



Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Nathalie Skibine, Chair
Stanford Purser, 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:	September 5, 2024
Time:	12:00 to 1:30 p.m.

Action: Welcome and approval of June 6, 2024 Minutes	Tab 1	Nathalie Skibine, Chair
Action: Final Approval of Rules 19, 21, 23C, and 29	Tab 2	Nathalie Skibine
Action: Rule 8	Tab 3	Stan Purser
Action: Rule 42	Tab 4	Clark Sabey, Michelle Quist, Judge Christiansen Forster
Action: Review Manner of Appearance Rules and Consider a Rule for the Appellate Courts	Tab 5	Nick Stiles
Action: Appellate Disqualification	Tab 6	Nick Stiles
Discussion: Old/new business		Nathalie Skibine, Chair

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

2024/2025 Meeting schedule:

October 3, 2024	January 2, 2025	April 3, 2025
November 7, 2024	February 6, 2025	May 1, 2025
December 5, 2024	March 6, 2025	June 5, 2025

TAB 1



Minutes

Supreme Court's Advisory Committee on the Utah Rules of Appellate Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

In Person and by WebEx Videoconference
Thursday, June 6, 2024
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Judge Michele
Christiansen Forster
Lisa Collins
Carol Funk
Amber Griffith—Staff
Michael Judd—Recording
Secretary

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

EXCUSED

Debra Nelson
Michelle Quist

GUESTS

Heath Haacke
Debra Kurzban
Alexa Mareschal
Adam Trupp

1. Action:

Approval of May 2024 Minutes

The committee reviewed the May 2024 minutes and identified a needed correction to the attendee list.

With that correction made, Mary Westby moved to approve the May 2024 minutes as they appeared in the committee's materials. Judge Michele Christiansen Forster seconded that motion, and it passed without objection by unanimous consent.

Chris Ballard

2. Action: Chris Ballard
Rule 21 Nathalie Skibine

The committee discussed a concern raised by Nicole Gray about a potential contradiction within Rule 21 regarding proof-of-service requirements. The committee considered a pair of potential approaches to resolving that issue. The committee also changed a reference to “contact information” to refer instead to “user accounts.”

Following that discussion, Emily Adams moved to approve the proposed changes to Rule 21, as modified and as they appeared on the screen at the committee’s meeting. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

3. Action: Chris Ballard
Rule 23C and Rule 19 Nathalie Skibine

The committee received feedback from the Utah Supreme Court designed to help clarify language contained in Rules 23C and 19. The committee reviewed and agreed on changes intended to incorporate that feedback.

Following that discussion, Judge Gregory Orme moved to approve the proposed changes to Rules 23C and Rule 19, as modified and as they appeared on the screen at the committee’s meeting. Clark Sabey seconded that motion, and it passed without objection by unanimous consent.

4. Action: Stan Purser
Rule 8

The committee returned to its discussion of the standard an appellate court should apply in granting a stay. Mr. Purser explained the basis for the proposed changes and alerted the committee to the fact that the two parallel federal rules (governing injunctive relief and stays) track one another and that existing Utah caselaw—including *Jensen v. Schwendimann*, 744 P.2d 1026 (Utah Ct. App. 1987)—may already call for the showings required by the proposed amended rule.

Mr. Sabey and Ms. Westby raised concerns about the burden on appellants and on the court in evaluating likelihood-of-success-on-the-merits arguments at an early appellate stage.

Following that discussion, Ms. Adams moved that the committee refer the proposed changes to Rule 8 to a subcommittee comprising Troy Booher, Clark Sabey, and Stan Purser. That motion was seconded, and it passed without objection by unanimous consent.

- 5. **Action:** **Mary Westby, Emily Adams, Martha Pierce, John Peterson, Alexa Mareschal**
Rules Governing Child-Welfare Appeals

The subcommittee reported broad agreement on a number of formerly contested issues, reserving for discussion only a matter related to options regarding supplemental briefing. The committee discussed what would become of Rule 58, reaffirming that the committee’s intent was to repeal that rule as unnecessary after the proposed changes are made.

