



Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Christopher Ballard, Chair
Nathalie Skibine, Vice Chair

Location: Webex (see calendar appointment for instructions)
Date: October 7, 2021
Time: 12:00 to 1:30 p.m.

Welcome and introduction of new members		Chris Ballard, Chair Nathalie Skibine, Vice Chair
Action: Welcome and approval of September 2, 2021 minutes	Tab 1	Chris Ballard, Chair
Action: Rule 12	Tab 2	Nick Stiles
Action: Rules 25 & 50	Tab 3	Clark Sabey Michael Judd
Action: Rules 19 & 20	Tab 4	Clark Sabey Nick Stiles
Discussion: Old/new business		Paul C. Burke

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

2021 Meeting schedule:

November 4, 2021
December 2, 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, September 2, 2021
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Lisa Collins
Carol Funk
Tyler Green
Michael Judd—
Recording Secretary

Judge Gregory Orme
Judge Jill Pohlman
Sarah Roberts—Staff
Clark Sabey
Nathalie Skibine
Nick Stiles—Staff
Christopher Williams—Guest
Mary Westby

EXCUSED

Patrick Burt
Scarlet Smith

1. Welcome and Introduction of New Members

Chris Ballard

Chris Ballard greeted the committee and thanked its members for their attendance. Mr. Ballard welcomed the committee's two new members—Emily Adams and Carol Funk. At Mr. Ballard's invitation, the committee's members introduced themselves to one another and described their practices. Mr. Ballard expressed the committee's appreciation for the work done by the committee's now-former members.

2. Discussion: Nick Stiles
Emeritus Members

Nick Stiles noted that the issue related to emeritus membership has been resolved. The committee's practices regarding engagement of emeritus members remain the same.

3. **Action:** **Chris Ballard**
Approval of June 3, 2021 Minutes

The committee reviewed the June 2021 minutes. The committee did not make note of any needed changes.

Mary Westby moved to approve the June 2021 minutes as circulated. Judge Jill Pohlman seconded that motion, and it passed without objection by unanimous consent.

4. **Action:** Clark Sabey
Rule 25

Substantial changes to Rule 25 were sent to Utah Supreme Court for comment or potentially approval, but those proposed amendments haven't yet been circulated for public comment. Instead, the Court has asked the committee to consider standards for granting and denying motions for amicus curiae briefing. The current version of the rule does not state an explicit standard. Rather, it simply asks that a movant describe why their brief is desirable. The committee discussed the value of drawing standards or approaches from other jurisdictions.

Clark Sabey volunteered to take on 50-state survey, which he suggested he may be able to complete by next meeting. Michael Judd agreed to review the application of the parallel federal rule in federal court.

5. **Action:** Sarah Roberts
Rule 11

Rule 11 relates to the record on appeal. The committee discussed details regarding timing and deadlines, both generally and with respect to indigent parties. The committee also discussed adding clarifying detail to specify that

the index is not part of the record on appeal—the index should therefore be described as *accompanying* the record. The committee agreed to remove references in (a) and (b)(1), and to revise language in (b)(3), to reflect that relationship. The committee made additional line-edits to clarify the rule.

After that discussion, Ms. Westby moved to approve rule as shown on screen. Lisa Collins seconded Ms. Westby's motion, and it passed without objection by unanimous consent.

**6. Action:
Rule 12**

Sarah Roberts

The committee's discussion of Rule 12 included several minor changes, a question regarding the rule's reference to "20 days," and clean-up on line 56 regarding the transmission of exhibits.

Following that work on revisions, Judge Pohlman moved to approve rule as shown on screen. Ms. Westby seconded Judge Pohlman's motion and it passed without objection by unanimous consent.

**7. Discussion:
Old / New Business**

Chris Ballard

The committee briefly discussed new areas for review and potential rule-making, including a discussion of expedited procedures. As part of that discussion, the committee noted that such procedures may not be necessary because of the Utah Supreme Court's discretion to suspend provisions of the appellate rules as appropriate and needed. The committee agreed that these new areas for discussion may be added to agendas for future meetings.

8. Adjourn

Following its productive September meeting, the committee adjourned. The committee's next meeting will take place in October.

Tab 2

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

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

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

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

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

Tab 3

MEMORANDUM

To: The Appellate Rules Committee
From: Clark Sabey
Re: Survey of amicus provisions in other states
Date: September 28, 2021

The Supreme Court recently asked the Committee to consider whether it would be appropriate to consider the inclusion of additional criteria in Rule 25 for granting motions to permit briefs of amicus curiae.

The current version of Rule 25 provides, in relevant part:

A motion for leave shall identify the interest of the movant and shall state the reasons why a brief of an amicus curiae . . . is desirable.

The proposed amended version that recently was sent out for comment provides, in relevant part:

The motion must . . . identify the movant's interest and state the reasons why an amicus curiae brief is desirable and why the matters asserted are relevant to the disposition of the case.
Proposed Rule 25(c)(1)

The proposed amended version allows for submission of amicus briefs by consent of the parties; and it is my understanding that the Committee anticipates most amicus briefs will be submitted in that manner, with only a few of them being opposed and submitted by motion to an appellate court. Bearing that point in mind, any further amendments relating to criteria for granting motions presumably would apply only to a circumstance that may be rare.

