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:	May 2, 2024
Time:	12:00 to 1:30 p.m.

Action: Welcome and approval of April 4, 2024 Minutes	Tab 1	Chris Ballard, Chair
Action: Amendments to Rules Governing Child Welfare Appeals	Tab 2	Debra Nelson
Action: Rule 23C and Rule 19	Tab 3	Clark Sabey, Mary Westby, Troy Booher
Action: Rule 8	Tab 4	Stan Purser
Action: Rule 42	Tab 5	Clark Sabey, Judge Christiansen Forster, Michelle Quist, Carol Funk
Action: Rule 29	Tab 6	Clark Sabey
Discussion: Old/new business		Chris Ballard, Chair

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

2024 Meeting schedule:

June 6, 2024	November 7, 2024
September 5, 2024	December 5, 2024
October 3, 2024	

TAB 1

Draft 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, April 4, 2024
12:00 pm to 1:30 pm

PRESENT
Emily Adams
Christopher Ballard—Chair
Troy Booher
Lisa Collins
Debra Nelson
Judge Gregory Orme
Tera Peterson
Stanford Purser
Nathalie Skibine—Vice Chair
Scarlet Smith
Mary Westby

EXCUSED
Judge Michele Christiansen Forster
Carol Funk
Michelle Quist

STAFF
Amber Griffith
Nick Stiles
Michael Judd—Recording Secretary

GUESTS
Alexa Mareschal
Adam Trupp
Margaret Lindsay
Heath Haacke
Martha Pierce
John Peterson
Deborah Wood
Sonia Sweeney
Annie ValDez

1. Action: Chris Ballard
Approval of March 2024 Minutes

Chris Ballard welcomed everyone to the meeting. As multiple guests were attending, Mr. Ballard asked everyone to introduce themselves. Following the

introductions, the Committee reviewed the minutes from the March 7, 2024 meeting.

No corrections were suggested. Nathalie Skibine moved to approve March's minutes. Stan Purser seconded that motion, and the minutes were unanimously approved.

2. Action: Chris Ballard
Final Approval of Rules 10 and 57

No public comments were received on the proposed amendments to Rules 10 and 57. Mr. Ballard asked the Committee if they had any concerns prior to voting.

No concerns were voiced. Mary Westby moved to approve the proposed amendments as final. Lisa Collins seconded the motion, and it was approved without objection.

3. Discussion: Debra Nelson
Amendments to Rules Governing Child Welfare Appeals

Debra Nelson introduced the proposal which was submitted to the Committee by the Indigent Appellate Defense Division (IADD). Alexa Mareschal from IADD then provided a brief history of the proposal. She explained that after an original proposal was presented to the Committee in late 2022 and early 2023, various stakeholder meetings were held, and the proposal was revised based on feedback received.

The most significant provisions in the current revised proposal would eliminate the petition process and allow full briefing for all child welfare appeals. These changes are intended to give all appellants the opportunity to file a merits brief and to increase the number of opinions issued in child welfare appeals. Acknowledging that the original intent of the rules was to have these types of appeals resolved quickly, the proposed amendments also make a reply brief optional. Within seven days of the filing of appellee's brief, the appellant must notify the court if the appellant intends to submit a reply brief. The case will be submitted on the briefs absent notification of an intent to file a reply. Ms. Mareschal explained that in her opinion, the new proposal would add only "a couple of months" to the appellate process.

Jon Peterson of the Attorney General's Office stated that he does not believe the current system is broken and that all appeals currently filed are thoroughly reviewed. Mr. Peterson also questioned IADD's expectation that more opinions would be entered if all cases went to full briefing.

Deborah Wood, also of the Attorney General's Office, similarly voiced concerns with the proposal. She stressed the need for quick resolution of child welfare appeals and explained that her biggest concern is the delay this proposal would cause.

Martha Pierce, of the Guardian ad Litem's Office, also expressed concerns with the proposal and informed the Committee that, in her opinion, none of the reasons for creating these rules have changed. She also expressed skepticism that the proposal would add only "a few months" to the appellate process and that even if that were true, a delay of only "a few months" is significant to a child awaiting a ruling on their placement.

Sonia Sweeney, Juvenile Court Administrator, informed the Committee that the Board of Juvenile Judges reviewed both the original 2023 proposal and the current revised proposal and does not believe that any changes are needed.

Annie ValDez from the Court Improvement Program (CIP) explained how the CIP helped with drafting the current rules. She explained that the CIP has discussed both the original and the current proposal and has been unable to reach a consensus given its makeup.

Adam Trupp, from the Utah Indigent Defense Commission, spoke in favor of the proposal, noting that the requirement for approval before a case can go to full briefing is not found anywhere else in the appellate system.

Margaret Lindsay, from the Utah County Public Defender Association, voiced support for the proposal and stated that there is nothing more important in the law than due process, and parents deserve to be treated like every other appellant.

Troy Booher questioned why a couple of months makes a difference for these types of appeals. He also suggested that a different type of screening process could be implemented to weed out cases that do not need full briefing from those that do, perhaps allowing the appellate court to call for a response to the petition only if the court believes a response is necessary.

Tera Peterson noted that Ms. Mareschal had commented that in recent years there has been an increase in reversals and opinions. Ms. Peterson questioned whether this shows that the current process is working and that the Court is catching the cases that need to go to full briefing.

Mary Westby explained that staff attorneys review the petitions and only recommend a disposition if it is a clear affirmance or reversal, anything in the middle requiring closer scrutiny goes to chambers for review. Ms. Westby added that the staff attorneys use the petition, the State's response, and the entire record when evaluating a petition. Ms. Westby agreed with Ms. Peterson that the increase in opinions and cases that go to full briefing shows that the current process is working as intended. She also explained that, in her opinion, an increase of even "a few months" in each child welfare appeal would induce systemic delay.

Chris Ballard recognized that while there may be a need to allow more child welfare appeals to go to full briefing, implementing that change while keeping

child welfare appeals on an expediated track would appear to require the allocation of more resources to IADD, the Attorney General's Office, the Guardian ad Litem's Office, and perhaps also the appellate courts, but that is something that is beyond the Committee's power. Any change that would increase the number of cases going to full briefing would therefore require a broader-based solution involving more than merely amending the appellate rules.

Following this discussion, the Committee asked the guests to attend the beginning of the Committee's May 2nd meeting. It was suggested that the Committee reserve the first 30 minutes of that meeting for additional questions and then vote on the proposal.

4.	**Action:** **Rule 23C and Rule 19**	**Clark Sabey, Mary Westby, Troy Booher**

Item tabled due to time constraints.

5.	**Action:** **Rule 8**	**Clark Sabey, Mary Westby, Troy Booher**

Item tabled due to time constraints.

6.	**Adjourn**	**Chris Ballard**

Stan Purser moved to adjourn the meeting. Judge Orme seconded that motion, and the meeting was adjourned.

TAB 2

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.

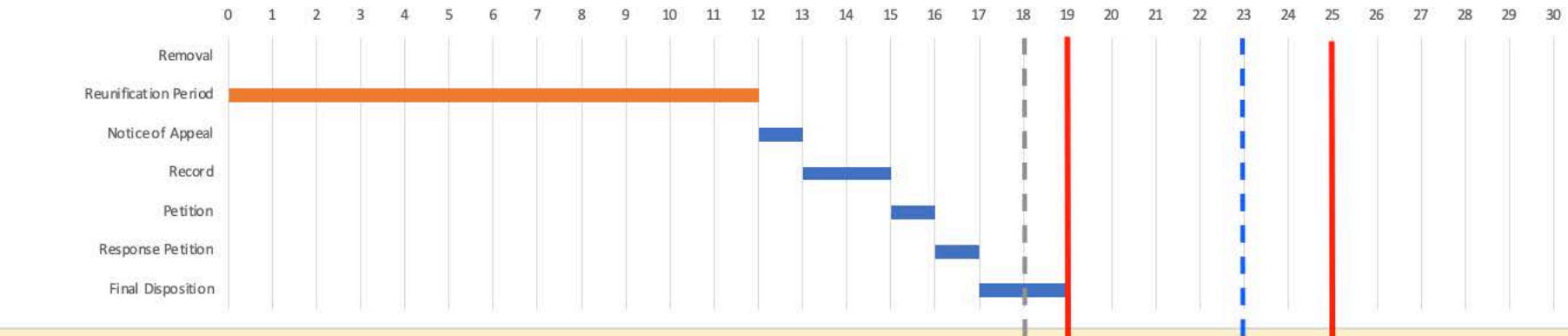
On Counsel: While the burden of having to brief every appeal may increase workloads for counsel on all sides, it will also become more manageable as counsel will no longer have to juggle the short, demanding petition timelines with regular briefing

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.

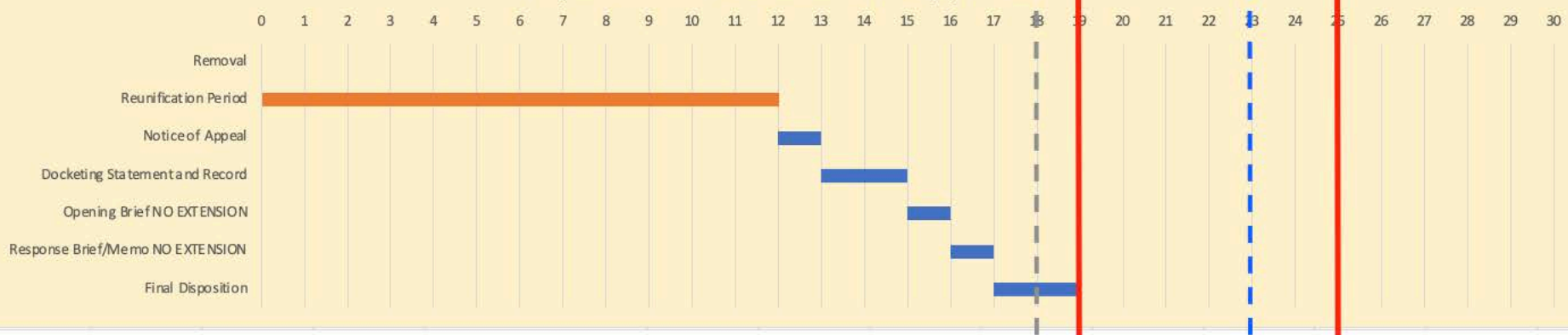
Eliminating the petition will also allow appellate counsel to use alternative resolutions processes. Appellate mediation can be used to come up with different solutions and circumvent the need for an appeal altogether. These tools are not readily available at the petition stage.

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.

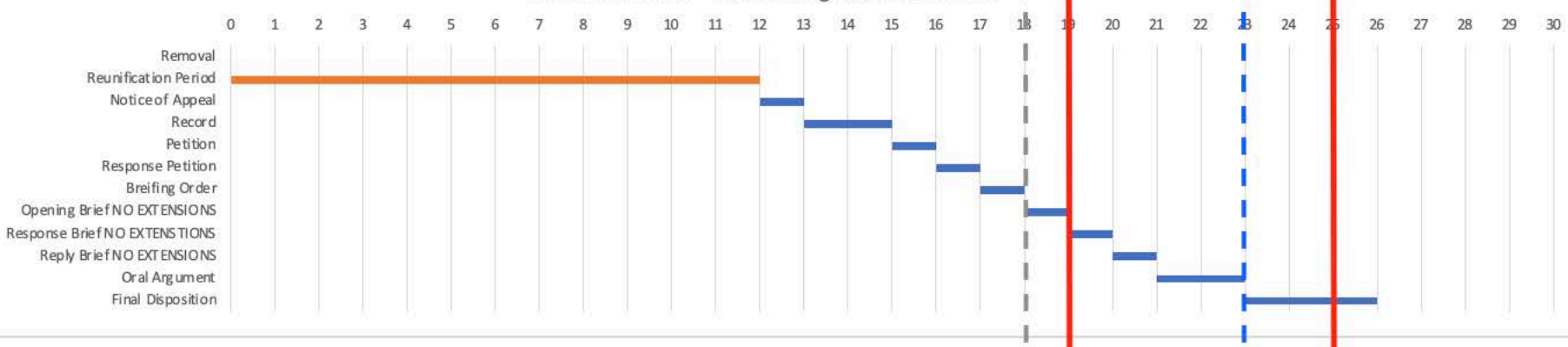
Current Timeline - Petition ONLY



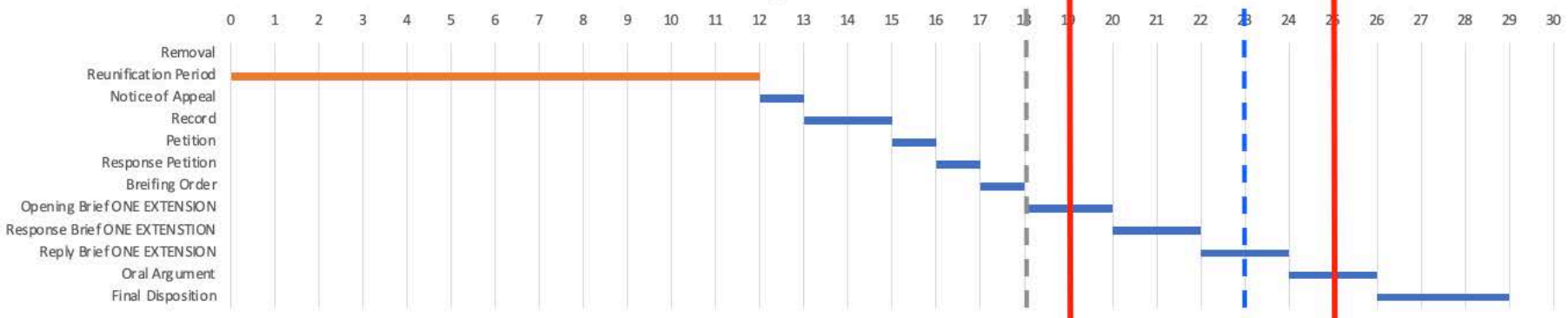
Proposed Timeline - No Extensions, No reply, No OA



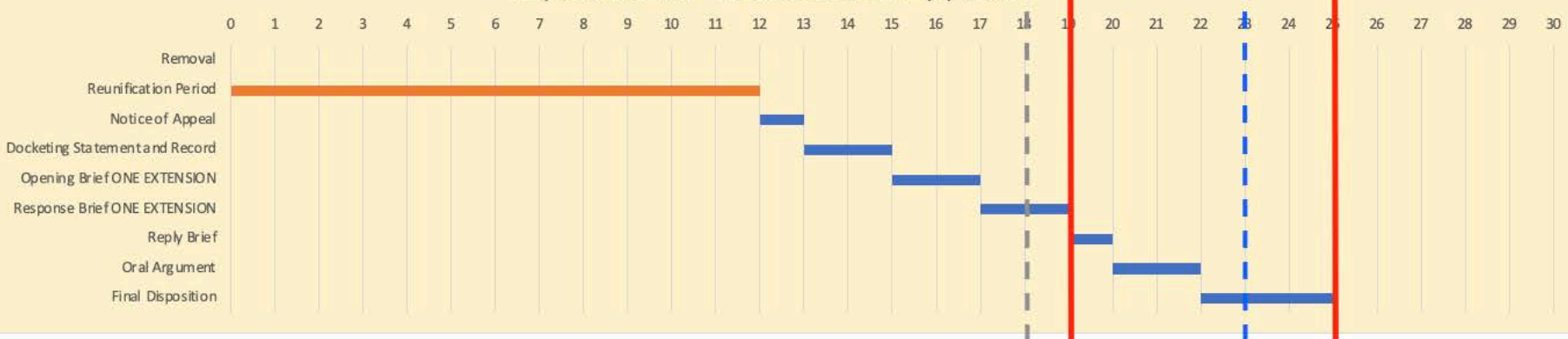
Current Timeline - Full Briefing NO EXTENSIONS



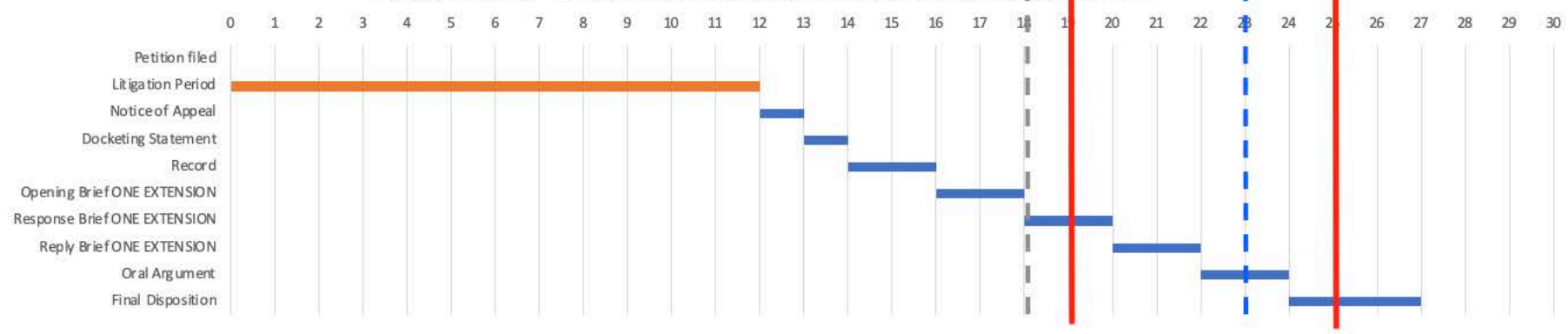
Current Timeline - Full Briefing ONE EXTENSION PER SIDE



Proposed Timeline - ALL extensions and reply taken



Current Timeline - Private District Court Terminations ONE EXTENSION PER SIDE



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

RESPONSE TO IADD PROPOSAL

Martha Pierce
Office of Guardian ad Litem
April 2023

INTRODUCTION

The IADD proposal and research synopsis provides a lecture on well-established child welfare principles going to relational permanency to conclude that the "only" way to achieve relational permanency is to eliminate the petition requirement, to extend a child's impermanence, and to shift the 4-6 month to the parent's side of the ledger.

The IADD has not researched the case law regarding the expedited rules, nor has it read the case law where the Supreme Court rejected similar research as a basis to override governing precedent and rules. More importantly, the IADD has not accepted responsibility for the defense's role in their practice of waiting until the termination trial, and even until the appeal, to litigate issues going to relational permanency.

