

Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Paul C. Burke, Chair

Location: Webex (see calendar appointment for instructions)
Date: April 1, 2021
Time: 12:00 to 1:30 p.m.

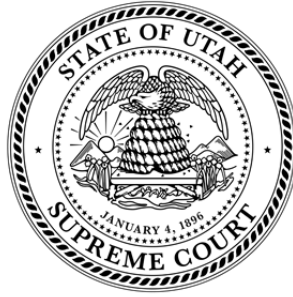
Action: Welcome and approval of March 4, 2021 minutes	Tab 1	Paul C. Burke, Chair
Discussion: Legislative update (if any); Drafting a proposed letter for long-standing cases		Paul C. Burke, Judge Jill Pohlman, Christopher Ballard
Action: Rule 31	Tab 2	Mary Westby
Action: Rules 23, 27, 56	Tab 3	Sarah Roberts
Action: Rule 11	Tab 4	Debra Nelson, Joanna Landau; Judge Pohlman
Action: Rule 12	Tab 5	Judge Pohlman, Sarah Roberts
Discussion: Old/new business		Paul C. Burke

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

2021 Meeting schedule:

May 6, 2021	August 5, 2021	November 4, 2021
June 3, 2021	September 2, 2021	December 2, 2021
July 1, 2021	October 7, 2021	

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

Via WebEx Videoconference
Thursday, March 4, 2021
12:00 pm to 1:30 pm

PRESENT

Christopher Ballard
Troy Booher—
Emeritus Member
Paul C. Burke—Chair
Patrick Burt
Lisa Collins
R. Shawn Gunnarson
Michael Judd—
Recording Secretary

Alan Mouritsen
Judge Gregory Orme
Rodney Parker
Judge Jill Pohlman
Sarah Roberts—Staff
Clark Sabey
Nathalie Skibine
Scarlet Smith
Nick Stiles—Staff
Mary Westby

EXCUSED

Tyler Green

1. Welcome, Approval of February 2021 Minutes Paul C. Burke

Paul Burke welcomed the committee. The committee reviewed the February 2021 minutes. No changes or concerns were noted.

Judge Orme moved to approve the minutes from the February 2021 meeting. That motion was seconded and it passed without objection by unanimous consent.

2. **Discussion:** **Paul C. Burke**
Legislative Update & Appellate Case Management

The committee opened discussion regarding the legislative session. No committee members were aware of issues or tasks raised by that session.

Mr. Burke informed the committee that the Utah Supreme Court had asked him to solicit feedback on how to manage or implement procedures to address long-standing cases. (Examples of such procedures may include status conferences or summary decisions with more detailed reasoning to come.) Judge Orme offered insight into what may account for delays in certain cases. The committee discussed whether a notice to the parties, sent after 6 to 8 months, would help address the problem. After discussion, the committee opted not to recommend any of the procedures discussed, but to retain the topic on its working agenda to be considered in conjunction with future amendments related to case management.

3. **Discussion:** **Judge Orme**
Cross-Petitions for Review in Administrative Cases

Judge Orme introduced the topic of cross-petitions for review in administrative cases, which had been introduced at a prior committee meeting, and expressed that he does not have a strong opinion on whether the problem merited any change to the existing rules. Lisa Collins informed the committee that parties ask about this rules nuance quite often, and suggested that if there is no compelling reason for the bar on cross-petitions, the committee should consider removing that bar. After further discussion, including discussion of whether Utah's administrative rules require such cross-petitions to be brought separately, the committee concluded that lifting the bar on cross-petitions may prove to be a good idea, but noted that it may require coordination between Utah's rules of administrative procedure and the appellate rules. Judge Orme suggested that the topic be considered as part of next year's "housekeeping" legislation, and the committee agreed to return to the issue at that later date.

**4. Action:
Rule 22**

**Paul C. Burke
Sarah Roberts**

Sarah Roberts introduced the proposed amendment, emphasizing that there are no substantive changes and that the stylistic changes are intended to ensure consistency as to how time is computed.

Mary Westby moved to strike the final two sentences of 22(a), and Scarlet Smith seconded. After some discussion about the computation of time, the committee agreed that the amendment at issue and the lingering questions regarding computation of time be separated, and Ms. Westby agreed to withdraw her motion.