Whether filed by consent or following a motion granted by the appellate court, the amended version also requires identification of “the party or parties supported” in the brief and whether “the brief

supports affirmance or reversal.” With some exemptions, it further requires disclosure of:

[whether a] party’s counsel authored the brief in whole or in part; . . . a party or party’s counsel contributed money that was intended to fund preparing or submitting the brief; and . . . [whether] a person – other than the amicus curiae, its members, or its counsel – contributed money that was intended to fund preparing or submitting the brief, and if so, identifies each such person

Proposed Rule 25(f)(5)

In connection with the request to consider whether to include additional criteria, the Supreme Court justices also expressed interest in the nature of the criteria specified by amicus rules in other jurisdictions. During last month’s meeting, Judge Orme suggested focusing on rules in some of the more prominent jurisdictions. Prominence being somewhat subjective, I elected to first look at the provisions in the most populous states, then to briefly peruse as many of the others as I could manage. I was able to locate provisions from all but a handful of states and can provide the following basic summary. In a nutshell, the proposed amended Rule 25 appears to be in line with the most common requirements and disclosures found in the provisions in other states.

Some rules have provisions for submission by consent, with a motion allowed when consent is not obtained. Others simply require a motion. And both often exempt certain governmental entities from the requirements of consent or a motion (as does the proposed amended Utah rule). The various rules almost uniformly require certain types of information, typically consisting of: (1) reasons for accepting an amicus brief; and (2) certain disclosures when the amicus brief is submitted. Only one of the jurisdictions I surveyed formally framed the required information in terms of detailed criteria that the appellate court would employ to determine whether to grant or deny the motion; but courts in other jurisdictions presumably could justify denying a request for amicus participation by motion if required information is not included or if the information provided by the movant discloses an impediment to accepting the brief.

The most common required information is the nature of the movant's interest in the case and which party the movant intends to support. A small number of jurisdictions require nothing else in the way of specific information. But a substantial majority seek a general explanation of why an amicus brief would be beneficial (e.g., "desirable," "helpful," or "appropriate") and/or relevant. Several jurisdictions list multiple categories of circumstances that can justify an amicus brief, including a claim that a brief would supply information, perspective, or argument not adequately presented by the parties. But it appears those jurisdictions frame the circumstances in non-exclusive terms and also list a general catch-all justification for other circumstances that could warrant an amicus brief. A few jurisdictions seek information about a movant's involvement in any similar case.

A fair number of jurisdictions require certain disclosures in connection with a motion or when the brief is filed; and it appears the proposed amendments to Utah's rule are of the latter variety. Thus, the disclosures do not necessarily constitute criteria for granting a motion to allow an amicus brief; but if a proposed brief accompanies a motion, courts in other jurisdictions presumably may consider the disclosures in connection with the decision to grant or deny the motion. The disclosures in a brief also could affect the manner in (or degree to) which a court relies on the brief. And the required disclosures could provide advance notice of certain funding or authorship practices disfavored by a court (or possibly even justifying denial of a motion or striking of the brief).

The disclosures usually relate to financial assistance for the preparation or submission of the proposed amicus brief. Typically, the jurisdictions require identification of any party to the case or any other entity or person (apart from the amicus movant itself) who will help fund the brief. Some also require disclosure of (or expressly prohibit) any authorship of any portion of the brief by a party to the case.

Following are examples from the most populous states and a few others. Only the portions pertaining to requirements or criteria justifying acceptance of an amicus brief have been highlighted.

Kansas Rule of Appellate Procedure 6.06(a) merely specifies the procedure for seeking permission to file an amicus brief:

A brief of an amicus curiae may be filed when: (1) an application to file the brief is served on all parties and filed with the clerk of the appellate courts; and (2) the appellate court enters an order granting the application.

Colorado Rule of Appellate Procedure 29 provides an example of a very common type of provision, which simply requires a statement of the amicus movant's interest in the case and an explanation of why an amicus brief would be beneficial:

The motion to file an amicus brief must identify the movant's interest and state the reasons why an amicus brief would be helpful to the court. . . . The caption page on the brief must indicate whether the brief is submitted in support of a party, and if so must identify the party or parties supported.

Mississippi Rule of Appellate Procedure 29 supplies an example of a provision seeking information regarding the amicus movant's involvement in a similar case:

A brief of an amicus curiae may be filed only by leave of the appropriate appellate court A motion for leave shall demonstrate that (1) amicus has an interest in some other case involving a similar question; or (2) counsel for a party is inadequate or the brief insufficient; or (3) there are matters of fact or law that may otherwise escape the court's attention; or (4) the amicus has substantial legitimate interests that will likely be affected by the outcome of the case and which interests will not be adequately protected by those already parties to the case.

Texas Rule of Appellate Procedure 11 only seeks information about the identity of the amicus movant and the source of funding for a proposed or filed brief:

An amicus curiae brief must . . . identify the person or entity on whose behalf the brief is tendered . . . [and] . . . disclose the source of any fee paid or to be paid for preparing the brief[.]

Rule 8.200 of the California Rules of Court includes an additional requirement for disclosures relating to authorship and

financing of the brief:

The application must state the applicant's interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter. [It] . . . must also identify . . . [a]ny party or any counsel for a party in the pending appeal who . . . [a]uthored the proposed amicus brief in whole or in part; or . . . [m]ade a monetary contribution intended to fund the preparation or submission of the brief; and . . . [e]very person or entity who made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members, or its counsel in the pending appeal.