Following that discussion, Judge Orme moved to approve the proposed changes to the rules governing child-welfare appeals, as modified, as included in Tab 7 of the committee’s monthly materials, and as they appeared on the screen at the committee’s meeting. Ms. Adams seconded that motion, and it passed without objection by unanimous consent.

- 6. **Action:** **Clark Sabey, Judge Christiansen Forster, Michelle Quist, Carol Funk**
Rule 42

Given the lack of adequate time to discuss Rule 42, the committee tabled that discussion until its next meeting.

- 7. **Action:** **Clark Sabey**
Rule 29

The proposed changes to Rule 29 are intended to address a potential practice of parties designating too much time for rebuttal at oral argument in an attempt to circumvent expectations about the content and order of arguments.

Following that discussion, the committee received a motion to approve the changes to Rule 29, as modified and as they appeared on the screen at the committee's meeting. That motion was seconded, and it passed without objection by unanimous consent.

8. Discussion: Chris Ballard
Old/New Business

None.

9. Adjourn Chris Ballard

Following the business and discussions described above, Ms. Quist moved to adjourn, and Mr. Purser seconded. The committee adjourned. The committee's next meeting will take place on September 5, 2024.

TAB 2

1 **Rule 19. Extraordinary relief.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (i) **Page and word limits.** A petition or response may not exceed 20 pages or 7,000 words.
50 A reply may not exceed 10 pages or 3,500 words. Headings, footnotes, and quotations
51 count toward the page or word limit, but the cover page or caption, any table of contents
52 or authorities, signature block, certificates, and any attachments do not.

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

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

57 (2) [Rule 21](#), governing filings containing non-public information.

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

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

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

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

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

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

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

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

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

86 *Effective ~~May 1~~, 2024*

87 **Advisory Committee Note**

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

96 *Adopted May 1, 2023*

1 **Rule 21. Filing and service.**

2 (a) **Filing.** Documents required or permitted to be filed by these rules must be filed with
3 the appellate court clerk.

4 (1) **How to file.** The appellate courts are transitioning to an e-filing system. Before
5 August 1, 2024, a document may be filed by submitting it through the appellate e-
6 filing system, by email, mail, or in person. Effective August 1, 2024, all licensed
7 attorneys must file through the appellate e-filing system. Unrepresented parties may
8 continue to file by email, mail, or in person. If e-filed or emailed, a document must be
9 in a searchable PDF format of no more than seven megabytes. Large PDF documents
10 must be divided into multiple files of no more than seven megabytes each. Documents
11 filed by email in the Supreme Court must be sent to supremecourt@utcourts.gov.
12 Documents filed by email in the Court of Appeals must be sent
13 to courtofappeals@utcourts.gov.

14 (2) **Timing.** Except as provided in paragraph (g):

15 (A) Documents other than briefs are timely:

16 (i) if received by e-filing or email to the appropriate court by 11:59 p.m. on the
17 due date; or

18 (ii) if received by mail or hand delivery to the Appellate Clerks' Office before 5
19 p.m. on the due date.

20 (B) Briefs are timely:

21 (i) if received by e-filing or email to the appropriate court by 11:59 p.m. on the
22 due date;

23 (ii) if postmarked by the due date; or

24 (iii) if received by hand delivery to the Appellate Clerks' Office before 5 p.m.
25 on the due date.

26 (b) **Filing Fees.** If a statute or rule establishes a fee for the filing, the party must pay the
27 fee to the appellate court clerk no more than seven days after the filing, or the filing may
28 be stricken. If a party elects to e-file, the party must pay the filing fee at the time of e-
29 filing. Failure to pay the filing fee may result in dismissal.

30 (c) **Service of all documents required.** All documents filed with the appellate court must,
31 at or before the time of filing, be served on all other parties to the appeal or review. Service
32 on a party represented by counsel must be made on counsel of record, or, if the party is
33 not represented by counsel, on the party at the last known address or email address
34 provided to the appellate court. ~~Any document required by these rules to be served on a~~
35 ~~party must be filed with the court and accompanied by proof of service.~~

36 (d) **Manner of service.** Service may be personal, by e-filing, by mail, or by email. Personal
37 service includes delivery of the copy to a clerk or other responsible person at the office of
38 counsel. Service by mail or email is complete on mailing or emailing. Service by e-filing
39 is complete on acceptance by the e-filing system.

