if partial transcript is ordered.

(1) Request for transcript; time for filing. Within 104 days after filing the notice of appeal, the appellant ~~shall~~ must order the transcript(s) online at www.utcourts.gov, specifying the entire proceeding or parts of the proceeding to be transcribed that are not already on file. The appellant ~~shall~~ must serve on the appellee a designation of those parts of the proceeding to be transcribed. ~~If the appellant desires a transcript in a compressed format, appellant shall include the request for a compressed format within the request for transcript.~~ If no such parts of the proceedings are to be requested, within the same period the appellant ~~shall~~ must file a certificate to that effect with the ~~clerk of the~~ appellate court clerk and serve a copy ~~of that certificate~~ on the appellee.

(2) Transcript required of all evidence regarding challenged finding or conclusion. If the appellant intends to ~~urge~~ argue on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, the appellant ~~shall~~ must include in the record a transcript of all evidence relevant to such finding or conclusion. Neither the court nor the appellee is obligated to correct appellant's deficiencies in providing the relevant portions of the transcript.

(3) Statement of issues; ~~C~~ cross-designation by appellee. If the appellant does not order the entire transcript, the appellee may, within 104 days after the appellant ~~services~~ of the designation or certificate described in paragraph (e)(1) ~~of this rule~~, order the transcript(s) in accordance with (e)(1), and file and serve on the appellant a designation of additional parts to be included.

(fe) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in paragraph (a) of this rule, the parties may prepare and sign a statement of the case, showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, — together with such additions as

87 the trial court may consider necessary fully to present the issues raised by the appeal, ~~— shall will~~
 88 be approved by the trial court. The ~~clerk of the~~ trial court clerk shall will transmit the statement
 89 to the ~~clerk of the~~ appellate court clerk within the time prescribed by Rule 12(b)(2). The ~~clerk of~~
 90 ~~the~~ trial court clerk shall will transmit the record index ~~of the record~~ to the ~~clerk of the~~ appellate
 91 court clerk upon the trial court's approval of the statement ~~by the trial court~~.

92 **(gf) Statement of evidence or proceedings when no report was made or when transcript is**
 93 **unavailable.** If no report of the evidence or proceedings at a hearing or trial was made, or if a
 94 transcript is unavailable, or if the appellant is impecunious and unable to afford a transcript in a
 95 civil case, the appellant may prepare a statement of the evidence or proceedings from the best
 96 available means, including recollection. The statement ~~shall~~ must be served on the
 97 appellee, who may serve objections or propose amendments within 104 days after service. The
 98 statement and any objections or proposed amendments ~~shall~~ must be submitted to the trial court
 99 for settlement and approval and, as settled and approved, ~~shall~~ will be included by the ~~clerk of~~
 100 ~~the~~ trial court clerk in the record on appeal.

101 **(hg) Correction ng or modification ng of the record.**

102 (1) If any ~~difference-dispute~~ arises as to whether the record ~~truly discloses what occurred~~
 103 ~~in the trial court~~ is complete and accurate, the ~~difference-dispute~~ shall may be submitted to
 104 and settled by the ~~at~~ trial court. ~~The trial court will change and~~ the record ~~made to~~
 105 ~~conform to the truth~~ reflect what was filed in or considered by the trial court.

106 (2) If anything material to either party is ~~omitted from or~~ misstated ~~or is omitted from in~~
 107 the record by error ~~of the trial court or court personnel~~, by accident, or because the
 108 appellant did not order a transcript of proceedings that the appellee needs to respond to
 109 issues raised in ~~appellant's brief~~ ~~the Brief of Appellant~~, ~~the parties by stipulation, the trial~~
 110 ~~court, or the appellate court, either before or after the record is transmitted, may direct~~
 111 ~~that~~ the omission or misstatement may be corrected and, ~~if necessary, that~~ a supplemental
 112 record may be ~~certified~~ created and forwarded ~~and transmitted~~;

113 (A) on stipulation of the parties;

114 (B) by the trial court before or after the record has been forwarded; or

115 (C) by the appellate court.

116 | (3) The moving party, or the court if it is acting on its own initiative, ~~shall~~ must serve on
117 | the parties a statement of the proposed changes. Within ~~10~~4 days after service, any party
118 | may serve objections to the proposed changes.