Rule 531(b), 201 Pennsylvania Code, provides a similar example of required disclosures of funding and authorship in the brief itself:

An amicus curiae brief must contain a statement of the interest of amicus curiae. . . . [which shall] disclose the identity of any person or entity other than the amicus curiae, its members, or counsel who (i) paid in whole or in part for the preparation of the amicus curiae brief or (ii) authored in whole or in part the amicus curiae brief.

Florida Rule of Appellate Procedure 29, provides an example of required disclosures of funding and authorship in the motion:

The motion must be accompanied by the proposed brief and . . . [state]the movant's interest . . . the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case. . . . a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file. . . a statement that indicates whether . . . a party's counsel authored the brief in whole or in part . . . [whether] a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief. . . and [whether] . . . a person – other than the amicus curiae, its members, or its counsel – contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person[.]

Rule 500.23(a)(4), of the Rules of Practice, Judiciary of New York, includes justifications relating to how the amicus movant will remedy deficiencies or omissions in the parties' briefing:

A motion for amicus curiae relief shall . . . demonstrate that the parties are not capable of a full and adequate presentation and that movant could remedy this deficiency; movant could identify law or arguments that might otherwise escape the Court's consideration; or the propose amicus curiae brief otherwise would be of assistance to the Court . . . [shall] include a statement of the identity of movant and movant's interest in the matter; and . . . [shall] include a statement indicating whether: (a) a party's counsel contributed content to the brief or participated in the preparation of the brief in any other manner; (b) a party or a party's counsel contributed money that was intended to fund preparation or submission of the brief; and (c) a person or entity, other than the movant's counsel, contributed money that was intended to fund preparation or submission of the brief and, if so, identifying each such person or entity.

Iowa Rule of Appellate Procedure 6.906 references various circumstances that may be found in (or implied by) other rules. But it appears to be unique (at least amongst the states I was able to survey) in expressly framing those circumstances as favoring either a grant or denial of a motion for permission to file an amicus brief:

A motion for leave must identify the interest of the applicant and must state the reasons an amicus curiae brief would assist the court in resolving issues preserved for appellate review in the case. . . . An appellate court has broad discretion in determining whether an amicus curiae brief should be allowed. The court will base its decision on whether the brief will assist the court in resolving the issues preserved for appellate review in the case. In reaching its decision, the court will consider various factors, including those set forth below. . . .

The court will ordinarily grant a motion for leave to file an amicus curiae brief if one of the following factors is present. (1) The party whose position the proposed amicus brief supports is unrepresented or has not received adequate representation. (2) The proposed amicus curiae has a direct interest in another case that may be materially affected by the outcome of the present case. (3) The proposed amicus curiae has a unique perspective or information that will assist the court in assessing the ramifications of any decision rendered in the present case. . . .

The court will ordinarily deny a motion for leave to file an amicus curiae brief if one of the following factors is present. (1) The proposed amicus curiae brief will merely reiterate the arguments of the party whose position the brief supports. (2) The proposed amicus curiae brief appears to be an attempt to expand the number of briefing pages available to the party whose

position the brief supports.(3)The proposed amicus curiae brief attempts to raise issues that were not preserved for appellate review.(4)The proposed amicus curiae brief will place an undue burden on the opposing party. . . . The court may also strike an amicus curiae brief filed with the consent of all parties if it appears the brief would not be allowed under the above criteria.

Rule 25. Amicus curiae briefs~~Brief of an amicus curiae or guardian ad litem.~~

(a) Notice. An amicus curiae in the Supreme Court or Court of Appeals must provide notice to counsel of record for all parties to the appeal of its intent to file its brief at least 14 days before the brief's due date as provided in paragraph (d).

(1) Only one signatory to any amicus curiae brief filed jointly must notify the parties of its intent to file that brief.

(2) An amicus curiae whose brief is requested by an appellate court need not comply with this notice requirement.

(b) When permitted. ~~A brief of an amicus curiae or of a guardian ad litem representing a minor who is not a party to the appeal may be filed only by leave of court granted on motion or at the request of the court.~~

(1) The following entities may file an amicus curiae brief without consent of the parties or leave of court:

(A) a guardian ad litem;

(B) the State of Utah or any agency of the State of Utah by the Office of the Utah Attorney General;

(C) any other State, Commonwealth, or Territory when submitted by its Attorney General; or

(D) the United States of America when submitted by the United States Department of Justice.

(2) Any other amicus curiae brief may be filed only if all parties have consented to its filing, at the court's request, or by leave of court granted on motion.

(c) Motion for leave to file. ~~The motion for leave may be accompanied by a proposed amicus brief, provided it complies with applicable rules and the number of copies specified by Rule 26(b) are submitted to the court. If all parties do not consent to the brief's filing, A~~ an amicus curiae may file a motion for leave to file the brief.

(1) The motion must ~~shall~~ identify the party or parties who have withheld consent, identify the movant's interest, ~~of the movant and shall~~ and state the reasons why ~~a brief of~~ an amicus curiae ~~or the guardian ad litem~~ brief is desirable and why the matters asserted are relevant to the disposition of the case.

(2) The motion must not exceed 1,500 words. It must be submitted as one document with the brief sought to be filed.

