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:	April 4, 2024
Time:	12:00 to 1:30 p.m.

Action: Welcome and approval of March 7, 2024 Minutes	Tab 1	Chris Ballard, Chair
Action: Final Approval of Rules 10 and 57	Tab 2	Chris Ballard
Discussion: Child Welfare Rule Amendmen	Tab 3	Debra Nelson
Action: Rule 23C and Rule 19	Tab 4	Clark Sabey, Mary Westby, Troy Booher
Action: Rule 8	Tab 5	Stan Purser
Discussion: Old/new business		Chris Ballard, Chair

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

2024 Meeting schedule:

May 2, 2024	October 3, 2024
June 6, 2024	November 7, 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, March 7, 2024
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Judge Michele Christiansen Forster
Lisa Collins
Carol Funk
Amber Griffith—Staff
Michael Judd—Recording Secretary
Debra Nelson
Judge Gregory Orme
Tera Peterson
Stanford Purser
Michelle Quist
Clark Sabey
Nathalie Skibine—Vice Chair
Scarlet Smith
Nick Stiles—Staff
Mary Westby

EXCUSED

Troy Booher—Emeritus Member

1. Action: Chris Ballard
Approval of February 2024 Minutes

The committee reviewed the February 2024 minutes and identified a needed correction in Part 6: changing a reference to "Rule 3" to "Rule 8."

With that correction made, Debra Nelson moved to approve the February 2024 minutes (as corrected), as they appeared in the committee's materials. Mary Westby seconded that motion, and it passed without objection by unanimous consent.

2. Action: **Chris Ballard**

Final Approval of Rules 3, 5, 14, 19, 48, 21, 26, and 27

The committee received only one public comment related to this batch of amendments—a comment related to the size limit for electronic filings. Nick Stiles explained that while the appellate courts recognize that filers may prefer a higher filing-size limit, an increase to that limit is not available, given existing system limitations.

The committee also made a slight change to the e-filing amendments to clarify whether agencies need to electronically file a record.

Following that discussion, Ms. Westby moved to approve the eight rules, as they appeared in the committee minutes and, in at least one case, on the screen at the committee's meeting. Lisa Collins seconded that motion, and it passed without objection by unanimous consent.

3. Action: **Clark Sabey, Michelle Quist, Judge Michele Christiansen Forster**

Rule 42—Transfer of Cases

The proposed amendments to Rule 42 would relate to the transfer of cases from the Supreme Court to the Court of Appeals. Those amendments would not change the existing practices, but would simply codify those practices—now circulated to parties by letter—into a rule.

The committee discussed proposed subsection (b)(5)'s treatment of the relevant deadlines, and Carol Funk proposed edits to subsection (b) that would eliminate redundancies and clarify language.

Following that discussion, Ms. Funk moved to table the proposed amendments to allow the subcommittee to complete additional work on the language of the rule. Michelle Quist seconded that motion, and it passed without objection by unanimous consent.

4. Action: Stan Purser
Rule 8

The proposed amendments to Rule 8 are designed to track the standard that appears in Rule 65A(e) of the Utah Rules of Civil Procedure. The committee engaged in a vigorous discussion regarding the applicable standard—including whether the appellate rule and civil rule should, in fact, map precisely.

Following that discussion, Ms. Funk moved to table the proposed amendments to allow the subcommittee to complete additional work on the language of the rule. Mr. Purser seconded that motion, and it passed without objection by unanimous consent.

5. Discussion: Clark Sabey, Mary Westby,
Rule 23C—Emergency Relief Standard Troy Booher

The committee's discussion of the proposed amendments to Rule 23C was time-restricted but productive. The committee discussed whether Rule 23C should adopt a standard drawn from other rules but noted that the adoption of a specific standard would reduce the rule's flexibility. The committee did recognize the appeal of changing the term "emergency" to "expedited," and expects that change to figure into the eventual proposed amendment.

With that discussion completed, the committee plans to return to discussion of Rule 23C at its next meeting.

6. Discussion: Chris Ballard
Old/New Business

The committee noted that proposed changes to the rules for child-welfare proceedings are currently being handled by an assigned subcommittee. Those rules implicate important interests and represent a balance—at least at times, a delicate balance—between the needs of various stakeholders. That project still holds the committee's attention, and the committee plans to return to those rules in the next several months.

8. Adjourn **Chris Ballard**

Following the business and discussions described above, Ms. Quist moved to adjourn, and Ms. Nelson seconded. The committee adjourned. The committee's next meeting will take place in April 2024.

TAB 2

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

~~(a)~~(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) **Dismissal for failure to prosecute.**

(1)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, 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).

(2) 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.

(c~~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~~ paragraph within ~~10~~ ten 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.

(d~~c~~) **Memoranda in lieu of briefs.**

~~(c)~~(1) In appeals designated under ~~subsection~~ paragraph (~~b~~c), 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.

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

~~(c)(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;

~~(c)(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;

~~(c)(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;

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

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

~~(c)~~(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 ~~r~~Rule 21 regarding public and private documents.

~~(c)~~(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~~e) **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 ~~r~~Rule 22(b).

~~*Effective November 1, 2022*~~

Rule 57. Record on appeal; transmission of record~~.~~; supplementation of the record.

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

(b) The record on appeal will be transmitted by the juvenile court clerk to the Court of Appeals clerk upon the request of an appellate court.

(c) If anything is omitted from the legal record in error, the omission may be corrected and a supplemental record on appeal may be created upon a motion from a party in the appellate court. If the party making the motion has access to the omitted document, the document ~~should~~must be attached to the motion. The motion must establish that any document requested to be added to the record:

(1) was before ~~considered by~~ the juvenile court; and

(2) is material to the issues on appeal.

TAB 3

TAB A

Proposal to Amend the Rules of Appellate Procedure for Child Welfare

An appeal from a child welfare proceeding—termination of parental rights, adjudication of abuse, neglect, or dependency, or other related final orders—is an appeal of right. The fundamental liberty interest to the care of one's child is at stake in these appeals. Despite this fact, aside from an appeal, there is no mechanism for remedy or review of the loss of parental rights. This is unlike criminal cases, where those interests garner multiple layers of review such as post-conviction relief.

The appeal is the only chance the family has to get review of a juvenile court's decision. These important rights should be entitled to the same rigorous review on appeal as every other appeal.

This proposal would eliminate the petition prerequisite to appeals of child welfare cases so that all cases proceed to briefing, like all other appeals.

AUGUST 2023 AMENDED PROPOSAL

Over the summer of 2023, the IDC met with various stakeholders to determine if changes could be made to the current proposal that would satisfy concerns. Out of these meetings, the following amendments are proposed:

1. Changes to URAP 9: the docketing statement of a child welfare case was updated to be more consistent with the existing rules and more workable for court staff.
2. Replacement of URAP 55: Briefing in child welfare cases will comply with the requirements and timelines of rule 24 **except** that there will be no reply brief **unless** the appellant gives notice to the court, in writing, of its intent to file a reply within 7 days of the filing of the last response brief. This change allows briefing in child welfare cases to move much faster and simple cases can be reviewed by the court on almost the same timeline as petitions without truncating the appellate process for more substantial cases.
3. Changes to URAP 58 (formerly 59): Allows for ONE 30 day extension on principal briefs only upon showing of good cause. No extensions on reply briefs and additional extensions will only be granted in extraordinary circumstances.

Under this proposal, the timeline for a child welfare case will be as short as 70 days (from record to end of briefing). It generally takes 50 days just to complete petitions (from record to end of petitions). The difference in time, for simple cases, will be negligible. But it will *shorten* the complex cases from at least 128 days to 100 days (without extensions) and will cap the time for briefing at 160 days (with each side taking one extension). This means cases will be *fully briefed* in, at most, 5.3 months.

Current Process

Phase 1: Final Juvenile Court Order → 15 days → Notice of Appeal → 4 days → Transcript request (URAP 52, 53, 54)	During this time, rostered appellate counsel has to be appointed and become oriented enough with the case to order the necessary transcripts.
Phase 2: Record Transmitted → 15 days → Petition on Appeal → 15 days → Response(s) to Petition (URAP 55, 56, 57)	Appellate counsel may need to move to supplement the record during this time. If there is potential IAC, appellate counsel must investigate those claims within the time allowed. Petitions are limited to 5000 words.
Phase 3: Decision on Petition 3A: Court of Appeals issues order → 14 days → Petition for Rehearing → 30 days → Petition for Certiorari 3B: Court of Appeals grants full briefing → 30 days → Opening Brief → 30 days → Response Brief → 30 days → Reply Brief	Petitions, response, and record are reviewed by COA staff attorneys to determine if the issues presented are simple. If so, they are resolved by unpublished orders and almost exclusively affirmed. If not, the case is set for full briefing, often on an expedited briefing schedule which sets OA five months out.

