



## Agenda

### Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

*Chris Ballard, Chair*  
*Nathalie Skibine, Vice Chair*

Location: Webex (see calendar appointment for instructions)  
Date: November 4, 2021  
Time: 12:00 to 1:30 p.m.

<b>Action:</b> Welcome and approval of October 7, 2021 minutes	Tab 1	Chris Ballard, Chair
<b>Action:</b> UCJA 4-206 Version #1 (Approved) Version #2 (Pending Approval)	Tab 2	Nick Stiles
<b>Action:</b> Rule 25	Tab 3	Stan Purser
<b>Action:</b> Updating Rule 20 - Discussion	Tab 4	Clark Sabey
<b>Action:</b> Rule 3	Tab 5	Lisa Collins
<b>Discussion:</b> Old/new business	--	Chris Ballard

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

**2021 Meeting schedule:**

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, October 7, 2021  
12:00 pm to 1:30 pm

---

#### **PRESENT**

Christopher Ballard—Chair  
Lisa Collins  
Carol Funk  
Tyler Green  
Michael Judd—  
Recording Secretary  
Judge Jill Pohlman  
Judge Gregory Orme  
Stanford Purser

Michelle Quist  
Sarah Roberts—Staff  
Clark Sabey  
Nathalie Skibine  
Nick Stiles—Staff  
Christopher Williams—  
Guest  
Mary Westby

#### **EXCUSED**

Emily Adams  
Troy Booher—  
Emeritus Member  
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 again welcomed two new members to the committee—Michelle Quist and Stanford Purser. At Mr. Ballard's invitation, the committee's members introduced themselves to one another and described their practices.

2. **Action:**

**Chris Ballard**

**Approval of June 3, 2021 Minutes**

The committee reviewed the September 2021 minutes. Clark Sabey offered one correction: contrary to what was stated in Section 4 of those minutes, proposed amendments *had* been circulated for public comment. The September 2021 minutes will be corrected to make that change.

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

3. **Action:**

**Nick Stiles**

**Rule 12**

The committee has already approved amendments to Rule 12, but that approval was subject to a check against the district courts' practices, which Nick Stiles had offered to handle. Mr. Stiles reported that the amended relevant district court rule at issue (CJA 4-206) has no relationship to Rule 12. The committee engaged in further discussion regarding exhibits and common practices at the district-court level, and the committee eventually concluded that the changes discussed may be more appropriately addressed at the administrative level, rather than in the appellate rules.

The committee settled on a course of action under which a representative from the committee would approach policy and planning division, explain the problems encountered at the appellate level, and propose there be an administrative solution.

Following that discussion, Judge Pohlman proposed several additional line edits to clean up stray language and clarify the meaning of rule.

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

4. **Action:**

**Clark Sabey**

**Michael Judd**

**Rules 25 & 50**

Clark Sabey presented to the committee the results of his research regarding analogous state statutes, including a memo he had prepared and circulated. Michael Judd followed suit with brief research regarding the application of

the parallel federal rule. The committee considered whether that research prompts any changes to the standard that appears at lines 27–30 of the draft now under consideration. At Carol Funk’s recommendation, the committee discussed adding language from the Iowa version of the rule, and that language was eventually added at subsection (c)(4). The committee also discussed the provision of the rule stating that, “Withholding consent is disfavored,” which the committee believes is relatively rare in the rules. Finally, the committee engaged in further discussion about timing of amicus filings and other fine-tuning of the rule’s language.

*After that discussion, Ms. Westby moved to table the proposed amendments, given the limited time remaining in the month’s meeting. Stanford Purser seconded Ms. Westby’s motion, and it passed without objection by unanimous consent. Mr. Purser offered to take up the language regarding service.*

**5. Action:**

**Rules 19 & 20**

**Clark Sabey**

**Nick Stiles**

Given the limited amount of time remaining in the month’s meeting, discussion of Rules 19 and 20 was postponed until the committee’s next meeting.

**6. Discussion:**

**Old / New Business**

**Chris Ballard**

None.

**7. Adjourn**

*Orme moved, Mary seconded, the committee adjourned. The committee’s next meeting will take place on November 4, 2021.*

Tab 2

## **Rule 4-206. Exhibits.**

### **Intent:**

To establish a uniform procedure for the receipt, maintenance and release of exhibits.