~~Except for a motion for leave to participate in support of, or in opposition to, a petition for writ of certiorari filed pursuant to Rule 50(e), the motion for leave shall be filed at least 21 days prior to the date on which the brief of the party whose position as to affirmance or reversal the amicus curiae or guardian ad litem will support is due, unless the court for cause shown otherwise orders.~~

(3) A ~~p~~Party ~~ies~~ to the appeal ~~proceeding~~ may ~~indicate their support for, or opposition to,~~ the motion. ~~Any responses of a party to a motion for leave shall be by~~ filed an objection within ~~7~~14 days ~~after the motion is~~ served that concisely states its reasons for withholding consent~~ice of the motion~~.
Withholding consent is disfavored.

(d) Time for filing. An amicus curiae brief, together with a motion under paragraph (c) when a party has withheld consent, must be filed:

(1) in a case before the Supreme Court when a petition for a writ of certiorari is pending, 14 days after the petition is filed; or

(2) in a case before the Supreme Court for merits review, or before the Court of Appeals, 14 days after the principal brief of the party being supported is filed. ~~If leave is granted, an amicus curiae or guardian ad litem shall file its brief within 7 days of the time allowed the party whose position the amicus curiae or guardian ad litem will support, unless the order granting leave otherwise indicates.~~

(3) An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed.

(e) **Length.** An amicus curiae brief filed regarding a petition for writ of certiorari may not exceed 4,000 words. Any other amicus curiae brief may not exceed 7,000 words. Those limits will not be extended. Both limits exclude the table of contents, the table of authorities, any appendix, and required certificates of counsel.

(f) **Contents and form.** An amicus curiae brief must comply with Rule 27. In addition, the cover must identify the party or parties supported and must indicate whether the brief supports affirmance or reversal. The brief must include:

(1) a table of contents;

(2) a table of authorities;

(3) unless included as part of a motion under paragraph (c)(1), a concise statement of the identity of the amicus curiae and its interest in the case;

(4) a statement indicating whether counsel for the parties received timely notice under paragraph (a);

(5) unless the amicus curiae is one listed in paragraph (b)(1), a statement that indicates whether:

(A) a party's counsel authored the brief in whole or in part;

(B) a party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(C) a person – other than the amicus curiae, its members, or its counsel – contributed money that was intended to fund preparing or submitting the brief, and if so, identifies each such person; and

(6) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review.

(g) **Responsive briefs.** The time for responsive briefs under Rule 26(a) ~~shall~~ runs from the timely service of the amicus ~~curiae or guardian ad litem~~ brief or from the timely

79 service of the brief of the party whose position the amicus curiae ~~or guardian ad litem~~
80 supports, whichever is later.

81 (h) Oral argument. A motion of a While such requests are not favored, a amicus curiae
82 ~~or guardian ad litem~~ may file a letter requesting permission ~~motion~~ to participate in the
83 oral argument within 14 days after the notice of oral argument. ~~will be granted when~~
84 ~~circumstances warrant in the court's discretion.~~

85 (i) An amicus curiae brief may not be filed in support of a petition for rehearing under
86 Rule 35.

87

Rule 50. Response; reply; ~~brief of amicus curiae.~~

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

(b) **Page limitation.** A response ~~shall~~ must be as short as possible and may not, ~~in any single case,~~ exceed 20 pages, excluding the table of contents ~~subject index~~, the table of authorities, and the appendix.

(c) **Objections to jurisdiction.** The court will not accept a ~~No~~ motion ~~by a respondent~~ to dismiss a petition for a writ of certiorari ~~will be received~~. Objections to the Supreme Court's ~~jurisdiction of the Supreme Court~~ to grant the petition may be included in the response.

(d) **Reply.** A petitioner may file a reply addressed to arguments first raised in the response ~~may be filed by any petitioner~~ within ~~fourteen~~ 7 days after ~~service of~~ the response is served, but distribution of the petition and response to the court ordinarily will not be delayed pending the filing of any such reply unless the response includes a new request for relief, such as an award of attorney fees for the response. The reply ~~shall~~ must be as short as possible, ~~but~~ may not exceed five pages, and ~~shall~~ must comply with Rule 27. ~~The number of copies to be filed shall be as described in Rule 50(a).~~

~~(e) **Brief of amicus curiae.** A brief of an amicus curiae concerning a petition for certiorari may be filed only by leave of the Supreme Court granted on motion or at the~~

~~request of the Supreme Court. The motion for leave shall be accompanied by a proposed amicus brief, not to exceed 20 pages, excluding the subject index, the table of authorities, any verbatim quotations required by Rule 49(a)(7), and the appendix. The proposed amicus brief shall comply with Rule 27, and, as applicable, Rule 49. The number of copies of the proposed amicus brief submitted to the Supreme Court shall be the same as dictated by Rule 48(f). A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. The motion for leave shall be filed on or before the date of the filing of the timely petition or response of the party whose position the amicus curiae will support, unless the Supreme Court for cause shown otherwise orders. Parties to the proceeding in the Court of Appeals may indicate their support for, or opposition to, the motion. Any response of a party to a motion for leave shall be filed within seven days of service of the motion. If leave is granted, the proposed amicus brief will be accepted as filed and, unless the order granting leave otherwise indicates, amicus curiae also will be permitted to submit a brief on the merits, provided it is submitted in compliance with the briefing schedule of the party the amicus curiae supports. Denial of a motion for leave to file brief of an amicus curiae concerning a petition for certiorari shall not preclude a subsequent amicus motion relating to the merits after a grant of certiorari. All motions for leave to file brief of an amicus curiae on the merits after a grant of certiorari are governed by Rule 25.~~

Tab 4

Rule 19. Extraordinary writs.