40 (e) **Proof of service.** Documents filed through the e-filing system need not include a
41 certificate or acknowledgement of service if all parties have ~~contact information~~[user](#)
42 [accounts](#) in the e-filing system. All other documents presented for filing must contain an
43 acknowledgment of service by the person served or a certificate of service in the form of
44 a statement of the date and manner of service, the names of the persons served, and the
45 addresses at which they were served. The certificate of service may appear on or be
46 affixed to the documents filed. If counsel of record is served, the certificate of service must
47 designate the name of the party represented by that counsel.

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

52 (g) **Filing by inmate.**

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

55 (2) Documents filed by an inmate are timely filed if they are deposited in the
56 institution's internal mail system on or before the due date. Timely filing may be
57 shown by a contemporaneously filed notarized statement or written declaration
58 setting forth the date of deposit and stating that first-class postage has been, or is
59 being, prepaid, or that the inmate has complied with any applicable requirements for
60 legal mail set by the institution. Response time will be calculated from the date the
61 documents are received by the court.

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

68 *Effective ~~May 1~~, 2024*

69

70 **Advisory Committee Note**

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

78 *Note adopted April 2, 2020*

1 **Rule 23C. Motion for ~~emergency relief~~expedited review.**

2 ~~(a) Emergency relief; exception. Emergency relief is any relief sought within a time period~~
3 ~~shorter than specified by otherwise applicable rules. A motion for emergency relief filed~~
4 ~~under this Rule is not sufficient to invoke the jurisdiction of the appellate court. No~~
5 ~~emergency relief will be granted in the absence of a separately filed petition or notice that~~
6 ~~invokes the appellate jurisdiction of the court.~~

7 ~~(b) Content of motion. A party seeking emergency relief shall file with the appellate court~~
8 ~~a motion for emergency relief containing~~(a) Expedited review. A party may request
9 expedited review on any pending motion, petition, or appeal by filing a motion with the
10 appellate court.

11 (b) Content of motion. A motion for expedited review must contain under appropriate
12 headings and in the order indicated:

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

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

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

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

17 ~~(5) a~~(2) a statement of the facts and any applicable legal grounds justifying ~~emergency~~
18 ~~action~~expedited review; and

19 ~~(6)~~3 a certificate that all papers filed with the court have been served upon all parties
20 by overnight mail, hand delivery, ~~facsimile~~, or electronic transmission.

21 The motion ~~shall~~may not exceed ~~15~~5 pages, exclusive of any ~~addendum containing~~
22 ~~statutes, rules, regulations, or portions of the record necessary to decide the matter. It also~~
23 ~~shall not seek relief beyond that necessitated by the emergency circumstances justifying~~
24 ~~the motion.~~addenda.

25 ~~(e) Service in criminal and juvenile delinquency cases. Any motion filed by a defendant~~
26 ~~in a criminal case originally charged as a felony or by a juvenile in a delinquency~~
27 ~~proceeding shall be served on the Appeals Division of the Office of the Utah Attorney~~
28 ~~General.~~

29 ~~(d)~~ **(c) Response; no reply.** Any party may file a response to the motion within three days
30 after service of the motion or whatever shorter time the appellate court may fix. The
31 response ~~shall~~may not exceed ~~15~~5 pages, exclusive of any ~~addendum containing statutes,~~
32 ~~rules, regulations, or portions of the record necessary to decide the matter.~~addenda. No
33 reply ~~shall~~will be permitted. ~~Unless~~ unless the ~~appellate court is persuaded that an~~
34 ~~emergency circumstance justifies and requires a temporary stay of a lower tribunal's~~
35 ~~proceedings prior to the opportunity to receive or review a response, no motion shall be~~
36 ~~granted before the response period expires.~~calls for one.