The IADD overstates what the law can and cannot do. The law can *only* address legal structure and legal rights. A divorce court can terminate a legal relationship, but it cannot control whether the divorced couple maintain a warm relationship or a frosty relationship or no relationship at all. *See, In re W.A.,* 2002 UT 127, ¶ 22, 63 P.3d 607 (termination is analogous to a termination of the marriage relationship). Just so, a termination order can only speak to legal rights and duties. Utah Code Ann. § 80-4-105(1) (effect of termination decree). Whether a child continues a relationship with a biological parent has a lot to do with proper screening of the foster placement and with the parent and with the training and support provided. This is why the Supreme Court extoled family connections as "fundamental stitches in the fabric of our society," while refusing to order grandparent visitation because "court-ordered relationships are another matter. *Jones v. Jones,* 2015 UT 84, ¶¶ 45-46, 359 P.3d 603. This is also why Goldstein *et al* warned against having family courts micro manage family relationships. *See* Joseph Goldstein, Albert J. Solnit, Sonja Goldstein, Anna Freud, The Best Interests of the Child: The Least Detrimental Alternative 46 (1996) ("While the law may claim to regulate parent-child relationships, it can at best do little more than give them recognition and an opportunity for them to develop").

The IADD assumptions. To support its bid to prolong the appellate process, the IADD makes six assumptions:

> (1) that the expedited rules deny a parent due process and the right to a meaningful appeal;
>
> (2) full briefing is the only way to litigate relational permanency;
>
> (3) the law has changed "in every capacity";
>
> (4) the 4-6 week time period where children receive expedited permanency by way of an affirmance on the petition, is better used on the parent's side of the ledger in case of the rare event that a reversal will result in parental placement;
>
> (5) more guidance is needed;
>
> (6) prolonging permanency will benefit minority communities.

Each of these assumptions is flawed.

ONE: THE EXPEDITED RULES SATISFY A PARENT'S RIGHTS TO DUE PROCESS AND A MEANINGFUL APPEAL.

A parent's substantive due process claims are not implicated in *strictly necessary* claims. First, most appeals concede grounds and challenge only the strictly-necessary determination. Once a parent concedes unfitness, the parent's substantive due process rights have been satisfied. *In re Adoption of J.S.,* 2014 UT 51 ¶ 38, 358 P.3d 1009 ("fundamental right for a mother not to lose her rights to her child absent proof of unfitness, abandonment, or neglect").

Expedited rules satisfy due process and right to meaningful appeal. Moreover, the Utah Supreme Court has already considered and rejected claims that the process is truncated and violates a parent's right to due process and a meaningful appeal. *In re B.A.P.,* 2006 UT 68, ¶ 1, 148 P.3d 934 (expedited rules do not deny right to meaningful appeal under the Utah Constitution); *id.* ¶ 7 (expedited rules do not deny due process under the federal constitution); *id.* ¶ 13 ("the page limit is just a matter of convenience and uniformity; it has nothing to do with limiting the scope of the appeal."); *id.* ¶ 15 ("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."); *id.* ¶ 16 ("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"); *id.* ¶ 19 (rules do not preclude meaningful appeal); *id.* ¶ 20 (rules "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.").

The IADD argues that "recent" social science supports a focus on relational permanency. In fact, this social science dates back to early attachment studies. *See* John Bowlby, Attachment, 1 Attachment and Loss 216-220 (1969); Joseph Goldstein, Anna Freud & Albert J. Solnit, Beyond the Best Interests of the Child 31-34 (1973). Notions of relational permanency are well-entrenched in guidance offered by

> the Children's Bureau, Administration for Children Youth and Families, Information Memorandum ACYF-CB-IM-20-09, January 5, 2021; available at https://www.acf.hhs.gov/sites/default/files/documents/cb/im2101.pdf
>
> and by
>
> the National Council of Juvenile and Family Court Judges, Enhanced Resource Guidelines, Gatowski, S., Miller, N., Rubin, S., Escher, P.,& Maze, C. (2016) Enhanced resource guidelines: Improving court practice in child abuse and neglect cases. Reno, NV: National Council of Juvenile and Family Court Judges. Available at https://www.ncjfcj.org/wp-content/uploads/2016/05/NCJFCJ-Enhanced-Resource-Guidelines-05-2016.pdf

The IADD sets up a false dichotomy to pit legal permanency against relational permanency. As if the two cannot coexist. As if the child does not need both.

The IADD ignores the Utah Supreme Court's rejection of "new research" as a basis to undercut ASFA or to argue for a higher burden of proof. *See, e.g., In re B.R.,* 2007 UT 82, ¶ 7 & n.5, 171 P.3d 435; *In re G.D.,* 2021 UT 19, ¶ 50, 491 P.3d 867.

In sum, while child welfare matters involve important rights and relationships, issues going to relational permanency are subject to ongoing review and revision

as well as to an appeal of right. The expedited rules protect a parent's right to due process as well as a parent's right to a meaningful appeal. Finally, the opportunity to "get it right" presents itself over and over throughout the life of a case.

TWO: RELATIONAL PERMANENCY IS BEST ADDRESSED EARLY IN A CASE.

The IADD's claim that relational permanency is best resolved at the post-termination stage is inconsistent with national standards and with common sense.

The National Council of Juvenile and Family Court Judges (NCJFCJ) recommends focusing on locating kin early in a case:

> When courts and agencies have not conducted thorough relative searches and reunification is ruled out, they can be faced with the difficult choice of deciding between adoption by a foster parent with whom the child has bonded and a relative who is appropriate but did not previously know of the child's need for a permanent home. If, however, the relative search was thorough and a relative who has previously chosen not to come forward changes his or her mind, the preference for keeping the child with relatives diminishes. When courts and agencies do their job thoroughly, they should not have to choose between a foster parent adoption and a relative adoption

Enhanced Resource Guidelines at 82.

Likewise, Josh Gupta-Kagan, a source cited by the IADD, notes that when kinship placement decision are not resolved early, the result is "difficult permanency litigation." Josh Gupta-Kagan, *The New Permanency,* 19 U.C. Davis J. Juv. L. & Pol'y 1, 63 (2015).

Utah law provides for ongoing review and revision. The IADD's claim that "there is no mechanism for remedy or review," and "the appeal is the only chance the family has to get review of a juvenile court's decision," ignores the numerous opportunities a parent has to participate in, and to seek review and revision of service planning and permanency planning. Parents are statutory members of the child and family team. Utah Code Ann. § 80-3-307(3). They can ask for team meeting at any time. They can ask for reviews "at any time." Utah R. Juv. P. 47(b)(1) ("Any party in a case subject to review may request a review hearing").

And, they can ask for an evidentiary hearing after receiving an adverse review. *Id.* 47(b)(3).

Notwithstanding these opportunities, defense counsel fails to take advantage of these important, timely remedies. *In re A.C.*, 2004 UT App 255, ¶ 17, 97 P.3d 706 ("parent's responsibility to demand services if they are not offered prior to the termination hearing."); *In re A.T.,* 2015 UT 41, ¶ 13 & n.1, 353 P.3d 131 (where parent waited until termination hearing to seek including in permanency plan); *In re K.C.,* 2015 UT 92, ¶ 27, 362 P.3d 1248 (where parent waited until termination hearing to raise ADA claim); *In re A.W.,* 2018 UT App 217, ¶ 31, 437 P.3d 640 (where father failed to challenge numerous, interim reasonable-efforts findings); *In re D.G.,* 2022 UT App 128, ¶ 8 & n.2, - P.3d - (where no feasible option was readily apparent and Mother did not suggest one); *In re S.T.,* 2022 UT App 130, ¶ 21, 521 P.3d 887 (same); *In re P.J.R.,* 2023 UT App 27, ¶ 10, - P.3d – (no record of Mother objecting to interim findings).

In contrast, waiting until the post-termination stage to litigate relational permanency results in *less* nuance than what is available at a family team meeting or an early review. Two reasons account for this lack of nuance.

First, *strictly necessary* review is subject to a highly deferential clearly-erroneous standard of review. *In re G.D.,* 2021 UT 19, ¶ 72 & n.45, 491 P.3d 867. Under this standard, the appellate court believes the evidence favorable to the trier of fact and assumes that the evidence would compel a finding even where the finding was not made. *Id.*

Second, our appellate system is based on a writ-of-error model, which requires a claim to be litigated at the trial level. *State v. Johnson,* 2017 UT 76, ¶¶ 14-15, 416 P.3d 443. Thus, the appellate court has no authority "to embark on a broader quest for justice." *State v. Larraby,* 2013 UT 70, ¶ 70, 321 P.3d 1136 (Lee, J., dissenting). A final reason why "nuanced" review is not likely at the appellate level is the Supreme Court's reluctance to impose a multifactor test and to focus instead on the plain language of the statute. *Met v. State,* 2016 UT 51, ¶¶ 89-90, 388 P.3d 447); *State v. Cuttler,* 2015 UT 95, ¶ 2, 18-21, 367 P.3d 981.

In short, the IADD should decline to seek an extended appeal period until it has taken advantage of available, early remedies to assure relational permanency.

THREE: *STRICTLY NECESSARY* DID NOT REPEAL THE SUBSTANCE AND STRUCTURE OF THE STATUTORY SCHEME.

The IADD claims the law has changed "in every capacity." This is not the case.

The 2012 addition of *strictly necessary* did not repeal the substance or the structure of Utah's statutory scheme. Utah's statutory scheme, which incorporates ASFA, includes developmentally sensitive permanency time-frames. *See In re B.T.B.,* 2020 UT 60, ¶ 71, 472 P.3d 827 (*strictly necessary* not an "invitation to disrupt the timelines and permanency goals at play").

Utah's statutory scheme has been subject to the *Santosky* language since *Santosky* was issued in 1982. *Santosky v. Kramer,* 455 U.S. 745, 102 S. Ct 1388 (1982). Moreover, *Santosky* language has been part of the Utah code since 1994. *See* Utah Code Ann. § 62A-4a-201 (Supp. 1994).

The standard of review has not changed.

Finally, the addition of qualified appellate counsel has not significantly changed the landscape of appeals. The IADD reargues the facts, raises claims that were not preserved, raises claims that are a matter of invited error, and raises claims from unappealed final orders.

In short, the structure and substance of Utah's statutory scheme did not materially change with the addition of *strictly necessary*. And, the appellate court still has a role to play in screening out non meritorious, threshold-level claims.

FOUR: MOST REVERSALS RESULT IN A REMAND FOR MORE FINDINGS.

The IADD argues that Children should forfeit the expedited permanency received when termination orders are affirmed at the petition level. The IADD argues that parents can better use this time period in the off chance that a reversal results in parental placement.

Second, most reversals amount to a remand for more findings. And, where the appellate claim goes to *strictly necessary* and not to grounds, then the possibility of parental placement is not implicated.

If the most recent reversals are any indication, parents do not appear to be in any hurry on remand, as evidenced by parents seeking continuances and failing to attend crucial hearings and mediations. Thus it makes no sense to ask a child to sacrifice the crucial months to access swift permanency for the remote chance that a reversal will result in parental placement.

Third, the fact that children who are the subject of district court cases are denied the benefits of expedited appeals is no reason to deny foster children this same benefit. And some are arguing that the same expedited process be afforded to

children involved in district court litigation. *See,* Deborah Bulkeley, *Who's My Daddy?! A Call for Expediting Contested Adoption Cases in Utah*, 12 J. L. & Fam. Stud. 225, 226 (2010).

The IADD is incorrect to suggest that the expedited rules were a "historical artifact" of a backlog of appeals. This was not the case at the time the rules were adopted. The backlog was addressed during the Permanency Project, which took place from July 1, 1995 through June 30, 1996, as part of the Child Welfare Reform Act Amendments. Ch. 302, § 34, 1995 Utah Laws at 1052.

In sum, Children should not be asked to sacrifice expedited permanency for the extremely rare chance that a reversal might result in parental placement.

FIVE: ELIMINATING THE PETITIONS WILL NOT RESULT IN "MORE GUIDANCE."

The IADD claims it needs more guidance, claiming that few of the appeals result in a publicly available opinion. First, it appears that IADD may be conflating memorandum decisions with orders of affirmances. *See* IADD prop at 1 (suggesting that resolution of petitions is by unpublished orders, when many are resolved by memorandum decisions). Memorandum affirmances are publicly available and can be cited as precedent.

Second, the IADD is not taking advantage of currently-available guidance. The last page of this memo includes a list of publicly-available opinions and orders.

Third, published opinions are a function of the nature of the claim raised. If the IADD wants "more guidance," it needs to raise opinion-worthy claims. "The decision to treat a particular decision as an opinion or as a memorandum decision is one made by the judges of the court of appeals." *Grand Cnty v. Rogers,* 2002 UT 25, ¶ 12, 44 P.3d 734. The court of appeals' determination to treat a particular decision as an issue based on whether the underlying claim presents a novel issue of law. *Id.* ¶ 7.[1]

In other words, if the IADD were truly raising "more complex and nuanced issues," these issues would result in published opinions.

[1] The fact that an appeal results in something less than a published opinion is not a due process violation. *State v. Robison*, 2006 UT 65, ¶ 34 & n.6, 147 P.3d 448.

SIX: PROLONGING PERMANENCY WILL NOT BENEIFT MINORITY COMMUNITIES.

The IADD suggests that the expedited rules disadvantage minority parents, ignoring the fact that minority children are no less deserving of swift permanency.

While minority communities should not be over-policed, they should not be under protected. *See* Elizabeth Bartholet, *The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions*, 51 Ariz. L. Rev. 871.

Studies considering the issue of disproportionality, indicate that the relationship between race and child welfare cannot be separated from the relationship between economic deprivation and child welfare. In other words, "the fundamental question to be answered . . . is whether need in its many forms accounts fully" for such disproportionality." Fred H. Wulczyn & Kristin Brunner Hislop, Chapin Hall Ctr. for Children, Univ. of Chi., Foster Care Dynamics in Urban and Non-Urban Counties 32 (2002).

The Supreme Court rejected a similar "resource imbalance" argument. *In re G.D.,* 2021 UT 19, ¶¶ 60-61, 491 P.3d 867. The Supreme Court held that the numerous interim dispositional hearings, along with the informal procedure, "may serve to lower the hurdle for legally unsophisticated parents." *Id.* ¶ 61.

The IADD asserts that ineffectiveness claims are "virtually impossible to raise" prior to the current system. The Supreme Court did not agree with this assessment. *In re B.A.P.,* 2006 UT 68 ¶ 18, 148 P.3d 934. And, counsel has managed to raise ineffectiveness claims under the expedited rules.[2]

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[2] *In re J.C.,* 2004 UT App 282; *In re B.M.,* 2004 UT App 409; *In re M.Y.,* 2004 UT App 425; *In re M.Y.,* 2004 UT App 428; *In re J.E.,* 2005 UT App 382, 122 P.3d 679; *In re M.M.,* 2005 UT App 63; *In re J.D.,* 2006 UT App 29; *In re V.H.,* 2007 UT App 1, 154 P.3d 867; *In re S.H.,* 2007 UT App 8, 155 P.3d 109; *In re Guardianship of A.S.,* 2007 UT App 72; *In re A.R.,* 2008 UT App 54; *In re A.S.,* 2008 UT App 71; *In re V.L.,* 2008 UT App 88, 182 P.3d 395; *In re G.C.,* 2008 UT App 270, 191 P.3d 55; *In re P.F.B.,* 2008 UT App 271 191 p.3d 49; *In re N.B.,* 2008 UT App 352; *In re J.C.,* 2008 UT App 385, 196 P.3d 643; *In re D.A.,* 2009 UT App 4; *In re K.R.,* 2009 UT App 392; *In re B.H.,* 2010 UT App 62; *In re A.C.G.,* 2010 UT App 347; *In re J.R.G.F.,* 2011 UT App 98, 250 P.3d 1016; *In re J.F.,* 2013 UT App 288, 317 P.3d 964; *In re J.S.,* 2013 UT App 294, 318 P.3d 252; *D.A. v. D.H.,* 2014 UT App 138, 329 P.3d 828; *In re A.C.,* 2015 UT App 107, 349 P.3d 751; *In re S.S.,* 2015 UT App 230, 360 P.3d 16; *In re J.S.,* 2017 UT App 197,

ANTICIPATED EFFECT OF RULE CHANGE

The IADD proposes eliminating the petition requirement, which for 20 years has afforded children swifter permanency, when orders were affirmed at the petition stage. The IADD proposes shifting the 4-6-month period, currently afforded to Children, to their side of the ledger because "the cases that require the most expediency are the reversals" and because children awaiting permanency will not notice their impermanent status. IADD Prop. 4.

Children do notice and are harmed by each day of impermanence. And, given that parents tend to challenge only the *strictly necessary* determination, a reversal generally amounts to a remand for more findings, and placement with the parent is not on the table. A review of the most recent reversals reveals that Parents are not attending hearing or mediations and Parents are asking for continuances. In other words, Parents do not seem to need the saved 4-6 months in cases when we have had reversals.

In short, the IADD wants to trade the very real benefit Children have been receiving by way of affirmances at the petition level, for the very speculative and unlikely possibility that a reversal will result in a parental placement.

On Children.
The IADD at 6 suggests that the present system prioritizes legal permanency over relational permanency and that Children are not affected when permanency is delayed or denied. The IADD suggests that the best time to litigate relational permanency is at the post-termination stage.

As discussed above, this claim is specious where parents and counsel decline to participate in important early meetings and reviews where relational is best established. And, as discussed above, appellate review of placement is compromised by counsel's failure to raise claims at the numerous interim reviews. *See In re K.C.,* 2015 UT 92, ¶ 27, 362 P.3d 1248 ("Children have an interest in permanency and stability); *In re B.T.B.,* 2020 UT 60, ¶ 69, 472 P.3d 827 ("a court deciding whether termination is strictly necessary for the child's best interest would consider a child's need for permanence as part of that inquiry"); *id.* ¶ 71 (*strictly necessary* not "an invitation to disrupt the timelines and permanency goals at play").

On Parents.

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407 P.3d 1010; *In re C.M.R.,* 2020 UT App 114, 473 P.3d 184; *In re A.H.,* 2021 UT App 57, 493 P.3d 81.

The IADD claims that Parents cannot tell "their story" in the 5000 word of a petition. IADD at 5. Recent IADD briefs have more or less repeated the fact statement from the petition. In each case, the parent's story was emphatically told. *See, In re B.A.P.,* 2006 UT 68, ¶ 13, 148 P.3d 934 (counsel unable to suggest "what number of pages would be necessary to vindicate their right to a meaningful appeal").

On Courts.

The IADD suggests that courts will receive "more guidance." As discussed above, published opinion result from opinion-worthy claims. *Grand Cnty v. Rogers,* 2002 UT 25, ¶ 12, 44 P.3d 734.

On counsel.

The IADD suggests that eliminating the petition will make their work "more manageable," because they will not have to deal with "the short, demanding petition timelines."

The Utah Supreme Court acknowledged that the expedited rules "impose[d] certain burdens" on counsel. *In re B.A.P.,* 2006 UT 68, ¶ 20, 148 P.3d 934. Such burdens were justified by the policy of "providing children and parents with swifter resolution and permanency in their family relations." *Id.*

The Supreme Court also saw this claim as an issue of work ethic and time management. *Id.* at ¶ 15 (noting that, if counsel had fifteen days to file a petition, counsel would get it filed within the fifteen days. And, if counsel had sixty days to file, "he would probably start to work on it around day fifty.").