(a) ~~Petition for extraordinary writ to a judge or agency; petition; service and filing.~~

~~An application~~ petition for an extraordinary writ referred to in Rule 65B, of the Utah Rules of Civil Procedure, must be filed in the trial court unless the petition falls under paragraphs (b) or (g).

(b) Petition directed to a judge or agency. ~~directed to a judge, agency, person or entity shall be made by filing a petition with the clerk of the appellate court. A petition for extraordinary writ directed to a judge or agency must be made by filing a petition with the appellate clerk. Service of the petition shall be made on the respondent judge, agency, person, or entity and on all parties to the action or case in the trial court or agency. The judge or agency and all parties in the action in the trial court other than the petitioner will be deemed respondents. The petition must be served on the respondent judge or agency and all parties to the proceedings in the trial court or agency and to the trial court clerk.~~

~~In the event of an original petition in the appellate court where no action is pending in the trial court or agency, the petition shall be served personally on the respondent judge, agency, person or entity and service shall be made by the most direct means available on all persons or associations whose interests might be substantially affected.~~

(c) ~~(b)~~ **Contents of petition and filing fee.** A petition for an extraordinary writ ~~shall~~ must contain the following:

(1) A ~~statement of~~ list of all persons or entities ~~associations~~, by name or by class, whose interests might be substantially affected;

(2) A statement of the issues presented and of the relief sought;

(3) A statement of the facts necessary to an understanding of the issues presented by the petition;

(4) A statement of the reasons why no other plain, speedy, or adequate remedy exists and why the writ should issue;

(5) Except in cases where the writ is directed to a ~~district trial~~ court, a statement explaining why the petition was filed in the appellate court it is impractical or inappropriate to file the petition for a writ in the ~~district trial~~ court;

(6) Copies of any order or opinion or parts of the record ~~which that~~ may be essential to an understanding of the matters set forth in the petition;

(7) A memorandum of points and authorities in support of the petition; and

(8) The prescribed filing fee, unless waived by the court.

(9) When seeking emergency relief, Where emergency relief is sought, the petitioner must file a separate motion that complies with ~~petition must comply with Rule 23C(b), including any additional requirements set forth by that subpart.~~

(10) ~~When~~ Where the subject of the petition is an interlocutory order, the petitioner er must state whether a petition for interlocutory appeal has been filed and, if so, summarize its status or, if not, state why interlocutory appeal is not a plain, speedy, or adequate remedy.

~~(de)~~ **Response to petition.** Unless the court orders otherwise in response to a Rule 23C(d) motion, within 21 days after the petition is served, any respondent may file a response in opposition or concurrence, which includes supporting authority. ~~The judge, agency, person, or entity and all parties in the action other than the petitioner shall be deemed respondents for all purposes. Two or more respondents may respond jointly.~~ If ~~any~~ respondent does not desire to appear in the proceedings, that respondent may advise the ~~clerk of the~~ appellate court clerk and all parties ~~by letter in writing, and~~ but the respondent will not be deemed to have admitted the petitioner's allegations ~~of the petition shall not thereby be deemed admitted.~~ Two or more respondents may respond jointly. ~~Where emergency relief is sought, Rule 23C(d) shall apply. Otherwise, within seven days after service of the petition, any respondent or any other party may file a response in opposition or concurrence, which includes supporting authority.~~

(ed) Review and disposition of petition.

(1) The court ~~shall~~will render a decision based on the petition and any timely response, or it may require briefing, ~~or the submission of request~~ further information, ~~and may~~or hold oral argument at its discretion. If additional briefing is required, the briefs ~~shall~~must comply with Rules 24 and 27.

(2) Rule 23C(f) applies to requests for hearings in emergency matters. ~~With regard to~~If an emergency petitions ~~is~~ submitted under Rule 23C, and ~~where~~ consultation with other court members ~~of the court~~ cannot be timely obtained, a single judge or justice may grant or deny the petition, subject to the court's review ~~by the court~~ at the earliest possible time.

(3) ~~With regard to~~For all petitions, a single judge or justice may deny the petition if it is frivolous on its face or fails to materially comply with the requirements of this rule or Rule 65B, Utah Rules of Civil Procedure. A petition's ~~The denial of a petition~~ by a single judge or justice may be reviewed by the appellate court upon specific request filed within seven days of notice of disposition, but such request ~~shall~~may not include any additional argument or briefing.

(fe) Transmission of record. In reviewing a petition for extraordinary writ, the appellate court may order transmission of the record, or any relevant portion thereof, ~~to be transmitted.~~

(g) Other extraordinary writs. Any petition for extraordinary writ, other than one provided for in paragraph (b), must be made by filing a petition with the appellate clerk and serving it on the respondents. Proceedings on the petition must conform with paragraphs (c) through (f).

~~(f) Number of copies. For a petition presented to the Supreme Court, petitioner shall file with the clerk of the court an original and five copies of the petition. For a petition pending in the Supreme Court, respondent shall file with the clerk of the court an original and five copies of the response. For a petition presented to the Court of~~

~~Appeals, petitioner shall file with the clerk of the court an original and four copies of the petition. For a petition pending in the Court of Appeals, respondent shall file with the clerk of the court an original and four copies of the response.~~

~~(h)~~ ~~Issuance of~~ ing an extraordinary writ ~~by appellate court sua sponte~~ on the court's motion.