A case that is resolved **on the petitions** is resolved within **4-6 months** of the record being transmitted**.** A case that goes to **full briefing** (expedited) is resolved within **7-9 months** of the briefing order but because it had to go through the petition process first, it takes a total of **11-15 months**.

This means, on average, cases that go to full briefing (any reversal) takes more than **twice** as long as a case resolved on the petitions. **But** there is only about a **four month** difference between the petition process and expedited briefing. If all cases went straight to expedited briefing, the "easy" affirmances would take 4 months longer but the more difficult cases and reversals, which require remands, would take **4-6 month less time**.

Results of the Current Process

There are **500 contested terminations** of parental rights per year in Utah. These do not include voluntary relinquishments. Of those 500 terminations, only **50 notices of**

appeal are filed per year on average. Of those 50 appeals filed, only about **10 are granted full briefing** of which only about 3 end up being reversals.

Roughly only 14% of juvenile court appeals are resolved with a publicly available opinion. This is compared to much larger percentages in every other area of law (30% for agency appeals, 39% for criminal appeals, and 41% for civil). The result is that this area of law receives considerably less guidance from the appellate courts than other areas of law despite its constitutional nature and direct impact on Utah communities.

Why Change is Needed

1. **The nature of the rights at stake and the extremely high cost of getting a child welfare decision wrong.**

This cost is borne not only by parents who have their rights terminated, but by the children who permanently lose the connection to their families. These are fundamental constitutional rights that should be afforded every protection and process of law.

The recent social science on child development, bonding, and the child welfare system support maintaining family connections wherever possible. While swift permanency has traditionally been a central goal of the child welfare system, recent research suggests that some of the basic assumptions underlying the focus on swift permanency should be re-evaluated. A more nuanced approach—and one that is more child-centric—is to separate *legal* permanency from *relational* permanency.[1] To summarize a great body of research: adoption is not as permanent or as beneficial as we assume it is and circumstances that support relational permanency—regardless of what legal form those circumstances take—leads to better outcomes for the child.

A truncated appellate process that prioritizes "swift legal permanency" over relational permanency is not in the best interest of children. A thoughtful, meaningful appellate process that fully examines whether a termination decision was strictly necessary to be in the best interest of the child is the only option that operationalizes

[1] Researchers define relational permanency as "youth experiencing a sense of belonging through enduring, life-long connections to parents, extended family, or other caring adults, including at least one adult who will provide a permanent, parentlike connection for that youth." Semanchin-Jones, A. S., & LaLiberte, T. (2013). *Measuring youth connections: A component of relational permanence for foster youth*. Children and Youth Services Review, 35(3), 509-517.

what the social science is clearly dictating to us: we have to be beyond certain that termination is the only solution appropriate for a child's best interest, and prioritize kinship placements as the least traumatic options for children.

2. **The landscape of child welfare has changed dramatically since this appellate process was put in place about 20 years ago.**

The landscape has changed in every capacity. Utah juvenile code underwent significant reform in 2012 with the addition of the language from the U.S. Supreme Court decision in *Sanotsky*, now enshrined in Utah Code section 80-4-104. Around the same time, Utah appellate courts in *In re B.T.B.* disavowed the "almost automatically" line of cases which held that termination almost automatically followed whenever grounds were found. This gave rise to the "strictly necessary" requirement and a more rigorous best interest analysis. Since then, there has also been a clarification of the standard of review for termination cases, making clear that juvenile courts are not entitled to any special deference, but the normal deference for factual findings on appeal. The strictly necessary requirement has also been recently refined.

Another major change in appellate child welfare law has been the requirement that indigent parties be represented by qualified appellate counsel on appeal and the advent of the appellate roster for child welfare and parental termination cases. Shortly after this change, the appellate rules were amended to ensure that appellate counsel have access to the record prior to filing a petition. As a result, higher quality appeals with more complex and nuanced issues are being brought by appellate counsel. A screening process to "weed out" the non-meritorious appeals may have had value when petitions were filed by trial counsel without the benefit of the record and often rehashed factual challenges from trial. But the purpose of having qualified appellate counsel on these cases is to do what appellate counsel should do: find and raise the meritorious legal issues. There is little value in a screening process with these measures in place.

3. **The time "saved" is not worth the cost and the cases requiring expediency are delayed beyond the time of a regular appeal.**

The *only* justification for the petition process is to expedite appeals to achieve permanency for children as fast as possible. But there are two problems with this guiding principle that bear closer examination.

First, with the changes to the appellate process already in place (qualified appellate counsel and the record must be transmitted prior to the petition), the time saved on appeal is about four months when comparing a case resolved on petition to a

case resolved on expedited briefing. There is no evidence or social science supporting that these four months make a critical difference in the timeline of a child "waiting for permanency." If a decision is affirmed, the child's status quo (placement with a foster family or relative) is maintained and the only tangible effect is that the child is not officially adopted for a few more months. If the child is in a guardianship, there is no change to the child's permanency from an affirmance.

Second, the cases that require the most expediency are the *reversals*. These cases, by and large, require remand for further proceedings in the trial courts and have the potential to alter the child's placement. Termination reversals, for example, are greatly affected by the passage of time: if a new best interest analysis has to be done on remand, every month that goes by where the child is more entrenched in their placement without contact with their parent makes it more difficult to show that it is *now* in that child's best interest to be returned home, regardless of how erroneous the original termination decision was. Despite the devastating effect of time on reversals, these cases take *longer* than a normal appeal would because they have to go through the petition process and then full briefing before being resolved, adding at 4-6 months of time. In short, the parents and the child are worse off for reversals taking longer on appeal.

In addition, there is a disparate treatment of cases between private termination coming out of district court and state-driven terminations out of juvenile court. The rule 55 petition only applies to juvenile court cases, not district court. The children who are the subject of private terminations are no less deserving of swift permanency than children in juvenile court terminations. Yet we are willing to accept normal appellate timelines for district court appeals. This disparity may be a historical artifact of a problem that existed when the petition process was created: a backlog of appeals and children languishing in foster care as a result of a surge in DCFS termination actions. The petition process allowed these appeals to be dealt with quickly, but we no longer have any such backlog. Children are, almost exclusively, placed in adoptive placements while waiting for a decision on appeal, not languishing in the foster care system.

4. **More guidance from appellate courts through opinions will benefit trial courts and practitioners.**

Currently, about 86% of the 50 child welfare appeals filed every year are resolved through orders. This means there is less guidance from appellate courts in this area of the law than any other area. The effect of having so few opinions is particularly evident recently as the number of reversals has increased. And these reversals have already had an identifiable effect on the analysis at the trial court level.

In addition, practitioners at all levels can better tailor their arguments to provide more meaningful representation of their clients, rather than rote process. More appellate opinions means more consistency among the juvenile and district courts dealing with termination and child welfare cases. All of this increases confidence in the system, which is essential to the success of child welfare in particular.

5. **Access to justice and disparate impact on impoverished and minority communities.**

Finally, putting child welfare appeals on equal footing with every other appeal supports access to justice, particularly for vulnerable families. Overwhelmingly, families in the child welfare system are low-income families. The parents are indigent. They cannot afford to hire an attorney at the trial level and are assigned contracted public defenders who often have high caseloads. By DCFS's own data, minority families are disproportionately affected by the child welfare system in Utah: hispanic families are twice as likely to have a child removed and black families are four times as likely to have a child removed.

It is a fact of every justice system that mistakes are made. Appellate review, with qualified counsel who look at the case with fresh eyes, is essential to ensuring due process of law for these families. This is most evident with ineffective assistance of counsel claims, which were virtually impossible to raise prior to appellate counsel being required. But the current petition process still limits access to chambers review of these families' cases. Child welfare is the *only* area of law that requires this kind of screening process for a direct appeal of right.

Anticipated Effect of Rule Change

On Children: Of primary concern, both at trial and on appeal, are the children at the center of these cases. The main goal of the child welfare system has been to provide swift permanency to children in the system. But what the system considers permanency and what the child considers permanency are not always in line. As discussed above, recent research has drawn a distinction between *legal* permanency—i.e., a child's legal status as related to their caregivers—and *relational* permanency–the real sense of stability and care that a child experiences from their point of view.

Unsurprisingly, relational permanency tends to be what matters most *to the child*. Children who have relational permanency—regardless of legal status—experience less placement changes and more security than children who have achieved what the

system considers permanency through a legal outcome. Importantly, relational permanency is not contingent on legal permanency. In this way, we can separate the real-world effect of an appeal on a child (which delays legal permanency but does not necessarily affect relational permanency) from the general goal of swift permanency. If we, as a system, maintain focus and resources on relational permanency throughout an appeal, we can mitigate the effect on the child while ensuring these issues receive the robust review they deserve.