### **Applicability:**

This rule shall apply to all trial in courts of record and not of record, except small claims court. In the discretion of the court, this rule may apply to any proceeding in which exhibits are introduced.

### **Statement of the Rule:**

#### **(1) Marking exhibits.**

(1)(A) **Marking Exhibits.** Prior to trial, or at a time specified by the judge, each party must mark all exhibits it intends to introduce by utilizing exhibit labels in the format prescribed by the clerk of court. Labels or tags must include, at a minimum, a case number, exhibit number/letter, and an appropriate party designation. With approval of the court, a photograph may be offered by the submitting party as a representation of the original exhibit.

(1)(B) **Digital Exhibits.** Digital exhibits must be marked as provided in paragraph (1)(A) and submitted to the court as prescribed by the clerk of court. Exhibits should not be eFiled.

(1)(C) **Courts not of record.** Courts not of record may exempt parties from the requirements outlined in paragraphs (1)(A) and (1)(B) and prescribe an alternative process for marking exhibits.

#### **(2) Exhibit custody during trial.**

(2)(A) **Custody of the Parties.** During the trial, bulky and sensitive exhibits, and exhibits that require law enforcement chain of custody, will remain in the custody of the party offering the exhibit. Such exhibits include, but are not limited to: biohazards, controlled substances, paraphernalia, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, original digital storage media such as a hard drive or computer, and documents or physical exhibits of unusual bulk or weight. The clerk of court or designee must list these exhibits in the exhibit list and note that the original exhibit is in the custody of the party.

(2)(B) **Custody of the Court.** Physical exhibits received during trial, other than those in paragraph (2)(A), must be placed in the custody of the clerk of court or designee. Digital exhibits received as evidence by the court during the trial shall be stored electronically or on digital media such as a thumb drive and stored in accordance with paragraph (2)(C). The clerk of court or designee must list all exhibits in the exhibit list, and the list shall be made a part of the court record. An exhibit list may be the court's designated case management system or a form approved by the Judicial Council.

#### **(2)(C) Secured Storage.**

(2)(C)(i) Upon daily adjournment, the clerk of court or designee must compare the exhibit list with the exhibits received that day. Digital exhibits received under paragraph (2)(B) shall be stored electronically in a manner meeting the requirements outlined in paragraph (3)(A)(ii). Physical exhibits received under paragraph (2)(B) must be stored in an envelope or container, marked with the case number, and stored in a secured storage location that meets the requirements outlined in paragraph (3)(A)(ii).

(2)(C)(ii) Exhibits may be stored in a temporary secured location for no more than 72 hours, provided the temporary location is sufficient to prevent access by unauthorized persons, and the location is secured with a key lock, combination lock, or electronic lock. Access to the temporary storage location shall be limited to the clerk of court, judge, or a designee.

**(3) Exhibit custody prior to disposition.**

(3)(A) **Pending Disposition.** Exhibits in the court's custody pursuant to paragraph (2)(B) may not be taken from the custody of the clerk of court or designee until final disposition of the case, except upon order of the court and execution of a receipt that identifies the material, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record.

(3)(A)(i) **Exhibit Manager.** The clerk of court shall appoint an exhibit manager with responsibility for the security, maintenance, documentation of the chain of custody, and disposition of exhibits. The clerk of court may also appoint a person to act as exhibit manager during periods when the primary exhibit manager is absent. Unaccompanied or unauthorized access to secured storage locations by anyone other than the exhibit manager, acting exhibit manager, or the clerk of court is prohibited without a court order.

(3)(A)(ii) **Secured Storage Location.** Each court must provide physical and electronic secured storage locations within their facility for storing exhibits retained by the court under subsection (2)(B), and shall maintain a current inventory list of all exhibits in the court's custody. The physical secured storage location must be sufficient to prevent access from unauthorized persons, secured with a key lock, combination lock, or electronic lock, and protected from theft or damage. The electronic secured storage location should be sufficient to prevent access from unauthorized persons. Prior to use, physical and electronic secured storage locations must be certified by the Court Security Director. Requests for certification must be made in writing and shall fully describe the secured storage location, local access procedures, and security controls. Any changes to the location, access procedures, or security controls require recertification by the Court Security Director.