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

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

43 (f) Decision. The court will not grant a motion before the response time expires unless
44 the court is persuaded that the circumstances justify immediate relief.

45 **(g) Power of a single justice or judge to entertain** ~~motions~~a motion. A single justice or
46 judge may act upon a motion for ~~emergency relief~~expedited review as provided in Rule
47 23(e).

48
49 Advisory Committee Note

50 This rule does not confer jurisdiction on the court and may not be used to ~~the extent~~
51 ~~permitted by Rule 19 where extraordinary~~seek substantive relief ~~is sought, and by Rule~~
52 ~~23(e) in all~~that might be available under other rules, including Rules 8 and 19.

1 **Rule 29. Oral ~~argument.~~Argument.**

2 (a) **Holding oral argument.**

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

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

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

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

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

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

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

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

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

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

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

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

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

67 *Effective ~~November 1, 2022~~*

68 **Advisory Committee Note**

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

71 *Adopted 2022*

TAB 3

1 **Rule 8. Stay or injunction pending appeal.**

2 (a) **Motion for stay or injunctive relief.**

3 (1) Initial motion in the trial court. ~~A-Unless a party can demonstrate extraordinary~~
4 ~~circumstances or that the trial court has already rejected the basis for the relief~~
5 ~~requested under this rule, the~~ party must ~~ordinarily~~ move first in the trial court for
6 the following relief pending appeal or pending disposition of a petition under Rule 5,
7 Rule 14, Rule 15, or Rule 19:

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

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

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

15 (2) Motion in the appellate court.

16 (A) The motion for a stay or injunctive relief must include:

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

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

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

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

21 (B) ~~Any~~The motion must comply with Rule 23.

22 ~~(C) A motion for injunctive relief must also satisfy Rule 62(c) or Rule 65A(e).~~

23 ~~(C) Except in extraordinary circumstances, an appellate court will not act on a~~
24 ~~motion to stay a judgment or order or to suspend, modify, restore, or grant an~~

25 ~~injunction, unless the movant first requested a stay or opposed the injunction in~~
26 ~~the trial court.~~

27 (3) Stays in criminal cases. Stays pending appeal in criminal cases in which the
28 defendant has been sentenced are governed by Utah Code section [77-20-302](#) and Rule
29 [27](#) of the Utah Rules of Criminal Procedure. Stays in other criminal cases are governed
30 by this rule.

31 (b) **Bond Security** requirement.

32 ~~(1) Stay ordinarily conditioned upon giving a bondadequate security. For requests to [A](#)~~
33 ~~[stay or injunctive relief under this rule ordinarily](#) -stay enforcement of a judgment or~~
34 ~~order to pay money to which Rule [62](#) of the Utah Rules of Civil Procedure applied in the~~
35 ~~trial court, relief available pending appeal~~ will be conditioned upon giving a bond or
36 other appropriate security in the trial court, unless ~~there is no reasonable means of~~
37 ~~quantifying the security in monetary or other terms and~~ the conditions of paragraphs
38 ~~(b)(2)c~~ or (d) are ~~met~~satisfied.

39 ~~(c) (2) Stay in cases not conditioned on [giving a bond](#)security.~~ Ordinarily a stay ~~or~~
40 ~~[injunctive relief](#)~~ without ~~a bond or other~~ security will not be granted unless the
41 movant demonstrates ~~that the following factors weigh in favor of the stay~~~~or~~
42 ~~[injunctive relief](#)~~:

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

45 ~~(BA) a likelihood of irreparable harm to the movant outweighing the harm to any~~
46 ~~other party;~~

47 ~~(C) and~~ the stay would not be adverse to the public interest; ~~and~~ ~~or~~

48 ~~(DB) any extraordinary circumstances~~ that justify~~ies issuing a stay~~ ~~the relief~~.