On Parents: The most important effect of an appeal on parents, notwithstanding reversals, is the sense they were heard. Often, parents feel railroaded and overwhelmed by juvenile and district court proceedings (rightly or wrongly). Appeals proceed at a different pace and give parents a unique opportunity to work with their appellate counsel and present "their story" in brief form. Even where the appellate court affirms the trial court order, parents will be more likely to accept these results. In cases where the parent may have ongoing contact with the child, the child's placement is more secure if the biological parent is more accepting or supportive of the outcome because they feel they received adequate process.

On Courts: Courts will most likely benefit from more in-chambers appellate review of child welfare and parental termination decisions. Juvenile and district courts will receive more guidance through published opinions. Appellate courts will have a better understanding of this category of cases through more exposure. At the appellate level, cases will still go through the internal triage process that all cases go through to identify cases that have jurisdictional issues, very simple issues, or frivolous issues. Should any of those apply to a child welfare case, it can be resolved through summary disposition.

Other jurisdictions have implemented similar processes and have been able to accommodate those appeals without significant issue. Colorado, for example, has an expedited briefing process for child welfare appeals and created a centralized office for parental representation. Iowa, the state on which our petition process was based 20 years ago, conducts in-chambers *de novo* review of all child welfare cases. While they technically have a petition process, there is no full briefing, there is only the petition. So it is essentially just a truncated, expedited briefing process subject to de novo review. Neither jurisdiction has experienced an unmanageable surge in child welfare cases despite marked increases in the number of appeals brought due to better representation.

On Counsel: While the burden of having to brief every appeal may increase workloads for counsel on all sides, it will also become more manageable as counsel will no longer have to juggle the short, demanding petition timelines with regular briefing

schedules. Because petitions are limited on extensions, appellate counsel often has to extend briefing schedules for cases on full briefing to accommodate new petitions. This means cases that are on full briefing get "back-burnered" more often and take longer.

Eliminating the petition will also allow appellate counsel to use alternative resolutions processes. Appellate mediation can be used to come up with different solutions and circumvent the need for an appeal altogether. These tools are not readily available at the petition stage.

Finally, briefing will give appellate counsel a reasonable amount of time to identify better issues for the appeal, resulting in more meaningful appeals and better jurisprudence. The rules already require specially-qualified appellate counsel and access to the record prior to filing a petition. Giving appellate counsel access to all the tools and strategies available a full briefing process will increase the overall quality family representation and, consequently, the child welfare system as a whole.

TAB B

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

March 28, 2024

Ronald B. Gordon, Jr.
State Court Administrator
Neira Siaperas
Deputy State Court Administrator

MEMORANDUM

TO: **Advisory Committee on the Rules of Appellate Procedure**

FROM: **Board of Juvenile Court Judges**

RE: **Indigent Defense Commission's Proposal to Amend the Utah Rules of Appellate Procedure Related to Child Welfare Appeals**

In the winter of 2022, the Indigent Defense Commission (IDC) submitted a proposal to the Advisory Committee on the Utah Rules of Appellate Procedure (Advisory Committee) to change the appellate rules related to child welfare appeals. The Advisory Committee requested input from all stakeholders, including the Board of Juvenile Court Judges (BJCJ).

In May of 2023, the BJCJ voted that it was not persuaded of the need for the change proposed by the IDC.

In February of 2024, the IDC circulated a proposal that contained non-substantive modifications that is anticipated to be reviewed by the Advisory Committee at the April 2024 meeting. At the March 20, 2024 BJCJ meeting, the BJCJ discussed the current proposal. After a lengthy discussion, the BJCJ voted again that it was not persuaded of the need for the change proposed by the IDC.

TAB C

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

March 11, 2024

Ronald B. Gordon, Jr.
State Court Administrator
Neira Siaperas
Deputy State Court Administrator

MEMORANDUM

TO: Advisory Committee on the Rules of Appellate Procedure

FROM: Annie ValDez, Court Improvement Program Director

RE: Indigent Defense Commission's Proposal to Amend the Utah Rules of Appellate Procedure Related to Child Welfare Appeals

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From approximately 2002 to 2004, Utah's Court Improvement Program (CIP) was involved in changes made to expedite child welfare appellate rules. That work involved representatives from all partners in the CIP community and ultimately resulted in the Utah Judiciary's adoption of appellate rules that expedited child welfare appeals.

After learning of the Indigent Defense Commission's (IDC) original proposed amendments to the rules regarding child welfare appeals (draft November 23, 2022), the CIP convened its Steering Committee on multiple occasions to further discuss the issue. In addition to meetings held in March and May 2023, the CIP Steering Committee met with the IDC and their Indigent Appellate Defense Division (IADD) in June and July 2023 to consider feedback and concerns. The CIP Steering Committee reviewed a number of documents submitted including the IADD Proposal to Amend the Rules of Appellate Procedure for Child Welfare, the IADD Empirical Research supporting the proposal, and the Response to the IADD Proposal and the Response to the IADD Empirical Research submitted by Martha Pierce, Office of the Guardian ad Litem.

Upon discussion and examination of documents both in support and opposition of the proposal, the CIP Steering Committee did not reach a consensus. The IDC/IADD's current proposal is not a work product of the CIP, nor does it reflect unanimous support from the CIP Steering Committee.

TAB D

148 P.3d 934
Supreme Court of Utah.

STATE of Utah, in the interest of B.A.P., and A.S.P., persons under eighteen years of age.
C.P. and A.P., Petitioners,
v.
State of Utah, Respondent.
State of Utah, in the interest of T.L. and A.L., persons under eighteen years of age.
J.L., Petitioner,
v.
State of Utah, Respondent.

Nos. 20050892, 20051035.
|
Nov. 7, 2006.

Synopsis

Background: The Seventh District Court, Moab, Lyle R. Anderson, J., terminated parental rights in one case, and the Seventh District, Monticello, Mary L. Manley, J., terminated parental rights in second case. Parents appealed. The Court of Appeals affirmed. Parents sought certiorari review, which was granted.

Holdings: The Supreme Court, Wilkins, Associate C.J., held that:

[1] appellate rule governing petitions on appeal in child welfare proceedings in no way forbids the inclusion of an argument;

[2] appellate rule that imposed page limit on petitions on appeal in child welfare cases did not violate state constitution's guarantee of right to appeal;

[3] appellate rules imposing condensed time frames in appeals in child welfare cases did not violate state constitution's guarantee of right to appeal; and

[4] appellate court may render a decision in a child welfare case in the absence of full presentation of arguments without offending the appellant's constitutional right to a meaningful appeal.

Decisions of Court of Appeals affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (8)

[1] Certiorari Scope and Extent in General

On certiorari, Supreme Court reviews the decision of the Court of Appeals, not that of the trial court.

[2] Appeal and Error Rules of court in general

Constitutional challenges to the validity of rules of appellate procedure are questions of law that are reviewed for correctness.

[3] Infants Petition or prayer, allowance, and certificate or affidavit

Appellate rule governing petitions on appeal in child welfare proceedings in no way forbids the inclusion of an argument, and in fact, it requires one. Rules App.Proc., Rule 55.

1 Case that cites this headnote

[4] **Constitutional Law** Right to appeal and other proceedings for review

Infants Petition or prayer, allowance, and certificate or affidavit

Appellate rule that imposed page limit on petitions on appeal in child welfare cases did not violate state constitution's guarantee of right to appeal; page limit was just matter of convenience and uniformity and had nothing to do with limiting scope of appeal. West's U.C.A. Const. Art. 8, § 5; Rules App.Proc., Rule 55(c).

1 Case that cites this headnote

[5] **Constitutional Law** Right to appeal and other proceedings for review

Infants Time for proceedings

Appellate rules imposing condensed time frames in appeals in child welfare cases did not violate state constitution's guarantee of right to appeal; rules recognized and mitigated problem by requiring that trial counsel prepare petition on appeal, and audio recordings of trial proceedings in juvenile court were available almost immediately at nominal cost. West's U.C.A. Const. Art. 8, § 5; Rules App.Proc., Rules 52(a), 54(a), 55(a, c).

2 Cases that cite this headnote

[6] **Courts** Power to regulate procedure

It is the prerogative and obligation of the Supreme Court to set time limits for appellate proceedings. West's U.C.A. Const. Art. 8, § 4.

[7] **Constitutional Law** Right to appeal and other proceedings for review

Infants Appeal and Review

Infants Hearing and rehearing

Appellate court may render a decision in a child welfare case in the absence of full presentation of arguments without offending the appellant's constitutional right to a meaningful appeal. West's U.C.A. Const. Art. 8, § 5; Rules App.Proc., Rule 52 et seq.

3 Cases that cite this headnote

[8] **Criminal Law** Anders Withdrawal on Appeal

Counsel who believes his criminal client's claims on appeal to be wholly frivolous must state so to the court and request to withdraw, but must also present the court with the claims

and anything in the record that arguably supports them; the court must then review the record and independently decide whether the case has any merit.