(3)(B) **Exhibit custody post disposition.** In courts of record, upon final disposition of the case, exhibits in the court's custody not suitable for filing and transmission to the appellate court, as specified in the Utah Rules of Appellate Procedure, shall be disposed of or returned to the offering parties pursuant to paragraph (5). The clerk of court, exhibit manager, or designee shall execute a receipt identifying the material taken, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record. In courts not of record, upon final disposition of the case, all exhibits shall be returned to the parties.

(3)(C) **Exhibits in the custody of the parties.** Unless otherwise ordered by the court, exhibits identified in paragraph (2)(A) shall remain in the custody of the parties until they are eligible for disposal pursuant to paragraph (5). Parties are responsible for preserving exhibits in the same condition as when they were first admitted into evidence.

(3)(D) **Access to exhibits by parties.** Parties may file a motion requesting access to an exhibit in the custody of the court or another party. Upon order of the court, the clerk of court, exhibit manager or designee, or party with custody of the exhibits shall promptly make available for examination exhibits, or original or true copies of the exhibits.

**(4) Appeals.** Exhibits and exhibit lists shall be provided upon appeal in accordance with the Utah Rules of Appellate Procedure.



(5) **Disposal of exhibits.** Parties may dispose of, and exhibit managers, clerks of court, or designees shall dispose of any exhibits in their custody 90 days after the time for appeal has expired, or the statute of limitations for post-conviction relief, including the time for appeal from post-conviction relief has expired, whichever is later. Exhibits in the court's custody shall be disposed of as follows:

(5)(A) Property having no monetary value shall be destroyed by the exhibit manager, clerk of court, or designee. The exhibit manager shall create a certificate of destruction including a description of the exhibit, the case and exhibit numbers, and the date and time of the destruction. The certificate of destruction shall be made a part of the court record.

(5)(B) Property having monetary value shall be returned to its owner or, if unclaimed, shall be given to the prosecuting agency, sheriff of the county, or other law enforcement agency to be sold in accordance with Utah Code. The receiving agency shall furnish the court with a receipt identifying the receiving agency, the exhibit received, and the date and time the exhibit was received. The receipt shall be made a part of the court record.

*Effective November 1, 2021*

## **Rule 4-206. Exhibits.**

### **Intent:**

To establish a uniform procedure for the receipt, maintenance and release of exhibits.

### **Applicability:**

This rule shall apply to all trial in courts of record and not of record, except small claims court. In the discretion of the court, this rule may apply to any proceeding in which exhibits are introduced.

### **Statement of the Rule:**

#### **(1) Marking exhibits.**

(1)(A) **Marking Exhibits.** Prior to trial, or at a time specified by the judge, each party must mark all exhibits it intends to introduce by utilizing exhibit labels in the format prescribed by the clerk of court. Labels or tags must include, at a minimum, a case number, exhibit number/letter, and an appropriate party designation. With approval of the court, a photograph may be offered by the submitting party as a representation of the original exhibit.

(1)(B) **Digital Exhibits.** Digital exhibits must be marked as provided in paragraph (1)(A) and submitted to the court as prescribed by the clerk of court. Exhibits should not be eFiled.

(1)(C) **Courts not of record.** Courts not of record may exempt parties from the requirements outlined in paragraphs (1)(A) and (1)(B) and prescribe an alternative process for marking exhibits.

#### **(2) Exhibit custody during trial.**

(2)(A) **Custody of the Parties.** During the trial, bulky and sensitive exhibits, and exhibits that require law enforcement chain of custody, will remain in the custody of the party offering the exhibit. Such exhibits include, but are not limited to: biohazards, controlled substances, paraphernalia, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, original digital storage media such as a hard drive or computer, and documents or physical exhibits of unusual bulk or weight. The clerk of court or designee must list these exhibits in the exhibit list and note that the original exhibit is in the custody of the party.

(2)(B) **Custody of the Court.** Physical exhibits received during trial, other than those in paragraph (2)(A), must be placed in the custody of the clerk of court or designee. Digital exhibits received as evidence by the court during the trial shall be stored electronically or on digital media such as a thumb drive and stored in accordance with paragraph (2)(C). The clerk of court or designee must list all exhibits in the exhibit list, and the list shall be made a part of the court record. An exhibit list may be the court's designated case management system or a form approved by the Judicial Council.