49 ~~(d) Injunction in cases not conditioned on security. (e) Injunctions.~~ For requests for
50 ~~injunctive relief to which Rules [65A](#) or [62](#) of the Utah Rules of Civil Procedure applied in~~

51 ~~the trial court, any relief available pending appeal is governed by those rules.~~An
52 injunction without security will not be granted unless the movant demonstrates:
53 (A) a substantial likelihood of prevailing on the merits on appeal;
54 (B) the movant will suffer irreparable harm unless the injunction is granted;
55 (C) the irreparable harm to the movant outweighs whatever harm the proposed
56 injunction may cause the party enjoined; and
57 (D) the injunction would not be adverse to the public interest.

58 *Effective May 1, 2023*

59 **Advisory Committee Note**

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

62 *Adopted 2022*

63

TAB 4

Note: Rule 42 was tabled due to time constraints at the June 6, 2024 meeting. In error the rule was submitted to the Supreme Court. Before this mistake was discovered, Justice Pohlman reviewed the draft and provided the below suggestions.

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

2 (a) **Discretion of Supreme Court to transfer.** At any time before a case is set for oral
3 argument before the Supreme Court, the Court may conditionally transfer to the Court
4 of Appeals any case except those cases within the Supreme Court's exclusive jurisdiction.

5 ~~The order of transfer will be issued without opinion, written or oral, as to the merits of
6 the appeal or the reasons for the transfer.~~

7 (b) **Conditional transfer order.** The court will issue the conditional order of transfer will
8 be issued without opinion, written or oral, as to the merits of the appeal or the reasons
9 for the transfer.

10 (c) **Request for recall; response.** A party may request that ~~When~~ the Supreme Court recall
11 a case that has been ~~issues an order~~ conditionally transferred ~~ing a case~~ to the Court of
12 Appeals ~~by, any party to the case may~~ submitting a letter to the Supreme Court
13 requesting that the case be retained.

14 (1) A letter requesting ~~concerning recall~~ retention must contain:

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

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

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

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

20 (E) A completed checklist for appellate jurisdiction.

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

Commented [JJMP1]: I'm curious to ask why the rule doesn't describe this as the court providing notice of an intent to transfer (and allowing for requests for retention)?

I do think if we use the conditional transfer language, we should refer to the case being recalled rather than retained. If it's been transferred, even if only conditionally, I think recall is the right verb.

Commented [JJMP2]: If we've already had a conditional transfer, does it make sense to have someone file in support of transfer? I'd suggest deleting.

Commented [JJMP3]: Rule 22(a) provides how 7 days will be computed.

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

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

(5) If no timely request for ~~recall~~ention is received or if the Supreme Court declines a request to ~~recall~~tain, the Supreme Court clerk will issue a notice to the parties and the Court of Appeals informing them that the conditional transfer order ~~of transfer~~ will stand.

~~(4)~~ The Supreme Court will not consider any request for recall that does not comply with Any letter submitted outside of the provisions of the requirements of this paragraph (b) will not be considered.

~~(d)~~ **Notice of order of transfer.** Upon entry of an order of transfer or conditional transfer the Supreme Court clerk ~~will~~ provide notice of the order to each party to the proceeding and to the trial court clerk.

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

(e) **Transfer of appeal record.** If the record on appeal has already been filed with the Supreme Court clerk the record on appeal will be transmitted to the Court of Appeals clerk within five days of the date of the entry of the order of transfer.

(f) **Subsequent proceedings before Court of Appeals.** Upon receipt by the Court of Appeals clerk of an order of transfer or notice that a conditional order of transfer will

Commented [JJMP4]: This probably needs to be in the next subparagraph. I didn't cut and paste it so as to avoid losing the suggested edits, but I don't think it fits under this heading.

Commented [JJMP5]: I've changed to (4) in anticipation of moving (4) and (5) to the next paragraph.

Commented [JJMP6]: Are we sure? Occasionally, a party will realize late in the game that recall might be appropriate. Although I don't want to encourage belated requests, I don't know that we want to say that we won't consider them. Just something to think about.

Commented [JJMP7]: This overlaps a bit with what we have in (5) above. We'll want to merge the two together.

Commented [JJMP8]: This is the first mention of an unconditional order of transfer. We should either delete or explain what it is.

Commented [JJMP9]: Conditional? Unconditional?