The committee discussed several other minor changes: Judge Pohlman recommended that on lines 6-7, the committee change the phrase “business days” back to previous language. Ms. Collins lodged a question about the utility of subsection (b)(3)’s requirement. The committee recommended that that requirement be left in place. Christopher Ballard recommended that the phrase “prior to the” be simplified to read “before.”

Following that discussion, Ms. Westby moved to table the proposed amendment, given the committee’s overarching project to address the “counting of days” issue. Judge Pohlman seconded the motion and it passed without objection by unanimous consent.

**5. Action:
Rule 50**

Tyler Green

The committee noted that at the February 2021 meeting, it passed Rule 25 but left Rule 50 unpassed and that the changes to Rule 50 are largely stylistic. Troy Booher initiated a discussion about the time requirement in subsection 50(d) and recommended that the time be shortened to 7 days. Judge Pohlman suggested that in line 23, the word “it” be added, for the purposes of clarity. Rodney Parker recommended that even after the proposed changes and clarifications are made, the rule be examined for possible additional clean-up, and Mr. Ballard agreed.

Following that discussion, Parker moved to adopt the rule as amended as it appeared on the screen at the committee meeting. Judge Pohlman seconded the motion and it passed without objection by unanimous consent.

**Judicial Efficiency
Subcommittee**

Judge Orme moved to remove word “published,” Ms. Westby seconded, and the motion passed without objection by unanimous consent.

Mr. Sabey moved to strike that final clause, and Judge Orme seconded that motion. After some discussion, that motion was withdrawn, and Shawn Gunnerson proposed instead that the second sentence be stricken. Mr. Parker seconded that motion and it passed without objection.

Mr. Ballard moved to make that change, Ms. Westby seconded, and the motion passed without objection by unanimous consent.

Mr. Parker moved to remove subparagraph 30(e), Ms. Westby seconded, and the motion passed without objection by unanimous consent.

Judge Pohlman moved to delete subparagraph 31(c). After discussion regarding a potential difference between Rules 30(e) and 31(c), the motion was seconded and it passed without objection.

After further discussion, Mr. Parker moved to table the amendments to Rule 30 and 31, at least in part to resolve a perceived conflict between Rules 31(a) and (b). Judge Orme seconded that motion and no objections were noted.

Paul C. Burke

8. Adjourn

5

Tab 2

Rule 31. Expedited appeals decided after oral argument without written opinion.

(a) **Motion and stipulation for expedited hearing.** After ~~the filing of~~ all briefs in an appeal have been filed, a party may move for an expedited decision without a written opinion. The motion ~~shall~~ must be in the form prescribed by Rule 23 and ~~shall~~ must describe: the nature of the case, the issues presented, and any special reasons the parties may have for an expedited decision. ~~The court may dispose of any qualified case under this rule upon its own motion before or after oral argument.~~

Comment [1]:

Deleted last sentence re court motion – Mary W.

(b) **Cases ~~which~~ that qualify for expedited decision.** The following are matters ~~which~~ that the court may consider for expedited decision without opinion:

(1) appeals involving uncomplicated factual issues based primarily on documents or upon stipulation of all parties;

Comment [2]:

Tabled (3/4/2021)

(2) summary judgments;

(3) dismissals for failure to state a claim;

(4) dismissals for lack of personal or subject matter jurisdiction; and

(5) judgments or orders based on uncomplicated issues of law.

~~(c) An order may be used to render a decision in cases where the governing rules of law are. In all motions brought under this rule, the substantive rules of law should be deemed settled, although the parties may differ as to their application.~~

~~(d) Appeals ineligible for expedited decision. The court will not grant a motion for an expedited appeal in cases raising substantial constitutional issues, issues of significant public interest, issues of law of first impression, or complicated issues of fact or law.~~

Comment [3]: Suggest deleting this paragraph – Mary W.

(e) Procedure if expedited motion is granted. If a motion for expedited decision is granted, the appeal will be given an expedited setting for oral argument within 45 to 60 days from the date of the order granting the motion. Within two days after submission of the appeal, the court will conference, decide the case, and issue a written order which need not be accompanied by an opinion. ~~Entry of the order by the clerk in the records of~~

27 ~~the court, shall constitute the entry of t~~The judgment of the court will be entered when
28 the clerk docket the order.

