



Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Chris Ballard, Chair
Nathalie Skibine, Vice Chair

Location:	Meeting held through Webex and in person at: Matheson Courthouse, Council Room, N. 301 450 S. State St. Salt Lake City, Utah 84111 https://utcourts.webex.com/utcourts/j.php?MTID=m538581f9082cdad50ff1e74adef124f9
Date:	December 7, 2023
Time:	12:00 to 1:30 p.m.

Action: Welcome and approval of November 2, 2023 Minutes	Tab 1	Chris Ballard, Chair
Action: Final Approval of Rules 4, 27	Tab 2	Chris Ballard
Action: E-filing Rule Amendments	Tab 3	Nick Stiles, Lisa Collins, Nicole Gray, Marina Kelaidis
Action: Rule 10	Tab 4	Mary Westby
Discussion: Old/new business		Chris Ballard, Chair

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

2024 Meeting schedule:

February 1, 2024	May 2, 2024	October 3, 2024
March 7, 2024	June 6, 2024	November 7, 2024
April 4, 2024	September 5, 2024	December 5, 2024

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

In Person and by WebEx Videoconference
Thursday, November 2, 2023
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Lisa Collins
Amber Griffith—Staff
Michael Judd—Recording
Secretary
Alexandra Mareschal—
Guest

Debra Nelson
Judge Gregory Orme
Tera Peterson
Stanford Purser
Clark Sabey
Nathalie Skibine—
Vice Chair
Scarlet Smith
Nick Stiles—Staff
Carol Verdoia—Guest
Mary Westby

EXCUSED

Judge Michele
Christiansen Forster
Carol Funk
Michelle Quist

1. Action:

Nathalie Skibine

Approval of October 2023 Minutes

The committee reviewed the October 2023 minutes. No changes were noted.

After that review, Debra Nelson moved to approve the October 2023 minutes as they appeared in the committee's materials. Tera Peterson seconded that motion, and it passed without objection by unanimous consent.

**2. Action:
Rule 52**

Nathalie Skibine

The committee's discussion has focused on the nature of the deadline applicable to motions to reinstate the time for an appeal. Mary Westby expressed comfort with the current proposal. Alexandra Mareschal cautioned that adjudications may present more complicated circumstances and expressed skepticism that any parent participating in an adjudication would deliberately delay in an effort to "game the system." Ms. Westby pointed out that the proposed change from 15 days to 45 days already provides additional flexibility for parents in that situation.

After further discussion regarding how this rule change would apply to adjudication proceedings, the committee resolved to address the remainder of the proposed rule, while setting aside further discussion regarding how these changes would apply to adjudication decisions.

Following that discussion, Ms. Westby moved to approve the amendments as they appeared on the screen at the committee's meeting. Lisa Collins seconded that motion, and it passed without objection by unanimous consent. In presenting the approved amendment to the Supreme Court, Chris Ballard will convey that while the committee has resolved the issue the court asked it to address, a lurking issue related to adjudications remains unaddressed.

**3. Action:
Rule 11**

Nathalie Skibine

Ms. Skibine introduced proposed language. Ms. Westby observed that the term "sealed" is often misused—parties often mean "protected" or "private"—and noted the proposed language risks tying the courts' hands with respect to how to handle mischaracterized documents under those circumstances. The committee discussed proposed language, including sharpening language and considering additional revisions.

Following that discussion, Ms. Skibine moved to approve the amendments as they appeared on the screen at the committee's meeting. Ms. Nelson seconded that motion, and it passed without objection by unanimous consent.

Tera Peterson

Following that discussion, Ms. Westby moved to approve the amendments (both to the rule and the note) as they appeared on the screen at the committee's meeting. Stan Purser seconded that motion, and it passed without objection by unanimous consent.

Mary Westby

With the month's time exhausted, the committee resolved to table the proposed amendments to Rule 10 until the committee's next meeting.

Lisa Collins

The committee also resolved to table discussion regarding bail orders until the committee's next meeting.

Nathalie Skibine

The committee noted that it will likely cancel the January, July, and August 2024 meetings, in accordance with past practice.

Nathalie Skibine

Following the business described above, Emily Adams moved to adjourn, and Ms. Nelson seconded. The committee adjourned. The committee's next meeting will take place on December 7, 2023.

TAB 2

One thought on "Rules of Appellate Procedure – Comment Period Closed November 10, 2023"

Cheryl Siler

October 23, 2023 at 1:44 pm

Proposed Amendment to RAP 27

RAP 27(d)(4) states in part, "The clerk will retain one copy of the noncomplying brief and the party must file a brief prepared in compliance with these rules within 5 days." As written, the rule fails to set out the precise event that starts the clock for this 5-day deadline. Is it the actual date of the notice of deficiency? Is it the receipt of the notice? Something else?

It would be useful if the rule were revised to clearly specify the trigger that starts the 5-day deadline. For instance, the rule could be revised to state, "The clerk will retain one copy of the noncomplying brief and the party must file a brief prepared in compliance with these rules within 5 days after receipt of the clerk's notice of deficiency."

Thank you for your time.

Rule 4. Appeal as of right: when taken.