Attorneys and Law Firms

***935** Mark L. Shurtleff, Att'y Gen., Carol L.C. Verdoia, John M. Peterson, Asst Att'ys Gen., Salt Lake City, for respondent.

William L. Schultz, Moab, for petitioners.

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***936** On Certiorari to
the Utah Court of Appeals

WILKINS, Associate Chief Justice:

¶ 1 On appeal to the Utah Court of Appeals, Petitioners in these two cases challenged the termination of their parental rights. Acting pursuant to recently adopted rules of appellate procedure, the court of appeals affirmed the termination orders in both cases based exclusively on a review of the records and the petitions on appeal. On certiorari, Petitioners now argue that the expedited procedures outlined in the appellate rules, and applied by the court of appeals, denied them their constitutional right to a meaningful appeal by precluding full presentation of legal argument to the appellate court. Because these two cases present identical legal issues, we address them both together in this single opinion. We now reject Petitioners' constitutional challenges to the new appellate rules and affirm the decisions of the court of appeals.

BACKGROUND

¶ 2 Both of these cases involve appeals from the termination of the parental rights of the Petitioners. In the first case, C.P. and A.P., the natural parents of two minor children, had their parental rights terminated by court order on March 25, 2005. The parents have a history of domestic violence, extramarital relationships, and unstable employment and housing. In addition, the mother has a history of drug abuse and attempted suicide, and the father has been incarcerated several times. The juvenile court found that the behavior of both parents endangered the emotional and physical welfare of their children and that the parents' rights should be terminated based on unfitness, incompetence, neglect, failure to remedy the circumstances for the children's removal, and failure of parental adjustment.

¶ 3 In the second case, J.L., the natural father of two minor children, was convicted of aggravated assault and attempted murder for domestic violence against the children's mother. He was subsequently sentenced to one 0–to–5–year term and one 1–to–15–year term, to be served consecutively. In view of his violence and incarceration, the State filed a petition to terminate his parental rights. On July 7, 2005, the juvenile court entered a termination order based on his extended incarceration, history of violent behavior, and general unfitness and neglect.

¶ 4 The parents in each case timely appealed the termination order to the Utah Court of Appeals, challenging, among other things, the sufficiency of the evidence. Pursuant to rule 55 of the Utah Rules of Appellate Procedure, the parents then filed a Petition on Appeal, which, similar to a docketing statement, sets forth the facts, issues, and legal authorities relevant to the appeal. In each case, the court of appeals, acting pursuant to rule 58, affirmed the juvenile court's termination order after reviewing the record and the petition on appeal, but without ordering full briefing.

¶ 5 The parents now argue that the rules of appellate procedure, which prescribe an expedited procedure in child welfare appeals, denied them their constitutional right to a meaningful appeal by precluding adequate presentation of legal arguments to the appellate court. We granted certiorari in these cases to determine (1) whether the appellate rules governing appeals in child welfare proceedings are facially unconstitutional, in that they deny appellants the right to a meaningful appeal by precluding full presentation of legal argument and analysis; and (2) whether the court of appeals applied these rules in a manner that deprived Petitioners of their right to a meaningful appeal.

ANALYSIS

[1] **[2]** ¶ 6 On certiorari, we review the decision of the court of appeals, not that of the trial court. *Brown v. Glover,* 2000 UT 89, ¶ 15, 16 P.3d 540. Constitutional challenges to the validity of rules of appellate procedure are questions of law reviewed for correctness. *Id.*

¶ 7 The Utah Constitution guarantees a right to appeal. Utah Const. art. VIII, § 5. Although the federal constitution includes no such right, the United States Supreme Court has stated that when a state provides such a right, due process demands that it be provided fairly and equally. *See* ***937** *Smith v. Robbins,* 528 U.S. 259, 270 & n. 5, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000). In addition, we have held that to satisfy this right, an appeal must be meaningful. *See, e.g., State v. Rees,* 2005 UT 69, ¶¶ 17–18, 125 P.3d 874. Petitioners in these cases argue that the recently adopted rules of appellate procedure, which prescribe expedited procedures in child welfare appeals, effectively denied them their constitutional right to a meaningful appeal. We begin by briefly explaining the salient features of the new rules, which should clarify the issues in these cases.

¶ 8 In 2004, this court adopted rules 52 to 59 of the Utah Rules of Appellate Procedure in an effort to expedite child welfare proceedings. Under the new rules, appellants—in this case, parents seeking to overturn the termination of their parental rights—must file a notice of appeal within fifteen days of the termination order, Utah R.App. P. 52(a), and have fifteen days from that time to file the petition on appeal, *id.* R. 55(a). Extensions are limited to ten days. *Id.* R. 59. Appellants must also order transcripts within four days after filing the notice of appeal. *Id.* R. 54(a). Because of these abbreviated time frames, transcripts of the trial proceedings typically are not available to

counsel by the time the petition on appeal is due.

¶ 9 Under the new rules, an appellant files a petition on appeal, which is substantially equivalent to a docketing statement. The petition on appeal must be prepared by trial counsel, *id.* R. 55(b), and is limited to fifteen pages, *id.* R. 55(c). According to rule 55, the petition on appeal must include, among other things, (1) a "statement of the nature of the case and the relief sought"; (2) a "concise statement of the material adjudicated facts"; (3) a "statement of the legal issues presented for appeal," which must set forth "specific legal questions," not "[g]eneral, conclusory statements"; and (4) "supporting statutes, case law, and other legal authority for each issue raised." *Id.* R. 55(d). Any response to the petition on appeal from an appellee is voluntary but must be filed within fifteen days and is also limited to fifteen pages. *Id.* R. 56.

¶ 10 Finally, under rule 58, the court of appeals, "after reviewing the petition on appeal, any response, and the record, ... may issue a decision or may set the case for full briefing." *Id.* R. 58. In both of the cases before us, the court of appeals chose to render a decision based solely on the petition on appeal and the record without ordering full briefing.

¶ 11 Petitioners preface their challenge to the validity of these rules by arguing that the right to a meaningful appeal necessarily includes the opportunity to present legal arguments to the appellate court. Petitioners then argue that the new rules effectively deny them that opportunity. They claim that several features of the rules, taken together, prevent an appellant from adequately presenting an argument. We find that assertion, however, to be unavailing.

[3] ¶ 12 Petitioners first point out that rule 55, which outlines what the petition on appeal must include, makes no provision for an "argument" section. However, rule 55 in no way forbids the inclusion of an argument, and in fact, as Utah courts have interpreted that rule, it requires one. In the case of *In re J.E.,* another parental rights termination case, the Utah Court of Appeals held that a petition that raised only "broad, conclusory, and ambiguous, rather than specific and exact," issues and that contained "no legal authority or *legal analysis* " was "noncompliant with rule 55(d)(6)." 2005 UT App 382, ¶ 18 & n. 9, 122 P.3d 679 (emphasis added). Because rule 58 makes clear that the court of appeals may render a decision based on the petition without full briefing, counsel would be remiss to omit arguments from that petition, albeit argument in specific, exact, and concise form.

[4] ¶ 13 Petitioners nevertheless contend that although the rules do not expressly forbid the inclusion of an argument in the petition on appeal, the restrictive page limits, combined with the list of items that must be included in the petition, leave too little space to develop an argument. However, they were unable, when asked at oral argument, to offer any suggestion of how to determine what number of pages would be necessary to vindicate their right to a meaningful appeal. If an appellant finds fifteen pages to be ***938** inadequate, then wisdom dictates use of some of those pages to persuade the court of appeals that full briefing is needed. Otherwise, the page limit is just a matter of convenience and uniformity; it has nothing to do with limiting the scope of the appeal.

[5] ¶ 14 Petitioners next argue that the condensed time frames prescribed in the rules allow insufficient time to review the record and transcript and that the typical unavailability of transcripts by the filing deadline makes it difficult to formulate a legal argument. The rules recognize and mitigate this problem, however, by requiring that the attorney who acted as counsel at trial also prepare the petition, presumably ensuring that counsel will be "familiar with the legal file, trial exhibits, trial testimony, and court rulings relevant to the appeal." *J.E.,* 2005 UT App 382, ¶ 16, 122 P.3d 679. In addition, as Petitioners' counsel acknowledged at oral argument, audio recordings of trial proceedings in juvenile court are available almost immediately at nominal cost. Counsel may easily use these recordings to refresh their recollection and to review the course of the trial proceedings.

[6] ¶ 15 It is the prerogative and obligation of this court to set time limits for appellate proceedings.[1] Counsel for Petitioners candidly admitted at oral argument that, given fifteen days to file a petition, he would get it filed within the fifteen days, and that if he were given sixty days to file, he would probably start to work on it around day fifty. We are not persuaded that a fifteen-day limit provides inadequate time to file a petition.