49 stand, the case will proceed before the Court of Appeals to final decision and disposition
50 as in other appellate cases pursuant to these rules.

Commented [JJMP10]: This might suggest that the COA lacks discretion to ask the Supreme Court for recall. Assuming we want that discretion to remain (and I think we do), this may need revision.

We could also build into this a process by which a party could ask the COA to request recall by the supreme court. That would resolve the issue noted above where a party might realize late in the game that recall makes sense. Just an idea.

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

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

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

16 (1) A letter concerning retention must contain:

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

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

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

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

22 (E) A completed checklist for appellate jurisdiction.

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

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

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

29 (34) If the Supreme Court elects to retain the case, it will issue an order rescinding the
30 conditional order of transfer.

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

34 (56) Any letter submitted outside of the provisions of paragraph (b) will not be
35 considered.

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

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

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

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

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

TAB 5

Rule 87. In-person, remote, and hybrid hearings; request for different format.

(a) Definitions.

- (1) "Participant" means a party, an intervenor, a person who has objected to a subpoena, or an attorney for any such persons.
- (2) "In-person" means a participant will be physically present in the courtroom.
- (3) "In-person hearing" means a hearing where all participants appear in person.
- (4) "Remote" or "remotely" means a participant will appear by video conference or other electronic means approved by the court.
- (5) "Remote hearing" means no participants will be physically present in the courtroom and all participants will appear remotely.
- (6) "Hybrid hearing" means a hearing at which some participants appear in person and others appear remotely.

(b) Setting hearing format; factors to consider. The court has discretion to set a hearing as an in-person hearing, a remote hearing, or a hybrid hearing. In determining which format to use for a hearing, the court will consider:

- (1) the preference of the participants, if known;
- (2) the anticipated hearing length;
- (3) the number of participants;
- (4) the burden on a participant of appearing in person compared to appearing remotely, including time and economic impacts;
- (5) the complexity of issues to be addressed;
- (6) whether and to what extent documentary or testimonial evidence is likely to be presented;
- (7) the availability of adequate technology to accomplish the hearing's purpose;

URCP 87. New.

- (8) the availability of language interpretation or accommodations for communication with individuals with disabilities;
- (9) the possibility that the court may order a party, who is not already in custody, into custody;
- (10) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights; and
- (11) any other factor, based on the specific facts and circumstances of the case or the court's calendar, that the court deems relevant.

(c) Request to appear by a different format.

(1) **Manner of request.** A participant may request that the court allow the participant or a witness to appear at a hearing by a different format than that set by the court. Any request must be made verbally during a hearing, by email, by letter, or by written motion, and the participant must state the reason for the request. If a participant is represented by an attorney, all requests must be made by the attorney.

(A) Email and letter requests.

- (i) An email or letter request must be copied on all parties on the request;
- (ii) An email or letter request must include in the subject line, "REQUEST TO APPEAR IN PERSON, Case _____" or "REQUEST TO APPEAR REMOTELY, Case _____;" and
- (iii) An email request must be sent to the court's email address, which may be obtained from the court clerk.

(B) Request by written motion. If making a request by written motion, the motion must succinctly state the grounds for the request and be

accompanied by a request to submit for decision and a proposed order. The motion need not be accompanied by a supporting memorandum.

(2) **Timing.** All requests, except those made verbally during a hearing, must be sent to the court at least seven days before the hearing unless there are exigent circumstances or the hearing was set less than seven days before the hearing date, in which case the request must be made as soon as reasonably possible.

(d) Resolution of the request.

(1) **Timing and manner of resolution.** The court may rule on a request under paragraph (c) without awaiting a response. The court may rule on the request in open court, by email, by minute entry, or by written order. If the request is made by email, the court will make a record if the request is denied.

(2) **Court's accommodation of participant's preference; factors to consider.** The court will accommodate a timely request unless the court makes, on the record, a finding of good cause to order the participant to appear in the format originally noticed. The court may find good cause to deny a request based on:

(A) a constitutional or statutory right that requires a particular manner of appearance or a significant possibility that such a right would be impermissibly diminished or infringed by appearing remotely;

(B) a concern for a participant's or witness's safety, well-being, or specific situational needs;

(C) a prior technological challenge in the case that unreasonably contributed to delay or a compromised record;

(D) a prior failure to demonstrate appropriate court decorum, including attempting to participate from a location that is not conducive to accomplishing the purpose of the hearing;

URCP 87. New.