(a) **Appeal as of right.** Except as provided in paragraph (a)(1) or (a)(2), in a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule [3](#) must be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. If the trial court enters a judgment or order on a Saturday, Sunday, or legal holiday, the date of entry will be deemed to be the first day following the trial court's entry that is not a Saturday, Sunday, or legal holiday.

(1) When a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule [3](#) must be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(2) When an order is entered denying, in whole or in part, a motion to dismiss under Utah Code section [78B-25-103](#), the notice of appeal must be filed with the clerk of the trial court within 21 days after the date of entry of the order appealed from.

(b) Time for appeal extended by certain motions.

(1) If a party timely files in the trial court any of the following, the time for all parties to appeal from the judgment runs from the entry of the dispositive order:

(A) A motion for judgment under Rule [50\(b\)](#) of the Utah Rules of Civil Procedure;

(B) A motion to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, under Rule [52\(b\)](#) of the Utah Rules of Civil Procedure;

(C) A motion to alter or amend the judgment under Rule [59](#) of the Utah Rules of Civil Procedure;

(D) A motion for a new trial under Rule [59](#) of the Utah Rules of Civil Procedure;

(E) A motion for relief under Rule [60\(b\)](#) of the Utah Rules of Civil Procedure if the motion is filed no later than 28 days after the judgment is entered;

(F) A motion or claim for attorney fees under Rule [73](#) of the Utah Rules of Civil Procedure; or

(G) A motion for a new trial under Rule [24](#) of the Utah Rules of Criminal Procedure.

(2) A notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any motion listed in paragraph (b), ~~shall~~will be treated as filed after entry of the order and on the day thereof, except that such a notice of appeal is effective to appeal only from the underlying judgment. To appeal from a final order disposing of any motion listed in paragraph (b), a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order. If multiple motions in paragraph (b) are timely filed and the court decides any motion by separate order, the time to file a notice of appeal runs from the entry of the last order.

(c) **Filing prior to entry of judgment or order.** A notice of appeal filed after the announcement of a decision, judgment, or order but before entry of the judgment or order ~~shall~~will be treated as filed after such entry and on the day thereof.

(d) **Additional or cross-appeal.** If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule, whichever period last expires.

(e) **Motion for extension of time.**

(1) The trial court, upon a showing of good cause, may extend the time for filing a notice of appeal upon motion filed before the expiration of the time prescribed by paragraphs (a) and (b) of this rule. Responses to such motions for an extension of time are disfavored and the court may rule at any time after the filing of the motion. No

extension ~~shall~~can exceed 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

(2) The trial court, upon a showing of good cause or excusable neglect, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by paragraphs (a) and (b) of this rule. The court may rule at any time after the filing of the motion. That a movant did not file a notice of appeal to which paragraph (c) would apply is not relevant to the determination of good cause or excusable neglect. An ~~No~~-extension ~~shall~~may not-exceed 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

(f)- Motion to reinstate period for filing a direct appeal in criminal cases. ~~Upon a showing that~~

(1) The trial court will~~must~~ reinstate the 30~~thirty-day~~ period for filing a direct appeal
If no timely appeal is filed in a criminal case, if a defendant demonstrates by a
preponderance of the evidence that the defendant was deprived of the right to appeal
through no fault of the defendant,~~the trial court shall reinstate the thirty-day period~~
~~for filing a direct appeal. A defendant seeking such reinstatement shall may file a~~
~~written motion in the sentencing court and serve the prosecuting entity. trial court to~~
~~reinstate the time to appeal.~~

(2) The motion must be filed within one year, or within a reasonable time, whichever
is later, from the day on which the defendant personally knew, or should have known
in the exercise of reasonable diligence, of evidentiary facts forming the basis of the
claim that the defendant was deprived of the right to appeal.

(A) The motion must state:

(i) the date the defendant learned that the defendant was denied the right to an
appeal.~~'s attorney had not pursued an appeal; and~~

(ii) how the defendant learned that the defendant was denied the right to 's attorney had not pursued an appeal, including all efforts the defendant made to learn whether his attorney had pursued an appeal.

(B) If the motion is filed more than one year after the defendant learned that the defendant's attorney had not pursued was denied the right to an appeal, the defendant must allege all of the grounds that support the allegation that the delay in filing the motion was reasonable.

(23) If the defendant is not represented by counsel and is indigent, the trial court ~~shall~~will appoint counsel.

(34) The motion must be served on the prosecuting entity. The prosecutor ~~shall have 30 days after service of the motion to~~may file a ~~written~~ response. ~~If the prosecutor opposes to~~ the motion within 28 days after being served.

(45) If the motion to reinstate the time to appeal is opposed, the trial court ~~shall~~will set a hearing at which the parties may present evidence.

(6)(a) If the prosecutor opposes the motion on the ground that the defendant filed it beyond the time limit in paragraph (f)(2), the prosecutor must prove, by a preponderance of the evidence, that the defendant's delay was unreasonable. The court may~~can~~ deny the motion as untimely only if the court finds that the prosecutor has carried this burden.