Children should not have to delay permanency to make counsel's work load "more manageable."

Counsel's claim that mediation is not available at the petition stage is unavailing. To date, the appellate mediation office has never denied a request to mediate.

The IADD's claim that it needs "a reasonable amount of time to identify better issues for appeal" suggests that finding an appealable claim is like hunting for a needle in a haystack. This is not the case. The preservation rule requires that appellate claims must be litigated at the trial level. *State v. Johnson,* 2017 UT 76, ¶¶ 14-15, 416 P.3d 443. This means that appellate claims are overt, obvious, well-known to trial counsel, and highlighted in the appellate record.

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CONCLUSION

The IADD ignores Supreme Court case law affirming that the expedited rules protect parental rights to due process and to a meaningful appeal.

The IADD relies on "new" research that supports well-accepted ideas going to attachment theory and relational permanency. The IADD suggests that this "new" research supports changing the rules that have worked well for years to help children achieve swift permanency.

The IADD sets up a false dichotomy to pit legal permanency against relational permanency.

The IADD presents a false dichotomy suggesting that legal and relational permanency cannot coexist.

The IADD ignores the numerous opportunities for parents to engage with the process of permanency planning and service planning.

The IADD ignores that the substance and structure of law, including ASFA, has remained the same since 1997, and was not repealed by the addition of *strictly necessary*.

The IADD ignores the reality that most reversals are a remand for more findings, and that, given the trend to litigate only the issue of *strictly necessary,* parental placement is not at play.

The IADD suggests the minority children and their families will not benefit from swift permanency.

The IADD ignores the child's sense of time and the child's lived experience when it wants to claim for itself the 4-6 six months that are currently due the child.

The IADD wants more "guidance." But such "guidance" is a function of raising claims that are opinion-worthy.

The IADD suggests that minority children and children who are the subject of district court appeals are not worthy of swift permanency.

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Guidance postscript

Since 2004, there have been more child welfare cases issues than any other category of cases:

2004.
In re Z.D., 2004 UT App 261, 98 P.3d 40; *In re A.C.,* 2004 UT App 255, 907 P.3d 706; *In re E.H.,* 2004 UT App 419, 103 P.3d 177; *In re W.P.O.,* 2004 UT App 451, 104 P.3d 662; *In re J.W.,* 2004 UT App 482, 105 P.3d 962; *In re K.H.,* 2004 UT App 483, 105 P.3d 967.

2005
In re A.M., 2005 UT App 2, 106 P.3d 193; *In re E.H.,* 2005 UT App 24, 106 P.3d 758; *K.F.K. v. B.L.W.,* 2005 UT App 85, 110 P.3d 162*; In re M.E.P.,* 2005 UT App 227, 114 P.3d 596; *In re J.J.L.,* 2005 UT App 322, 119 P.3d 315; *In re S.H.,* 2005 UT App 342, 2005 WL 2840334; *In re J.E.,* 2005 UT App 382, 122 P.3d 679; *In re S.O.,* 2005 UT App 393, 122 P.3d 686; *Cline v. DCFS,* 2005 UT App 498, 142 P.3d 127; *In re O.C.,* 2005 UT App 563, 127 P.3d 1286; *In re Z.C.,* 2005 UT App 562; P.3d 128 561.

2006
In re D.T., 2006 UT App 132, 134 P.3d 1148; *In re C.L.,* 2006 UT App 145, 134 P.3d 1157; *In re J.M.,* 2006 UT App 157, 135 P.3d 902; *In re A.F.,* 2006 UT App 200, 135 P.3d 65; *In re J.H.,* 2006 UT App 205, 138 P.3d 70; *In re T.W.,* 2006 UT App 259, 139 P.3d 312; *In re F.L.R.,* 2006 UT App 294, 141 P.3d 601; *In re B.R.,* 2006 UT App 354, 144 P.3d 231; *In re O.D.,* 2006 UT App 382, 145 P.3d 1180; *In re J.R.,* 2006 UT App 391, 147 P.3d 462; *In re T.M.,* 2006 UT App 435, 147 P.3d 529; *In re A.M.D.,* 2006 UT App 457, 153 P.3d 724; *In re D.K.,* 2006 UT App 461; 153 P.3d 736.

2007
In re S.H., 2007 UT App 8, 155 P.3d 109; *In re V.H.,* 2007 UT App 1, 154 P.3d 867; *In re Z.D.,* 2007 UT App 33, 156 P.3d 844; *In re L.N.,* 2007 UT App 67, 157 P.3d 352; *In re B.B.G.,* 2007 UT App 149, 160 P.3d 9; *In re W.H.V.,* 2007 UT App 239, 164 P.3d 1279; *In re B.W.G.,* 2007 UT App 278, 167 P.3d 1099; *In re A.B.,* 2007 UT App 286, 168 P.3d 820; *In re C.U.,* 2007 UT App 320, 171 P.3d 456; *In re T.H.,* 2007 UT App 341, 171 P.3d 480;

2008
In re V.L., 2008 UT App 88, 182 P.3d 395; *In re K.C.J.,* 2008 UT App 152, 184 P.3d 1239; *C.G. v. DCFS,* 2008 UT App 160, 185 P.3d 572; *In re J.O.,* 2008 UT App 220, 189 P.3d 90; *In re G.R.,* 2008 UT App 265, 191 P.3d 1241; *In re G.C.,*

2008 UT App 270, 191 P.3d 55; *In re P.F.B.,* 2008 UT App 271, 191 P.3d 49; *In re T.V.,* 2008 UT App 345, 194 P.3d 973; *In re J.C.,* 2008 UT App 385, 196 P.3d 643; *In re A.K.,* 2008 UT App 423, 198 P.3d 1001; *In re M.B.,* 2008 UT App 433, 198 P.3d 1007; *In re C.D.,* 2008 UT App 475, P.3d 200 213.

2009
In re D.H., 2009 UT App 32, 204 P.3d 210; *In re A.M.,* 2009 UT App 118, 208 P.3d 1058; *In re D.A.B.,* 2009 UT App 169, 214 P.3d 878; *In re T.R.E.,* 2009 UT App 168, 213 P.3d 877; *In re J.T.,* 2009 UT App 182, 214 P.3d 881; *In re A.F.K.,* 2009 UT App 198, 216 P.3d 980; *In re R.B.F.S.,* 2009 UT App 223, 218 P.3d 908; *In re A.H.,* 2009 UT App 232, 217 P.3d 278.

2010
In re R.A., 2010 UT App 71, 231 P.3d 808; *In re D.B.,* 2010 UT App 111, 231 P.3d 819; *In re K.O.,* 2010 UT App 155, 238 P.3d 59; *In re J.M.S.,* 2010 UT App 326, 246 P.3d 1188; *K.Y. v. DCFS,* 2010 UT App 335, 244 P.3d 399;

2011
In re M.J.B., 2011 UT App 3, 2011 WL 38405; *In re M.G.,* 2011 UT App 5, 246 P.3d 530; *In re H.P.,* 2011 UT App 34, 247 P.3d 414; *Shedron-Easley v. Easley,* 2011 UT App 42; *In re H.H.,* 2011 UT App 44, 248 P.3d 67; *In re M.J.B.,* 2011 UT App 50, 248 P.3d 1039; *In re C.D.L.,* 2011 UT App 55; *In re H.H.,* 2011 UT App 60, 249 P.3d 582; *In re P.R.,* 2011 UT App 65; 249 P.3d 595; *In re K.C.,* 2011 UT App 92, 259 P.3d 1062; *In re J.R.G.F.,* 2011 UT App 97, 250 P.3d 1016; *In re C.C.,* 2011 UT App 99, 250 P.3d 1038; *In re T.J.D.,* 2011 UT App 102, 252 P.3d 867; *In re M.H.,* 2011 UT App 123, 153 P.3d 1153; *In re A.C.,* 2011 UT App 134, 256 P.3d 237; *In re R.D.,* 2011 UT App 132, 153 P.3d 1126; *In re G.O.-A.,* 2011 UT App 167; *In re C.K.F.,* 2011 UT App 175, 257 P.3d 464; *In re J.R.,* 2011 UT App 180, 257 P.3d 1043; *In re J.D.,* 2011 UT App 184, 257 P.3d 1062; *In re B.O.,* 2011 UT App 215, 262 P.3d 46; *In re D.N.,* 2011 UT App 205, 262 P.3d 50; *In re P.N.,* 2011 UT App 221; 262 P.3d 429; *In re C.B.,* 2011 UT App 218, 262 P.3d 426; *In re C.C.R.,* 2011 UT App 228, 257 P.3d 1106; *In re T.R.,* 2011 UT App 225, 262 P.3d 436; *In re D.V.,* 2011 UT App 241, 265 P.3d 803; *In re E.L.F.,* 2011 UT App 244, 262 P.3d 1196; *In re B.T.,* 2011 UT App 258, 259 P.3d 127; *In re M.A.,* 2011 UT App 268, 263 P.3d 428; *In re L.L.,* 2011 UT App 264, 263 P.3d 431; *In re J.C.R.,* 2011 UT App 263, 259 P.3d 1076; *In re R.S.,* 2011 UT App 322, 263 P.3d 1178; *In re C.S.N.N.,* 2011 UT App 326, 270 P.3d 547; *In re J.F.,* 2011 UT App 351, 264 P.3d 553; *In re E.E.P.,* 2011 UT App 363; 267 P.3d 278; *In re M.A.,* 2011 UT App 367, 271 P.3d 815; *In re R.D.R.,* 2011 UT App 381; 264 P.3d 778; *In re K.S.,* 2011 UT App 394, 266 P.3d 185; *In re J.J.,* 2011 UT App 395, 265 P.3d 846; *In re D.R.A.,* 2011 UT App 397, 266 P.3d 844; *In re M.J.,* 2011 UT App 398, 266 P.3d 850; *In re S.Y.T.,* 2011 UT App 407, 267 P.3d 930; *Barnett v. Adams,* 2011 UT App 408,

2011 WL 5995884; *In re J.N.,* 2011 UT App 413, 267 P.3d 287; *In re J.R.,* 2011 UT App 429, 267 P.3d 970; *In re A.H.F.,* 2011 UT App 437, 269 P.3d 165.

2012

Barnett v. Adams, 2012 UT App 6, 273 P.3d 378; *In re S.F.,* 2012 UT App 10, 268 831; *In re F.B.,* 2012 UT App 36, 271 P.3d 824; *In re R.B.,* 2012 UT App 37, 271 P.3d 827; *In re J.S.,* 2012 UT App 39, 272 P.3d 169; *In re A.M.,* 2012 UT App 79, 275 P.3d 277; *In re A.E.F.,* 2012 UT App 84, 275 P.3d 1030; *In re J.S.,* 2012 UT App 107, 276 P.3d 1238; *In re A.W.,* 2012 UT App 109, 176 P.3d 1188; *In re A.M.,* 2012 UT App 115, 280 P.3d 422; *In re N.P.,* 2012 UT App 116, 276 P.3d 1244; *In re A.C.,* 2012 UT App 117, 276 P.3d 1241; *In re R.B.F.S.,* 2012 UT App 132, 278 P.3d 143; *In re T.R.,* 2012 UT App 143, 278 P.3d 624; *In re D.S.,* 2012 UT App 150, 279 P.3d 417; *In re A.S.A.,* 2012 UT App 151, 279 P.3d 419; *In re M.O.K.,* 2012 UT App 157, 280 P.3d 423; *In re A.M.,* 2012 UT App 166, 280 P.3d 472; *In re J.H.,* 2012 UT App 195, 283 P.3d 971; *In re A.K.,* 2012 UT App 232, 285 P.3d 772; *In re J.T.,* 2012 UT App 253, 286 P.3d 960; *In re K.C.,* 2012 UT App 254, 286 P.3d 962; *In re J.D.,* 2012 UT App 255, 286 P.3d 957; *In re C.C.,* 2012 UT App 265, 286 P.3d 1287; *In re K.W.,* 2012 UT App 281, 288 P.3d 37; *In re J.G.,* 2012 UT App 301, 288 P.3d 1108; *In re R.C.,* 2012 UT App 311, 289 P.3d 614; *In re H.J,* 2012 UT App 310, 289 P.3d 611; *In re I.G.,* 2012 UT App 318, 290 P.3d 312; *In re J.S.,* 2012 UT App 340, 292 P.3d 709; *In re A.S.A.,* 2012 UT App 345, 291 P.3d 874.

2013

In re C.B., 2013 UT App 7, 294 P.3d 670; *In re E.F.,* 2013 UT App 13, 295 P.3d 1165; *In re J.D.,* 2013 UT App 14, 195 P.3d 1167; *In re O.F.,* 2013 UT App 18, 295 P.3d 1168; *In re R.M.,* 2013 UT App 27, 296 P.3d 757; *In re T.O.,* 2013 UT App 36, 297 P.3d 644; *In re K.K.,* 2013 UT App 44, 299 P.3d 1; *In re A.A.J.,* 2013 UT App 55, 299 P.3d 8; *In re B.H.-J.,* 2013 UT App 56, 299 P.3d 10; *In re J.J.,* 2013 UT App 80, 299 P.3d 1156; *In re R.T.,* 2013 UT App 108, 300 P.3d 767; *In re M.J.,* 2013 UT App 122, 302 P.3d 485; *In re K.K.,* 2013 UT App 126, 302 P.3d 495; *In re R.D.,* 2013 UT App 127, 302 P.3d 497; *In re N.M.,* 2013 UT App 151, 305 P.3d 194; *In re P.D.,* 2013 UT App 162, 306 P.3d 817; *In re D.T.,* 2013 UT App 169, 309 P.3d 248; *In re A.T.,* 2013 UT App 184, 307 P.3d 672; *In re L.M.,* 2013 UT App 190, 307 P.3d 686; *In re L.M.,* 2013 UT App 191, 308 P.3d 553; *In re Z.H.,* 2013 UT App 195, 307 P.3d 691; *In re K.C.,* 2013 UT App 201, 309 P.3d 255; *In re G.P.,* 2013 UT App 211, 309 P.3d 1159; *In re Z.Z.,* 2013 UT App 215, 310 P.3d 772; *In re D.M.,* 2013 UT App 220, 310 P.3d 741; *In re E.S.,* 2013 UT App 222, 310 P.3d 744; *In re D.M.,* 2013 UT App 234, 312 P.3d 932; *In re K.J.,* 2013 UT App 237, 327 P.3d 1203; *In re H.S.,* 2013 UT App 239, 314 P.3d 1005; *M.F. v. J.F.,* 2013 UT App 247, 312 P.3d 946; *In re K.M.,* 2013 UT App 252, 314 P.3d 1051; *In re Z.M.,* 2013 UT App 267, 316 P.3d 466; *In re C.U.,* 2013 UT App 268, 316 P.3d 464; *N.F. v. G.F.,* 2013 UT App 281, 316 P.3d 944; *In re C.J.,* 2013

UT App 284, 317 P.3d 475; *In re J.F.,* 2013 UT App 288, 317 P.3d 964; *In re J.S.,* 2013 UT App 294, 318 P.3d 252; *In re O.H.,* 2013 UT App 293, 318 P.3d 222; *In re K.D.N.,* 2013 UT App 298, 319 P.3d 768;

2014
In re K.C., 2014 UT App 8, 318 P.3d 1195; *In re D.G.,* 2014 UT App 22, 319 P.3d 768; *In re D.G.,* 2014 UT App 24, 391 P.3d 797; *In re C.L.V.,* 2014 UT App 39, 321 P.3d 216; *In re J.F.,* 2014 UT App 82, 327 P.3d 26; *In re J.Q.,* 2014 UT App 83, 326 P.3d 112; *In re J.Q.,* 2014 UT App 84, 325 P.3d 114; *In re N.V.,* 2014 UT App 94, 325 P.3d 901; *In re M.C.,* 2014 UT App 105, 326 P.3d 681; *In re E.B.,* 2014 UT App 115, 327 P.3d 594; *In re D.L.H.,* 2014 UT App 117, 327 P.3d 573; *In re Z.M.,* 2014 UT App 118, 327 P.3d 1220; *In re I.L.,* 2014 UT App 129, 329 P.3d 39; *In re C.D.M.,* 2014 UT App 130, 329 P.3d 37; *In re J.A.A.,* 2014 UT App 135, 329 P.3d 43; *In re J.A.A.,* 2014 UT App 136, 329 P.3d 40; *In re D.A.,* 2014 UT App 138; 329 P.3d 828; *In re A.C.,* 2014 UT App 157; *In re E.T.,* 2014 UT App 206; *In re H.E.,* 2014 UT App 218, 335 P.3d 926; *In re M.D.,* 2014 UT App 225, 336 P.3d 585; *In re A.S.,* 2014 UT App 226, 336 P.3d 582; *In re C.M.,* 2014 UT App 234, 336 P.3d 1069; *In re F.S.B.,* 2014 UT App 235, 336 P.3d 1073; *In re A.O.,* 2014 UT App 242, 337 P.3d 1039; *In re J.L.C.,* 2014 UT App 245, 337 P.3d 1069; *In re N.A.D.,* 2014 UT App 249, 338 P.3d 226; *In re C.H.,* 2014 UT App 261, 339 P.3d 111; *In re N.D.,* 2014 UT App 274, 339 P.3d 620; *In re R.A.,* 2014 UT App 276, 339 P.3d 622; *In re D.L.,* 2014 UT App 297;

2015
In re M.A., 2015 UT App 5, 342 P.3d 294; *In re O.T.,* 2015 UT App 8, 344 P.3d 1150; *In re O.T.,* 2015 UT App 9, 344 P.3d 1152; *In re P.G.,* 2015 UT App 14, 343 P.3d 297; *Shedron-Easely v. Easley,* 2015 UT App 20, 343 P.3d 718; *In re L.B.,* 2015 UT App 21, 343 P3d 332; *In re J.P.,* 2015 UT App 26, 344 P.3d 162; *In re E.P.E.,* 2015 UT App 38, 344 1162; *In re A.K.,* 2015 UT App 39, 344 P.3d 1153; *In re A.P.,* 2015 UT App 44; 345 P.3d 752; *In re K.L.S.,* 2015 UT App 51, 345 P.3d 1281; *In re T.H.,* 2015 UT App 66, 347 P.3d 2; *In re B.O.,* 2015 UT App 70, 347 P.3d 455; *In re D.A.J.,* 2015 UT App 74, 347 P.3d 430; *In re B.L.D.,* 2015 UT App 82, 347 P.3d 1071; *In re Z.V.,* 2015 UT App 85, 347 P.3d 1077; *In re A.C.,* 2015 UT App 107, 349 P.3d 751; *In re A.C.M.,* 2015 UT App 110, 349 P.3d 760; *In re T.W.,* 2015 UT App 121, 350 P.3d 235; *In re B.K.,* 2015 UT App 141, 352 P.3d 134; *In re D.L.,* 2015 UT App 156, 353 P.3d 619; *In re R.M.,* 2015 UT App 219, 359 P.3d 657; *In re F.L.,* 2015 UT App 224, 359 P.3d 693; *In re E.C.,* 2015 UT App 227, 359 P.3d 1264; *In re S.S.,* 2015 UT App 230, 360 P.3d 16; *In re V.L.V.-G.,* 2015 UT App 247, 362 P.3d 733; *In re D.B.,* 2015 UT App 256, 362 P.3d 737; *In re J.C.,* 2015 UT App 269, 362 P.3d 1257; *In re C.O.,* 2015 UT App 296, 364 P.3d 1064; *In re T.S.,* 2015 UT App 307, 365 P.3d 1221;

2016

In re M.D., 2016 UT App 3; 366 P.3d 408; *In re K.C.,* 2016 UT App 5, 366 P.3d 412; *In re J.C.,* 2016 UT App 10, 366 P.3d 867; *In re L.R.C.,* 2016 UT App 51, 369 P.3d 138; *In re J.B.,* 2016 UT App 66, 372 P.3d 61; *In re J.M.,* 2016 UT App 75, 372 P.3d 680; *In re Z.G.,* 2016 UT App 98, 376 P.3d 1077; *In re S.L.,* 2016 UT App 103, 376 P.3d 346; *In re M.H.,* 2016 UT App 128, 377 P.3d 192; *In re E.M.J.,* 2016 UT App 145; 376 P.3d 1093;*In re G.J.C.,* 2016 UT App 147, 379 P.3d 58; *In re D.D.,* 2016 UT App 148, 377 P.3d 706; *In re A.C.,* 2016 UT App 173, 379 P.3d 919; *In re O.P.,* 2016 UT App 181, 380 P.3d 69; *In re S.A.,* 2016 UT App 191, 382 P.3d 642; *In re E.R.,* 2016 UT App 204, 382 P.3d 1086; *In re B.C.,* 2016 UT App 208, 385 P.3d 705; *In re M.W.,* 2016 UT App 217, 387 P.3d 557; *In re D.N.,* 2016 UT App 244, 391 P.3d 322; *In re W.E.M.,* 2016 UT App 250, 391 P.3d 352.