[7] ¶ 16 Finally, Petitioners assert that the court of appeals applied the rules in an unconstitutional manner. They base this contention on the notion that deciding a case on its merits without an unfettered presentation of legal argument is equivalent to refusing to fully hear the case. We have made clear, however, that an appellate court may properly render a decision in the absence of full presentation of arguments without offending the appellant's constitutional right to a meaningful appeal.

[8] ¶ 17 In *State v. Clayton,* 639 P.2d 168 (Utah 1981), we adopted the procedures outlined in *Anders v. California,* 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, for criminal appeals. Under *Anders,* counsel who believes his client's claims on appeal to be wholly frivolous must state so to the court and request to withdraw, but must also present the court with the claims and anything in the record that arguably supports them. The court must then review the record and independently decide whether the case has any merit. The Utah Court of Appeals applied these procedures specifically to child welfare cases in *In re D.C.,* 963 P.2d 761, 764 (Utah Ct.App.1998), which that court later confirmed in light of the new appellate rules in *In re J.E.* We agree. In proper circumstances, a complete articulation of legal theories and analysis that litigants believe to be important to the case may actually have little impact on the decision dictated by law.

¶ 18 As in the cases before us here, an appellate court may decide a case on the merits with only a presentation of the issues along with an appropriate examination of the record. Furthermore, if an appellant in a termination case wishes to claim ineffective assistance of counsel, the petition on appeal may effectively become an *Anders*-type brief, asking the court of appeals to appoint new counsel and order a full briefing on the claims under rule 58.

¶ 19 We recognize that the appeal process is rarely perfect for the appellants. In any given case, if counsel is neglectful or incompetent and if the party fails to recognize that fact in time to correct it, their situation is even less satisfying. Such problems, when they exist, may be exacerbated by the expedited time frames, page limits, and other features of these rules. However, as a constitutional matter, and as a matter of rule interpretation, these rules do nothing to preclude either a presentation of appropriate legal arguments or a meaningful appeal.

*939 CONCLUSION

¶ 20 We find Petitioners' challenges to the constitutionality of the rules governing child welfare appeals to be unpersuasive. While we acknowledge that the expedited procedures outlined in the rules impose certain burdens on appellants to meet shorter deadlines and page limits, those restrictions are consistent with the policy of providing children and parents with swifter resolution and permanency in their family relations. There is nothing in the rules that precludes an appellant from presenting cogent, concise legal arguments to an appellate court or that precludes a meaningful appeal. We thus affirm the decisions of the court of appeals.

¶ 21 Chief Justice DURHAM, Justice DURRANT, Justice PARRISH, and Justice NEHRING concur in Associate Chief Justice WILKINS' opinion.

All Citations

148 P.3d 934, 564 Utah Adv. Rep. 26, 2006 UT 68

Footnotes

1 “The Supreme Court shall adopt rules of procedure ... and shall by rule manage the appellate process.” Utah Const. art. VIII, § 4.

TAB E

Current Child Welfare Appeal Process:

Events triggered by filing a notice of appeal.

a) Within 4 days, a request for transcripts must be submitted R. 54
b) Within 21 days, appointment of appellate counsel, if warranted R. 55(b). (This is almost always accomplished within a few days, rarely requiring 21 days.)
c) Call for the juvenile court record.

Petition on Appeal.

a) Within 15 days after the transmission of the record to the parties, Appellant must file a petition on appeal. A petition is more than a docketing statement but is less than a brief. The petition must identify the issues on appeal and should provide some context and argument to assist the court in understanding the issues. However, the petition is not a merits document with a burden of persuasion.
b) Within 15 days after service of the petition on appeal, any appellee may file a response to the petition.

First review of appeal.

a) After the petition and responses are received, a central staff attorney reviews the appeal materials and the record and makes recommendations to a judicial panel. The recommendation may include a proposed disposition of the appeal on the merits. Particularly if the issues raised are factual matters, such as the sufficiency of evidence to support a ground for termination, the appeal will likely be decided at this stage on a staff-authored proposed decision. The decision will usually be by an unpublished order.
b) If a petition contains legal rather than factual issues, or if a factual issue is a close call, the recommendation will likely be to set the case for full briefing. This recommendation is also made to a judicial panel that must agree with sending the appeal forward. An example of a legal issue that may result in going to full briefing is something further clarifying the strictly necessary analysis.

Full briefing.

a) If a case is sent to full briefing, a scheduling order will be sent to the parties setting the briefing schedule. A month in which oral argument will be heard will usually be included in the order. The briefing order discourages extensions.

b) A typical briefing schedule for child welfare appeals is 30 days for appellant's brief, 30 days for a response brief, and 30 days for a reply brief. If the oral argument month is not changed, because the court of appeals prioritizes these cases a child welfare appeal may be briefed and argued within four months after the matter was sent to full briefing.

Decision.

a) After oral argument, the appeal is under advisement. The court of appeals has internal goals to prioritize child welfare decisions. Fast-tracking the drafting, editing, internal review, and issuance processes, a decision on a child welfare case may be issued within a month after oral argument.

Summary.

With the petition process, the record is called for immediately and the record plus transcripts are usually completed within 30 days. The petitions and responses are then filed within 30 days and the court would have the material necessary to proceed with review within two months from the notice of appeal. The court prioritizes these cases, so usually, not always, a child welfare case may be decided within a month after the responses are filed. Roughly three months after the notice of appeal many appeals may be decided. Those that go to briefing, over the years roughly ten percent, will usually be quickly identified and will be decided within five to six months after the appeal was scheduled for briefing. So, for 80-90 percent, an appeal may be decided within 3-4 months after a notice of appeal is filed.

Proposed Child Welfare Appeal Process: The timelines and triggering events are still subject to change, but this reflects the proposal as it stands.

Events triggered by filing a notice of appeal.

a) Within 7 days, a request for transcripts must be submitted. The transcript request in the proposal may be delayed and triggered by appointment of counsel.
b) Call for the juvenile court record. This will likely remain court practice to assure quick access to the record on appeal.
c) Within 14 days after the notice of appeal is filed, a docketing statement must be filed. Like the transcript request, this may also be delayed until appointment of appellate counsel.

Docketing statement.

a) The docketing statement is a screening tool for the appellate courts to assure that jurisdiction is perfected and that there is a substantial issue for review on appeal. This is not a merits document. The statement of an issue is not a high bar to go to briefing. For child welfare appeals, unless there is a jurisdictional problem, basically all appeals will go to briefing.

Briefing.

a) The proposal includes a regular briefing schedule of 40 days for appellant's brief and 30 days for responsive briefs. Appellant must file a notice of intent to file a reply brief within 7 days after service of the responsive briefs. Because reply briefs are discretionary and often not necessary, this step may benefit the court in flagging when an appeal is fully briefed.

Review of the appeal.

a) Central staff attorneys will review the briefs on appeal. Where the issues are factual issues or application of well-settled law, staff attorneys will draft recommendations and proposed decisions for submission to a judicial panel. The disposition of the appeal will likely be an unpublished order. Staff attorneys will continue to prioritize child welfare cases, so a decision may be issued within about one month after briefing is completed.
b) If the appeal raises legal or factual issues that cannot be addressed by a staff attorney, the appeal will go onto a calendar for assignment to a panel of judges and a chambers-authored opinion. Because of court policies, these cases will be expedited to the greatest extent possible.

Summary.

The proposal here is to return child welfare appeals to the same appeal process for other appeals. Notably, the current system was developed to expedite child welfare appeals and take them out of the regular process. A return to the more typical appellate process will result in delays in the resolution of many child welfare appeals. The current rule design was intended to enable the court of appeals to quickly decide appeals that have only uncomplicated issues and to provide additional steps for complex appeals. The cases that get set for full briefing have about a one-month delay in the process because they are screened on the petitions, which may seem a bit repetitive. However, the bulk of the cases are resolved on the petitions and responses.

As noted above, in the current process a child welfare appeal may be decided in as little as three months after the filing of a notice of appeal. In the proposed rules, the minimum time for all appeals will be extended. A rough calculation of the minimum time is a little over four months if no reply brief is filed and a minimum of five plus months if a reply brief is filed. For cases that must go to chambers, the minimum time to get on a judicial calendar will be about seven months. These times are minimums, not accounting for extensions for any party, which are likely to be more common in briefing.

Timeline:

Current
Notice of appeal
Call for record (30 days)
Petition on appeal (15 days)
Response to petition (15 days)
First screening in 60 days
Staff-authored decision (30 days)
Send to briefing: 4 months

Proposed
Notice of appeal
Call for record (30 days)
Appellant's brief (40 days)
Appellee's brief (30 days)
First screening in 100 days
Reply brief (30 days)
Staff-authored decision (30 days)
Schedule on calendar: 4-5 months

TAB F

Rule 1. Scope of rules.