~~(6) The defendant must show that the defendant was deprived of the right to appeal through no fault of the defendant.~~

(7) If the trial court finds by a preponderance of the evidence that the defendant has demonstrated that the defendant was~~been~~ deprived of the right to appeal, it shall~~the court must enter an order reinstating the time for~~right to appeal. T~~enters an order reinstating the time for filing a direct appeal, the defendant's notice of appeal must be filed with the clerk of the trial court within 30 days after the date the order is entered~~of entry of the order.~~~~

(g) **Motion to reinstate period for filing a direct appeal in civil cases.**

(1) The trial court ~~shall~~will reinstate the ~~thirty-day~~30 period for filing a direct appeal if the trial court finds by a preponderance of the evidence that:

(A) The party seeking to appeal lacked actual notice of the entry of judgment at a time that would have allowed the party to file a timely motion under paragraph (e) of this rule;

(B) The party seeking to appeal exercised reasonable diligence in monitoring the proceedings; and

(C) The party, if any, responsible for serving the judgment under Rule 58A(d) of the Utah Rules of Civil Procedure did not promptly serve a copy of the signed judgment on the party seeking to appeal.

(2) A party seeking such reinstatement ~~shall~~must file a written motion in the trial court within one year from the entry of judgment. The party ~~shall~~must comply with Rule 7 of the Utah Rules of Civil Procedure and ~~shall~~must serve each of the parties in accordance with Rule 5 of the Utah Rules of Civil Procedure.

(3) If the trial court enters an order reinstating the time for filing a direct appeal, a notice of appeal must be filed within 30 days after the date of entry of the order.

Rule 27. Form of briefs, motions, and other documents.

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

(1) **Size, line spacing, and margins.** All documents must be prepared on 8½ by 11 inch sized paper. The text must be double spaced, except for matter customarily single spaced and indented. Margins must be at least one inch on all sides. Page numbers are required and may appear in the margins.

(2) **Typeface.** The type must be a plain, roman style with serifs. Italics or boldface may be used for emphasis. Cited case names must be italicized or underlined.

(3) **Typesize.** The typeface must be 13-point or larger for both text and footnotes.

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

(c) **Caption** Cover page for briefs on the merits and petitions. ~~The cover of each brief or the first page of any other document must contain a caption that includes the following information:~~

(1) Caption. ~~For briefs on the merits and petitions:~~ The cover of each brief or the first page of a petition must contain a caption that includes the following information:

(A) the number of the case in the appellate court (if available);

(B) the name of the appellate court;

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

(D) the designation of the parties both as they appeared in the ~~lower~~ court or agency from which the appeal is taken and as they appear in the appellate proceeding;

(E) the title or description of the document (e.g., Brief of Appellant, Petition for Permission to File Interlocutory Appeal, Petition for Rehearing, Petition for Extraordinary Relief);

(F) the nature of the proceeding in the appellate court (e.g., Appeal, Petition for Review) if not apparent from the title or description of the document; and ~~(e.g., Direct Appeal, Interlocutory Appeal, Petition for Review);~~

(G) the name of the court and judge, agency, or board ~~below~~ from which the appeal is taken and the case or proceeding number.; ~~and~~

(2H) eCounsel or unrepresented party information. The identifying and contact information of the counsel or unrepresented party filing the document must appear ~~on the bottom half~~ in the lower right -corner of the cover page. ~~The party or counsel filing the document must appear in the lower right of the cover, and opposing counsel or party in the lower left of the cover.~~

(A) eCounsel's information must include counsel's: ~~their~~

(i) ~~counsel's~~ name;

(ii) ~~the~~ Utah State Bar number ~~of the filing counsel;~~

(iii) ~~counsel's~~ mailing address;

(iv) ~~the~~ email address ~~of the filing counsel;~~

(v) ~~counsel's~~ telephone number; and

(vi) ~~and~~ a designation ~~as~~ indicating the party counsel represents in the appeal (e.g., eCounsel for Aappellant, pPetitioner, aAppellee, or rRespondent, ~~as the case may be~~).; ~~or~~

(iiB) ~~a~~An unrepresented party's information must ~~list~~include the party's:

(i) ~~their~~ name;

(ii) mailing address;

(iii) email address (if any); ~~and~~

(iv) telephone number (if any); ~~and~~

(v) a ~~designation as~~ statement identifying the party's designation in the appeal (e.g., ~~the a~~Appellant, ~~p~~Petitioner, ~~a~~Appellee, or ~~r~~Respondent, ~~as the case may be~~).

(12d) ~~First page For of m~~Motions and ~~other~~ appellate documents ~~besides~~other than briefs and petitions.~~Case and document information:~~

1. **Caption.** The first page of a motion or appellate document other than a brief or petition must include a caption with the following information:

(A) the number of the case in the appellate court (if available);

(B) the name of the appellate court;

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

(D) the designation of the parties both as they appeared in the ~~lower~~ court or agency from which the appeal is taken and as they appear in the appellate proceeding; and

(E) the title or description of the document (e.g., Motion to Dismiss, Docketing Statement, Stipulation, Motion to Extend Time, Notice).; ~~and (A) full title given to the case in the court or agency from which the appeal was taken, as modified under Rule 3(g),~~

2. Counsel or unrepresented party information. The identifying and contact information of the counsel or unrepresented party filing the document must appear in the upper left corner of the first page.