2017

In re J.S., 2017 UT App 5, 391 P.3d 358; *In re S.K.A.,* 2017 UT App 12, 391 P.3d 405; *In re A.B.,* 2017 UT App 14, 391 P.3d 1067; *In re B.J.V.,* 2017 UT App 57, 397 P.3d 678; *In re K.K.,* 2017 UT App 58; 397 P.3d 745; *In re M.L.,* 2017 UT App 61, 397 681; *In re C.A.,* 2017 UT App 72, 397 P.3d 788; *In re D.V.,* 2017 UT App 79, 397 P.3d 859; *In re D.V.,* 2017 UT App 80, 397 P.3d 853; *In re K.G.,* 2017 UT App 88, 397 P.3d 897; *In re A.C.,* 2017 UT App 94, 400 P.3d 1078; *In re A.B.,* 2017 UT App 99, 400 P.3d 1107; *In re X.C.H.,* 2017 UT App 106, 400 P.3d 1154; *In re S.M.,* 2017 UT App 108, 400 P.3d 1201; *In re R.M.,* 2017 UT App 109, 400 P.3d 1189; *In re J.S.,* 2017 UT App 113, 400 P.3d 1209; *In re Z.J.,* 2017 UT App 118, 400 P.3d 1230; *In re C.J.,* 2017 UT App 126, 402 P.3d 27; *In re L.A.,* 2017 UT App 131, 402 P.3d 69; *In re C.C.,* 2017 UT App 134, 402 P.3d 17; *In re A.R.,* 2017 UT App 153, 402 P.3d 206; *In re A.R.,* UT App 154; 402 P.3d 199; *In re P.F.,* 2017 UT App 159, 405 P.3d 755; *In re J.S.,* 2017 UT App 167, 405 P.3d 828; *In re J.M.,* 2017 UT App 193, 407 P.3d 1000; *In re J.S.,* 2017 UT App 197, 407 P.3d 1010; *In re B.A.,* 2017 UT App 201, 407 P.3d 1021; *In re B.A.,* 2017 UT App 202, 407 P.3d 1053; *In re K.B.,* 2017 UT App 210, 407 P.3d 1084; *In re A.J.,* 2017 UT App 235, 414 P.3d 541; *In re J.A.,* 2017 UT App 237, 414 P.3d 552.

2018

In re M.R., 2018 UT App 17, 414 P.3d 2021; *In re K.W.,* 2018 UT App 44, 420 P.3d 82; *In re E.A.,* 2018 UT App 83, 424 P.3d 1169; *In re B.C.,* 2018 UT App 125, 428 P.3d 18; *In re N.M.,* 2018 UT App 141, 427 P.3d 1239; *In re B.T.B.,* 2018 UT App 157, 436 P.3d 206; *In re K.J.,* 2018 UT App 216, 437 P.3d 609; *In re A.W.,* 2018 UT App 217, 437 P.3d 640; *In re C.T.,* 2018 UT App 233, 438 P.3d 100;

2019

In re G.D.B., 2019 UT App 29, 440 P.3d 706; *In re C.C.W.,* 2019 UT App 34, 440 P.3d 749; *In re A.R.,* 2019 UT App 81, 444 P.3d 1; *In re C.S.,* 2019 UT App 98, 446 P.3d 109; *In re L.L.,* 2019 UT App 134, 454 P.3d 51; *In re N.S.,* 2019 UT App 151, 451 P.3d 1048; *In re C.R.C.,* 2019 UT App 153, 450 P.3d 1169; *In re L.M.,*

2019 UT App 174, 453 P.3d 651; *In re H.F.,* 2019 UT App 204, 455 P.3d 1098; *In re E.R.,* 2019 UT App 208, 457 P.3d 389;

2020
In re N.K., 2020 UT App 26, 461 P.3d 1116; *V.M. v.* DCFS, 2020 UT App 35, 461 P.3d 326; *In re A.T.,* 2020 UT App 50, 464 P.3d 173; *In re J.M.,* 2020 UT App 52, 463 P.3d 66; *In re D.M.*, 2020 UT App 59, 462 P.3d 1278; *In re J.E.G.,* 2020 UT App 94, 468 P.3d 1048; *In re J.A.M.,* 2020 UT App 103, 470 P.3d 454; *In re C.M.R.,* 2020 UT App 114, 473 P.3d 184; *In re J.R.H.,* 2020 UT App 155, 478 P.3d 56.

2021
In re C.Z., 2021 UT App 28, 484 P.3d 431; *In re A.R.F.,* 2021 UT App 31, 484 P.3d 1185; *In re A.H.,* 2021 UT App 57, 493 P.3d 81; *In re A.B.,* 2021 UT App 91, 498 P.3d 894; *In re Z.C.W.,* 2021 UT App 98, 500 P.3d 94; *In re D.D.,* 2021 UT App 100, 500 P.3d 868; *In re J.P.,* 2021 UT App 134, 502 P.3d 1247;

2022
In re K.S., 2022 UT App 68, 512 P.3d 497; *In re G.B.,* 2022 UT App 98, 516 P.3d 781; *In re A.H.,* 2022 UT App 114, 518 P.3d 993; *In re D.R.,* 2022 UT App 124, 521 P.3d 545; *In re A.G.,* 2022 UT App 126, 522 P.3d 31; *In re D.G.,* 2022 UT App 128, 522 P.3d 39; *In re S.T.,* 2022 UT App 130, 512 P.3d 887; *In re B.W.,* 2022 UT App 131, 521 P.3d 896; *In re A.K.,* 2022 UT App 148, 523 P.3d 1156; *In re K.Y.,* 2022 UT App 149, 523 P.3d 1159.

2023
In re J.E., 2023 UT App 3, 524 P.3d 1009; *In re K.T.,* 2023 UT App 5, 524 P.3d 1003; *In re K.K.,* 2023 UT App 13, 525 P.3d 519; *In re K.K.,* 2023 UT App 14, 525 P.3d 526; *In re P.J.R.,* 2023 UT App 27, -P3d-

2006 Supreme Court
In re E.H., 2006 UT 36, 137 P.3d 809; *In re Z.D.,* 2006 UT 54, 147 P.3d 401; *In re P.N.,* 2006 UT 64, 148 P.3d 928; *In re B.A.P.,* 2006 UT 68, 148 P.3d 934.

2007 Supreme Court
In re S.M., 2007 UT 21, 154 P.3d 835; *In re C.L.,* 2007 UT 51, 166 P.3d 608; *In re A.F.,* 2007 UT 69, 167 P.3d 1070; *In re B.R.,* 2007 UT 82, 171 P.3d 435.

2009 Supreme Court
In re K.F., 2009 UT 4, 201 P.3d 985; *In re A.C.M.,* 2009 UT 30, 221 P.3d 985; *In re D.A.,* 2009 UT 83; 222 P.3d 1172;

2010 Supreme Court
In re A.B., 2010 UT 55, 245 P.3d 711; *In re C.D.,* 2010 UT 66; 245 P.3d 724.

2011 Supreme Court
Jensen v. Cunningham, 2011 UT 17, 250 P.3d 465; *In re T.E.,* 2011 UT 51; 266 P.3d 739.

2012 Supreme Court
In re A.T.I.G., 2012 UT 88, 293 P.3d 276.

2013 Supreme Court
In re C.C., 2013 UT 26; 301 P.3d 1000.

2014 Supreme Court
In re M.H., 2014 UT 26; 347 P.3d 368.

2015 Supreme Court
In re A.T., 2015 UT 41; 353 P.3d 131; *In re K.C.,* 2015 UT 92; P.3d 362 1248

2017 Supreme Court
In re S.W., 2017 UT 37, 424 P.3d 7; *In re K.T.,* 2017 UT 44, 424 P.3d 91; *A.S. v. R.S.,* 2017 UT 77, 416 P.3d 465.

2018 Supreme Court
In J.B., 2018 UT 15, 417 P.3d 816.

2020 Supreme Court
In re B.T.B., 2020 UT 60, 472 P.3d 827;

2021 Supreme Court
In re G.D., 2021 UT 19, 496 P.3d 58; *In re E.R.,* 2021 UT 36, 496 P.3d 58.

2022, Supreme Court.
In re J.A.L., 2022 UT 12, 506 P.3d 606; *In re A.B.,* 2022 UT 39; 523 P.3d 168.

TAB E

RESPONSE TO IADD EMPIRICAL RESEARCH
Martha Pierce
April 2023

The research. The research presented by IADD is not new, and is well-known to the Children's Bureau ("CB") and to the National Council of Juvenile and Family Court Judges ("NCJFCJ"). Finally, the Utah Supreme Court, when presented with similar research findings, rejected the findings as a basis to ignore the provisions of ASFA, and more recently, to raise the burden of proof.

First, much of the research is based on attachment theory, a theory that has been informing child welfare policy and law since the 1973 publication of the groundbreaking trilogy of books written by a distinguished collaboration of child development experts. Joseph Goldstein is Yale Law Professor and a graduate in Career Research from the Western New England Institute for Psychoanalysis. Anna Freud, who died in 1982, was the Director of the Hampstead Child-Therapy Clinic and the prolific author of works on psychoanalysis and child development. Albert Solnit, a child psychiatrist, wrote the books when he was the Director of the Yale Child Study Center and a Yale Medical School professor of Pediatrics and Psychiatry. Finally, Sonja Goldstein, who joined in the third book, is a lawyer and lecturer at the Yale Child Study Center and Law school. The trilogy is The Best Interests of the Child: The Least Detrimental Alternative (1973); Before the Best Interests of the Child (1979); and In the Best Interests of the Child (1986).

THE UTAH SUPREME COURT HAS CONSIDERED SIMILAR RESEARCH.

Rejecting risk of disruption. In the first iteration of *In re B.R.,* the Utah Court of Appeals cited a study to support its claim that "adoption is not a panacea for children who have been removed from their parent's homes." *In re B.R.,* 2006 UT App 354, ¶ 71, 144 P.3d 231, *vacated,* 2007 UT 82, 171 P.3d 435 (*citing* Alan Rushton & Cherilyn Dance, *The Adoption of Children from Public Care: A Prospective Study of Outcome in Adolescence,* 45:7 J. Am. Acad. Child Adolesc. Psychiatry 877, 881 (2006) (citing high degree of disruption and a high degree of "substantial difficulties").[1] Among the factors associated with disruption was the

[1] Rushton & Dance studied children who were "placed late for adoption." The researchers concluded, "[l]ate adoption can be successful in that half the children

length of time a child spent in substitute care. *In re B.R.,* 2006 UT App 354 at ¶ 71 & n.16.

On certiorari, the Supreme Court rejected the idea that permanency planning decisions should consider a child's risk for disruption. *In re B.R.,* 2007 UT 82, ¶ 7 & n.5, 171 P.3d 435. "We do not think this is consistent with statute or public policy." *Id.*

Rejecting research going to trauma to support defense bid to change system. Years later, defense argued that society's "new understanding of childhood trauma" supported its claim that the burden of proof should be raised. *In re G.D.,* 2021 UT 19, ¶ 50, 491 P.3d 867. The Supreme Court was "not convinced," because "this argument cuts both ways. Although removing children from their parents is often traumatic, leaving children in a neglectful or unsafe home may be equally traumatic or even physically dangerous." *Id.* ¶ 59 & n. 35 (*citing to* Heather A. Turner et al., *Child Neglect and the Broader Context of Child Victimization*, 24 Child Maltreatment 265 (2019) (finding that experiences with neglect and violence, "both inside and outside the family context," are associated with trauma symptoms)).

Either the IADD has not read its own research, or if it has, it has repeatedly misrepresented the findings.

First, the IADD misrepresents generally findings and assumptions: *See, e.g.,* IADD Propr at 3 (suggesting that research supports adoption not beneficial, and does not lead to better outcome); *id.* 4 (suggesting that delayed permanency make no difference to child); *id.* 6 (suggesting that "relational permanency is not contingent on legal permanency"); IADD Research Doc at 1 (suggesting that present assumption is that substitute caregivers "will be able to meet all of the child's important needs"); *id.* 1 (suggesting that adoption not a predictor of stable, permanent relationships).

Next, the IADD misrepresents the specific findings of the studies. *See, e.g., id.* 2 (suggesting that Keyes (2013) study supports that adoption causes suicidality); *id.* 2 (suggesting that Strand (2002) study supports that adoption causes eating disorders); *id.* 2 (suggesting that Yoon study supports that adoption causes substance abuse disorders); *id.* 2 (suggesting that Turney and Wildeman (2016) study supports that adoption causes mental health problems); *id.* 2 (suggesting

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made good progress, but the extent of disruptions and difficulties in continuing placements gives rise to concern. Knowledge of predictors will help in devising planning pre- and postplacement support services." Rushton & Dance suggested that, with appropriate preparation and support, adoption is an option for older children.

that Simmel (2007) study supports that adoption associated with more behavior problems than non-adopted youth); *id.* 2 (suggesting that Landon (2017) study supports that adoption of American Indian associated with high level of mental health, self-injury, and suicide); *id.* 2 (concluding that adoption as a good permanency goal "is faulty" and that "adoption is traumatic" and "exposes children to poor long-term outcome").

Finally, the IADD misrepresents the conclusions in articles and guidance. *See, e.g., id.* 3 (suggesting that expedited permanency precludes relational permanency); *id.* 3 (suggesting that Children's Bureau January 5, 2021 memo recommends against adoption and expedited permanency when it does not); *id.* 3 (suggesting that termination order necessarily terminates the personal relationship); *id.* 3 (suggesting that article by Gupta-Kagan does not support expedited appeals when it explicitly does).

Based on the above, the IADD misrepresents the present system as well as their proposal. *See, e.g., id.* 3 (suggesting that present system "prioritizes 'swift legal permanency' over strong relational permanency"); *id.* 3 (suggesting that relational permanency available "only" by way of eliminating petition); *id.* 3 (suggesting that their research supports that a longer appellate process is not a factor for disruption, when that is not the case).

Now to the specifics.

The IADD misrepresents the findings from studies to support three conclusions:

(1) that adoption as a permanency goal should be discounted;

(2) that adoptions disrupt more often than guardianships; and

(3) that adoption is traumatic.

The IADD then cites to two law review articles and a Children's Bureau memo to support its conclusion that "a truncated appellate process that prioritizes "swift legal permanency" over strong relational permanency is not in the best interest of children."

1. **Discounting adoption.** The IADD concludes that "legal adoption is not the most significant predictor of a stable, permanent relationship for a child; degree of genealogical relatedness is. If our concern is truly to provide the most permanent relationship for the child, policies that promote kinship connections are the most likely to produce permanency for children, not legal adoption.:
Citing Mark F. Testa, Ph.D., The Quality of Permanence - Lasting or Binding? Subsidized Guardianship and Kinship Foster Care as Alternatives to Adoption, 12 Va. J. Soc. Pol'y & L. 499, 529 (2005).

In fact Testa's point is not to discount adoption, but to allow kin families more say in their choice between permanent custody and guardianship versus adoption and to argue against delaying private guardianships in the hopes of encouraging kin to adopt or of finding an alternative home to adopt." *Id.* 529.

2. **Adoptions disrupt more than guardianships with kin.** The IADD concluded that, "Our assumption that legal adoption leads to long-lasting permanency for children is inaccurate. Adoptions disrupt, potentially at even higher rates than permanent custody and guardianship placements with kin."
Citing Rolock & White (2016), Goodwin & Madden (2020).

   The two studies did *not* look at whether adoptions disrupt "at even higher rates than permanency custody and guardianship placements with kin." Instead, the two studies looked at factors associated with disruptions such as age at adoption, number of placements, emotional and behavioral challenges. Goodwin & Madden supported adoption subsidies, training, and ongoing support.

   Rolock & White (2016) study looked at disruption among Indiana foster children who exited to *both* adoption and to permanent custody and guardianship to conclude that "the vast majority of children did not experience post-permanency discontinuity." The authors recommended "providing adoptive and guardianship caregivers with training and support related to better understanding traumatized children, having realistic expectations, and helping children and their adoptive and guardianship caregivers problem solve challenging behaviors and build successful relationships and attachment."

3. **Adoption is traumatic.** The IADD concluded that "Our assumption that adoption is 'good for children' is faulty. Adoption is traumatic. Speeding to adoption in the name of swift permanency knowingly exposes children to poor long-term outcomes."
Citing Margaret A. Keyes, et al., (2013); Strand, et al, (2020); Yoon (2012); Turney & Wildeman (2016); Simmel, et al (2007); Landers (2017).