(E) a prior failure to appear for a hearing of which the participant had notice;

(F) the possibility that the court may order a party, who is not already in custody, into custody;

(G) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights;

(H) an agreement or any objection of the parties;

(I) the court's determination that the consequential nature of a specific hearing requires all participants to appear in person; or

(J) the capacity of the court, including but not limited to the required technology equipment, staff, or security, to accommodate the request.

(3) Effect on other participants. The preference of one participant, and the court's accommodation of that preference, does not:

(A) change the format of the hearing for any other participant unless otherwise ordered by the court; or

(B) affect any other participant's opportunity to make a timely request to appear by a different format or the court's consideration of that request.

Rule 17.5. In-person, remote, and hybrid hearings; request for different format.**(a) Definitions.**

- (1) "Participant" means a party, a participating victim, or an attorney for a party or participating victim.
- (2) "In-person" means a participant will be physically present in the courtroom.
- (3) "In-person hearing" means a hearing where all participants appear in person.
- (4) "Remote" or "remotely" means a participant will appear by video conference or other electronic means approved by the court.
- (5) "Remote hearing" means no participants will be physically present in the courtroom and all participants will appear remotely.
- (6) "Hybrid hearing" means a hearing at which some participants appear in person and others appear remotely.

(b) Setting hearing format; factors to consider. The court has discretion to set a hearing as an in-person hearing, a remote hearing, or a hybrid hearing. In determining which format to use for a hearing, the court will consider:

- (1) the preference of the participants, if known;
- (2) the anticipated hearing length;
- (3) the number of participants;
- (4) the burden on a participant of appearing in person compared to appearing remotely, including time and economic impacts;
- (5) the complexity of issues to be addressed;
- (6) whether and to what extent documentary or testimonial evidence is likely to be presented;
- (7) the availability of adequate technology to accomplish the hearing's purpose;

- (8) the availability of language interpretation or accommodations for communication with individuals with disabilities;
- (9) the possibility that the court may order a party, who is not already in custody, into custody;
- (10) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights; and
- (11) any other factor, based on the specific facts and circumstances of the case or the court's calendar, that the court deems relevant.

(c) Request to appear by a different format.

(1) **Manner of request.** A participant may request that the court allow the participant or a witness to appear at a hearing by a different format than that set by the court. Any request must be made verbally during a hearing, by email, by letter, or by written motion, and the participant must state the reason for the request. If a participant is represented by an attorney, all requests must be made by the attorney.

(A) Email and letter requests.

- (i) An email or letter request must be copied on all parties;
- (ii) An email or letter request must include in the subject line, "REQUEST TO APPEAR IN PERSON, Case _____" or "REQUEST TO APPEAR REMOTELY, Case _____;" and
- (iii) An email request must be sent to the court's email address, which may be obtained from the court clerk.

(B) Request by written motion. If making a request by written motion, the motion must succinctly state the grounds for the request and be accompanied by a request to submit for decision and a proposed order. The motion need not be accompanied by a supporting memorandum.

(2) **Timing.** All requests, except those made verbally during a hearing, must be sent to the court at least seven days before the hearing unless there are exigent circumstances or the hearing was set less than seven days before the hearing date, in which cases the request must be made as soon as reasonably possible.

(d) Resolution of the request.

(1) **Timing and manner of resolution.** The court may rule on a request under paragraph (c) without awaiting a response. The court may rule on the request in open court, by email, by minute entry, or by written order. If the request is made by email, the court will make a record of the request if the request is denied.