~~(F) counsel or party information in the upper left hand corner, including (B) the designation of the parties both as they appeared in the lower court or agency and as they appear in the appeal~~

~~(i) counsel's (C) the name of the appellate court;~~

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

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

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

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

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

~~(A)~~ (A) Counsel's information must include counsel's:

(i) counsel's name;

(ii) the Utah State Bar number of the filing counsel;

(iii) counsel's mailing address;

(iv) the email address of the filing counsel;

(v) counsel's telephone number; ~~Utah State Bar number,~~ and

(vi) a designation indicating which party counsel represents in the appeal (e.g., designation as attorney Counsel for a Appellant, p Petitioner, a Appellee, or r Respondent~~), as the case may be, or~~

~~(B) A~~
~~(B) (ii) a~~ An unrepresented party's information must include the party's:
(i) must list the party's name;
(ii) mailing address;
(iii) email address (if any); ~~and~~
(iv) telephone number (if any); and
(v) a designation statement identifying the party's designation in the appeal
(e.g., as the aAppellant, pPetitioner, aAppellee, or rRespondent); ~~as the case~~
may be.

~~(3) For briefs on the merits, the names of all counsel for the respective parties must appear on the bottom half of the cover page. The party filing the document must appear in the lower right and opposing counsel in the lower left of the cover.~~

(d) **Additional requirements for briefs on the merits.**

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

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

<u>Document</u>	<u>Cover Page Color</u>
<u>Opening Brief of Appellant or Petitioner</u>	<u>Blue</u>

<u>Brief of Appellee or Respondent</u>	<u>Red</u>
<u>Brief of Intervenor, Guardian ad Litem, or Amicus Curiae</u>	<u>Green</u>
<u>Reply Brief</u>	<u>Gray</u>
<u>Appellant's or Petitioner's Second Brief in a Case Involving a Cross-Appeal or Cross-Petition</u>	<u>Gray</u>

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

(4) **Effect of noncompliance.** The clerk will examine all briefs before filing. If ~~the a~~ briefs ~~are~~is not prepared in accordance with these rules, the clerk may lodge ~~may choose to not file the briefs y will not be filed but will~~ and ~~be returned them to be properly prepared~~ notify the party of the deficiency. The clerk will retain one copy of the noncomplying brief and the party must file a brief prepared in compliance with these rules within 5 days. The clerk may grant additional time for bringing a brief into compliance. This rule is not intended to permit significant substantive changes in briefs.

TAB 3

Rule 5. Discretionary appeals from interlocutory orders.

(a) **Petition for permission to appeal.** Any party may seek an appeal from an interlocutory order by filing a petition for permission to appeal from the interlocutory order with the appellate court with jurisdiction over the case. The petition must be filed and served on all other parties to the action within 21 days after the entry of the trial court's order. If the trial court enters an order on a Saturday, Sunday, or legal holiday, the date of entry will be deemed to be the first day following the trial court's entry that is not a Saturday, Sunday, or legal holiday. A timely appeal from an order certified under Rule [54\(b\)](#), Utah Rules of Civil Procedure, that the appellate court determines is not final may, in the appellate court's discretion, be considered by the appellate court as a petition for permission to appeal an interlocutory order. The appellate court may direct the appellant to file a petition that conforms to the requirements of paragraph (c) of this rule.

(b) **Fees and filing of petition.** The petitioner must file the petition with the appellate court clerk and pay the fee required by statute [at the time of electronic filing or](#) within seven days of filing [by email, mail, or in person](#). The petitioner must serve the petition on the opposing party and notice of the filing of the petition on the trial court. If the appellate court issues an order granting permission to appeal, the appellate court clerk will immediately give notice of the order to the respective parties and will transmit the order to the trial court where the order will be filed instead of a notice of appeal.

(c) **Content of petition.**

(1) The petition must contain:

(A) A concise statement of facts material to a consideration of the issue presented and the order sought to be reviewed;

(B) The issue presented expressed in the terms and circumstances of the case but without unnecessary detail, and a demonstration that the issue was preserved in the trial court. Petitioner must state the applicable standard of appellate review and cite supporting authority;

(C) A statement of the reasons why an immediate interlocutory appeal should be permitted, including a concise analysis of the statutes, rules or cases believed to be determinative of the issue stated; and

(D) A statement of the reason why the appeal may materially advance the termination of the litigation.

(2) If the petition is subject to assignment by the Supreme Court to the Court of Appeals, the phrase "Subject to assignment to the Court of Appeals" must appear immediately under the title of the document, i.e. Petition for Permission to Appeal. Petitioner may then set forth in the petition a concise statement why the Supreme Court should decide the case.

(3) The petitioner must attach a copy of the trial court's order from which an appeal is sought and any related findings of fact and conclusions of law and opinion. Other documents that may be relevant to determining whether to grant permission to appeal may be referenced by identifying trial court docket entries of the documents.

(d) **Page limitation.** A petition for permission to appeal must not exceed 20 pages, excluding table of contents, if any, and the addenda.