   The Keyes study looked at teens that had been adopted through Minnesota adoption agencies. Three quarters of the teens had been born abroad, primarily from Korea adoption agencies. The study did not determine why

the adopted teens were likely to attempt suicide, but posited that genetics and early trauma were contributing factors. The authors noted that other mediating factors, not considered by the study could include heritable risk, prenatal factors, factors unique to relinquishment by a biological parent, early trauma, weak attachment to adoptive families, and loss of cultural identity and ethnic discrimination.

The Strand study considered Swedish adoptees compared with Swedish nonadoptees to conclude that the adoptees had a higher level of eating disorders. The authors posited that "biological, environmental, and societal factors" could explain the observed differences," "but they remain primarily theoretical."

The Yoon study notes that the "large majority of adopted children are well adjusted," and that "placement in an adoptive family most likely results in better childhood experience, health care, family stability, and family relationships." "Adoption has been associated with increased cognitive development and cognitive competence among adopted children." Even so, adoptees were at higher risk for substance use disorder. The point of the study was to provide education, help, and support for adoptees and their families.

The Turney and Wildeman study observed that children in foster care "are in poor mental and physical health relative to children in the general population." "Children in foster care are a vulnerable population in poor health, partially as a result of their early life circumstances."

The Simmel study compared adopted foster children with adopted non-foster children. "A striking number of the foster youth displayed behavior problems."

The Landers study "suggests that it doesn't matter if an adoptees is AI or White, adoptees in general experience depression." The authors posited that AI adoptees were vulnerable due to historical trauma. "[O]ur study did not determine the causes of increased mental health problems." "[T]he findings cannot be generalized to all adoptees."

4. The IADD concludes that the new research suggests that relational permanency and legal permanency are at odds and that a prolonged appellate process is essential to ensuring relational permanency.

   In fact, the research supports the need for ongoing training and support for adoptive families.

   The Children's Bureau IM, cited by the IADD, emphasized that "adoption is a critically important permanency option for children in foster care who are unable to be reunified with their parents." "Adoption may occur with a child's relatives or with unrelated resource parents. In either case, adoption should be viewed as an opportunity to expand a child's experience of family."

   Gupta-Kagan's article argued for guardianship subsidies. He noted that the "inability to resolve kinship placement issues early leads to difficult permanency litigation."

TAB F

Expedited appeals

> "*The standard appellate process is slow. For a child in foster care, a lengthy appellate process can often mean months or years in limbo, without hope of achieving permanence, to the obvious detriment of the child involved.*"

Nat'l Council of Juvenile & Family Court Judges, Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases 38 (2000).

Survive challenges

Commission's criticisms

THE COMMISSION'S PROPOSAL IS INCONSISTENT WITH CIP CORE PRINCIPLES AND CASE LAW.

The Utah Indigent Defense Commission seeks to eliminate the petition requirement, arguing that doing so would "create equity" between child welfare appeals and conventional appeals. The Commission argues that the petition creates an unnecessary and duplicative level of briefing, particularly given that more and more petitions are being referred for full briefing.

The purpose of this memorandum is to discuss how the current rules have served Utah Children and Families since 2004 and to encourage the Rules Committee to continue to support the expedited rules. This memo discusses the following:

The policy of Utah's child welfare scheme as articulated in case law and in Utah's Core Principles and Guiding Practices for a Fully Integrated Child-Welfare System [hereinafter CIP Core Principles] (August 2020), which has been endorsed by Parental Defense Alliance of Utah;

How Utah's expedited system was developed by a collaboration of the various stakeholders;
A review of the current rules;

How the rules have survived constitutional challenges.

How the Commission's criticisms of the rules do not support eliminating the petition requirement.

Then the memo will address the Commission's criticisms of the rules.

THE POLICY OF UTAH'S CHILD WELFARE SCHEME SUPPORTS RETAINING THE PETITION REQUIREMENT.

The policy of Utah's child welfare scheme has been articulated in case law and in Utah's Core Principles and Guiding Practices for a Fully Integrated Child-Welfare System [hereinafter CIP Core Principles] (August 2020). Available at https://legacy.utcourts.gov/courts/juv/cip/summit/2020/docs/Introduction%20of%20Utah's%20Child-Welfare%20Core%20Principles%20and% 20Guiding% 20Practices.pdf

First, the case law. The Utah Supreme Court observed that the policy underlying child welfare appeals is to "provid[e] children and parents with swifter resolution and permanency in their family relations." *In re B.A.P.,* 2006 UT 68, ¶ 20, 148 P.3d 934; *see also In re M.H.,* 2104 UT 26, ¶ 44, 347 P.3d 368 (Nehring, J., concurring) (policy of child welfare statutory scheme is "one of swift permanency.").

Now, the CIP Core Principles. The CIP Core Principles are supported by the Board of Juvenile Court Judges, the Juvenile Court Improvement Program, the Office of Guardian ad Litem and Court Appointed Special Advocates, the Department of Human Services, the Utah Attorney General's Office, Child Protection Division, the Parental Defense Alliance of Utah, the Division of Child and Family Services, and Lokken & Associates, P.C. CIP Core Principles at ii.

Moreover, the CIP itself begins with the Utah Supreme Court, which receives CIP grants from the Children's Bureau to implement recommendations to enhance the court's role in achieving timely permanency for children. 42 U.S.C. § 629h. The purpose of the CIP is to "implement improvements" to "provide for the safety, well-being, and permanence of children in foster care in a *timely* and complete manner, as set forth in the Adoption and Safe Families Act of 1997." *Id.* 42 U.S.C. 629h(a)(2)(A).

Timely permanency. The CIP Core Principles "are centered on the belief that child safety, well-being, and *timely permanency* are shared responsibilities of those within our child-welfare system." The goal is to reduce "the length of time any family has contact with the child-welfare system." *Id.* at 1. One principle is that services and court processes should be trauma-informed. *Id.* at 3. One critical judicial determination to prevent further trauma to children and families is to make reasonable efforts to timely finalize the permanency plan. *Id.* at 4.

The expedited rules, particularly the petition requirement, support timely permanency by requiring practitioners and the appellate system to engage early

in a case to determine if a particular case can be resolved at the petition level. And, where practitioners deliver early transcriptions or early petitions, cases move along even more quickly as each filing triggers the timeframe for the subsequent event or filing.

Family engagement. Another core principle is family engagement. *Id.* at 4. "[T]he decision-making and placing process is family-driven." *Id.* "We also need to provide timelines to help them understand what is likely to happen and what they need to do." *Id.* The expedited rules require parents to exhibit buy-in to the appeal by staying contact in contact and by signing the notice of appeal. The appeal is to serve the parent's needs, not those of counsel. And, if an appeal results in a reversal, the parent will be more prepared to assume parental duties and reunification will be more likely. In contrast, under the old system, a reversal on appeal was not always likely to result in reunification. For instance, in *In re E.,* 578 P.2d 831 (Utah 1978) a mother obtained a reversal of a termination order. However, so much time had elapsed that, by the time she sought restoration of custody, she had been separated from the children for four years, the caseworker had changed, her first attorney had died, her second attorney had withdrawn, and the law had changed. *In re Orgill,* 636 P.3d 1075, 1076 (Utah (1981).

Front loading service delivery. The concept of front-loading at the trial level means that practitioners make efforts to get parents involved in services as soon as possible. CIP Core Principles at 6. "This 'front-loading' approach is also aimed at generating early momentum in a case. *Id.* Front-loading for the courts includes a process to encourage early permanency. *Id.*

Utah's expedited rules requires all practitioners, juvenile court clerks, transcriptionists, appellate attorneys, appellate court staff, and appellate judges to put in their best efforts up front and to provide early, intensive advocacy. *Id.*

Harm of removal. The Core Principles recognize the harm of the initial removal. *Id.* at 7. In cases where a termination has occurred and where a child is in an adoptive home, an appeal places the child at risk of a second removal. In a reversal makes a second removal necessary, it should be done as early as possible to reduce the inevitable trauma.

Recruiting, Training, & Retaining High-Quality Professionals. *Id.* at 12. High-quality representation "is one of the most important systemic safeguards to avoid . . . overly long stays in foster care and trauma to parents and children. *Id.* at 12. "AAGs, GALs, and parental defense attorneys need to be well-trained because the child-welfare court system works best when all parties are represented by high-quality, well-trained lawyers." *Id.*

The demands of the expedited rules require high-qualify professionals to put in their best efforts early in the case to obtain timely results.

The expedited rules require high-quality work of the appellate judiciary. The judiciary is expected to engage with the record and with the petition to determine whether a case is appropriate for an expedited disposition.[1]

In short, the model should not be equity with conventional appeals. The model for child welfare appeals should be based on CIP core principles.

HISTORY OF UTAH'S EXPEDITED RULES

Utah's expedited system was developed by a collaboration of the various stakeholders.

While the enactment of the Adoption and Safe Families Act (ASFA) did much to expedite permanency at the trial level, it became apparent that the policy of swift permanency should be applied to child welfare appeals. Thus, the national focus turned to how states could expedite child welfare appeals. *See* The National Council of Juvenile and Family Court Judges (NJCFCJ), *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases,* 2000, 40 (recommending maximum 150 days from juvenile court ruling to appellate finality); National Center for State Courts, Presentation of Survey Results, *Expediting Dependency Appeals* (2001); Expediting Dependency Appeals: Strategies to Reduce Delay By Ann L. Keith and Carol R. Flango, The National Center for State Courts (2002); "Can We Go Home Now?": Expediting Adoption and Termination of Parental Rights Appeals in Ohio State Courts, 4 J. App. Prac. & Process 257 (2002); Jessica K. Heldman, Comment, Court Delay and the Waiting Child, 40 San Diego L. Rev. 1001 (2003) (discussing why lengthy court proceedings have such a profound negative impact on young children); Laura Grzetic Eibsen & Toni J. Gray, *Dependency and Neglect Appeals Under C.A.R. 3.4*, Colo. Law., October 2007, at 55; Judge Gayle Nelson Vogel, *Expediting Dependency Appeals*, 26 Child. L. Prac. 139 (2007).

[1] One argument for eliminating the petition requirement is that the court of appeals is requiring more child welfare appeals to full briefing. This trend may be short lived. Two reasons for this trend could be then changeover in the appellate bench and the uncertainty going to the *strictly necessary* issue. Both issues should be resolved in the near future as the appellate bench stabilizes and as the Utah Supreme Court provides more guidance on *strictly necessary*.

Utah's Court Improvement Project ("CIP") considered how to expedite child welfare appeals. A subcommittee was formed consisting of representatives from the major stakeholders: parental defense, the attorney general's office, the division, the Office of Guardian ad Litem, and representatives from the juvenile and appellate courts. The subcommittee began by surveying our court systems of expedited child welfare appeals, including Ohio, Colorado, and Iowa. After presenting its findings to the general committee, the CIP determine to explore the Iowa model.

The CIP convened a summit that included stakeholders from all parts of the state and from all aspects of child welfare: parental defense, the Tribes, the juvenile court, the appellate court, the division, the Office of Attorney General, and the Office of Guardian ad Litem, to name a few. These representatives were invited to a summit at the Utah State Bar's Law and Justice Center. Judge Vogel flew in from Iowa to help moderate the many group discussions. Everyone agreed on this fundamental and driving principle: **Once the juvenile court hearing has concluded and the record has closed, both parents and children would benefit from a more timely appellate decision**.

Throughout the day, the attendants were grouped and regrouped sometimes in interest groups and sometimes in cross-interest groups. Throughout the day, sheets of newsprints were posted on the walls to reflect preferences, concerns, and proposals regarding whether the Iowa model could be adapted for use in Utah.

The conference ended with a series of recommendations to the rules and to the code to expedite Utah's child welfare appellate system.

THE 2004 RULES.

The Utah Supreme Court determined that the expedited rules did not violate a parent's rights under the state and federal constitution. *In re B.A.P.,* 2006 UT 68. The Opinion outlined other salient features of the 2004 version of Utah's expedited rules:

> ¶ 8 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.

In re B.A.P., 2006 UT 68, ¶¶ 8-10, 148 P.3d 934.

The 2004 rules required that trial counsel prepare the petition. Even though the transcripts were not yet available, audio tapes were. And, trial counsel would have been "familiar with the legal file, trial exhibits, trial testimony, and court rulings relevant to the appeal."

THE CURRENT RULES

The rules have changed over time. The notice must will be filed within 15 days of the entry of the final order. Utah R. App. P. 52(a). The notice must be signed by appellant's counsel and b appellant (unless the appellant is a minor child or state agency). *Id.* 53(b). The Appellant must request a transcripts without four days of the filing of the notice of appeal. *Id.* 54(a).

The 15-day period to file the petition is now timed from "transmission of the record on appeal." *Id.* 55(a). Where the parent has appointed counsel, the petition is prepared by qualified appellate counsel. *Id.* 55(b). The 15-page limit has bee replaced by a 5,000 word limit. *Id.* 55(c).

The format of the petition remains requires:

(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.

Id. 55(d).

Responses are due within 15 days after service of the petition. *Id.* 56(a). The cases can move along every more quickly if one filing occurs before its deadline as each filing then triggers the timeframe for the subsequent event or filing.

"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." *Id.* 58(a). The reviewing process is not streamlined. The reviewing court's ability to thoroughly appraise the legality of the termination order should not be compromised. The idea is that child welfare appeals would be "accorded the highest priority at all stages of the appellate process." *In re T.R.*, 705 N.W.2d 6, 12 (Iowa 2005).

The expedited rules govern continuances. A party seeking a continuance to file a jurisdictional notice of appeal must show "good cause" or excusable neglect," and must do so prior to the expiration of the time. Utah R. App. P. 59(a).

A motion for a continuance at the appellate level complies with Rule 22, which favors stipulations for the first extension. Good cause can include other pending litigation. Significantly, the moving party must describe why the pending litigation "should take precedence over the subject appeal." *Id.* 22. If the issue is the complexity of the appeal, the moving party should state why the appeal is so complex. *See In re C.M.,* 652 N.W.2d at 211 (stating delays in termination of parental rights cases are "antagonistic" to the child's best interest).

At the trial level, the person seeking a continuance has the burden to show that the continuance will not adversely affect the interest of the child or cause a hearing to be held later than statutory child welfare timelines. Utah R. Juv. P. 54(c). I suggest that continuances at the appellate level include the same policies.

CRITICISMS AND CONSTITUTIONAL CHALLENGES

First, the constitutional challenges. The Utah Supreme Court held that the expedited rules did not violate either state or federal constitutional rights. *In re B.A.P.,* 2006 UT 68, 148 P.3d 934.

The **Utah Constitution** guarantees a right to appeal. Utah Const. art. VIII, § 5. And, the federal constitution provides for due process and equal protection rights. *Smith v. Robbins,* 528 U.S. 259, 270 & n. 5, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000).

The Supreme Court held that the expedited rules did not violate the Utah's constitution right to a meaningful appeal. *In re B.A.P.,* 2006 UT 68 at ¶ 11. The page-limit did not violate that right. *Id.* ¶ 13 ("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. . . . the page limit is just a matter of convenience and uniformity; it has nothing to do with limiting the scope of the appeal.").

Nor did the unavailability of **transcripts** (but not audio recordings) limit the right to a meaningful appeal. *Id.* ¶ 14 ("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.).

Nor did the **condensed time frames** limit the right to a meaningful appeal. *Id.* ¶ 15 ("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.").

Nor did the court of appeals' deciding the case at the **petition** level the right to a meaningful appeal. *Id.* ¶ 16 ("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.").

Nor did the **combination of rules** limit the right to a meaningful appeal. *Id.* ¶ 19 ("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.").

And, the claim that the rules are **burdensome** to practitioners is unavailing, given the "policy of providing children and parents with swift

resolution and permanency in their family relations." *Id.* ¶ 20 ("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."). *See also* Judge Gayle Nelson Vogel, *Expediting Dependency Appeals*, 26 Child. L. Prac. 139, 140–41 (2007).

While Utah appellate courts have not yet entertained an **equal protection** claim, Iowa has. *See In re C.M., Jr.*, 652 N.W.2d 204 (Iowa 2002) (Iowa's expedited system did not violate mother's equal protection rights).

CURRRENT CRITIQUES

Trend of referring more petitions for full briefing. Recently, more cases have been set for traditional briefing. This trend may be due to two factors, both of which may be resolved in the near future. The first factor is that the court of appeals has undergone a dramatic change in personnel. This may have caused the court of appeals to be more cautious about resolving appeals at the petition stage. Second, *strictly necessary,* currently the most frequently-briefed issue, is the subject of confusing and at times contradictory case law. This factor may be resolved at the Utah Supreme Court entertains certiorari petitions on the issue.

Claim that petition is onerous and duplicative. The Utah Supreme Court recognized that "the expedited procedures outlined in the rules impose certain burdens on appellants to meet shorter deadlines and page limits." *In re B.A.P.,* 2006 UT 68 at ¶ 20. However, the Supreme Court found that those burdens were justified by "the policy of providing children and parents with swifter resolution and permanency in their family relations." *Id.*

The claim that the petition is requires duplicative efforts does not make sense in practice. Attorneys who have prepared a well-written, well-researched petition will find, if they are required to do full briefing, that they have already done the lion's share of the work. Often a full-briefing order requires re-formatting the original petition, and including all the portions that were edited out to achieve the 5000 word-limit.

Equity with conventional appeals. The Commission seeks to eliminate the petition requirement, arguing that doing so would "create equity" between child welfare appeals and conventional appeals. The goal should not be "equity" with conventional appeals that involve money damages or property rights. The better standards are those found in the CIP Core Principles that encourage timely decision-making so that a win on appeal occurs at a time when it actually benefits the parent.

CONCLUSION

The Committee should recognize that eliminating the petition requirement would effectively dismantle the child welfare expedited appellate system.

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Utah R. Juv. P. 52.

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42 U.S.C. § 5106a

42 U.S.C. § 670, *et seq*.

42 U.S.C. § 629h.

TAB G

Martha Pierce
April 2024

The Supreme Court promulgated the rules for reasons that remain today.

The Supreme Court tasked the Court Improvement Committee to consider ways to expedite child welfare appeals, consistent with its mission "to implement improvements the highest state courts deem necessary as a result of the assessments, including to provide for the safety, well-being, and permanency of children in foster care in a *timely and complete* manner, as set forth in the Adoption and Safety Families Act of 1997 (Public Law 105-89)." 42 U.S.C. § 629h(a)(2)(A). The Supreme Court continues to manage this grant to this day.

Purpose of rules.

> Rules were designed to "expedite child welfare proceedings." *Id.* ¶ 8.
>
> Utah rules "promote Utah's legitimate interest in providing, without undue delay, a stable and permanent adoptive home to children who might otherwise linger indefinitely in foster care." *In re Adoption of A.B.*, 2010 UT 55, ¶ 37, 245 P.3d 711.
>
> "[The] overarching purpose [of Utah's child welfare laws] is to provide stability and permanency for abused and neglected children, and to end the 'legal limbo' of state custody as quickly as possible." *Id.* ¶ 37 & n.45.