#### **(2)(C) Secured Storage.**

(2)(C)(i) Upon daily adjournment, the clerk of court or designee must compare the exhibit list with the exhibits received that day. Digital exhibits received under paragraph (2)(B) shall be stored electronically in a manner meeting the requirements outlined in paragraph (3)(A)(ii). Physical exhibits received under paragraph (2)(B) must be stored in an envelope or container, marked with the case number, and stored in a secured storage location that meets the requirements outlined in paragraph (3)(A)(ii).

(2)(C)(ii) Exhibits may be stored in a temporary secured location for no more than 72 hours, provided the temporary location is sufficient to prevent access by unauthorized persons, and the location is secured with a key lock, combination lock, or electronic lock. Access to the temporary storage location shall be limited to the clerk of court, judge, or a designee.

**(3) Exhibit custody prior to disposition.**

(3)(A) **Pending Disposition.** Exhibits in the court's custody pursuant to paragraph (2)(B) may not be taken from the custody of the clerk of court or designee until final disposition of the case, except upon order of the court and execution of a receipt that identifies the material, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record.

(3)(A)(i) **Exhibit Manager.** The clerk of court shall appoint an exhibit manager with responsibility for the security, maintenance, documentation of the chain of custody, and disposition of exhibits. The clerk of court may also appoint a person to act as exhibit manager during periods when the primary exhibit manager is absent. Unaccompanied or unauthorized access to secured storage locations by anyone other than the exhibit manager, acting exhibit manager, or the clerk of court is prohibited without a court order.

(3)(A)(ii) **Secured Storage Location.** Each court must provide physical and electronic secured storage locations within their facility for storing exhibits retained by the court under subsection (2)(B), and shall maintain a current inventory list of all exhibits in the court's custody. The physical secured storage location must be sufficient to prevent access from unauthorized persons, secured with a key lock, combination lock, or electronic lock, and protected from theft or damage. The electronic secured storage location should be sufficient to prevent access from unauthorized persons. Prior to use, physical and electronic secured storage locations must be certified by the Court Security Director. Requests for certification must be made in writing and shall fully describe the secured storage location, local access procedures, and security controls. Any changes to the location, access procedures, or security controls require recertification by the Court Security Director.

(3)(B) **Exhibit custody post disposition.** In courts of record, upon final disposition of the case, exhibits in the court's custody ~~not suitable for filing and transmission to the appellate court as part of a record on appeal.~~ shall be disposed of or returned to the offering parties pursuant to paragraph (5). The clerk of court, exhibit manager, or designee shall execute a receipt identifying the material taken, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record. In courts not of record, upon final disposition of the case, all exhibits shall be returned to the parties.

(3)(C) **Exhibits in the custody of the parties.** Unless otherwise ordered by the court, exhibits identified in paragraph (2)(A) shall remain in the custody of the parties until they are eligible for disposal pursuant to paragraph (5). Parties are responsible for preserving exhibits in the same condition as when they were first admitted into evidence.

(3)(D) **Access to exhibits by parties.** Parties may file a motion requesting access to an exhibit in the custody of the court or another party. Upon order of the court, the clerk of court, exhibit manager or designee, or party with custody of the exhibits shall promptly make available for examination exhibits, or original or true copies of the exhibits.

**(4) Appeals.**

~~(5)~~ Exhibits and exhibit lists shall be provided upon appeal in accordance with the Utah Rules of Appellate Procedure. Documents, photographs, and similar exhibits must be included in the record on appeal. Exhibits of unusual bulk or weight, or other physical exhibits, should not be transmitted to the appellate court unless specifically requested by a party or the appellate court.

**~~(6)~~(5) Disposal of exhibits.**

~~(7)~~ Parties may dispose of, and exhibit managers, clerks of court, or designees shall dispose of any exhibits in their custody 90 days after the time for appeal has expired; if no appeal has been taken, or the statute of limitations for post-conviction relief, including the time for appeal from post-conviction relief has expired, whichever is later. Exhibits in the court's custody shall be disposed of as follows:

(5)(A) Property having no monetary value shall be destroyed by the exhibit manager, clerk of court, or designee. The exhibit manager shall create a certificate of destruction including a description of the exhibit, the case and exhibit numbers, and the date and time of the destruction. The certificate of destruction shall be made a part of the court record.