29 (d~~f~~) **Effect as precedent.** Appeals decided under ~~this rule~~ paragraph (e) will not stand
30 as precedent; but, ~~in other respects,~~ will otherwise have the same force and effect as
31 other court decisions ~~of the court.~~

32 (e~~g~~) **Issu~~ance of~~ing a written opinion.** If ~~it appears to the court after the case has been~~
33 ~~submitted for decision~~ the court decides to issue ~~that~~ a written opinion ~~should be issued,~~
34 the time limitation in paragraph (c~~e~~) ~~shall~~ will not apply and the parties will be so
35 notified.

36 (f~~e~~) **Party motion after oral argument.** If the appellate court has not issued a decision
37 on an appeal within nine months after oral argument, any party may move the court for
38 an expedited order. The expedited order will state the resolution of the appeal without
39 explanation and may be followed by an opinion.

Comment [4]:
C – Mary W.

Comment [SCR5]: Add paragraph (f) – Mary W.

Tab 3

Rule 23. Motions.

(a) **Content of motion.** Unless another form is elsewhere prescribed by these rules, an application for an order or other relief ~~shall~~must be made by filing a motion for such order or relief with proof of service on all other parties. The motion ~~shall~~must contain ~~or be accompanied by the following:~~

- (1) ~~A~~a specific and clear statement of the relief sought;
- (2) ~~A~~a particular statement of the factual grounds;
- (3) ~~If the motion is for other than an enlargement of time,~~ a memorandum of points and authorities in support (unless the motion is for an enlargement of time); and
- (4) ~~A~~affidavits and ~~papers~~documents, where appropriate.

(b) **Response.** Any party may file a response to a motion within ~~10~~4 days after the motion is served~~service of the motion~~; however, the court may, for good cause shown, dispense with, shorten, or extend the time for responding to any motion.

(c) **Reply.** The moving party may file a reply only to answer new matters raised in the response. A reply, if any, may be filed no later than ~~75~~7 days after the response is served~~service of the response~~, but the court may rule on the motion without awaiting a reply.

(d) **Determination of motions for procedural orders.** Notwithstanding ~~the provisions of~~ paragraph (a) ~~of this rule~~ as to motions generally, motions for procedural orders ~~which do not~~ substantially affecting the rights of the parties or the ultimate disposition of the appeal, including any motion under Rule 22(b), may be acted upon at any time, without awaiting a response or reply. Pursuant to rule or at the court's direction~~order of the court~~, the clerk may dispose of motions for specified types of procedural orders ~~may be disposed of by the clerk~~. The court may review a clerk's disposition ~~by the clerk~~ upon a party's motion ~~of a party~~ or upon its own motion.

(e) **Power of a single justice or judge to entertain motions.** In addition to the authority expressly conferred by these rules or by law, a single justice or judge of the court may entertain and may grant or deny any request for relief ~~which~~ that under these rules may properly be sought by motion, except that:

(1) a single justice or judge may not dismiss or otherwise determine an appeal or other proceeding; ~~and~~

(2) ~~except that~~ the court may provide by order or rule that any motion or class of motions must be acted upon by the court; and

(3) ~~The~~ the action of a single justice or judge may be reviewed by the court.

~~(f) Form of papers; number of copies.~~

Comment [LL1]: Incorporated into Rule 27.

~~(1) Only the original of a motion to enlarge time shall be filed. The number of required copies of motions for summary disposition shall be governed by Rule 10(b). For other motions presented to the Supreme Court, the movant shall file with the clerk of the court an original and three copies. For other motions pending in the Supreme Court, the respondent shall file an original and three copies of the response. For a motion presented to the Court of Appeals, the movant shall file with the clerk of the court an original and four copies. For a motion pending in the Court of Appeals, the respondent shall file an original and four copies of the response.~~

~~(2) Motions and other papers shall be typewritten on opaque, unglazed paper 8 1/2 by 11 inches in size. Paper may be recycled paper, with or without deinking. The text shall be in type not smaller than ten characters per inch. Lines of text shall be double spaced and shall be upon one side of the paper only. Consecutive sheets shall be attached at the upper left margin.~~