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

(f) **Response; no reply.** No petition will be granted in the absence of a request by the court for a response. No response to a petition for permission to appeal will be received unless requested by the court. Within 14 days after an order requesting a response, any other party may oppose or concur with the petition. Any response to a petition for permission to appeal is subject to the same page limitation set out in paragraph (d) and must be filed in the appellate court. The respondent must serve the response on the petitioner. The petition and any response will be submitted without oral argument unless otherwise

ordered. No reply in support of a petition for permission to appeal will be permitted unless requested by the court.

(g) **Grant of permission.** An appeal from an interlocutory order may be granted only if it appears that the order involves substantial rights and may materially affect the final decision or that a determination of the correctness of the order before final judgment will better serve the administration and interests of justice. The order permitting the appeal may set forth the particular issue or point of law that will be considered and may be on such terms, including requiring a bond for costs and damages, as the appellate court may determine. The appellate court clerk will immediately give the parties and trial court notice of any order granting or denying the petition. If the petition is granted, the appeal will be deemed to have been filed and docketed by the granting of the petition. All proceedings after the petition is granted will be as and within the time required, for appeals from final judgments except that no docketing statement under Rule 9 is required unless the court otherwise orders, and no cross-appeal may be filed under Rule 4(d).

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

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

(j) **Record.** If the petition is granted, the trial court will prepare and transmit the record under Rule 11 or 12. Any transcript(s) must be ordered in compliance with Rule 11.

~~Effective: 11/1/2023~~ Effective: 2/28/2024

Rule 14. Review of administrative orders: how obtained; intervention.

(a) **Petition for review of order; joint petition.** When a statute provides for judicial review by or appeal to the Supreme Court or the Court of Appeals of an order or decision of an administrative agency, board, commission, committee, or officer (hereinafter the term “agency” shall include agency, board, commission, committee, or officer), a party seeking review must file a petition for review with the clerk of the appellate court within the time prescribed by statute, or if there is no time prescribed, then within 30 days after the date of the written decision or order. The petition must specify the parties seeking review and must designate the respondent(s) and the order or decision, or part thereof, to be reviewed. In each case, the agency must be named respondent. The State of Utah is a respondent if required by statute, even if not designated in the petition. If two or more persons are entitled to petition for review of the same order and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner. The agency must electronically file the record within 20 days of the request of the appellate courts.

(b) **Filing fees.** At the time of filing any petition for review or cross-petition for review, the petitioner or cross-petitioner must pay the filing fee established by law, unless waived by the appellate court. ~~The appellate court clerk must accept the petition or cross-petition for review regardless of whether the filing fee has been paid. Failure to pay the required filing fee within seven days may result in dismissal of the petition or cross-petition.~~ If a petition or cross-petition for review is filed by email, by mail, or in person without payment of the filing fee, the required filing fee must be paid within seven days or the petition or cross-petition may be dismissed.

(c) **Service of petition.** The petitioner must serve the petition on the respondents and all parties to the proceeding before the agency in a manner provided by Rule 21.

(d) **Intervention.** Any person may file with the clerk of the appellate court a motion to intervene. The motion must contain a concise statement of the interest of the moving

28 party and the grounds on which intervention is sought. A motion to intervene must be
29 filed within 40 days of the date on which the petition for review is filed.

30 (e) **Additional or Cross-Petition.** If a timely petition for review is filed by any party, any
31 other party may file a petition for review within 14 days after the date on which the first
32 petition for review was filed, or within the time otherwise prescribed by paragraph (a) of
33 this rule, whichever period last expires.

34 Effective 2/28/2024 ~~Effective: 11/1/2023~~

Rule 21. Filing and service.

(a) **Filing.** ~~A document may be filed by email, by mail, or in person.~~ Documents required or permitted to be filed by these rules must be filed with the appellate clerk. A document may be filed by submitting it through the appellate electronic filing system, by email, mail, or in person. If electronically filed or emailed, a document must be in a searchable PDF format of no more than ~~725~~ megabytes. Large PDF documents must be divided into 7 megabyte files. Documents filed by email in the Supreme Court must be sent to supremecourt@utcourts.gov. Documents filed by email in the Court of Appeals must be sent to courtsofappeals@utcourts.gov. Except as provided in paragraph (g):

(1) Documents other than briefs are timely:

(A) if received by electronic filing or email to the appropriate court by 11:59 p.m. of the due date; or

(B) if received by mail or hand delivery to the Appellate Clerks' Office before 5 p.m. of the due date.

(2) Briefs are timely:

(A) if received by electronic filing or email to the appropriate court by 11:59 p.m. of the due date;

(B) if postmarked by the due date; or

(C) if received by hand delivery to the Appellate Clerks' Office before 5 p.m. of the due date.

(b) **Filing Fees.** If a statute or rule establishes a fee for the filing, the party must pay the fee to the appellate clerk no more than 7 days after the filing, or the filing may be stricken. If a party elects to file electronically, the party must pay the fee at the time of filing through the appellate electronic filing system.