(5)(B) Property having monetary value shall be returned to its owner or, if unclaimed, shall be given to the prosecuting agency, sheriff of the county, or other law enforcement agency to be sold in accordance with Utah Code. The receiving agency shall furnish the court with a receipt identifying the receiving agency, the exhibit received, and the date and time the exhibit was received. The receipt shall be made a part of the court record.

*Effective November 1, 2021*

# Tab 3

**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, 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 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~~ fil~~ing~~ an objection within ~~7~~14 days after the motion is ~~of~~ served that states its reasons for withholding consent~~ice of the motion~~. The objection must not exceed 1,500 words.

(4) The appellate court has broad discretion in determining whether to grant a motion for leave to file an amicus curiae brief.

(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 on the amicus's motion. 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.**



(1) when no motion under paragraph (c) has been filed, ~~The~~ the time for responsive briefs under Rule 26(a) ~~shall run~~ s from the timely filing service of the amicus curiae or guardian ad litem brief, ~~or~~ or from the timely filing service of the brief of the party whose position the amicus curiae ~~or guardian ad litem~~ supports, whichever is later.

(2) when a motion under paragraph (c) has been filed, the time for responsive briefs under Rule 26(a) runs from the date of the appellate court order granting or denying the motion.

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

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

Tab 4

**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, 6<sup>th</sup> 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

# Tab 5

### **Rule 3. Appeal as of right—how taken.**

#### **(a) Filing the notice of appeal.**

(1) Except as otherwise provided by law, a party may appeal a final order or judgment from a district or juvenile court to the appellate court by filing a notice of appeal with the trial court clerk within the time allowed by Rule 4.

(2) An appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for the appellate court to act as it considers appropriate, including dismissing the appeal or other sanctions short of dismissal, and awarding attorney fees.

**(b) Joint or consolidated appeals.** If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may join in an appeal of another party after filing separate timely notices of appeal. Joint appeals may proceed as a single appeal with a single appellant. Individual appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties to the separate appeals.

**(c) Party Designation.** The party taking the appeal is known as the appellant and the adverse party as the appellee. Unless otherwise directed by the appellate court, the appeal will not change the title of the action or proceeding. For original proceedings in the appellate court, the party making the original application is known as the petitioner and any other party as the respondent.

**(d) Notice of appeal contents.** The notice of appeal must:

- (1) specify the party or parties taking the appeal;
- (2) designate the judgment, order, or part thereof being appealed;
- (3) name the court from which the appeal is taken; and
- (4) name the court to which the appeal is taken.

**(e) Serving the notice of appeal.** The appellant must serve the notice of appeal on each party to the judgment or order in accordance with the requirements of the court from which the appeal is taken. If counsel of record is served, the certificate of service must include the name of the party represented by that counsel.

**(f) Filing fee in civil appeals.** When filing any notice of separate, joint, or cross appeal in a civil case, the party taking the appeal or cross appeal must pay the filing fee established by law to the trial court clerk. The trial court clerk must accept a notice of

appeal regardless of whether the filing fee has been paid. Failure to pay the filing fee within a reasonable time may result in dismissal.

**(g) Docketing of appeal.**

**(1) Transmitting notice of appeal to the appellate court.** After a ~~notice of appeal is filed, appellant files the notice of appeal~~, the trial court clerk must immediately email a copy of the notice of appeal to the appellate court clerk. Every notice of appeal filed, including from vexatious litigants, must be transmtted. The email will include:

(A) the date the notice of appeal was filed, and

(B) the clerk's statement declaring whether the filing fee was paid and whether the cost bond required by Rule 6 was filed.

**(2) Docketing the appeal.** Upon receiving the copy of the notice of appeal from the trial court clerk, the appellate court clerk will enter the appeal on the docket. An appeal will be docketed under the title given to the action in the trial court, with the appellant identified as such, but if the title does not contain the name of the appellant, such name will be added to the title.

*Effective November 1, 2020*