~~(3) A motion or other paper shall contain a caption setting forth the name of the court, the title of the case, the docket number, and a brief descriptive title indicating the purpose of the paper. The attorney shall sign all papers filed with~~

53 ~~the court with his or her individual name. The attorney shall give his or her~~
54 ~~business address, telephone number, and Utah State Bar number in the upper left~~
55 ~~hand corner of the first page of every paper filed with the court except briefs. A~~
56 ~~party who is not represented by an attorney shall sign any paper filed with the~~
57 ~~court and state the party's address and telephone number.~~

1 **Rule 27. Form of briefs, motions, and other appellate documents.**

2 (a) Form of briefs, motions, and other appellate documents. Except as otherwise
3 provided in this rule or by leave of court, all briefs, motions, and other appellate
4 documents must comply with the following standards:

5 (1) ~~Paper s~~Size, line spacing, ~~printing and~~ margins. Briefs shall All documents
6 must be prepared on 8½ by 11 inch sized paper. ~~typewritten, printed or prepared~~
7 ~~by photocopying or other duplicating or copying process that will produce clear,~~
8 ~~black and permanent copies equally legible to printing, on opaque, unglazed~~
9 ~~paper 8 1/2 inches wide and 11 inches long, and shall be securely bound along~~
10 ~~the left margin. Paper may be recycled paper, with or without deinking. The~~
11 ~~printing text~~ must be double spaced, except for matter customarily single spaced
12 and indented. Margins ~~shall~~ must be at least one inch on ~~the top, bottom and~~
13 ~~sides of each page~~ all sides. Page numbers are required and may appear in the
14 margins.

15 (b2) Typeface. ~~Either a proportionally spaced or monospaced typeface in~~ The
16 type must be a plain, roman style with serifs ~~may be used.~~ Italics or boldface may
17 be used for emphasis. Cited case names must be italicized or underlined.

18 (3) Typesize. ~~A proportionally spaced~~ The typeface must be 13-point or larger for
19 both text and footnotes. ~~A monospaced typeface may not contain more than ten~~
20 ~~characters per inch for both text and footnotes.~~

21 (b) Documents submitted by unrepresented parties. An unrepresented party who does
22 not have access to a word-processing system must file typewritten or legibly
23 handwritten briefs, motions, and other appellate documents. An unrepresented party
24 must sign any document filed with the court. These documents must otherwise comply
25 with the form requirements of this rule, and, if applicable, Rules 24 and 24A.

~~(c) **Binding.** Briefs shall be printed on both sides of the page, and bound with a compact type binding so as not unduly to increase the thickness of the brief along the bound side. Coiled plastic and spiral type bindings are not acceptable.~~

~~(d) **Caption page color of cover; contents of cover.** The cover of the opening brief of appellant shall be blue; that of appellee, red; that of intervenor, guardian ad litem, or amicus curiae, green; that of any reply brief, or in cases involving a cross appeal, the appellant's second brief, gray; that of any petition for rehearing, tan; that of any response to a petition for rehearing, white; that of a petition for certiorari, white; that of a response to a petition for certiorari, orange; and that of a reply to the response to a petition for certiorari, yellow. All brief covers shall be of heavy cover stock. There shall be adequate contrast between the printing and the color of the cover. The cover first page of all briefs, motion, or appellate document shall must contain a caption that includes the following information set forth in the caption:~~

(1) Case and document information:

(A) ~~the~~ full title given to the case in the court or agency from which the appeal was taken, as modified ~~pursuant to~~ under Rule 3(g), ~~as well as~~

(B) the designation of the parties both as they appeared in the lower court or agency and as they appear in the appeal. ~~In addition, the covers shall contain:~~

(C) the name of the appellate court;

(D) the number of the case in the appellate court opposite the case title;

(E) the title or description of the document (e.g., Brief of Appellant, Petition for Rehearing, Motion to Dismiss);

(F) the nature of the proceeding in the appellate court (e.g., Appeal, Petition for Review, Extraordinary Writ);

Comment [1]: From Rule 23:

(3) Caption. A motion or other document must contain a caption setting forth:
(A) the name of the court,
(B) the title of the case,
(C) the docket number, and
(D) a brief descriptive title indicating the purpose of the document.

(G) the name of the court and judge, agency, or board below ~~and~~.