(a) **Applicability of rules.** These rules govern the procedure before the Supreme Court and the Court of Appeals of Utah in all cases. Applicability of these rules to the review of decisions or orders of administrative agencies is governed by Rule 18. When these rules provide for a motion or application to be made in a trial court or an administrative agency, commission, or board, the procedure for making such motion or application shall be governed by the Utah Rules of Civil Procedure, Utah Rules of Criminal Procedure, and the rules of practice of the trial court, administrative agency, commission, or board.

(b) **Reference to "court."** Except as provided in Rule 43, when these rules refer to a decision or action by the court, the reference shall include a panel of the court. The term "trial court" means the court or administrative agency, commission, or board from which the appeal is taken or whose ruling is under review. The term "appellate court" means the court to which the appeal is taken.

(c) **Procedure established by statute.** If a procedure is provided by state statute as to the appeal or review of an order of an administrative agency, commission, board, or officer of the state which is inconsistent with one or more of these rules, the statute shall govern. In other respects, these rules shall apply to such appeals or reviews.

(d) **Rules not to affect jurisdiction.** These rules shall not be construed to extend or limit the jurisdiction of the Supreme Court or Court of Appeals as established by law.

(e) **Title.** These rules shall be known as the Utah Rules of Appellate Procedure and abbreviated Utah R. App. P.

(f) **Rules for appeals in child welfare proceedings.** Appeals taken from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings are governed by Rules 52 through ~~59~~58, except for orders related to substantiation proceedings under Section 78-3a-320. ~~Rules 9 and 23B do not apply. Due to the summary nature of child welfare appeals, Rule 10(a)(2)(A) does not apply.~~ Other appellate rules apply if not inconsistent with Rules 52 through ~~59~~58.

Rule 9. Docketing statement.

(a) **Purpose.** A docketing statement has two principal purposes: (1) to demonstrate that the appellate court has jurisdiction over the appeal, and (2) to identify at least one substantial issue for review. The docketing statement is a document used for jurisdictional and screening purposes. It should not include argument.

(b) **Time for filing**. ~~Within~~Except child welfare appeals, within 21 days after a notice of appeal, cross-appeal, or a petition for review of an administrative order is filed, the appellant, cross-appellant, or petitioner must file the docketing statement with the appellate court clerk and serve the docketing statement with any required attachments on all parties. The Utah Attorney General must be served in any appeal arising from a crime charged as a felony or a juvenile court proceeding.

For child welfare appeals, within 14 days after a notice of appeal or cross-appeal is filed, or, where appellate counsel is appointed, within 14 days after the issuance of the letter of appointment, the appellant or cross-appellant must file a docketing statement consistent with ~~Subsection~~paragraph (f) with the appellate court clerk and serve the docketing statement with any required attachments on all parties. The Utah Attorney General must be served in any appeal arising from a juvenile court proceeding.

Commented [1]: This is existing language in 9(b). I am not sure that is entirely correct - for example, a private termination proceeding in juvenile court does not involve the AGs right? Do they need to be served?

Commented [2R1]: _Marked as resolved_

Commented [3R1]: _Re-opened_

(c) **Content of docketing statement in a civil case**. The docketing statement in an appeal arising from a civil case must include:

(1) A concise statement of the nature of the proceeding and the effect of the order appealed, and the district court case number, e.g., "This appeal is from a final judgment of the First District Court granting summary judgment in case number 001900055."

(2) The following dates relevant to a determination of the appeal's timeliness and the appellate court's jurisdiction:

(A) The date the final judgment or order from which the appeal is taken is entered.

(B) The date the notice of appeal was filed in the trial court.

(C) If the notice of appeal was filed after receiving a time extension under Rule 4(e), the date the motion for an extension was granted.

(D) If any motions listed in Rule 4(b) were filed, the date such motion was filed in the trial court and the date any order disposing of such motion was entered.

(E) If the appellant is an inmate confined in an institution and is invoking Rule 21(f), the date the notice of appeal was deposited in the institution's internal mail system.

(F) If a motion to reinstate the time to appeal was filed under Rule 4(g), the date the order disposing of such motion was entered.

(3) If the appeal is taken from an order certified as final under Rule 54(b) of the Utah Rules of Civil Procedure, a statement of what claims and parties remain for adjudication before the trial court.

(4) A statement of at least one substantial issue appellant intends to assert on appeal. An issue not raised in the docketing statement may nevertheless be raised in appellant's brief; conversely, an issue raised in the docketing statement does not have to be included in the appellant's brief.

(5) A concise summary of the facts necessary to provide context for the issues presented.

(6) A reference to all related or prior appeals in the case, with case numbers and citations.

(d) **Content of a docketing statement in a criminal case**. The docketing statement in an appeal arising from a criminal case must include:

(1) A concise statement of the nature of the proceeding, including the highest degree of any of the charges in the trial court, and the district court case number, e.g., "This appeal is from a judgment of conviction and sentence of the Third District Court on a third degree felony charge in case number 001900055."

(2) The following dates relevant to a determination of the appeal's timeliness and the appellate court's jurisdiction:

(A) The date the final judgment or order from which the appeal is taken is entered.

(B) The date the notice of appeal was filed in the district court.

(C) If the notice of appeal was filed after receiving a time extension under rule 4(e), the date the motion for an extension was granted.

(D) If a motion under Rule 24 of the Utah Rules of Criminal Procedure was filed, the date such motion was filed in the trial court and the date any order disposing of such motion was entered.

(E) If a motion to reinstate the time to appeal was filed under Rule 4(f), the date the order disposing of such motion was entered.

(F) If the appellant is an inmate confined to an institution and is invoking Rule 21(f), the date the notice of appeal was deposited in the institution's internal mail system.

(3) The charges of which the defendant was convicted, and any sentence imposed; or, if the defendant was not convicted, the dismissed or pending charges.

(4) A statement of at least one substantial issue appellant intends to assert on appeal. An issue not raised in the docketing statement may nevertheless be raised in appellant's brief; conversely, an issue raised in the docketing statement does not have to be included in appellant's brief.

(5) A concise summary of the facts necessary to provide context for the issues presented. If the conviction was pursuant to a plea, the statement of facts should include whether a motion to withdraw the plea was made before sentencing, and whether the plea was conditional.

(6) A reference to all related or prior appeals in the case, with case numbers and citations.

(e) **Content of a docketing statement in a review of an administrative order**. The docketing statement in a case arising from an administrative proceeding must include:

(1) A concise statement of the nature of the proceedings and the effect of the order appealed, e.g., "This petition is from an order of the Workforce Appeals Board denying reconsideration of the denial of benefits."

(2) The statutory provision that confers jurisdiction on the appellate court.

(3) The following dates relevant to a determination of the timeliness of the petition for review:

(A) The date the final order from which the petition for review is filed.

(B) The date the petition for review was filed.

(4) A statement of at least one substantial issue petitioner intends to assert on review. An issue not raised in the docketing statement may nevertheless be raised in petitioner's brief; conversely, an issue raised in the docketing statement does not have to be included in petitioner's brief.

(5) A concise summary of the facts necessary to provide context for the issues presented.

(6) If applicable, a reference to all related or prior petitions for review in the same case.

(7) The following documents must be attached to the docketing statement:

(A) The final order from which the petition for review is filed.

(B) In appeals arising from an order of the Public Service Commission, any application for rehearing filed pursuant to Utah Code section 54-7-15.

(f) **Content of a docketing statement in a child welfare case**. The docketing statement in an appeal arising from a child welfare case must include:

(1) A concise statement of the nature of the case and the effect of the order appealed.

Commented [4]: This incorporates Mary Westby's proposed changes to our draft of rule 9

(2) The following dates relevant to a determination of the appeal's timeliness and the appellate court's jurisdiction:.

~~(2)~~(A) The date the final order from which the appeal is taken was entered;

~~(2)~~(B) The date the notice of appeal was filed in the juvenile court;

~~(2)~~(C) If the notice of appeal was filed after receiving an extension of the time under rule 59(a), the date the motion for an extension of time was granted; and

~~(2)~~(D) If any motions listed in rule 52(b) were filed, the date such a motion was filed in the juvenile court and the date any order disposing of such a motion was entered.

(3) A statement of at least one substantial legal issue the appellant intends to assert on appeal. An issue not raised in the docketing statement may nevertheless be raised in appellant's brief; conversely, an issue raised in the docketing statement does not have to be included in appellant's brief.

(4) A concise summary of the facts necessary to provide context for the issues presented.

(5) A reference to all related or prior appeals in the case, with case numbers and citations.

(g) **Consequences of failure to comply**. In a civil appeal, failure to file a docketing statement within the time period provided in subsection (b) may result in dismissal of a civil appeal or a petition for review. In a criminal or child welfare case, failure to file a docketing statement within the time period provided in subsection (b) may result in a finding of contempt or other sanction.

(~~g~~) h) **Appeals from interlocutory orders**. When a petition for permission to appeal from an interlocutory order is granted under Rule 5, a docketing statement may not be filed unless otherwise ordered.