(1) The appellate court, in aid of its own jurisdiction in extraordinary cases, may on its own motion issue a writ of certiorari ~~sua sponte~~ directed to a judge, ~~agency, person, or entity~~ or agency.

(2) A copy of the writ ~~shall~~ will be served on the named respondents in the manner and by an individual authorized to accomplish personal service under Rule 4 of the, Utah Rules of Civil Procedure.

(3) The appellate court clerk must transmit ~~In addition,~~ copies of the writ ~~shall be transmitted by the clerk of the appellate court,~~ by the most direct means available, to all persons or entities ~~associations~~ whose interests might be substantially affected by the writ.

(4) ~~The respondent~~ Any respondent and or the persons or entities ~~associations~~ whose interests are substantially affected may, within ~~four~~ 14 days of ~~the issuance of~~ the writ's issuance, petition the court to dissolve or amend the writ.

The petition ~~shall~~ must be accompanied by a concise statement of the reasons for dissolution ing or amendment ing of the writ.

Rule 20. Habeas corpus proceedings.

(a) ~~Application~~ Petition for an original writ of habeas corpus; ~~when appropriate. If a~~ petition for a writ of habeas corpus may be filed in the appellate court only if the petitioner demonstrates that it is impractical or inappropriate to file in the district court or other extraordinary circumstances exist. ~~is filed in the appellate court or submitted to a justice or judge thereof, it will be referred to the appropriate district court unless it is shown on the face of the petition to the satisfaction of the appellate court that the district court is unavailable or other exigent circumstances exist.~~ If a petition is initially filed in a district court or the appellate court ~~is~~ refers ~~red~~ the petition to a ~~the~~ district court ~~by the appellate court~~ and the district court denies or dismisses the petition, a ~~the~~ petitioner may not ~~refiling of~~ the petition with the appellate court. ~~is inappropriate;~~ Instead, the petitioner must ~~proper procedure in such an instance is an appeal from the district court's order of the district court.~~

(b) Procedure on original petition.

(1) Filing. A habeas corpus proceeding may be commenced in the appellate court by filing a petition with the ~~clerk of the appellate~~ clerk ~~court or, in emergency situations, with a justice or judge of the court. For matters pending in the Supreme court, an original petition and seven copies must be filed in the Supreme Court. For matters pending in the Court of Appeals, an original petition and four copies must be filed in the Court of Appeals.~~

(2) Service. The petitioner must serve ~~a copy of~~ the petition on the respondent, except: ~~pursuant to any of the methods provided for service of process in Rule 4 of the Utah Rules of Civil Procedure but, if imprisoned, the petitioner may mail by United States mail, postage prepaid, a copy of the petition to the Attorney General of Utah or the county attorney of the county if imprisoned in a county jail. Such service is in lieu of service upon the named respondent, and a certificate of mailing under oath that a copy was mailed to the Attorney General or county attorney must be filed with the clerk of the appellate court.~~

(A) A petitioner who is confined to an institution or committed to a place of legal confinement other than a county jail may mail, postage prepaid, the petition to the Utah Attorney General. A petitioner serving a misdemeanor sentence in a county jail may mail, postage prepaid, the petition to the applicable county attorney. The petitioner must file a certificate of mailing under oath that a copy was mailed to the Attorney General or county attorney with the appellate clerk.

(B) If the respondent cannot be found or the respondent does not have the person in custody, the writ and any other process issued may be served on anyone having the petitioner in custody, in the manner and with the same effect as if that person had been made respondent in the action.

(C) If the respondent refuses or avoids service, or attempts wrongfully to carry the person imprisoned or restrained out of the county or state after service of the writ, the person serving the writ must immediately arrest the respondent or other person so resisting, together with the person designated in the writ, for presentation before the court.

(3) Emergencies. In emergency situations, ~~an order to show cause may be issued by~~ the court, or a single justice or judge if the court is not available, may issue an order to show cause and may issue a stay or injunction ~~may be issued~~ to preserve the court's jurisdiction until such time as the court can hear argument on whether a writ should issue.

~~(24)~~ Response. If the petition is not referred to the district court, the attorney general or the county attorney, as the case may be, must answer the petition or otherwise plead within ~~ten~~10 days after the petition is served ~~of a copy of the petition~~. When a responsive pleading or motion is filed or an order to show cause is issued, the court must set the case for hearing and the clerk must ~~give notice to~~notify the parties.

~~(35)~~ Notice. The appellate clerk ~~of the appellate court~~ must, if the petitioner is imprisoned or ~~is a person~~ otherwise in the custody of the state or any political subdivision thereof, give notice of the time for ~~the filing of~~ memoranda and for oral argument, to the attorney general, the county attorney, or the city attorney, depending on where the petitioner is held and whether the petitioner is detained pursuant to state, county, or city law. ~~Similar notice must be given to any other person or an association detaining the petitioner not in custody of the state.~~

(c) **Contents of petition and attachments.** The petition must include the following:

(1) A statement of where the petitioner is detained, by whom the petitioner is detained, and the reason, if known, why the respondent has detained the petitioner.

(2) A brief statement of the reasons why the detention is deemed unlawful. The petition must state in plain and concise language:

(A) the facts giving rise to each claim that the confinement or detention ~~is in violation of~~ violates a state order or judgment or a constitutional right established by the United States Constitution or the Constitution of the State of Utah or is otherwise illegal;

(B) whether an appeal was taken from the judgment or conviction ~~pursuant to~~ under which a petitioner is incarcerated; and

(C) whether the allegations of illegality were raised in the appeal and decided by the appellate court.