In re B.A.P. addresses most of IADD's claims.

> **IADD claim:** The rules deny a meaningful right to appeal.
>
> **Supreme Court response:** "[A]s 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." *Id.* ¶ 19.
>
> +++
>
> **IADD claim:** The rules preclude us from making an adequate argument.

Supreme Court response: "[R]ule 55 in no way forbids the inclusion of an argument, and in fact, as Utah courts have interpreted that rule, it requires one. . . . Because rule 58 makes 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." *Id.* ¶ 12. "[T]he page limit is just a matter of convenience and uniformity; it has nothing to do with limiting the scope of the appeal." *Id.* ¶ 13. "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." *Id.* ¶ 20.

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IADD claim: The time frame is unworkable.

Supreme Court response: "We are not persuaded that a fifteen-day limit provides inadequate time to file a petition." *Id.* ¶ 15.

IADD claim: Deciding a case on its merits without an unfettered presentation of legal argument is equivalent to refusing to fully hear the case.

Supreme Court response: "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." *Id.* ¶ 16. "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." *Id.* ¶ 17.

+++

IADD claim: The rules are burdensome.

Supreme Court response: "[W]e 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." *Id.* ¶ 20.

+++

IADD claim: we need more guidance.

Supreme Court response: "The decision to treat a particular decision as an opinion or as a memorandum decision is one made by the judges of the court of appeals." *Grand Cnty v. Rogers*, 2002 UT 25, ¶ 12, 44 P.3d 734. The court of appeals' determination to treat a particular decision as an issue based on whether the underlying claim presents a novel issue of law. Id. ¶ 7.

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TAB H

August 2020

Utah's Core Principles and Guiding Practices for a Fully Integrated Child-Welfare System

A Fully Integrated Child-Welfare System

As Utah's child-welfare and legal communities work toward a fully integrated child-welfare system that is focused on best practices, we are united in our commitment to protecting children and strengthening families. As such, we have come together to develop the following core principles that reflect our overarching goals of child safety, well-being, and permanency.

WE RECOGNIZE THAT IT IS OUR RESPONSIBILITY TO ENSURE THE FOLLOWING:

Core principles:

1. Our interventions preserve and create safe family and community connections in ways that minimize loss, harm, and disruption.
2. Children and families receive early, intensive family engagement, advocacy, and access to services and supports.
3. All participants are empowered and valued within a trauma-informed environment that amplifies family voice.
4. Children and families are served by highly-skilled professionals, including the judiciary, attorneys, child-welfare staff, foster parents, and other community partners.
5. All participants experience hearings and judicial orders that are consistent, of high quality, embody best practices, and afford all participants due process of law.
6. All participants are committed to providing families with an experience that is safety-driven, compassionate, transparent, and forward-moving.
7. Our interventions in the lives of children and families will be effective and individualized regardless of race, ethnicity, religion, cultural heritage, country of origin, gender, sexual orientation, or socioeconomic status.

These core principles embody a collaborative, cross-system, statewide child-welfare transformation, supported by the following Utah child-welfare professionals:

- Board of Juvenile Court Judges
- Juvenile Court Improvement Program
- Office of Guardian ad Litem and Court Appointed Special Advocates
- Department of Human Services
- Utah Attorney General's Office, Child Protection Division
- Parental Defense Alliance of Utah
- Division of Child and Family Services
- Lokken & Associates, P.C.

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Introduction

These guiding practices represent how to implement the established core principles for Utah's child-welfare system. As we developed the core principles, it became apparent that in order for these principles to transform and be reflected in our child-welfare system, they require practical, action-based steps and implementation strategies to ensure that our daily child-welfare practices promote and reflect these principles.

They should guide the overall operation of our child-welfare system and be reflected in the delivery of all services and interventions to children and families. They are centered on the belief that child safety, well-being, and timely permanency are shared responsibilities of those within our child-welfare system. The goal is to strengthen families and increase child safety and well-being while reducing the number of children in foster care and the length of time any family has contact with the child-welfare system.

It is intended that these guiding practices will be updated to ensure their content reflects current best practices and supports our work towards a fully integrated child-welfare system. The Court Improvement Program (CIP) Steering Committee comprised of representatives from the Juvenile Court, Division of Child and Family Services, Parental Defense Alliance of Utah, Utah Attorney General's Office Child Protection Division, and Office of Guardian ad Litem and CASA will have a process for reviewing and updating these guiding practices at least once a year. If you have any comments or feedback to these guiding practices, please email Bridget M. Koza, CIP Coordinator, at ***cip@utcourts.gov***, so that the CIP Steering Committee can consider it during their review process.

Equity and Cultural Humility

The clients and professionals within our child-welfare system are a diverse group of people, each with their own set of values and expectations. It is well-documented that certain racial and ethnic minorities are overrepresented in the child-welfare system, including Black and Native American families, and that racial disparities occur at various decision points throughout the child-welfare process.

Regardless of your role in the child-welfare system, whether attorney, judge, social worker, or other professional it is important to address your own and others' biases to ensure they do not drive decisions in child-welfare cases. The first step to reducing or preventing implicit bias in our decision-making process is to acknowledge and explore it. When we learn about our own biases, we can develop strategies, skills, and tools for dealing with them when they emerge.
The practice of cultural humility can help address biases because it is a process of self-reflection and discovery that challenges individuals to not only learn about other people's culture, but to critically examine our own beliefs and cultural identities. It is important to avoid imposing our own personal values upon families, and take into account how racial, cultural, social, economic, or any other differences may affect our relationships with children and families.

The Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care Initiative was a partnership between the National Council of Juvenile and Family Court Judges and Casey Family Programs to reduce racial disproportionality and disparities in the child-welfare court system. A bench card was created for judges to use at shelter hearings. The bench card includes reflection questions that encourage the judge to pause and think about his or her own decision-making process. Here are the reflection questions — though they are written for judges to consider, everyone in the child-welfare system can use them to reflect upon any conclusions about or decisions made with regards to a family:

- What assumptions have I made about the cultural identity, genders, and background of this family?
- What is my understanding of this family's unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court's past contact and involvement with this family influenced (or how might it influence) my decision-making process and findings?
- What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?
- Am I convinced that reasonable efforts (or active efforts in Indian Child Welfare Act (ICWA) cases) have been made in an individualized way to match the needs of the family?
- Am I considering relatives as preferred placement options as long as they can protect the child and support the permanency plan?
- Have I placed the child in foster care as a last resort?
- How have I integrated the parents, children, and family members into the hearing process in a way that ensures they have had the opportunity to be heard, respected, and valued? Have I offered the family and children the chance to respond to each of the questions from their perspective?
- Is this family receiving the same level and tailoring of services as other families?
- Is the parents' uncooperative or negative behavior rationally related to the involvement of the Agency and/or the Court?

Trauma-Informed Services

Even before involvement with the child-welfare system, many parents and children have experienced toxic stress (or trauma).[9] Addressing trauma while avoiding the infliction of further trauma must be the primary focus of our efforts to help the families we serve.[10]

Experiencing maltreatment and being removed from their homes are traumatic experiences for children.[11] These experiences can cause children to develop feelings of worry and confusion as well as a loss of identity, self-esteem, and a sense of belonging.[12] This can also lead to body dysregulation, difficulty managing emotions, cognitive impairment, and multiple long-term health consequences.[13] These experiences do not have to dictate a child's future. When negative early experiences occur concurrently with protective factors, there is an opportunity to promote resilience.[14] The following are protective factors:

- Support from family, friends, people at school, and members of the community;
- A sense of safety at home, at school, and in the community;
- High self-esteem and positive sense of self-worth;
- Self-efficacy;
- Spiritual or cultural beliefs, goals, or dreams for the future that provide a sense of meaning to a child's life;
- A talent or skill in a particular area (e.g., excelling in school or in a sport); and
- Coping skills that can be applied to varying situations.[15]

Also, the children who end up doing well are most often those who have at least one stable and responsive relationship with a parent, caregiver, or other adult.[16] These relationships provide the support and protection to children's lives that both buffer them from developmental disruptions and help build key skills.[17] These include the ability to plan, regulate behavior, and adapt to changing circumstances.[18] This enables children to respond to adversity and thrive.[19]

Also, a parent's own trauma history — either past or present experiences — can affect not only their ability to care for their children but also their ability to work effectively with their caseworker and respond to the requirements of the court.[20] We need to be aware of potential trauma 'icebergs' that may be hidden beneath the surface of parents' behavior.[21] Knowing how trauma can manifest in difficult behaviors can helps us strategize about how best to engage parents in case planning and meeting case goals.[22] *See Attachment A* for a chart on how trauma can affect a parent's thinking and behavior.

Trauma-Informed Services *Continued*

It is also important to be aware of historical trauma, a form of intergenerational trauma experienced by a specific cultural, racial, or ethnic group.[23] It is related to major events that oppressed a particular group of people, e.g., the violent colonization of Native Americans, slavery, genocide, and forced migration.[24] Descendants, who have not directly experienced a traumatic event, can still exhibit the signs and symptoms of trauma, such as depression, low self-esteem, anger, and self-destructive behavior.[25]

As attorneys, it's important to understand how trauma may affect a client's behavior so you can modify your approach with them, prepare them for court hearings in ways that reduces the likelihood of a traumatic response, and advocate for them in ways that empowers them and helps build a sense of safety and resiliency.[26]

For judges, courtrooms should be safe spaces that are used to promote healing for children and families through positive interactions. Specific ways to engage parents and children in their hearings to reduce stress and help them feel safe include:

- Speaking directly to the party;
- Addressing the party by name;
- Treating everyone in the courtroom with respect;
- Giving parties an opportunity to be heard; and
- Allowing parties to make choices, which could be as simple as asking children and parents what time of day they would prefer to come to court.[27]

Also, there are two critical judicial determinations that can be tools to prevent further trauma to children and families: reasonable efforts to prevent removal and reasonable efforts to finalize the permanency plan.[28]

Family Engagement

When a family becomes involved in our child-welfare system, it can be difficult for a parent to fully trust the caseworker, a problem further compounded depending on the parent's understanding of how the child-welfare system works.[29] A lack of trust and familiarity can create significant barriers to engagement and impede elements of case planning, including the identification of a family's strengths, needs, and resources.[30]

We must ensure the decision-making and planning process is family-driven with children and families as an integral part. Effective family engagement is at the heart of child welfare.[31] The voices of parents, children, and other caregivers will be centered and elevated at each stage of the child-welfare process and proceedings. We will actively engage families early and with a sense of urgency so they are supported and empowered to meet their children's safety and well-being needs, and their own, through empathetic listening, compassion, and respect.[32]

Positive parental, child, and family engagement are critical to successful outcomes.[33] When families are included in the decision-making and planning process, we enhance the fit between needs and services, and increase the likelihood of family participation in services and case plan completion.[34] We succeed when we encourage and empower families to be their own champions, and work towards family-driven case goals based on their specific strengths, resources, and needs.[35]

One strategy to promote family engagement is to provide parents with the ability to choose from a defined set of options rather than imposing a single option.[36] We also need to provide timelines to help them understand what is likely to happen and what they need to do.[37] These both help to engage families by conveying respect.[38] Another strategy is to ensure that case-planning meetings are arranged around the family's availability and are utilized to engage the family in case-planning discussions.[39]

Supports & Services

We will take a family-centered approach when providing services and support. Each family is both unique and diverse. We must tailor services to their strengths and needs by respecting their economic circumstances, beliefs, culture, values, practices, and traditions. This sends a clear message about the family's value by reassuring them that they know their own challenges and needs best. Providing tailored services improves our child-welfare system's ability to respond to the actual conditions that contributed to the family coming to the system's attention.

Service receipt can affect reunification (if it is the permanency goal), so it is important that we all ensure that families' needs are correctly identified and addressed.[40] In one study, more than one-third of parents seeking to reunify were ordered to receive services for problems they were not identified as having.[41] This can overburden parents already dealing with complex issues and diminish their ability to improve family functioning, which could lead to extended time in care for children.[42]

We also seek to enhance the family's support network so there are enough resources in place to deal with the underlying causes of the maltreatment that brought the family to the attention of the child-welfare system.[43] We can do this by seeking and strengthening informal and formal community supports and resources so that we build community around vulnerable families and increase their safety capacity.

Front-Loading Service Delivery

Because the law does not give parents a long time to complete services required for reunification, parents need to get involved in services as soon as possible.[44] The longer children remain in out-of-home care, the less likely it is that they will be reunified with one or both parents.[45] Early and intensive permanency and service planning and implementation are critical to promoting expeditious reunification.[46] This "front-loading" approach is also aimed at generating early momentum in a case.[47] When we focus on the first 60 days post-removal, it creates an appropriate sense of urgency, capitalizes on parties' optimism at the beginning of the case, and sets the direction towards reunification from the outset.[48]

The use of early family engagement and assessments is associated with many positive family outcomes, including higher levels of reunification, reduced re-abuse, increased kinship placements, and increased placement stability.[49] Also, parents' early cooperation and involvement in the development of a service plan is predictive of better outcomes because it emphasizes developing a positive relationship with the parent, it focuses on strengths and needs that are most relevant to the case, and it involves the parents in selecting the targets for service plans.[50]

"Front-loading" for the courts includes establishing a process that encourages cooperation and problem-solving from the outset of the court proceeding.[51] Research shows that front-loading procedures help to increase the quality of safety and case planning, reduce the length of time children remain in temporary placements, and ensure hearings themselves are more substantive and meaningful.[52]

For attorneys, using the Cornerstone Advocacy model (in conjunction with preparing for trial) during the first 60 days of a case can help promote reunification.[53] Cornerstone Advocacy is a practice approach, created by Center for Family Representation (CFR) in 2004, that devotes intense advocacy, when children are in foster care, around:

- Placement – options that support a child's connection to family and community;
- Family time – arrangements where families spend as much time as possible with as little supervision as is necessary, out of the agency whenever possible, and doing activities that mimic family life;
- Service planning – creating plans that are not duplicative or burdensome and that truly build on a family's strengths; and
- Teaming – working together at Child and Family Team Meetings (CFTM) to keep the case progressing.[54]

The CFR wrote an article detailing the small adjustments an attorney can make, even with a busy caseload, to incorporate the Cornerstone Advocacy model into his or her practice along with specific advocacy strategies and timeframes for pursuing them.[55] Families whose attorneys used the Cornerstone Advocacy model reunited more frequently and had fewer instances of re-entry than attorneys who did not.[56]

Sequenced Service Delivery

One way to help parents and children is to change how we develop case plans so that we focus on incremental steps and sequenced service delivery.[57] The capacity to make plans, follow them, evaluate progress, and make necessary modifications requires self-regulation and executive function.[58] Parents and children involved in the child-welfare system may need help developing and practicing these skills due to experienced adversity and trauma.[59] We need to ensure that service plans are broken down into steps and supported by reminders and feedback, especially positive feedback to reinforce progress. This can both encourage short-term success and help to develop skills over the long term.[60]

We should also limit the number of services and activities families are expected to participate in at one time.[61] A family's needs may require a sequence of services over time, rather than participation in numerous programs simultaneously.[62] When we simplify and streamline processes, we reduce the demands on a parent and child's limited and easily-depleted attention resources.[63] During the planning process it is also important to reduce any environmental stressors (such as dangerous housing conditions, urgent unpaid bills, or insufficient food) by addressing those basic needs.[64] When we reduce the immediate burden of stress upon parents it allows them to focus on long-term priorities, such as building the skills needed to care effectively for their children. [65]

Harm of Removal

While we recognize that removal may be necessary in some cases, it carries significant risks to the child and family in *all* cases.[66] Removing children from the custody of their parents harms them emotionally, developmentally, and socially.[67] Even when removed from dangerous environments, children suffer from loss and ambiguity.[68] It is a life-altering event for all those involved.[69] Studies have found better outcomes for similarly situated children living at home than those entering foster care.[70] It is the child-welfare system's responsibility to keep children in the home whenever safely possible, and remove only when absolutely necessary.[71]

Reasonable efforts require first focusing on preserving and strengthening families and on preventing the need to place children outside of their homes.[72] To that end, when we assess safety, we need to avoid confusing it with risk.[73] This involves asking whether the danger can be removed, rather than the child.[74] Because determining whether a child is safe and whether they should be removed from the situation are two separate questions.[75] An out-of-home safety plan — i.e. a placement with a relative, foster home, or other court-ordered placement — becomes necessary when an in-home safety plan is not sufficient, feasible, or sustainable.[76] Judges often are in the best position to provide immediate feedback on removal decisions on a case-by-case basis through careful vetting of removal petitions.[77]

Safety-Driven Decision-Making

Once a family becomes involved in our child-welfare system, safety should drive our decision-making. The most important question in many child-welfare cases is not whether a parent "neglected" his or her child, it is whether and when the child can safely live at home with his parents.[78] Because at the end of the day, parents do not need to be perfect, but they must be safe.[79]

Safety planning is a shared responsibility, but ultimately the court must make critical safety decisions, such as when to remove a child and when to return a child home.[80] The American Bar Association's Child Safety Guide for Judges and Attorneys provides clear standards for judicial decision-making regarding child safety.[81]

Safety is fundamentally a function of identifying threats, determining the child's vulnerability to those threats, and then balancing the threats to which the child is vulnerable against the available protective measures.[82] Good decisions about safety require extensive information about the family, including: the extent of maltreatment; circumstances contributing to the maltreatment; the child's vulnerabilities and strengths; the attitudes, behavior, and condition of parents; and how parents care for and discipline the child.[83]

Safety-driven decision-making demands that, at every stage of the child-welfare process, we are continually asking and answering the following questions:

- If the child is maintained in their own home — "What would it take for the family to be safely independent of formal child-welfare services?"
- If the child is out of the home and the permanency plan is reunification — "What would it take to safely return the child home today?"
    - Also, ask "would you remove the child today?" If you wouldn't, then it is likely that the child can return home with services.
    - We ask these questions because children should not remain in foster care until the case plan is completed.[84] Once it is safe, they should return home.[85]
    - Also, assessing child safety is relevant not only at the point of initial removal, but also when developing and approving an effective case plan and when determining whether a child can be reunified with parents or should achieve a different form of permanency (e.g. adoption or guardianship).[86]
- If a child has a permanency plan other than reunification — "What would it take to safely place this child in a stable and permanent home?