Rule 52. Child welfare appeals

(unchanged)

Rule 53. Notice of appeal

(unchanged)

Rule 54. Transcripts.

(a) **Duty of appellant to request transcript.** Within ~~four~~seven days after filing the notice of appeal, or, where appellate counsel is appointed, within seven days of receiving the letter of appointment, the appellant must order the transcripts online at ~~www.utcourts.gov,~~ legacy.utcourts.gov, specifying the entire proceeding or parts of the proceeding to be transcribed that are not already on file.

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

(c) **Notice that no transcript needed.** If no parts of the proceeding need to be transcribed, within four days after filing the notice of appeal, the appellant must file a notice to that effect with the Court of Appeals clerk.

Commented [1]: To make this rule easier to comply with in reality. Feedback from the court is that seven days is acceptable as a timeline.

Rule 55. Petition on appeal.

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

(b) **Preparation by counsel.** If the petitioner has appointed counsel in the juvenile court, or has been found to be indigent, then the petition on appeal must be prepared by appellate counsel appointed pursuant to the requirements of Rule 11-401 of the Utah Code of Judicial Administration. Counsel must be appointed within 21 days from the filing of the original notice of appeal. Otherwise, the petition on appeal must be prepared by appellant's trial counsel.

(c) **Format.** All petitions on appeal must substantially comply with the Petition on Appeal form that accompanies these rules. The petition must not exceed 5,000 words, excluding the attachments required by Rule 55(d)(7). The petition must comply with Rule 27(a) and (b), except that it may be printed or duplicated on one side of the sheet.

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

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

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

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

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

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

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

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

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

~~(B) a copy of any rulings on post judgment motions.~~

Rule 55. Principal and reply briefs in child welfare cases

(a) **Principal Briefs.** Principal briefs will comply with Rule 24. Principal briefs must be filed in the time provided by Rules 26 and 58.

(b) **Reply Briefs.** The appellant or petitioner may not file a reply brief unless the appellant or petitioner provides the parties and the court written notice of intent to file a reply within seven (7) days of the filing and service of the appellee's principal brief. If notice is timely filed, the appellant or petitioner may file a reply brief in compliance with Rule 24. The time for filing the reply brief is otherwise governed by Rules 26 and 58.

(c) **Cross appeals.** In cases involving cross-appeals, parties need not file the notice in subsection (b) of this rule to be entitled to a reply.

Commented [1]: Repeals Rule 55 petition on appeal and replaces it with this language

~~**Rule 56. Response to petition on appeal.**~~

~~(a) **Filing.** Any appellee, including the Guardian ad Litem, may file a response to the petition on appeal with the appellate clerk within 15 days after service of the appellant's petition on appeal. Filing of the petition must be in accordance with Rule 21(a). The response must be accompanied by proof of service to counsel of record of each party, including the Guardian ad Litem, or, on the party if the party is not represented by counsel. The response will be deemed filed on the date of the postmark if first-class mail is utilized.~~

~~(b) **Format.** A response must substantially comply with the Response to Petition on Appeal form that accompanies these rules. The response may not exceed 5,000 words, excluding any attachments, and must comply with Rule 27.~~

Rule 56~~7~~. Record on appeal; transmission of record~~.~~; supplementation of the record.

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

(b) The record on appeal will be transmitted by the juvenile court clerk to the Court of Appeals clerk upon the request of an appellate court.

(c) If anything is omitted from the legal record in error, the omission may be corrected and a supplemental record on appeal may be created upon a motion from a party in the appellate court. If the party making the motion has access to the omitted document, the document ~~should~~must be attached to the motion. The motion must establish that any document requested to be added to the record:

(1) was before ~~considered by~~ the juvenile court; and

(2) is material to the issues on appeal.

Commented [AG1]: This is the current draft that is on the agenda for final approval.

One new proposed edit is to renumber the Rule to 56

(struck entirely - superfluous with rule 10)

Commented [1]: This change was suggested by the court

~~**Rule 58. Ruling.**~~

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

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

Rule ~~59~~57. Extensions of time.

(a) **Extension of time to appeal.** The juvenile court, upon a showing of good cause or excusable neglect, may extend the time for filing a notice of appeal upon motion filed prior to the expiration of time prescribed by Rule 52. No extension shall exceed 10 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(b) **Extension of time to file ~~petition on appeal~~principal or ~~response~~reply briefs**. The Court of Appeals for good cause shown may extend the time for filing a ~~petition on appeal or a response to the petition on appeal~~principal brief upon motion filed prior to the expiration of the time for which the extension is sought. ~~No~~Absent extraordinary circumstances, no extension shall exceed ~~10~~30 days past the original due date or ~~10~~30 days from the date of entry of the order granting the motion, whichever occurs later. No extensions will be granted for reply briefs. The motion shall comply with Rule 22(b~~)(4~~).

TAB 4

Rule 23C. Motion for ~~emergency~~ expedited relief.

(a) ~~Emergency~~ **Expedited relief~~; exception~~.** ~~Emergency~~ Expedited relief is any relief sought within ~~a time period~~a time shorter than specified by otherwise applicable rules. This rule does not confer jurisdiction or authorize a court to provide a type of relief. This rule allows a court that has jurisdiction invoked by a timely notice or petition to act faster in providing relief to which a party is otherwise entitled. ~~A motion for emergency~~expedited relief filed under this R~~r~~ule is not sufficient to invoke the jurisdiction of the appellate court. No emergency expedited relief will be granted in the absence of a separately filed petition or notice that invokes the appellate jurisdiction of the court.~~

(b) **Content of motion.** A party seeking ~~emergency~~ expedited relief ~~shall~~must file with the appellate court a motion for ~~emergency~~ expedited relief containing under appropriate headings and in the order indicated:

(1) a specification of the order from which relief is sought;

(2) a copy of any written order at issue;

(3) a specific and clear statement of the relief sought;

(4) a statement of the factual and legal grounds entitling the party to the relief;

(5) a statement of the facts justifying ~~emergency~~ expedited ~~action~~treatment by the court and the scope of relief warranted by the facts justifying expedited treatment; and

Commented [TB1]: Do we perhaps want to move 5 to the top?

(6) a certificate that all papers filed with the court have been served upon all parties by overnight mail, hand delivery, facsimile, or electronic transmission.

The motion ~~shall~~ may not exceed 15 pages, exclusive of any addendum ~~containing~~ that should contain statutes, rules, regulations, or portions of the record necessary to decide the ~~matter~~motion. ~~It~~ The motion ~~also shall~~may not seek relief beyond that necessitated by

the facts justifying expedited treatment by the court~~emergency circumstances justifying the motion~~.

(c) **Service in criminal and juvenile delinquency cases.** Any motion filed by a defendant in a criminal case originally charged as a felony or by a juvenile in a delinquency proceeding ~~shall~~must be served on the Appeals Division of the Office of the Utah Attorney General in addition to the other parties described in section (b)(6).

Commented [TB2]: I said other parties so it is clear that the AG is a party under (d)

(d) **Response; no reply**. Any party may file a response to the motion within three days after service of the motion or whatever shorter time the appellate court may fix. The response ~~shall~~may not exceed 15 pages, exclusive of any addendum ~~containing~~ that should contain statutes, rules, regulations, or portions of the record necessary to decide the ~~matter~~motion that were not provided by the movant. No reply ~~shall~~will be permitted unless the court calls for a reply. No motion will be granted before the response period expires u~~U~~nless the appellate court is persuaded that ~~an emergency~~expedited~~d~~the circumstances justify~~ies~~ and require~~s~~ a temporary stay of a lower tribunal's proceedings or order prior to the opportunity to receive or review a response~~, no motion shall~~will be ~~granted before the response period expires.~~

(e) **Form of papers.** Papers filed pursuant to this rule shall comply with the requirements of Rule 27.

(f) **Hearing.** A hearing on the motion will be granted only in exceptional circumstances. An adverse party must be present for any hearing ~~No motion for emergency~~expedited ~~relief will be heard without the presence of an adverse party~~ except on a showing that the party (1) was served with reasonable notice of the hearing, and (2) cannot be reached by telephone.

(g) **Power of a single justice or judge to entertain motions.** A single justice or judge may act upon a motion for ~~emergency~~expedited relief to the extent permitted by Rule 19 where extraordinary relief is sought, and by Rule 23(e) in all other cases.

Effective ~~May 1~~, 202~~3~~

Rule 19. Extraordinary relief.

(a) **Petition for extraordinary relief.** When no other plain, speedy, or adequate remedy is available, a person may petition an appellate court for extraordinary relief referred to in Rule 65B of the Utah Rules of Civil Procedure.

(b) **Respondents.** The person or entity against whom relief is sought and all parties in any related district court or agency action other than the petitioner are deemed respondents for all purposes.