119 | (4) All other questions as to the form and content of the record ~~shall~~ must be presented to
120 | the appellate court.

Tab 4

1 **Rule 25A. Challenging the constitutionality of a statute, ~~or ordinance,~~ rule, or other**
2 **administrative or legislative enactment.**

3 (a) Notice to the Attorney General or ~~the county or municipal attorney~~ other
4 **governmental entity**; penalty for failure to give notice.

5 (1) Challenging a statute. When a party challenges the constitutionality of a
6 statute in an appeal or petition for review in which the Attorney General has not
7 appeared, every party must serve its principal brief and any subsequent brief on
8 the Attorney General by email or, if circumstances prevent services by email, by
9 mail at the below address on or before the date the brief is filed, and file proof of
10 service with the court.

11 Email: notices@agutah.gov

12 Mail:

13 Office of the Utah Attorney General

14 Attn: Utah Solicitor General

15 350 North State Street, Suite 230

16 P.O. Box 142320

17 Salt Lake City, Utah 84114-2320

18
19
20 (2) Challenging an ordinance, rule, or other administrative or legislative
21 enactment. When a party challenges the constitutionality of a governmental
22 entity's ordinance, rule, or other administrative or legislative enactment ~~-a county~~
23 ~~or municipal ordinance~~ in an appeal or petition for review in which the
24 responsible ~~county or municipal~~ governmental entity attorney has not appeared,
25 the party must notify the governmental entity by serving its principal brief on
26 the entity identified in Rule (4)(d)(1) of the Utah Rules of Civil Procedure and
27 every party must serve ~~its principal brief and~~ any subsequent brief on the
28 governmental entity ~~county or municipal attorney~~ on or before the date the brief
29 is filed, and file proof of service with the court.

30 (3) Appellee or cross-appellant challenges. If an appellee or cross-appellant is
31 the first party to challenge the constitutionality of a statute, ~~or~~ ordinance, rule, or
32 other administrative or legislative enactment, the appellant must serve its
33 principal brief on the Attorney General or ~~the county or municipal~~ other
34 governmental entity no more than 7 days after receiving the appellee's or the
35 cross-appellant's brief and must serve its reply brief on or before the date it is
36 filed.

37 ~~(4) When service on the Attorney General is necessary under these rules, Every~~
38 ~~party must serve its brief on the Attorney General by email or, if circumstances~~
39 ~~prevent service by email, by mail at the addresses below, or mail at the following~~
40 ~~address and must file proof of service with the court.~~

41 ~~Email:~~

42 ~~notices@agutah.gov~~

43
44 ~~Mail:~~

45 ~~Office of the Utah Attorney General~~

46 ~~Attn: Utah Solicitor General~~

47 ~~350 North State Street, Suite 230~~

48 ~~320 Utah State Capitol~~

49 ~~P.O. Box 142320~~

50 ~~Salt Lake City, Utah 84114-2320~~

51 (5) Failure to comply. If a party does not serve a brief as required by this rule
52 and supplemental briefing is ordered as a result of that failure, a court may order
53 that party to pay the costs, expenses, and attorney fees of any other party
54 resulting from that failure.

55 (b) Notice by the Attorney General or other governmental entity ~~county or municipal~~
56 ~~attorney~~; amicus brief.

57 (1) ~~Within 14 days after service of the brief that presents a constitutional~~
58 ~~challenge~~ When a party raises a constitutional challenge in an appeal in which the
59 Attorney General or responsible governmental entity has not appeared, the
60 Attorney General or other governmental ~~attorney~~ entity will ~~must~~ ~~notify~~ ~~inform~~
61 the appellate court whether ~~it intends to~~ ~~it will~~ file an amicus brief. When the
62 appellant's principal brief raises the constitutional challenge, the Attorney
63 General or other governmental entity must file its notice within 14 days after
64 service of the appellee's principal brief. When the appellee's or cross-appellant's
65 principal brief raises the constitutional challenge, the Attorney General or other
66 governmental entity must file its notice within 14 days after service of the
67 appellant's or cross-appellant's reply brief. The Attorney General or other
68 governmental ~~attorney~~ entity may seek up to an additional 7 days' extension of
69 time ~~from the court~~ to file its notice. ~~Should the Attorney General or other~~
70 ~~government attorney decline to file an amicus brief, that entity should plainly~~
71 ~~state the reasons therefor.~~

72 (2) If the Attorney General or other governmental ~~attorney~~ entity declines to file
73 an amicus brief, the briefing schedule is not affected.