(c) **Service of all documents required.** All documents filed with the appellate court must, at or before the time of filing, be served on all other parties to the appeal or review. Service

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

(d) **Manner of service.** Service may be personal, [by electronic filing](#), by mail, or by email. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail or email is complete on mailing or emailing. [Service by electronic filing is complete on acceptance by the electronic filing system.](#)

(e) **Proof of service.** Documents presented for filing must contain an acknowledgment of service by the person served or a certificate of service in the form of a statement of the date and manner of service, the names of the persons served, and the addresses at which they were served. The certificate of service may appear on or be affixed to the documents filed. If counsel of record is served, the certificate of service must designate the name of the party represented by that counsel. [Electronically filed documents do not need to contain a certificate or acknowledgement of service if all parties have contact information in the electronic filing system.](#)

(f) **Signature.** All documents filed in the appellate court must be signed by counsel of record or by a party who is not represented by counsel. For documents [electronically filed, or filed by](#) email, the documents may be electronically signed as follows: /s/ name of unrepresented party or name of counsel of record.

(g) **Filing by inmate.**

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

(2) Documents filed by an inmate are timely filed if they are deposited in the institution's internal mail system on or before the due date. Timely filing may be shown by a contemporaneously filed notarized statement or written declaration setting forth the date of deposit and stating that first-class postage has been, or is

being, prepaid, or that the inmate has complied with any applicable requirements for legal mail set by the institution. Response time will be calculated from the date the documents are received by the court.

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

Effective 2/28/2024 ~~Effective: 2/19/2020~~

Advisory Committee Note

Court records are public unless otherwise classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social by the Utah Code of Judicial Administration. The right of public access may be restricted by statute (including the Government Records Access and Management Act), rule, case law, or court order. If a filing contains information or records that are not public, the filer must file an unredacted version for the court and a version for the public that does not contain the nonpublic information.

Note Adopted 2020

1 **Rule 26. Filing and serving briefs.**

2 (a) **Time to file and serve briefs.** The appellant must file and serve a principal brief
3 within 40 days after date of notice from the appellate court clerk pursuant to Rule 13. If a
4 motion for summary disposition of the appeal or a motion to remand for determination
5 of ineffective assistance of counsel is filed after the Rule 13 briefing notice is sent, an
6 appellant's principal brief must be filed and served within 30 days from the denial of
7 such motion. The appellee, or in cases involving a cross-appeal, the cross-appellant, must
8 file and serve a principal brief within 30 days after service of the appellant's principal
9 brief. In cases involving cross-appeals, the appellant must file and serve the appellant's
10 reply brief described in Rule 24A(d) within 30 days after service of the cross-appellant's
11 principal brief. A reply brief may be filed and served by the appellant or the cross-
12 appellant in cases involving cross-appeals. If a reply brief is filed, it must be filed and
13 served within 30 days after the filing and service of the appellee's principal brief or the
14 appellant's reply brief in cases involving cross-appeals. If oral argument is scheduled
15 fewer than 35 days after the filing of appellee's principal brief, the reply brief must be
16 filed at least 5 days prior to oral argument. By stipulation filed with the court in
17 accordance with Rule 21(a), the parties may extend each of such periods for no more than
18 30 days. A motion for enlargement of time need not accompany the stipulation. No such
19 stipulation will be effective unless it is filed prior to the expiration of the period sought
20 to be extended.

21 (b) **Number of copies.** For matters pending in the Supreme Court, eight paper copies of
22 each brief, one of which shall contain an original signature, must be filed with the
23 Supreme Court Clerk. For matters pending in the Court of Appeals, six paper copies of
24 each brief, one of which shall contain an original signature, must be filed with the Court
25 of Appeals Clerk. If a brief was [electronically filed or](#) filed by email, the required paper
26 copies of the brief must be delivered no more than seven days after filing. If a brief is
27 served by [electronic filing or](#) email, upon request two paper copies must be delivered to
28 counsel for each party separately requesting paper copies.

(c) **Consequence of failing to file principal briefs.** If an appellant fails to file a principal brief within the time provided in this rule, or within the time as may be extended by order of the appellate court, an appellee may move for dismissal of the appeal. If an appellee fails to file a principal brief within the time provided by this rule, or within the time as may be extended by appellate court order, an appellant may move that the appellee not be heard at oral argument.

(d) **Return of record to the clerk.** Each party, upon filing its brief, must return ~~the~~ any physical records and exhibits to the court clerk having custody pursuant to these rules.

~~Effective: 2/19/2020~~ Effective: 2/28/2024

Commented [NG1]: Lisa's comment: Do we want to note that only paper copies and exhibits checked out must be returned? This may not be necessary.

Commented [NG2R1]: I agree with Lisa.

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

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

5 (1) **Size, line spacing, and margins.** All documents must be prepared on 8½ by 11
6 inch sized paper. The text must be double spaced, except for matter customarily single
7 spaced and indented. Margins must be at least one inch on all sides. Page numbers
8 are required and may appear in the margins.

9 (2) **Typeface.** The type must be a plain, roman style with serifs. Italics or boldface may
10 be used for emphasis. Cited case names must be italicized or underlined.

11 (3) **Typesize.** The typeface must be 13-point or larger for both text and footnotes.