(3) A statement ~~indicating of~~ whether any other petition for a writ of habeas corpus based on the same or similar grounds has been filed and the reason why relief was denied.

(4) Copies of the court order or legal process, court opinions, and findings ~~pursuant to~~ under which the petitioner is detained or confined, affidavits, copies of orders, and other supporting written documents must be attached to the

petition or ~~it must be stated~~petitioner must state~~by petitioner~~ why the same are not attached.

(d) **Contents of answer.** The answer must concisely set forth specific admissions, denials, or affirmative defenses to the petition's allegations~~of the petition~~ and must state plainly and unequivocally whether the respondent has, or at any time has had, the person designated in the petition under control and restraint and, if so, the cause for the restraint. The answer must not contain citations of legal authority or legal argument.

(e) **Other provisions.**

~~(1) If the respondent cannot be found or if the respondent does not have the person in custody, the writ and any other process issued may be served upon anyone having the petitioner in custody, in the manner and with the same effect as if that person had been made respondent in the action.~~

~~(2) If the respondent refuses or avoids service, or attempts wrongfully to carry the person imprisoned or restrained out of the county or state after service of the writ, the person serving the writ must immediately arrest the respondent or other person so resisting, for presentation, together with the person designated in the writ, forthwith before the court.~~

~~(3)~~1 At the time ~~of the issuance of~~ the writ is issued, the court may, if it appears that the person detained will be carried out of the court's jurisdiction~~of the court~~ or will suffer some irreparable injury before compliance with the writ can be enforced, cause a warrant to issue, reciting the facts and directing the sheriff to bring the detained person before the court to be dealt with according to law.

~~(4)~~2 The respondent must appear at the proper time and place with the person designated or show good cause for not doing so. If the person designated has been transferred, the respondent must state when and to whom the transfer was made, and the reason and authority for the transfer. The writ must not be

109 disobeyed for any defect of form or misdescription of the person restrained or of
110 the respondent, if enough is stated to show the meaning and intent.

111 (53) The person restrained may waive any rights to be present at the hearing, in
112 which case the writ must be modified accordingly. Pending decision~~a~~
113 ~~determination of the matter~~, the court may place such person in the custody of an
114 individual or association as may be deemed proper.

Rule 65C. Post-conviction relief.

(a) Scope. This rule governs proceedings in all petitions for post-conviction relief filed under the Post-Conviction Remedies Act, Utah Code [Title 78B, Chapter 9](#). The Act sets forth the manner and extent to which a person may challenge the legality of a criminal conviction and sentence after the conviction and sentence have been affirmed in a direct appeal under [Article I, Section 12](#) of the Utah Constitution, or the time to file such an appeal has expired.

(b) Procedural defenses and merits review. Except as provided in paragraph (h), if the court comments on the merits of a post-conviction claim, it shall first clearly and expressly determine whether that claim is independently precluded under [Section 78B-9-106](#).

(c) Commencement and venue. The proceeding shall be commenced by filing a petition with the clerk of the district court in the county in which the judgment of conviction was entered. The petition should be filed on forms provided by the court. The court may order a change of venue on its own motion if the petition is filed in the wrong county. The court may order a change of venue on motion of a party for the convenience of the parties or witnesses.

(d) Contents of the petition. The petition shall set forth all claims that the petitioner has in relation to the legality of the conviction or sentence. The petition shall state:

- (1) whether the petitioner is incarcerated and, if so, the place of incarceration;
- (2) the name of the court in which the petitioner was convicted and sentenced and the dates of proceedings in which the conviction was entered, together with the court's case number for those proceedings, if known by the petitioner;
- (3) in plain and concise terms, all of the facts that form the basis of the petitioner's claim to relief;
- (4) whether the judgment of conviction, the sentence, or the commitment for violation of probation has been reviewed on appeal, and, if so, the number and title of the appellate proceeding, the issues raised on appeal, and the results of the appeal;
- (5) whether the legality of the conviction or sentence has been adjudicated in any prior post-conviction or other civil proceeding, and, if so, the case number and

title of those proceedings, the issues raised in the petition, and the results of the prior proceeding; and

(6) if the petitioner claims entitlement to relief due to newly discovered evidence, the reasons why the evidence could not have been discovered in time for the claim to be addressed in the trial, the appeal, or any previous post-conviction petition.

(e) Attachments to the petition. If available to the petitioner, the petitioner shall attach to the petition:

- (1) affidavits, copies of records and other evidence in support of the allegations;
- (2) a copy of or a citation to any opinion issued by an appellate court regarding the direct appeal of the petitioner's case;
- (3) a copy of the pleadings filed by the petitioner in any prior post-conviction or other civil proceeding that adjudicated the legality of the conviction or sentence; and
- (4) a copy of all relevant orders and memoranda of the court.

(f) Memorandum of authorities. The petitioner shall not set forth argument or citations or discuss authorities in the petition, but these may be set out in a separate memorandum, two copies of which shall be filed with the petition.

(g) Assignment. On the filing of the petition, the clerk shall promptly assign and deliver it to the judge who sentenced the petitioner. If the judge who sentenced the petitioner is not available, the clerk shall assign the case in the normal course.

(h) Summary dismissal of claims.