74 (3) If the Attorney General or other governmental ~~attorney~~ entity intends to file
75 an amicus brief, that brief ~~will come~~ is due ~~30~~ 28 days after the notice of intent is
76 filed. ~~Each~~ The Attorney General or other governmental entity may ~~file a motion~~
77 ~~move~~ to extend that time as provided under Rule 22. ~~On a governmental~~
78 ~~entity~~ The filing of a notice of intent ~~to file an amicus brief,~~ ~~vacates~~ the briefing
79 schedule established under Rule 13 ~~is vacated,~~ and the next brief of a party, if the
80 rules allow for a next brief, ~~will come~~ is due ~~30~~ 28 days after the amicus brief is
81 ~~filed~~ served. If the rules do not allow the party that raised the constitutional
82 challenge to file an additional brief without leave of the court after that party

83 receives the amicus brief, that party may move for permission to file a
84 supplemental brief. If leave is granted, the court will state the length of, and due
85 date for, the supplemental brief. The supplemental brief must be limited to
86 responding to the arguments raised in the amicus brief and comply with all other
87 requirements of rule 24(b). On its own motion, the court may order additional
88 supplemental briefing.

89 (c) Call for the views of the Attorney General or other governmental entity ~~county or~~
90 ~~municipal attorney~~. Any time a party challenges the constitutionality of a statute, ~~or~~
91 ordinance, rule, or other administrative or legislative enactment, the appellate court
92 may call for the views of the Attorney General or ~~of the county or municipal~~
93 ~~attorney~~ other governmental entity and set a schedule for filing an amicus brief and
94 supplemental briefs by the parties, if any.

95 (d) Participation in oral argument. If the Attorney General or other governmental
96 entity ~~county or municipal attorney~~ files an amicus brief, the Attorney General or other
97 governmental entity ~~county or municipal attorney~~ will be permitted to participate at
98 oral argument by timely declaring an intent to participate on the court's oral argument
99 acknowledgment form. -

Tab 5

Proposed Changes to Utah Child Welfare Appeals
Rule 52-59, Utah Rules of Appellate Procedure
7.28.20 (MPL)

Proposal 1

Rule 52. Time for Appeal

No change

Rule 53. Time for Appeal

No change

Rule 54. Transcripts

No change

Rule 55. Petition on Appeal

(a) Filing; dismissal for failure to timely file. The appellant must file with the clerk of the Court of Appeals a petition on appeal within 15 days from ~~the filing of the notice of appeal or the amended notice of appeal~~ **transmission of the record on appeal by the Court of Appeals to each party**. ~~The petition will be deemed filed on the date of the postmark if first-class mail is used.~~ **Filing of the petition shall be in accordance with Rule 21(a)**. If the petition on appeal is not timely filed, the court may dismiss the appeal or take other appropriate action. The petition must be accompanied by proof of service. The appellant must serve a copy on counsel of record of each party, including the Guardian ad Litem, or, if the party is not represented by counsel, then on the party at the party's last known address, in the manner prescribed in Rule 21(c).

(b) Preparation by ~~trial~~ counsel. **If the petitioner has appointed counsel in the juvenile court, or has been found to be indigent, then the petition on appeal must be prepared by appellate counsel pursuant to the requirements of Rule 11-401 of the Utah Code of Judicial Administration.** ~~The petition on appeal must be prepared by appellant's trial counsel. Trial counsel may only be relieved of this obligation by the juvenile court upon a showing of extraordinary circumstances. Claims of ineffective assistance of counsel do not constitute extraordinary circumstances but should be raised by trial counsel in the petition on appeal.~~