(2) For motions and other appellate documents, counsel or party information in the upper left-hand corner, including:

(A) the name, ~~s and~~ address, ~~es,~~ telephone number, Utah State Bar number, of counsel for the respective parties and designation ~~ioned~~ as attorney for appellant, petitioner, appellee, or respondent, as the case may be, ~~or~~.

(B) An unrepresented party must list the party's name, address, and telephone number.

(3) For briefs on the merits, ~~T~~the names of all counsel for the respective parties must appear on the bottom half of the caption page. ~~for~~ The party filing the document ~~shall~~ must appear in the lower right and opposing counsel in the lower left of the cover. ~~In criminal cases, the cover of the defendant's brief shall also indicate whether the defendant is presently incarcerated in connection with the case on appeal and if the brief is an Anders brief.~~

(d) Additional requirements for briefs on the merits.

(1) Binding. Briefs ~~shall~~ must be printed on both sides of the page, and securely bound on the left margin with a compact-type binding so as not unduly to increase the thickness of the brief along the bound side. Coiled plastic and spiral-type bindings are not acceptable.

(2) Color of caption page. The ~~cover~~caption page of ~~the~~appellant's opening brief ~~of appellant shall~~ must be blue; that of appellee, red; that of intervenor, guardian ad litem, or amicus curiae, green; that of any reply brief, or in cases involving a cross-appeal, the appellant's second brief, gray. All brief ~~covers~~caption pages ~~shall~~ must be of heavy ~~cover~~card stock. There ~~shall~~ must be adequate contrast between the printing and the color of the ~~cover~~caption page.

(3) **Criminal appeals.** In criminal cases, the cover of the defendant's brief must also state whether the defendant is presently incarcerated in connection with the case on appeal and if the brief is an *Anders* brief. An *Anders* brief is a brief filed pursuant to *Anders v. California*, 386 U.S. 793 (1967), in cases where counsel believes no nonfrivolous appellate issues exist.

(4)(e) **Effect of non-compliance with rules.** The clerk ~~shall~~will examine all briefs before filing. If they ~~are~~briefs are not prepared in accordance with these rules, they will not be filed but ~~shall~~will be returned to be properly prepared. The clerk ~~shall~~will retain one copy of the non-complying brief and the party ~~shall~~must file a brief prepared in compliance with these rules within ~~5~~seven days. The party whose brief has been rejected ~~under this provision shall~~must immediately notify the opposing party in writing of the lodging. The clerk may grant additional time for bringing a brief into compliance only under extraordinary circumstances. This rule is not intended to permit significant substantive changes in briefs.

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 with the appellate clerk. ~~An original and four copies of the response must be filed with the clerk of the Court of Appeals~~ within ~~15~~4 days after service of the appellant's petition on appeal. The response ~~It shall~~must be accompanied by proof of service to. ~~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, on the party 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~~must substantially comply with the Response to Petition on Appeal form that accompanies these rules. The response ~~shall~~may not exceed 15 pages, excluding any attachments, and ~~shall~~must comply with Rule 27 ~~(a) and (b), except that it may be printed or duplicated on one side of the sheet.~~

Tab 4

Rule 11. The record on appeal.

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

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

(1) Preparing the record. Immediately upon filing of the notice of appealOn the appellate court's request, the clerk of the trial court clerk shall will securely fasten the record in a trial court case file, with collationprepare the record in the following order:

(A) the record index ~~prepared by the clerk;~~

~~(B) the docket sheet;~~

~~(C)~~ all original papers documents in chronological order;

~~(D)~~ all published depositions in chronological order;

~~(E)~~ all transcripts prepared for appeal in chronological order;

~~(F)~~ a list of all exhibits offered in the proceeding; and

~~(G)~~ in criminal cases, the presentence investigation report.

(2) Pagination.