- (1) The assigned judge shall review the petition, and, if it is apparent to the court that any claim has been adjudicated in a prior proceeding, or if any claim in the petition appears frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating either that the claim has been adjudicated or that the claim is frivolous on its face. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal. The order of dismissal need not recite findings of fact or conclusions of law.
- (2) A claim is frivolous on its face when, based solely on the allegations contained in the pleadings and attachments, it appears that:
 - (A) the facts alleged do not support a claim for relief as a matter of law;

(B) the claim has no arguable basis in fact; or

(C) the claim challenges the sentence only and the sentence has expired prior to the filing of the petition.

(3) If a claim is not frivolous on its face but is deficient due to a pleading error or failure to comply with the requirements of this rule, the court shall return a copy of the petition with leave to amend within 21 days. The court may grant one additional 21-day period to amend for good cause shown.

(4) The court shall not review for summary dismissal the initial post-conviction petition in a case where the petitioner is sentenced to death.

(i) Service of petitions. If, on review of the petition, the court concludes that all or part of the petition should not be summarily dismissed, the court shall designate the portions of the petition that are not dismissed and direct the clerk to serve upon the respondent a copy of the petition, attachments, memorandum, and an electronic court record of the underlying criminal case being challenged, including all non-public documents. If an electronic appellate record of the underlying case has not already been created, the clerk will create the record.

(1) If the petition is a challenge to a felony conviction or sentence, the respondent is the state of Utah represented by the Attorney General. Service on the Attorney General shall be by mail at the following address:

Utah Attorney General's Office

Criminal Appeals

Post-Conviction Section

160 East 300 South, 6th Floor

P.O. Box 140854

Salt Lake City, UT 84114-0854

(2) In all other cases, the respondent is the governmental entity that prosecuted the petitioner.

(j) Appointment of pro bono counsel. If any portion of the petition is not summarily dismissed, the court may, upon the request of an indigent petitioner, appoint counsel on a pro bono basis to represent the petitioner in the post-conviction court or on post-conviction appeal. In determining whether to appoint counsel the court shall consider

whether the petition or the appeal contains factual allegations that will require an evidentiary hearing and whether the petition involves complicated issues of law or fact that require the assistance of counsel for proper adjudication.

(k) Answer or other response. Within 30 days after service of a copy of the petition upon the respondent, or within such other period of time as the court may allow, the respondent shall answer or otherwise respond to the portions of the petition that have not been dismissed and shall serve the answer or other response upon the petitioner in accordance with Rule [5\(b\)](#). Within 30 days (plus time allowed for service by mail) after service of any motion to dismiss or for summary judgment, the petitioner may respond by memorandum to the motion. No further pleadings or amendments will be permitted unless ordered by the court.

(l) Hearings. After pleadings are closed, the court shall promptly set the proceeding for a hearing or otherwise dispose of the case. The court may also order a prehearing conference, but the conference shall not be set so as to delay unreasonably the hearing on the merits of the petition. At the prehearing conference, the court may:

- (1) consider the formation and simplification of issues;
- (2) require the parties to identify witnesses and documents; and
- (3) require the parties to establish the admissibility of evidence expected to be presented at the evidentiary hearing.

(m) Presence of the petitioner at hearings. The petitioner shall be present at the prehearing conference if the petitioner is not represented by counsel. The prehearing conference may be conducted by means of telephone or video conferencing. The petitioner shall be present before the court at hearings on dispositive issues but need not otherwise be present in court during the proceeding. The court may conduct any hearing at the correctional facility where the petitioner is confined.

(n) Discovery; records.

- (1) Discovery under Rules [26](#) through [37](#) shall be allowed by the court upon motion of a party and a determination that there is good cause to believe that discovery is necessary to provide a party with evidence that is likely to be admissible at an evidentiary hearing.
- (2) The court may order either the petitioner or the respondent to obtain any relevant transcript or court records.

(3) All records in the criminal case under review, including the records in an appeal of that conviction, are deemed part of the trial court record in the petition for post-conviction relief. A record from the criminal case retains the security classification that it had in the criminal case.

(o) Orders; stay.

(1) If the court vacates the original conviction or sentence, it shall enter findings of fact and conclusions of law and an appropriate order. If the petitioner is serving a sentence for a felony conviction, the order shall be stayed for 7 days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial, pursue a new sentence, appeal the order, or take no action. Thereafter the stay of the order is governed by these rules and by the [Rules of Appellate Procedure](#).

(2) If the respondent fails to provide notice or gives notice that no action will be taken, the stay shall expire and the court shall deliver forthwith to the custodian of the petitioner the order to release the petitioner.

(3) If the respondent gives notice that the petitioner will be retried or resentenced, the trial court may enter any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary and proper.

(p) Costs. The court may assign the costs of the proceeding, as allowed under Rule [54\(d\)](#), to any party as it deems appropriate. If the petitioner is indigent, the court may direct the costs to be paid by the governmental entity that prosecuted the petitioner. If the petitioner is in the custody of the Department of Corrections, Utah Code [Title 78A, Chapter 2, Part 3](#) governs the manner and procedure by which the trial court shall determine the amount, if any, to charge for fees and costs.

(q) Appeal. Any final judgment or order entered upon the petition may be appealed to and reviewed by the Court of Appeals or the Supreme Court of Utah in accord with the statutes governing appeals to those courts.

Effective May 1, 2021