(c) Format. All petitions on appeal must substantially comply with the Petition on Appeal form that accompanies these rules. The petition must not exceed ~~15 pages~~ **7,000 words**, excluding the attachments required by Rule 55(d)(7). The petition must be typewritten, ~~printed or prepared by photocopying or other duplicating or copying process that will produce clear, black and permanent copies equally legible to printing,~~ on opaque, unglazed paper 8 inches wide and 11 inches long. ~~Paper may be recycled paper, with or without deinking. The printing must be double spaced, except for matter customarily single spaced and indented.~~

~~Margins must be at least one inch on the top, bottom and sides of each page. Page numbers may appear in the margins. Either a proportionally spaced or monospaced typeface in a plain, roman style may be used. A proportionally spaced typeface must be 13 point or larger for both text and footnotes. Examples are CG Times, Times New Roman, New Century, Bookman and Garamond. A monospaced typeface may not contain more than ten characters per inch for both text and footnotes. Examples are Pica and Courier~~ **must comply with Rule 27(a) and (b), except that it may be printed or duplicated on one side of the sheet.**

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

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

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

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

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

(d)(5) A statement of the legal issues presented for appeal, how they were preserved for appeal, and the applicable standard of review. The issue statements should be concise in nature, setting forth specific legal questions. General, conclusory statements such as "the juvenile court's ruling is not supported by law or the facts" are not acceptable.

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

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

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

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

Rule 56. Response to petition on appeal.

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

(b) Format. A response shall substantially comply with the Response to Petition on Appeal form that accompanies these rules. The response shall not exceed 15 pages **7,000 words**, excluding any attachments, and shall comply with Rule 27(a) and (b), except that it may be printed or duplicated on one side of the sheet.

Rule 57. Record on appeal; transmission of record.

(a) The record on appeal shall include the legal file, any exhibits admitted as evidence, and any transcripts.

(b) The record shall be transmitted by the juvenile court clerk to the clerk of the Court of Appeals upon completion of the transcript or, if there is no transcript, within 20 days after the filing of the notice of appeal.

Rule 58. Ruling.

(a) After reviewing the petition on appeal, any response, and the record, the Court of Appeals may rule by opinion, memorandum decision, or order. The Court of Appeals may issue a decision or may set the case for full briefing under [Rule 24](#). The Court of Appeals may order an expedited briefing schedule and specify which issues shall be briefed.

~~(b) If the Court of Appeals sets the case for briefing under [Rule 24](#) and the petitioner has appointed counsel, the Court of Appeals will remand to the juvenile court to appoint appellate counsel pursuant to [Rule 11-401](#) of the Utah Code of Judicial Administration.~~

(c) If the Court of Appeals affirms, reverses, or remands the juvenile court order, judgment, or decree, further review pursuant to [Rule 35](#) may be sought, but refusal to grant full briefing shall not be a ground for such further review.

Rule 59. Extensions of Time.

No change.

Tab 6

1 **Rule 15. Petitions for review in tax cases.**

2 (a) If a petition for judicial review of a State Tax Commission decision is filed ~~pursuant to Utah~~
3 ~~Code Ann. §59-1-602~~ by one party in the district court and by another party in the ~~supreme Court~~
4 ~~appellate court~~ through a direct appeal, the direct appeal ~~shall~~will be, absent compelling
5 circumstances;

6 (1) stayed pending the district court proceeding's resolution ~~of the proceeding before the~~
7 ~~district court~~; and

8 (2) dismissed when the district court issues ~~upon the issuance of~~ a final appealable order
9 ~~by the district court.~~

10 (b) Assuming an absence of compelling circumstances under ~~subsection~~paragraph (a), all issues
11 appealed in the direct appeal may be raised by any party in the district court proceeding, and if
12 not raised in the district court proceeding, the direct appeal issues will be waived and subject to
13 dismissal with the direct appeal when the district court issues ~~upon the issuance of~~ a final
14 appealable order ~~by the district court.~~

15 (c) A party may not appeal ~~pursuant to Utah Code Ann. §59-1-602~~ to both the district court and
16 ~~to the Supreme Court~~appellate court through appeal. However, a party who has appealed to
17 either the district court or the ~~Supreme Court~~appellate court may join an appeal filed by another
18 party in the separate court through filing a cross-appeal at the ~~Supreme Court~~appellate court or
19 by intervening in the district court appeal.