Answering these questions requires us regularly to assess the safety of the family and home where the child would return, and have frequent, quality family time between parents and children to gather information to inform safety assessments.[87] We also need to utilize appropriate safety plans and safety-related services that allow for timely reunification.[88]

Reunification-focused

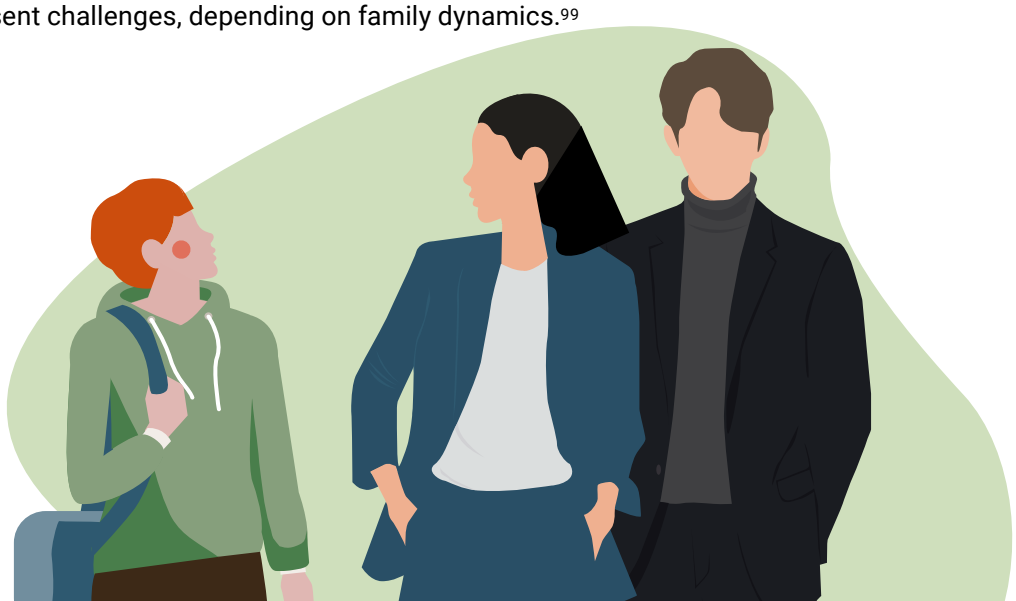
If a child has been removed from the care of his or her parents, reunification with the parents is the preferred initial permanency goal, except in cases where aggravated circumstances exist. [89] Most parents want to be good parents and have the strength and capacity, when adequately supported by family or other social supports, to care for their children and to keep them safe.[90] When children cannot be reunified with their parents, permanency with extended family rather than strangers should be prioritized.[91]

Foster Care is a Support for the Entire Family

We want to change the foster-care experience for children and parents so it strengthens families, supports healing, and promotes timely reunification where appropriate.[92] Our child-welfare system is a family-support system where foster care is a champion for the entire family; it is not a substitute for parents or an expedited conduit for adoption.[93] It is a tool to improve parent engagement, enhance parental capacity to meet their children's needs, and achieve safe, timely reunification.[94]

Achieving the best feasible partnership between parents and resource families promotes the stable and consistent caregiving needed to help children manage short-term transitions, such as family time with parents, as well as changes in caregiving brought about by reunification or adoption.[95] Assistant Attorneys General (AAGs), Guardians ad Litem (GALs), and parental defense attorneys all play an important role in supporting and strengthening a collaborative, mentoring relationship between parents and resource families.[96]

We can create a reunification-focused relationship between parents and resource families by creating opportunities for them to meet around the time of placement based on the families' circumstances and ensuring safety for all.[97] We can also work with them to develop a co-parenting relationship where they define roles, safety boundaries, communication with each other, and shared parenting activities specifically for the child.[98] It is also important we support kin resource families in navigating their relationship with parents due to foster-care placement. We know that kin placement can provide an opportunity for more parent-child involvement, but it may also present challenges, depending on family dynamics.[99]



Kinship Placement and Maintaining Family Connections

We believe in a kin-first culture that prioritizes placement with relatives or close family friends, and supports an ongoing and diligent the search for relatives.[100] Placement with non-kin is a last resort when ongoing efforts have failed to locate, engage, and support safe relative placements. We define "family" broadly to include parents, relatives, and those who are not related by blood but who have a close and meaningful relationship with the child. By placing children with relatives or someone familiar to them, we can reduce the overall trauma of removal and placement by keeping them connected to their family, their community, and their culture.[101]

Decades of research confirms that children who cannot remain with their parents thrive when raised by relatives and close family friends.[102] Children placed with kin have better outcomes in terms of: greater placement stability; fewer emotional and behavioral problems during placement; and more connections to their biological family, culture, and communities.[103]

The early identification of relatives is important. When courts and agencies have not conducted thorough relative searches and reunification is ruled out, they can be faced with the difficult choice of deciding between permanency with the resource parent and a relative who is appropriate but did not previously know of the child's need for a permanent home.[104] *See Attachment B* for a list of actions that can be used to build a kin-first courtroom.

The search for relatives should include:

- Engaging the legal mother and father and the child (if the child is of the maturity and age to verbalize their wishes) regarding available kin, preferences, etc.;
- A full genogram of paternal and maternal family members;
- A check of SAFE system, ORS, Vital Records, E-share, Facebook, and CLEAR; and
- Ongoing CFTM involvement of parents and extended family that allows the family to influence all placement decisions to the greatest extent allowable.[105]

This process should also be ongoing, as appropriate.

Relatives and other friends can also be utilized as a support for the family throughout the entirety of the case. It is important we work to build, support, and strengthen these existing relationships.[106] This type of support is essential for adults who need to make substantial changes in their own lives, as is typical in many child-welfare cases.[107]

Given the importance of sibling relationships and the positive outcomes [108] they can generate, it is crucial for siblings to be placed together or, if that is not possible, seek ways for them to remain connected while they are in foster care, post-permanency, or after they have aged out of care.[109]

Maintaining Social and Cultural Connections

When children are removed from their home, it separates them from their parents, siblings, extended family, friends, community, and school. Thus, it is important for children to have some sense of normalcy and be connected with familiar things. Our child-welfare system prioritizes maintaining as many social, communal, and cultural connections as possible, when they do not compromise a child's safety and well-being.[110] These relationships allow a child to develop resiliency and to work through and overcome the trauma they have experienced.[111]

The default is that children will remain in their school, when removed from their home or change placements, unless it is not in their best interest.[112] If a school change is in a child's best interest, then the child should be immediately enrolled in a new school even if they do not have the required school records to enroll.[113] It is the responsibility of the new school to obtain the child's school records from their previous school.[114] We should also make every effort to maintain any social connections the child had through their old school, as appropriate[115] This may include, but is not limited to: sports, clubs, dance, art, drama, music, and volunteer work.

Family Time (or Visitation)

Research on parent-child contact consistently shows that family time is fundamental to timely reunification[116] and permanency. Family time is essential for a child's well-being and helps mitigate the trauma of an out-of-home placement.[117]

Family time should be liberal and presumed unsupervised unless there is a demonstrated safety risk to the child.[118] To promote meaningful family time, it should be conducted in the least-restrictive environment available that supports the child's safety, with the level of supervision a family requires determined on a case-by-case basis.[119] Family time should be conducted in child-friendly places conducive to parent-child interaction and engagement, organized around activities that reflect the routine activities of the family, and progress through reduced supervision and increased frequency.[120]

Child and Family Teams should use creative problem-solving to increase family time so that one hour, once a week is not the default. We should consider individuals outside of DCFS staff, including kin or other community members, who may be available and appropriate, to facilitate more frequent family time. While in-person family time is preferred, additional forms of family time should be utilized to maintain and enhance on-going connection with parents and children. For example, parents should be encouraged to participate in the child's normal day-to-day activities.[121] The parent should be told about all doctor and school appointments as well as extracurricular activities so that they can go even if the parent and child do not get to interact at these events.[122]

Recruiting, Training, & Retaining High-Quality Professionals

When families come into contact with the child-welfare system, nothing has the power to impact them more than the professionals who serve and work with them every day.[123] A competent, stable, and high-quality workforce is important to providing children and families with the supports they need to stabilize, reunify, and thrive.[124] We are committed to recruiting, training, and retaining high-quality professionals and using multi-disciplinary trainings as an effective tool in sharing best practices and child-welfare expertise.

DCFS is committed to providing qualified, trained, and skilled staff, supported by an effectively structured organization that helps ensure positive outcomes for children and families. We understand that children and families need a relationship with an accepting, concerned, and empathetic worker who can confront difficult issues and effectively assist them in their process toward positive change. DCFS' practice model creates this environment. It is based on the seven principles of protection, partnership, permanency, cultural responsiveness, organizational and professional competence, and development.[125] The practice model training emphasizes the importance of maintaining the parent-child relationship whenever possible, the preference for providing in-home services over taking a child into protective custody, and the importance and priority of kinship placement in the event a child must be taken into protective custody.[126]

High-quality legal representation for parents, children, and child-welfare agencies is one of the most important systemic safeguards to avoid unnecessary removals, overly long stays in foster care, and trauma to parents and children.[127] AAGs, GALs, and parental defense attorneys need to be well-trained because the child-welfare court system works best when all parties are represented by high-quality, well-trained lawyers. For local practice standards, Utah Code specifies the duties and responsibilities of GALs[128] and the Indigent Defense Commission adopted Core Principles for Appointed Attorneys Representing Indigent Parents in Child Welfare Proceedings.[129] Further, the American Bar Association has published practice standards for agency representation, child representation, and parent representation that promote uniformity, increase the quality of representation, and discuss the requisite training content that attorneys should receive.[130] The Family Justice Initiative also has published the attributes for high-quality legal representation of children and parents in child-welfare proceedings.[131]

For judges, the National Council for Juvenile and Family Court Judges' Enhanced Resource Guidelines sets forth principles and best practices that should guide juvenile court judges and provides tools to achieve key principles of permanency planning for all children and families. The American Bar Association also published Judicial Excellence in Child Abuse and Neglect Proceedings[132] which provides principles and standards to promote judicial excellence in child-welfare proceedings.

Quality Hearings

Court decisions in child-welfare proceedings are serious and life changing.[133] Essential to the court's decision-making is having quality hearings where there is:

- Judicial engagement of parents and children;
- A hearing process that is experienced as fair;
- The presence of parents, age-appropriate children/youth, and other participants;
- Active legal representation;
- Appropriate and clear verbal judicial orders and findings; and
- A sufficiently thorough on the record discussion of a variety of topics related to children's safety, permanency, and well-being as well as parents' needs and progress.[134]

Pro forma hearings fall short of the judicial oversight required and may contribute to child safety concerns; prolonged foster care stays; delays in reunification, adoption, and other permanency outcomes; poor child and youth well-being outcomes; and unnecessary financial costs to the government.[135]

Procedural Justice & Engagement

The courtroom should be a place where all who appear are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.[136] When a party experiences a sense of fairness, they will be more likely to comply with court orders, return for further hearings, and trust the system.[137] In assessing what procedures are "fair," there are four key factors:

1. Voice – having one's viewpoint heard,
2. Neutrality – unbiased decision-makers and transparency of the process,
3. Respectful treatment – individuals are treated with dignity, and
4. Trustworthy decision-makers – the view that the decision-maker is compassionate and invested in helping.[138]

See *Attachment C* for a list of actions that can be used to build a court process that embodies these four key factors of procedural justice.

Children and parents must have the opportunity to be present in court and meaningfully participate in the court process.[139] This requires that courtrooms be culturally responsive.[140] Judges and all professionals must ensure that families are appropriately engaged in and understand the judicial process, the timelines that apply to cases, and the court's orders and expectations.[141] Judicial engagement of parents in hearings is associated with positive case processing and child-welfare case outcomes, such as better placements (e.g., less stranger foster care),[142] predicted attendance at subsequent hearings,[143] likelihood of placement with parents at the review hearing if there was judicial engagement at shelter hearings,[144] higher levels of reunification,[145] decreased time to adoption,[146] and overall, decreased time to permanency.[147]

Reasonable Efforts to Prevent Removal, Reunify Families, & Achieve Timely Permanency

It is the responsibility of all parties and judges to ensure that required reasonable efforts and active efforts in ICWA cases are made by DCFS to prevent removal, reunify families, and achieve permanency for children. The judicial determination that reasonable efforts were made to prevent removals provides an incredibly powerful tool to keep families together and prevent trauma to children.[148] Where out-of-home placement is necessary, the reasonable efforts determination to finalize the permanency plan is the second critical tool for expediting reunification or other safe permanency options and minimizing trauma to parents and children.[149] These tools provide all participants with the opportunity to change the outcomes for the families and children that experience our child-welfare system.

The reasonable efforts to prevent removal finding is the judge's opportunity to fully assess the efforts that have been made to engage the family in services and supports that would have either eliminated the safety threat prior to foster-care placement or allowed the child to return home immediately.[150] These findings powerfully communicate whether the court is satisfied that foster care is used only as a last resort and not simply as the most expeditious intervention and provides guidance about the court's expectations for immediate service delivery, whenever possible.[151] A judicial finding that it was reasonable to make no efforts to prevent the placement should only be made if there are no other reasonable means to protect the child from an imminent safety threat.[152]

Attorneys and judges should use the reasonable (or active) efforts mandate to ensure the parents have a fair opportunity to reunite with their children (if reunification is the permanency goal) and that children reach permanency in a timely fashion.[153] Reasonable (or active) efforts should be discussed at every hearing.[154] Reasonable (or active) efforts does not mean cookie-cutter case plans with the same referrals for the same services being provided to every parent regardless of their individual needs.[155] Attorneys and judges need to raise the reasonable (or active) efforts issue when either services are unavailable or have long waiting lines.[156] Attorneys should let judges know that the service must be provided in a timely fashion and that failure to do so is a violation of the reasonable (or active) efforts to reunify mandate.[157]

ATTACHMENT A
How Trauma Can Affect Parents' Thinking and Behavior[158]

What behaviors do you see?	How is it related to trauma?
Puts themselves or their child in risky situation; misses visits, court dates, and appointments; and has difficulty completing the case plan	Difficulty with Decision-Making and Judgement: Trauma negatively affects the parts of the brain involved with planning, evaluating situations, thoughtful decision-making, and problem-solving.
Misses visits, court dates, case conferences, appointments with the child	Re-Experiencing Trauma – Avoidance: People with trauma histories may re-experience past traumas when "triggered" by memories. They may avoid places and people who remind them of traumatic experiences and places that feel unsafe.
Appears disinterested in reunification efforts, seems "checked out," is uncooperative, relapses	Re-Experiencing Trauma – Disconnecting: Trauma can cause people to disconnect from strong negative emotions and to disengage from triggering experiences.
Appears "on guard" and on edge, agitated, or impulsive; overreacts, displays angry outbursts, confronts others	Hyperarousal: Trauma can impair the body's stress system so it is on constant high alert. This causes people to overreact to even ordinary stress and to be overly focused on threats in the present.
Has difficulty in relationships with attorney, service providers, foster parent; is uncooperative; pushes helpers away	Negative Self-Concept and Difficulty with Trust: People who experienced abuse and neglect in childhood commonly internalize the way they have been treated by others, experiencing strong feelings of shame and viewing themselves as "damaged goods."
Displays resistant behavior, emotionally disengages, takes a helpless stance, appears overwhelmed and paralyzed	Feelings of Powerlessness: Childhood experiences of victimization cause profound feelings of helplessness and hopelessness. The court setting, hearings, legal process, interacting with authority figures, case conferences – these can all trigger profound feelings of lack of control.

ATTACHMENT B
Building a Kin-First Courtroom

Judges can ask the following questions to create an expectation for a kin-first culture:[159]

- What is preventing a kinship placement now?
- What reasonable efforts were made to place siblings together?
- Ask the agency at each and every hearing: What efforts has the agency made to identify and locate kin? What efforts have been made to engage kin beyond a notice letter so that they may be part of a child's life?
- Ask the parents and child(ren) at first and all subsequent hearings to give the court information about their important family connections.
- Has the agency explained all possible placement options to kin (i.e., guardianship, adoption, foster care, etc.)?
- Order a family time plan not only for parents, but for siblings and relatives so children can maintain family connections.
- Ask whether ICWA applies and ensure the agency makes efforts to identify appropriate placements.

ATTACHMENT C
Parental Engagement Strategies for the Courtroom

A list of actions that is used to build a court process that seeks to connect with parents by giving them a voice, ensuring their understanding of decisions, reaffirming their confidence in the process and preserving their dignity.[160]

- Allow litigants to bring phones into the courthouse or provide free storage areas.
- Create a welcoming courthouse/courtroom environment (e.g., family-friendly waiting room).
- Clearly state the court's rules in a respectful and transparent manner.
- Display artwork to make courtroom more family-friendly.
- Start court hearings on time. Provide an estimate of wait times.
- Apologize for lengthy delays.
- Introduce yourself by name.
- Address parents by name (not "mom," "mother," or "respondent").
- Personalize interactions – make eye contact.
- Use open-ended questions and listen to answers.
- Ask parents and youth to repeat back their understanding of key decisions.
- Write information, such as the requirements of a treatment plan, on visible dry erase boards in addition to stating them out loud.
- Provide an opportunity for parents and youth to address the court directly.
- Consider allowing parents and youth to speak first at hearings, before the professionals report on the family's progress.
- Explain how and why decisions are made (e.g., why can't a child return home).
- Avoid the appearance of favoritism.
- Acknowledge unfairness.
- Situate the judge's bench at eye level.
- Create courtrooms where the parties, judge, and professionals are seated in a circle.
- Seek regular feedback from families about the court processes.
- Schedule court hearings at times convenient for families.
- Provide parents with a written copy of the court order after each hearing. Ensure orders are written in a manner that conveys the key pieces of information to the parent, including the requirements of the treatment plan.
- Minimize ex parte removal orders.
- Conduct robust removal hearings before a child's removal.
- Forge relationships between foster and birth parents.
- Involve birth parents when children are in foster care.
- Preserve positive relationships between children and their parents whenever possible and terminate parental rights only when absolutely necessary.

Endnotes

[1]Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases (Am. Bar Ass'n 2006).

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[4]Ellis, *supra* note 2.

[5]Children's Bureau's Capacity Building Center for States, *Coaching to Improve Family Engagement,* 21(2) Children's Bureau Express (2020).

[6]Family Justice Initiative, Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings - Attribute 3: Diversity and Inclusion/Cultural Humility (2019), accessible at https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/03/fji-implementation-guide-attribute3-1.pdf (last accessed 5/11/2020).

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[8]National Council of Juvenile and Family Court Judges, *Right from the Start: The CCC Preliminary Protective Hearing Benchcard,* 10 (2011).

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[14]American Academy of Pediatrics, *Adverse Childhood Experiences and the Lifelong Consequences of Trauma* (2014), accessible at https://www.aap.org/en-us/Documents/ttb_aces_consequences.pdf (last accessed 5/11/2020).

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[17]Center on the Developing Child, *supra* note 9, at 7.

[18]Center on the Developing Child, *supra* note 9, at 7.

[19]Center on the Developing Child, *supra* note 9, at 7.