(A) ~~The clerk shall mark the bottom right corner of every page of the collated index, docket sheet, and all original papers as well as~~ Using bates

27 numbering, the entire record must be paginated, except that only the
28 cover pages must be paginated ~~only of~~ all published depositions ~~and~~ and
29 ~~the cover page only of each volume of~~ transcripts prepared for appeal
30 ~~constituting the record with a sequential number using one series of~~
31 ~~numerals for the entire record.~~

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

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

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

52 (c) **Duty of appellant.** ~~After filing the notice of appeal, t~~ The appellant, or in the event
53 that more than one appeal is taken, each appellant, ~~shall~~ must comply with ~~the~~
54 ~~provisions of paragraphs (d) and (e) of this rule and shall~~ must take any other action

necessary to enable ~~the clerk of~~ the trial court [clerk](#) to assemble and transmit the record.

~~A single record shall be transmitted.~~

~~(d) Papers on appeal.~~

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

~~(2) Civil cases. Unless otherwise directed by the appellate court upon sua sponte motion or motion of a party, the clerk of the trial court shall include all of the papers in a civil 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.~~

(ed) 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, or within 30 days of the notice of appeal where the appellant has been determined indigent under Utah Code section 78B-22-202, 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

Comment [SCR1]: Indigent Defense Commission

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.

~~(f)~~ **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 ~~may~~ shall together with such additions as the trial court may consider necessary fully to present the issues raised by the appeal ~~shall~~ will be approved by the trial court. The ~~clerk of the~~ trial court clerk shall will transmit the statement to the ~~clerk of the~~ appellate court clerk within the time prescribed by Rule 12(b)(2). The ~~clerk of the~~ trial court clerk shall will transmit the record index ~~of the record~~ to the ~~clerk of the~~ appellate court clerk upon the trial court's approval of the statement ~~by the trial court~~.

~~(g)~~ **Statement of evidence or proceedings when no report was made or when transcript is unavailable.** If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, or if the appellant is impecunious and unable to afford a transcript in a civil case, the appellant may prepare a statement of the evidence or proceedings from the best available means, including recollection. The statement ~~shall~~ must be served on the appellee, who may serve objections or propose amendments within 104 days after service. The statement and any objections or

110 proposed amendments ~~shall~~must be submitted to the trial court for settlement and
111 approval and, as settled and approved, ~~shall~~will be included by the ~~clerk of the~~ trial
112 court clerk in the record on appeal.

113 ~~(h)~~ (g) ~~Correction or modification of the record.~~

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

119 (2) If anything material to either party is ~~omitted from or~~ misstated ~~or is omitted~~
120 ~~from in~~ the record by error ~~of the trial court or court personnel~~, by accident, or
121 because the appellant did not order a transcript of proceedings that the appellee
122 needs to respond to issues raised in ~~appellant's brief~~ ~~the Brief of Appellant, the~~
123 ~~parties by stipulation, the trial court, or the appellate court, either before or after~~
124 ~~the record is transmitted, may direct that~~ the omission or misstatement may be
125 corrected and, ~~if necessary, that~~ a supplemental record may be ~~certified~~ created
126 ~~and forwarded and transmitted.~~

127 (A) on stipulation of the parties;

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

129 (C) by the appellate court.

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

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

Tab 5

1 **Rule 12. Transmission of the record.**

2 (a) Duty to prepare and file transcript; request for enlargement of time; notice to
3 appellate court.

4 (a)(1) ~~Upon receipt of a request for a transcript~~ On receiving a transcript request,
5 the ~~clerk of the~~ appellate court clerk shall will assign ~~the preparation of the~~
6 transcript preparation to the court reporter who reported the proceedings or, if
7 recorded on video or audio equipment, to an official court transcriber and notify
8 the requesting party of the assignment. With appellate court approval, ~~By~~
9 ~~stipulation of the parties approved by the appellate court~~, the parties may
10 stipulate that a person other than an official court transcriber may transcribe a
11 recorded hearing.

12 (a)(2) A party requesting a transcript ~~shall~~ must make satisfactory arrangements
13 for paying the fee to the reporter or transcriber ~~and notify the clerk of the~~
14 ~~appellate court of the date on which satisfactory arrangements were made~~. The
15 transcript ~~shall~~ must be completed and filed within 30 days after that date.