(c) **Filing and service.** The petition must be filed with the appellate court clerk and served on the respondent(s). In the event of an original petition in the appellate court where no action is pending in the district court or agency, the petition also must be served on all persons or entities whose interests might be substantially affected.

(d) **Filing fee.** The petitioner must, pursuant to Rule 21, pay the prescribed filing fee to the appellate court clerk, unless waived by the court.

(e) **Contents of petition.** A petition for extraordinary relief must contain the following:

(1) a list of all respondents against whom relief is sought, and all others persons or entities, by name or by class, whose interests might be substantially affected;

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

(3) a statement of the facts necessary to understand the issues presented by the petition;

(4) a statement of the reasons why no other plain, speedy, or adequate remedy exists and why the relief should be granted;

(5) when the subject of the petition is an interlocutory order, a statement explaining whether a petition for interlocutory appeal has been filed and, if so, summarize its status or, if not, why interlocutory appeal is not a plain, speedy, or adequate remedy;

(6) except in cases where the petition is directed to a district court, a statement explaining why it is impractical or inappropriate to file the petition in the district court;

(7) a discussion of points and authorities in support of the petition; and

(8) copies of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(f) ~~**Emergency**~~ **Expedited relief.** When ~~emergency~~ expedited relief is sought, the petitioner must file a separate motion pursuant to Rule 23C explaining why ~~emergency~~ expedited relief is requested. Any response to a motion filed under Rule 23C is governed by that rule and is separate from any response to a petition filed under Rule 19.

(g) **Response.** No petition will be granted in the absence of a request by the court for a response. No response to a petition will be received unless requested by the court.

(1) **Timing.** If requested, a respondent may file a response within 30 days of the court's request or within such other time as the court orders.

(2) **Joint Response.** Two or more respondents may respond jointly.

(3) **Contents.** The response must include, or respond to, as appropriate, the items in paragraph (e).

(4) **Notice of non-participation.** If any respondent does not desire to appear in the proceedings or file a response, that respondent may advise the appellate court clerk and all parties by letter, but the allegations of the petition will not thereby be deemed admitted.

(h) **Reply.** The petitioner may file a reply within 14 days after service of the response. A reply must be limited to responding to the facts and arguments raised in the response.

(i) **Page and word limits.** A petition or response may not exceed 20 pages or 7,000 words. A reply may not exceed 10 pages or 3,500 words. Headings, footnotes, and quotations

count toward the page or word limit, but the cover page or caption, any table of contents or authorities, signature block, certificates, and any attachments do not.

(j) **Certificate of compliance.** A petition, response, and reply must include the filer's certification that the document complies with:

(1) paragraph (i), governing the number of pages or words (the filer may rely on the word count of the word processing system used to prepare the document); and

(2) Rule 21, governing filings containing non-public information.

(k) **Review and disposition of petition.**

(1) The court may deny a petition without a response. Where a response has been called for, the court will render a decision based on the petition and any timely response and reply, or it may require briefing or request further information, and may hold oral argument at its discretion.

(2) If the court determines that the petition was not appropriately filed in the appellate court, the court will refer the petition to the appropriate district court. Any review of the district court's decision on the petition must be pursued by appeal rather than a refiling of the petition.

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

(l) **Transmission of record.** In reviewing a petition for extraordinary relief, the appellate court may order transmission of the record, or any relevant portion thereof.

(m) **Issuing an extraordinary writ on the court's motion.**

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

(2) A copy of the writ will be served on the named respondents in the manner and by an individual authorized to accomplish personal service under Rule 4 of the Utah Rules of Civil Procedure. In addition, copies of the writ must be transmitted by the appellate court clerk, by the most direct means available, to all persons or associations whose interests might be substantially affected by the writ.

(3) The respondent and the persons or entities whose interests are substantially affected may, within four days of the writ's issuance, petition the court to dissolve or amend the writ. The petition must be accompanied by a concise statement of the reasons for dissolving or amending the writ.

Effective May 1, 2024

Advisory Committee Note

The Utah Constitution enshrines the right to a writ of habeas corpus. Utah Const., art. I, sec. 5; art. VIII, sec. 3; art. VIII, sec. 5. The Appellate Rules Committee recommended repealing Rule 20 (Habeas Corpus Proceedings) because it was duplicative of Rule 19 (Extraordinary Relief) and potentially caused incarcerated individuals to forgo filing a petition under the Post-Conviction Remedies Act (Utah Code Title 78B, Chapter 9). The repeal is not intended to substantively affect a defendant's right to a writ of habeas corpus. Rule 19 of the Utah Rules of Appellate Procedure and Rules 65B and 65C of the Utah Rules of Civil Procedure govern habeas corpus proceedings.

Adopted May 1, 2023

TAB 5

Stay pending appeal standards:

1. Federal courts:

"Under both [FRCP 62(c) and FRAP 8(a)], . . . the factors regulating the issuance of a stay are generally the same." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)

"(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton*).

2. Sampling of states:

California: general rule is that an appeal automatically stays district court orders. But even where the general default rule does not apply, courts may issue a stay where "difficult questions of law are involved and the fruits of a reversal would be irrevocably lost unless the status quo is maintained." *Daly v. San Bernardino Cnty. Bd. of Supervisors*, 492 P.3d 921, 926 (Cal. 2021)

Colorado: "We conclude that the federal standards for analyzing whether or not to grant a stay are well reasoned and should be applied by this court." *Romero v. City of Fountain*, 307 P.3d 120, 122 (Colo. Ct. App. 2011)

Utah: "We hold that parties seeking a stay under Rule 8 must support the motion for stay as specified in the rule, and in such a manner to allow this court to make an assessment of the factors identified under the analogous federal rules." *Jensen v. Schwendiman*, 744 P.2d 1026, 1027 (Utah Ct. App. 1987).

Under the federal rules, the standard of review has been stated as follows:

> [I]t is generally required that (a) the applicant make a strong showing that he is likely to succeed on the merits of the appeal; (b) the applicant establish that unless a stay is granted he will suffer irreparable injury; (c) no substantial harm will come to other interested parties, and (d) a stay would do no harm to the public interest.

Id. (quoting Wright & Miller, *Federal Practice and Procedure* § 2904).

Rule 8. Stay or injunction pending appeal.

(a) **Motion for stay.**

(1) **Initial motion in the trial court.** A party must ordinarily move first in the trial court for the following relief:

(A) a stay of the judgment or order without security pending appeal or disposition of a petition under Rule 5;

(B) approval of a bond or other security provided to obtain a stay of the judgment or order; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending, unless the trial court has already rejected the basis for the requested relief.

(2) **Motion in the appellate court.**

(A) The motion for a stay must include:

(i) the reasons the trial court denied the request;

(ii) the reasons for granting the relief requested and the facts relied on;

(iii) copies of affidavits or declarations, supporting facts subject to dispute; and

(iv) relevant parts of the record, including a copy of the trial court's order.

(B) Any motion must comply with Rule 23.

(C) Except in extraordinary circumstances, an appellate court will not act on a motion to stay a judgment or order or to suspend, modify, restore, or grant an injunction, unless the movant first requested a stay or opposed the injunction in the trial court.

(3) **Stays in criminal cases.** Stays pending appeal in criminal cases in which the defendant has been sentenced are governed by Utah Code section 77-20-302 and Rule

27 of the Utah Rules of Criminal Procedure. Stays in other criminal cases are governed by this rule.

(b) **Bond requirement.**

(1) **Stay ordinarily conditioned upon giving a bond.** For requests to stay enforcement of a judgment or order to pay money to which Rule 62 of the Utah Rules of Civil Procedure applied in the trial court, relief available pending appeal will be conditioned upon giving a bond or other appropriate security in the trial court, unless there is no reasonable means of quantifying the security in monetary or other terms and the conditions of paragraph (b)(2) are met.

(2) **Stay in cases not conditioned on giving a bond.** Ordinarily a stay without a bond or other security will not be granted unless the movant demonstrates:

(A) a substantial likelihood of ~~success~~prevailing on the merits; ~~or the case presents serious issues on the merits warranting appellate review and the appellant demonstrates~~:

(~~A~~B) the movant will suffer irreparable harm unless the stay is granted;

(C) ~~a likelihood of irreparable harm to the movant outweighing~~ the irreparable harm to the movant outweighs whatever harm the proposed stay may cause the party whose enforcement rights would be stayed; and

(D) ~~any other party and~~ the stay would not be adverse to the public interest.~~; or~~

~~(B) an extraordinary circumstance that justifies issuing a stay.~~

(c) **Injunctions.** For requests for injunctive relief to which Rules 65A or 62 of the Utah Rules of Civil Procedure applied in the trial court, any relief available pending appeal is governed by those rules.

Effective ~~May 1~~, 202~~3~~

Advisory Committee Note

"Declaration" refers to an unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act.

Note ~~A~~adopted 2022