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

17 (c) ~~Caption~~ **Cover page for briefs on the merits and petitions.** ~~The cover of each brief or~~
18 ~~the first page of any other document must contain a caption that includes the following~~
19 ~~information:~~

20 (1) **Caption.** ~~For briefs on the merits and petitions:~~ The cover of each brief or the first
21 page of a petition must contain a caption that includes the following information:

22 (A) the number of the case in the appellate court (if available);

23 (B) the name of the appellate court;

24 (C) the full title given to the case in the court or agency from which the appeal
25 was taken, as modified under Rule 3(g);

(D) the designation of the parties both as they appeared in the ~~lower~~ court or agency from which the appeal is taken and as they appear in the appellate proceeding;

(E) the title or description of the document (e.g., Brief of Appellant, Petition for Permission to File Interlocutory Appeal, Petition for Rehearing, Petition for Extraordinary Relief);

(F) the nature of the proceeding in the appellate court (e.g., Appeal, Petition for Review) if not apparent from the title or description of the document; and ~~(e.g., Direct Appeal, Interlocutory Appeal, Petition for Review);~~

(G) the name of the court and judge, agency, or board ~~below~~ from which the appeal is taken and the case or proceeding number; ~~and~~

~~(2H) eCounsel or unrepresented party information.~~ The identifying and contact information of the counsel or unrepresented party filing the document must appear ~~on the bottom half~~ in the lower right corner of the cover page. ~~The party or counsel filing the document must appear in the lower right of the cover, and opposing counsel or party in the lower left of the cover.~~

~~(A)~~ eCounsel's information must include counsel's: ~~their~~

~~(i) counsel's name;~~

~~(ii) the Utah State Bar number of the filing counsel;~~

~~(iii) counsel's mailing address;~~

~~(iv) the email address of the filing counsel;~~

~~(v) counsel's telephone number;~~ and

~~(vi) and~~ a designation ~~as~~ indicating the party counsel represents in the appeal (e.g., eCounsel for Aappellant, pPetitioner, aAppellee, or rRespondent, ~~as the case may be~~); ~~or~~

(iiB) ~~a~~ An unrepresented party's information must ~~list~~ include the party's:

(i) ~~their name~~;

(ii) mailing address;

(iii) email address (if any); ~~and~~

(iv) telephone number (if any); ~~and~~

(v) ~~a designation as~~ statement identifying the party's designation in the appeal

(e.g., ~~the a~~Appellant, ~~p~~Petitioner, ~~a~~Appellee, or ~~r~~Respondent, ~~as the case may~~

~~be~~).

(12d) ~~First page For of n~~ Motions and ~~other~~ appellate documents ~~besides~~ other than
briefs and petitions; ~~Case and document information:~~

1. **Caption.** The first page of a motion or appellate document other than a brief or
petition must include a caption with the following information:

(A) the number of the case in the appellate court (if available);

(B) the name of the appellate court;

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

(D) the designation of the parties both as they appeared in the ~~lower~~ court or
agency from which the appeal is taken and as they appear in the appellate
proceeding; and

(E) the title or description of the document (e.g., Motion to Dismiss, Docketing
Statement, Stipulation, Motion to Extend Time, Notice); ~~and (A) full title given to~~
~~the case in the court or agency from which the appeal was taken, as modified~~
~~under Rule 3(g);~~

2. Counsel or unrepresented party information. The identifying and contact information of the counsel or unrepresented party filing the document must appear in the upper left corner of the first page.

~~(F) counsel or party information in the upper left hand corner, including (B) the designation of the parties both as they appeared in the lower court or agency and as they appear in the appeal~~

~~(i) counsel's (C) the name of the appellate court;~~

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

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

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

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

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

~~(A)~~ (A) Counsel's information must include counsel's:

~~(i) counsel's~~ name;

~~(ii) the Utah State Bar number of the filing counsel;~~

~~(iii) counsel's mailing~~ address;

~~(iv) the email address of the filing counsel;~~

~~(v) counsel's~~ telephone number; ~~Utah State Bar number,~~ and

~~(vi) a designation indicating which party counsel represents in the appeal (e.g., designation as attorney~~ Counsel for ~~a~~ Appellant, ~~p~~ Petitioner, ~~a~~ Appellee, or ~~r~~ Respondent). ~~as the case may be, or~~

~~(B)~~ A

~~-(B) (ii) a~~ An unrepresented party's information must include the party's:

~~(i) must list the party's name,~~

~~(ii) mailing address;~~

~~(iii) email address (if any); and~~

~~(iv) telephone number (if any); and~~

~~(v) a designation statement identifying the party's designation in the appeal (e.g., as the aAppellant, pPetitioner, aAppellee, or rRespondent), as the case may be.~~

~~(3) For briefs on the merits, the names of all counsel for the respective parties must appear on the bottom half of the cover page. The party filing the document must appear in the lower right and opposing counsel in the lower left of the cover.~~

(d) Additional requirements for briefs on the merits.

(1) Binding. Briefs must be printed on both sides of the page, and securely bound on the left margin with a compact type binding so as not unduly to increase the thickness of the brief along the bound side. Coiled plastic and spiral type bindings are not acceptable. Hard copies of the briefs must be submitted on 20 lb bond standard paper and with the exception to the first page, have printing on both sides of each page. Briefs should be submitted with a binder clip, not stapled.