16 (a)(3) The reporter or transcriber may request through the Transcript
17 Management System ~~from the clerk of the appellate court~~ an enlargement of time
18 in which to file the transcript. The request for enlargement of time ~~shall be in~~
19 ~~writing and shall~~ must contain the elements stated in CJA 5-201(1). If filed ~~prior~~
20 ~~to the expiration of~~ before the transcript preparation period expires, the request
21 ~~shall~~ must make a showing of good cause. If filed after the period ~~expiration of~~
22 ~~the period~~, the request ~~shall~~ must make a showing of extraordinary circumstances
23 beyond the control of the reporter or transcriber. ~~The reporter or transcriber shall~~
24 ~~provide a copy of the request to the parties. The clerk of the appellate court shall~~
25 ~~provide written notice of the disposition of the request for enlargement of time to~~
26 ~~the reporter or transcriber and the parties.~~

(a)(4) ~~Upon completion of~~On completing the transcript, the reporter and, if applicable, the transcriber ~~shall~~must certify that the transcript is a true and correct record of the court hearing or of the file provided by the ~~clerk of the~~ appellate court clerk. The reporter or transcriber ~~shall~~must prepare an index of its contents and file the electronic file through the transcript management program. ~~The original hard copy of the transcript and index shall must be filed with the clerk of the trial court.~~ At the request of the person ordering the transcript or at the request of the appellate court, the reporter or transcriber ~~shall~~must file the transcript in a compressed format that places multiple complete pages of the original transcript upon each page of compressed transcript. The compressed transcript ~~shall~~must retain the page and line numbers of the original transcript. ~~A compressed transcript may be certified as a correct copy of the original.~~

(b) ~~Transmittal of~~ing the record on appeal to the appellate court.

(b)(1) ~~Transmittal of~~ing an index. Within 20 days from the date of the appellate court's request ~~from the appellate court,~~ the trial court, ~~juvenile court, or~~ government agency ~~shall~~must transmit ~~a certified copy of~~ the index prepared ~~pursuant to~~under Rule 11(b) to the ~~clerk of the~~ appellate court clerk.

~~(b)(2) Transmittal of non-paginated record. Within 7 days from the date of request from the appellate court, the trial court, juvenile court, or government agency shall transmit the papers and any transcripts on file to the clerk of the appellate court. These papers may be sent "as is," without pagination, and will be used by the appellate court for purposes of preliminary review. If the appeal is not summarily dismissed, the record will be returned for indexing and pagination.~~

(b)(~~3~~2) ~~Transmittal of~~ing a paginated record. Within 20 days from the date of the appellate court's request ~~from the appellate court,~~ the trial court, ~~juvenile court,~~

54 ~~or government agency shall~~must transmit the ~~papers~~documents, transcripts, and
55 exhibits in the appeal to the appellate court.

56 (b)(~~43~~) ~~Transmission of~~fitting exhibits. Documents of unusual bulk or weight, and
57 physical exhibits other than documents, photographs, or binders, ~~shall~~must not
58 be transmitted by the trial court, ~~juvenile court, or government agency~~ unless
59 directed to do so by a party or by the ~~clerk of the~~ appellate court clerk. A party
60 must make advance arrangements with the clerks for ~~the transportation and~~
61 ~~receipt of~~transporting and receiving exhibits of unusual bulk or weight.

62 (b)(~~54~~) Examining the record. During the briefing period, the parties may obtain
63 a copy of the record on appeal from the appellate courts. If a digital record is
64 available, it may be shared with the parties electronically.

65 (b)(~~65~~) Checking out the record on appeal. If a physical record on appeal exists,
66 d~~D~~uring the briefing period, counsel for the parties who are members of the
67 Utah State Bar in good standing may, as officers of the court, check out the
68 record upon written request to the clerk of court of the court in possession of the
69 record on appeal. The record may be mailed by registered mail or other
70 reputable overnight carrier, return receipt requested, provided that counsel
71 requesting mailing makes advance arrangements with the clerk and pays the cost
72 of shipping. The record may be picked up in person by counsel, or his or her
73 authorized agent. Counsel ~~shall~~must be responsible for promptly returning the
74 record to the court not later than when the party's brief is filed.

75 (c) ~~Expedited~~editing the transmittal of parts of the record. If ~~prior to the appellate court~~
76 requires the record before the time the record is transmitted ~~the record is required in the~~
77 ~~appellate court~~, the ~~clerk of the~~ trial court clerk at the request of any party or of the
78 appellate court ~~shall~~must transmit to the appellate court such parts of the original
79 record as designated.