[20]National Childhood Traumatic Stress Network, Birth parents with trauma histories and the child welfare system: A guide for child welfare staff 1 (2011), accessible at http://nctsn.org/sites/default/files/assets/pdfs/birth_parents_trauma_history_fact_sheet_final.pdf (last accessed 5/11/2020).

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[22]National Childhood Traumatic Stress Network, *supra* note 20.

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[24]U.S. Department of Health and Human Services, *supra* note 23.

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[26]National Child Traumatic Stress Network, *supra* note 20; National Child Traumatic Stress Network, Justice Consortium Attorney Workgroup Subcommittee, *The Impact of Trauma on the Attorney-Client Relationship*, Am. Bar Ass'n Child Law Practice Today (2017).

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[27]National Council of Juvenile and Family Court Judges, *Assessing Trauma for Juvenile and Family Court Judges: From Development to Implementation* 2013-2017, 15 (2019)

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[30]U.S. Department of Health and Human Services, *supra* note 29.

[31]Children's Bureau's Capacity Building Center for States, *supra* note 5.

[32]Motivational interviewing can be used to help professionals harness the client's commitment toward their goal and motivation to change, while maintaining a level of acceptance and understanding, rather than being directive or punitive. Payal Dalal, Rick Barinbaum, and Carolyn Walther, *Motivational Interviewing: Counseling Clients in Challenging Contexts,* Am. Bar Ass'n Child Law Practice Today (2017).

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[54]Cohen & Cortese, *supra* note 53.

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[57]Center on the Developing Child, *supra* note 9, at 14.

[58]There is a set of foundational skills that adults need both to parent effectively and to earn a living, and that children need to develop as they move toward adulthood. These skills are described as "self-regulation" — the ability to draw upon the right skills at the right time, manage our responses to the world, and resist inappropriate responses. Self-regulation requires "executive function," which consists of three primary components: inhibitory control (the ability to resist impulsive behavior); working memory (the capacity to hold and manipulate information in our heads over short periods of time); and mental flexibility (adjusting to changed demands, priorities, rules, or perspectives). These skills can be under-developed if someone experiences trauma in childhood or is unable to use them effectively if bombarded with stressors. Center on the Developing Child, *supra* note 9, at 14.

[59]Center on the Developing Child, *supra* note 9, at 14.

[60]Center on the Developing Child, *supra* note 9, at 11.

[61]Center on the Developing Child, *supra* note 9, at 11.

[62]Center on the Developing Child, *supra* note 9, at 11.

[63]Center on the Developing Child, *supra* note 9, at 11.

[64]Center on the Developing Child, *supra* note 9, at 11.

[65]Center on the Developing Child, *supra* note 9, at 11.

[66]Christopher Church, Monique Mitchell & Vivek Sankaran, *Timely Permanency or Unnecessary Removal? Tips for Advocates for Children Who Spend Less Than 30 Days in Foster Care,* Am. Bar Ass'n Child Law Practice Today (2017).

[67]Vivek Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children who Spend Less Than Thirty Days in Foster Care, 19 University of Pennsylvania Journal of Law and Social Change* 207, 210-213 (2016).

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[71]Sankaran & Church, *supra* note 67, at 210-213.

[72]U.S. Department of Health and Human Services, Administration for Children and Families, Child and Family Services Reviews Information Portal, E-Training Platform: Section 2 - Understanding the Child Welfare System - Achieving Permanency, accessible at https://training.cfsrportal.acf.hhs.gov/section-2-understanding-child-welfare-system/3030 (last accessed 5/11/2020).

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Finally, safety should not be confused with risk. For a child to be unsafe, the consequences must be severe and imminent. A conclusion about safety means considering:

- How soon something may occur;
- How severe the consequences will be to a child; and
- How out-of-control conditions are.

A conclusion about risk assesses the likelihood of maltreatment and has an open-ended timeframe and consequences may be mild or serious. Risk may be managed through in-home and/or community based services. Therese Roe Lund & Jennifer Renne, Child Safety: A Guide for Judges and Attorney, American Bar Association, 2 (2009) (hereinafter ABA Child Safety Guide).

[74]National Quality Improvement Center on the Representation of Children in Child Welfare, supra note 73. ABA Child Safety Guide, 22.

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[76]ABA Child Safety Guide, 33.

[77]Sankaran & Church, *supra* note 67, at 213.

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[80]ABA Child Safety Guide, 2.

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[82]ABA Child Safety Guide, 19.

[83]ABA Child Safety Guide, 53.

[84]ABA Child Safety Guide, 35-36, 39, and 47.

[85]ABA Child Safety Guide, 35-36, 39, and 47.

[86]ABA Child Safety Guide, 1.

[87]U.S. Department of Health and Human Services, *supra* note 39, at 6.

[88]U.S. Department of Health and Human Services, *supra* note 39, at 6.

[89]42 U.S.C. § 671(a)(15) (2019).

[90]Capacity Building Center for State, Child Protective Services: A Guide for Caseworkers, 16 (2018), accessible at https://www.childwelfare.gov/pubPDFs/cps2018.pdf (last accessed 5/11/2020).

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[92]U.S. Department of Health and Human Services, *supra* note 39, at 6.

[93]David Kelly & Jerry Milner, *High-Quality Legal Representation is Critical to Creating a Better Child Welfare System*, Am. Bar Ass'n Child Law Practice Today 1 (2019).

[94]U.S. Department of Health and Human Services, *supra* note 39, at 5.

[95]Center on the Developing Child, *supra* note 9, at 13.

[96]Jenifer Goldman Fraser & Eva J. Klain, Advocacy for Infants and Toddlers: The Urgency of a Trauma- and Developmentally-Informed Approach, 42(1) NACC: The Guardian 7 (2020).

[97]U.S. Department of Health and Human Services, *supra* note 39, at 10.

[98]U.S. Department of Health and Human Services, *supra* note 39, at 10.

[99]U.S. Department of Health and Human Services, *supra* note 39, at 12-13.

[100]Diane Moore, DCFS Kinship Memo, May/June 2019. In order for DCFS to receive federal payments for foster care and

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adoption assistance, federal law requires that they "consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant state child protection standards." 42 U.S.C. § 671(a)(19) (2019).

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[105]Diane Moore, DCFS Kinship Memo, May/June 2019.

[106]Center on the Developing Child, *supra* note 9, at 12.

[107]Center on the Developing Child, *supra* note 9, at 12.

[108]Studies have found that placing siblings in the same foster home is associated with higher rates of reunification, adoption, and guardianship. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, Sibling issues in foster care and adoption 2 (2019), accessible at https://www.childwelfare.gov/pubPDFs/siblingissues.pdf (last accessed 5/8/2020) (citing Becci A. Akin, *Predictors of foster care exits to permanency: A competing risks analysis of reunification, guardianship, and adoption,* 33 Children and Youth Services Review 999 (2011); Christine Jones, *Sibling relationships in adoptive and fostering families: A review of the international research literature,* 30 Children & Society 324 (2016)).

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[109] U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, ACYF-CB-IM-20-02, Family time and visitation for children and youth in out-of-home care; Trauma; Well-Being; Best Practices 4 (2020).

[110]"In fact, a child can remain emotionally attached to a dysfunctional family and may be further traumatized by complete loss of contact with relatives. Family members can offer the best source of long-term support for a traumatized child. It is essential that a child stay connected with siblings, relatives and extended family (as defined by the client), and friends. In cases in which ongoing family contact is not feasible or is contraindicated for safety reasons, you can look for ways to involve other people trusted by your client, such as a family friend, coach, teacher, or pastor." National Child Traumatic Stress Network, Justice Consortium Attorney Workgroup Subcommittee, *The Impact of Trauma on the Attorney-Client Relationship,* Am. Bar Ass'n Child Law Practice Today (2017).

[111]Rose Marie Wentz & Kelly Lynn Beck, *Maintaining Family Relationships for Children in the Child Welfare System,* 31 Am. Bar Ass'n Child Law Practice Today (2012); Bruce D. Perry & Maia Szalavitz, The Boy Who Was Raised as a Dog and Other Stories from a Child Psychiatrist's Notebook: What Traumatized Children Can Teach Us About Loss, Love, and Healing 80 (2006). In addition to maintaining relationships, the traumatized child's ability to connect and socially communicate with adults and peers, generally, is important. Henry, Sloan & Vandervort, supra note 101, at 11.

[112]20 U.S.C. § 6311(g)(1)(E) (2019). Joint Federal Guidance suggests considering the following factors in a best interest determination: child's preference; views of the parents or the person with educational decision-making rights; child's attachment to school and staff; placement of the child's siblings; availability and quality of services in the current and potential schools to meet the child's educational and social/emotional needs; school climate/safety;

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impact of a school transfer, including the commute; and child's special needs. U.S. Department of Education & U.S. Department of Health & Human Services, Nonregulatory Guidance: Ensuring Educational Stability for Children in Foster Care (2016). See also Utah State Board of Education, Ensuring Educational Stability for Children in Foster Care, available at https://www.schools.utah.gov/File/ca689ec2-4161-4dc4-a196-ee1b0d0f22ec (last accessed 5/12/2020)/

[113]20 U.S.C. § 6311(g)(1)(E).

[114]20 U.S.C. § 6311(g)(1)(E).

[115]Viewing child and family contacts during foster care less as "visits" and more as "family time" suggests the critical importance of the length and quality of time that children spend with their parents, separated siblings, and other important family members. U.S. Department of Health and Human Services, *supra* note 109, at 4.

[116]"Consistent, high quality visitation is one of the best predictors of successful reunification between a parent and child." Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases 33 (Am. Bar Ass'n 2006).

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TAB I

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.

Connie L. Mower, Martha Pierce, Salt Lake City, for amicus guardian ad litem.

***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 J

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 K

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. In any appeal from a child welfare proceeding as defined in Rule 1(f), appellees may elect to file a memorandum in lieu of a brief consistent with the requirements in Rule 10(c).

(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

Commented [AM2]: Suggestion from the AG

~~**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**. By stipulation filed with the court in accordance with Rule 21(a), the parties may extend the period to file their principal briefs for no more than 30 days. A motion for enlargement of time need not accompany the stipulation. No such stipulation will be effective unless it is filed prior to the expiration of the period sought to be extended. ~~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 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 days past the original due date or 10 days from the date of entry of the order granting the motion, whichever occurs later~~further extensions will be granted. The motion to enlarge time based on extraordinary circumstances shall comply with Rule 22(b~~)(4~~). No extensions will be granted for reply briefs.

Commented [AM1]: Reworking this rule in consultation with the AG. This is a compromise position allowing for one stipulated 30 day extension per side for principal briefs but NO extensions beyond that, absent extraordinary circumstances.

TAB 3

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 4

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

TAB 5

Rule 42. Transfer of case from Supreme Court to Court of Appeals

(a) **Discretion of Supreme Court to transfer**. At any time before a case is set for oral argument before the Supreme Court, the Court may transfer to the Court of Appeals any case except those cases within the Supreme Court's exclusive jurisdiction. The order of transfer ~~shall~~will be issued without opinion, written or oral, as to the merits of the appeal or the reasons for the transfer.

(b) **Conditional transfer order**. ~~The Supreme Court may conditionally transfer a case, subject to a request that it be retained. If so, the A~~ When the Supreme Court issues an order conditionally transferring a case to the Court of Appeals~~conditional transfer order~~, any party to the case may submit a letter requesting that the case be retained. ~~will inform permit the parties to that any of them may submit a letter of five pages or less within seven days to the Supreme Court concerning the appropriateness of retaining the case on its own docket or transferring the case to the Court of Appeals. The order may be superseded by another order directing an immediate unconditional transfer if the Supreme Court deems such a transfer to be appropriate.~~

(1) A letter concerning retention must contain:

(A) The name of the case and the appellate case number,

(B) The names of all parties involved in the case and the attorneys and firms representing the parties,

(C) A concise statement of the issues presented on appeal,

(D) A brief explanation of the reasons supporting retention or transfer,~~;~~ and

(E) A completed checklist for appellate jurisdiction.

~~The order will specify the timing and contents of the letter and the timing of any response.~~

(2) The letter must not exceed five pages and must be filed within seven business days following issuance of the conditional transfer order.

(3) Any response to a ~~timely~~ timely letter concerning retention must be filed within five business days after service of the letter. The response may not exceed five pages.

(~~3~~4) If the Supreme Court elects to retain the case, it will issue an order rescinding the conditional order of transfer.

(~~4~~5) If no timely request for retention is received or the Supreme Court declines a request to retain, the ~~Clerk of the~~ Supreme Court clerk will issue a notice to the parties and the Court of Appeals informing them that the order of transfer will stand.

(~~5~~6) Any letter submitted outside of the provisions of paragraph (b) will not be considered.

(~~b~~c) **Notice of order of transfer**. Upon entry of ~~the~~ an order of transfer or conditional transfer the ~~Clerk of the~~ Supreme Court clerk ~~shall~~ will provide ~~give~~ notice ~~of entry~~ of the order ~~of transfer by mail~~ to each party to the proceeding and to the ~~clerk of the~~ trial court clerk. ~~Upon entry of the order of transfer, the Clerk of the Supreme Court shall transfer the original of the order and the case, including the record and file of the case from the trial court, all papers filed in the Supreme Court, and a written statement of all docket entries in the case up to and including the order of transfer, to the Clerk of the Court of Appeals.~~

(~~c~~d) **Receipt of order of transfer by Court of Appeals**. Upon receipt from the ~~Clerk of the~~ Supreme Court clerk of ~~the original~~ an unconditional order of transfer or a notice that a conditional order of transfer will stand ~~from the Clerk of the Supreme Court~~, the ~~Clerk of the~~ Court of Appeals clerk will~~shall~~ enter the appeal upon the Court of Appeals docket. The ~~Clerk of the~~ Court of Appeals clerk will~~shall~~ immediately give notice to each party to the proceeding and to the clerk of the trial court that the appeal has been docketed and that all further filings will be made with the ~~Clerk of the~~ Court of Appeals clerk. ~~The notice shall state the docket number assigned to the case in the Court of Appeals.~~

(~~d~~e) ~~**Filing or**~~ **T~~t~~transfer of appeal record**. ~~If the record on appeal has not been filed with the Clerk of the Supreme Court as of the date of the order of transfer, the Clerk of the~~

~~Supreme Court shall notify the clerk of the trial court that upon completion of the conditions for filing the record by that court, the clerk shall transmit the record on appeal to the Clerk of the Court of Appeals.~~ If~~, however,~~ the record on appeal has already been ~~transmitted to and~~ filed with the ~~Clerk of the~~ Supreme Court clerk ~~as of the date of the entry of the order of transfer~~ or notice~~,~~ the ~~Clerk of the Supreme Court shall transmit the~~ record on appeal will be transmitted to the ~~Clerk of the~~ Court of Appeals clerk within five days of the date of the entry of the order of transfer.

(~~e~~f) **Subsequent proceedings before Court of Appeals**. Upon receipt by the ~~Clerk of the~~ Court of Appeals clerk of ~~the~~ an order of transfer or notice that a conditional order of transfer will stand ~~and the entry thereof upon the docket of the Court of Appeals~~, the case will~~shall~~ proceed before the Court of Appeals to final decision and disposition as in other appellate cases pursuant to these rules.

TAB 6

Rule 29. Oral ~~argument.~~Argument.

(a) **Holding oral argument.**

(1) **Supreme Court**. Oral argument will be held in cases before the Supreme Court unless the court determines that oral argument will not aid the decisional process.

(2) **Court of Appeals**. Oral argument will be allowed in all cases in which the Court of Appeals determines that oral argument will significantly aid the decisional process.

(3) **Alternative means**. The court may hold oral argument in person, by phone, or by videoconference.

(b) **Notice; waiver; cancellation; continuance.**

(1) **Supreme Court.** Not later than 28 days before the date on which a case is calendared, the clerk will give notice of the time and place of oral argument, and the time to be allowed each side. If all parties to a case believe oral argument will not benefit the court, they may file a joint motion to cancel oral argument not later than 14 days from the date of the clerk's notice. The court will grant the motion only if it determines that oral argument will not aid the decisional process. A motion to continue oral argument must be supported by (1) a stipulation of all parties or a statement that the movant was unable to obtain such a stipulation, and (2) an affidavit or declaration of counsel specifying the grounds for the motion. A motion to continue filed not later than 14 days from the date of the clerk's notice may be granted on a showing of good cause. A motion to continue filed thereafter will be granted only on a showing of exceptional circumstances.

(2) **Court of Appeals**. Not later than 28 days before the date on which a case is calendared, the clerk shall give notice to all parties that oral argument is to be permitted, the time and place of oral argument, and the time to be allowed each side. Any party may waive oral argument by filing a written waiver with the clerk not later than 14 days from the date of the clerk's notice. If one party waives oral argument and any other party does not, the party waiving oral argument may nevertheless present

oral argument. A request to continue oral argument or for additional argument time must be made by motion. A motion to continue oral argument must be supported by (1) a stipulation of all parties or a statement that the movant was unable to obtain such a stipulation, and (2) an affidavit or declaration of counsel specifying the grounds for the motion. A motion to continue filed not later than 14 days from the date of the clerk's notice may be granted on a showing of good cause. A motion to continue filed thereafter will be granted only on a showing of exceptional circumstances.

(c) **Argument order**. The appellant argues first and the appellee responds. The appellant may reply to the appellee's argument if appellant reserved part of appellant's time for this purpose. ~~Such~~The time reserved may not exceed five minutes; and such argument in reply is limited to responding to points made by appellee in appellee's oral argument and answering any questions from the court.

(d) **Cross and separate appeals.** A cross or separate appeal is argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a separate appeal, the plaintiff in the action below is deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care must be taken to avoid duplicative arguments. Unless otherwise agreed by the parties, in cases involving a cross-appeal the appellant, as determined pursuant to Rule 24A, opens the argument and presents only the issues raised in the appellant's opening brief. The cross-appellant then presents an argument that answers the appellant's issues and addresses original issues raised by the cross-appeal. The appellant then presents an argument that replies to the cross-appellant's answer to the appellant's issues and answers the issues raised on the cross-appeal. The cross-appellant may then present an argument that is confined to a reply to the appellant's answer to the issues raised by the cross-appeal. The court will grant reasonable requests, for good cause shown, for extended argument time.

(e) **Nonappearance of parties**. If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to

appear, the court may hear argument on behalf of the appellee, if present. If neither party appears, the case may be decided on the briefs, or the court may direct that the case be rescheduled for argument.

(f) **Submission on the briefs**. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) **Use of physical exhibits at argument; removal**. If physical exhibits other than documents are to be used at the argument, counsel must arrange to have them placed in the courtroom before the court convenes on the date of the argument. After the argument, counsel must remove the exhibits from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they will be destroyed or otherwise disposed of.

Effective ~~November 1, 2022~~

Advisory Committee Note

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

Adopted 2022