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

<u>Document</u>	<u>Cover Page Color</u>
<u>Opening Brief of Appellant or Petitioner</u>	<u>Blue</u>
<u>Brief of Appellee or Respondent</u>	<u>Red</u>
<u>Brief of Intervenor, Guardian ad Litem, or Amicus Curiae</u>	<u>Green</u>
<u>Reply Brief</u>	<u>Gray</u>
<u>Appellant's or Petitioner's Second Brief in a Case Involving a Cross-Appeal or Cross-Petition</u>	<u>Gray</u>

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

(4) **Effect of noncompliance.** The clerk will examine all briefs before filing. If ~~the a~~ briefs ~~are~~is not prepared in accordance with these rules, the clerk may lodge ~~may choose to not file the briefs y will not be filed but will~~ and ~~be returned them to be properly prepared~~ notify the party of the deficiency. The clerk will retain one copy of the noncomplying brief and the party must file a brief prepared in compliance with these rules within 5 days. The clerk may grant additional time for bringing a brief into compliance. This rule is not intended to permit significant substantive changes in briefs.

TAB 4

Rule 10. Procedures for summary disposition or simplified appeal process.

(a) Time for filing; grounds for motion for summary disposition.

~~(a)~~(1) A party may move at any time to dismiss the appeal or the petition for review on the basis that the appellate court lacks jurisdiction. Any response to such motion must be filed within 14 days from the date of service.

~~(a)~~(2) After a docketing statement has been filed, the court, on its own motion, and on such notice as it directs, may dismiss an appeal or petition for review if the court lacks jurisdiction; or may summarily affirm the judgment or order that is the subject of review, if it plainly appears that no substantial question is presented; or may summarily reverse in cases of manifest error.

~~(a)~~(3) If the effective date of a notice of appeal is tolled under the provisions of rule 4(b) or 4(c), the court, on its own motion, and on such notice as it directs, may dismiss the appeal for failure to prosecute if

(A) any motion within the scope of rule 4(b) has not been submitted to the district court for decision within 150 days after the motion was filed; or

(B) a proposed final judgment has not been submitted to the court within 150 days after the announcement of judgment under rule 4(c).

A dismissal for failure to prosecute under this rule will be without prejudice to the filing of a timely notice of appeal after the entry of a dispositive order or final judgment.

~~(a)~~~~(4)~~(3) The time for taking other steps in the appellate process is suspended pending disposition of a motion for summary affirmance, reversal, or dismissal.

~~(a)~~~~(5)~~(4) As to any issue raised by a motion for summary disposition, the court may defer its ruling until plenary presentation and consideration of the case.

(b) Simplified appeal process; eligible appeals.

~~(b)~~(1) For appeals involving the application of well-settled law to a set of facts, the court may designate an appeal for a simplified appeal process. An appellant in a case pending before the Court of Appeals may move for a simplified appeal process under this subsection within 10 days after the docketing statement is filed or the case is transferred to the court of appeals, whichever is later.

~~(b)~~(2) Appeals eligible for a simplified process are those involving the application of well-settled law to a set of facts, which may include, but are not limited to, cases in the following categories:

~~(b)(2)~~(A) appeals challenging only the sentence in a criminal case;

~~(b)(2)~~(B) appeals from the revocation of probation or parole;

~~(b)(2)~~(C) appeals from a judgment in an unlawful detainer action; and

~~(b)(2)~~(D) petitions for review of a decision of the Department of Workforce Services Workforce Appeals Board or the Labor Commission.

(c) Memoranda in lieu of briefs.

~~(e)~~(1) In appeals designated under subsection (b), the parties must file memoranda in support of their positions instead of briefs. The schedule for preparing memoranda will be set by appellate court order.

~~(e)~~(2) A party's principal memorandum must include:

~~(e)(2)~~(A) an introduction describing the nature and context of the dispute, including the disposition in the court or agency whose judgment or order is under review;

~~(e)(2)~~(B) a statement of the issues for review, including a citation to the record showing that the issue was preserved for review or a statement of grounds for seeking review of an issue not preserved;

~~(e)(2)~~(C) an argument, explaining with reasoned analysis supported by citations to legal authority and the record, why the party should prevail on appeal; no separate statement of facts is required, but facts asserted in the argument must be supported by citations to the record;

~~(e)(2)~~(D) a claim for attorney fees, if any, including the legal basis for an award; and

~~(e)(2)~~(E) a certificate of compliance, certifying that the memorandum complies with rule 21 regarding public and private documents.

~~(e)~~(3) An appellant or petitioner may file a reply memorandum limited to responding to the facts and arguments raised in appellee's or respondent's principal memorandum. The reply memorandum must include an argument and a certificate of compliance with rule 21 regarding public and private documents.

~~(e)~~(4) Principal memoranda must be no more than 7,000 words or 20 pages if a word count is not provided. A reply memorandum must be no more than 3,500 words or 10 pages if a word count is not provided.

(d) Extension of time. By stipulation filed with the court prior to the expiration of time in which a memorandum is due, the parties may extend the time for filing by no more than 21 days. Any additional motions for an extension of time will be governed by rule 22(b).

~~Effective November 1, 2022~~