(2) **Court's accommodation of participant's preference; factors to consider.** The court will accommodate a timely request unless the court makes, on the record, a finding of good cause to order the participant to appear in the format originally noticed. The court may find good cause to deny a request based on:

(A) a constitutional or statutory right that requires a particular manner of appearance or a significant possibility that such a right would be impermissibly diminished or infringed by appearing remotely;

(B) a concern for a participant's or witness's safety, well-being, or specific situational needs;

(C) a prior technological challenge in the case that unreasonably contributed to delay or a compromised record;

(D) a prior failure to demonstrate appropriate court decorum, including attempting to participate from a location that is not conducive to accomplishing the purpose of the hearing;

(E) a prior failure to appear for a hearing of which the participant had notice;

(F) the possibility that the court may order a party, who is not already in custody, into custody;

(G) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights;

(H) a participant's involvement in a problem-solving court;

(I) an agreement or any objection of the parties;

(J) the court's determination that the consequential nature of a specific hearing requires all participants to appear in person; or

(K) the capacity of the court, including but not limited to the required technology equipment, staff, or security, to accommodate the request.

(3) Effect on other participants. The preference of one participant, and the court's accommodation of that preference, does not:

(A) change the format of the hearing for any other participant unless otherwise ordered by the court; or

(B) affect any other participant's opportunity to make a timely request to appear by a different format or the court's consideration of that request.

Rule 61. In-person, remote, and hybrid hearings; request for different format.**(a) Definitions.**

- (1) "Participant" means a party, an intervenor, an attorney for a party or an intervenor, a parent of a minor in a delinquency matter, a juvenile probation officer in a delinquency matter, a worker for Juvenile Justice and Youth Services in a delinquency matter, or a victim in a delinquency matter.
- (2) "In-person" means a participant will be physically present in the courtroom.
- (3) "In-person hearing" means a hearing where all participants appear in person.
- (4) "Remote" or "remotely" means a participant will appear by video conference or other electronic means approved by the court.
- (5) "Remote hearing" means no participants will be physically present in the courtroom and all participants will appear remotely.
- (6) "Hybrid hearing" means a hearing at which some participants appear in person and others appear remotely.

(b) Setting hearing format; factors to consider. The court has discretion to set a hearing as an in-person hearing, a remote hearing, or a hybrid hearing. In determining which format to use for a hearing, the court will consider:

- (1) the preference of the participants, if known;
- (2) the anticipated hearing length;
- (3) the number of participants;
- (4) the burden on a participant of appearing in person compared to appearing remotely, including time and economic impacts;
- (5) the complexity of issues to be addressed;
- (6) whether and to what extent documentary or testimonial evidence is likely to be presented;

- (7) the availability of adequate technology to accomplish the hearing's purpose;
- (8) the availability of language interpretation or accommodations for communication with individuals with disabilities;
- (9) the possibility that the court may order a party, who is not already in custody, into custody;
- (10) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights; and
- (11) any other factor, based on the specific facts and circumstances of the case or the court's calendar, that the court deems relevant.

(c) Request to appear by a different format.

(1) **Manner of request.** A participant may request that the court allow the participant or a witness to appear at a hearing by a different format than that set by the court. Any request must be made verbally during a hearing, by email, by letter, or by written motion, and the participant must state the reason for the request. If a participant is represented by an attorney, all requests must be made by the attorney.

(A) Email and letter requests.

- (i) An email or letter request must be copied on all parties;
- (ii) An email or letter request must include in the subject line, "REQUEST TO APPEAR IN PERSON, Case _____" or "REQUEST TO APPEAR REMOTELY, Case _____;" and
- (iii) An email request must be sent to the court's email address, which may be obtained from the court clerk.

(B) Request by written motion. If making a request by written motion, the motion must succinctly state the grounds for the request and be accompanied by a request to submit for decision and a proposed order. The

motion need not be accompanied by a supporting memorandum.

(2) **Timing.** All requests, except those made verbally during a hearing, must be sent to the court at least seven days before the hearing unless there are exigent circumstances or the hearing was set less than seven days before the hearing date, in which cases the request must be made as soon as reasonably possible.

(d) **Resolution of the request.**

(1) **Timing and manner of resolution.** The court may rule on a request under paragraph (c) without waiting for a response. The court may rule on the request in open court, by email, by minute entry, or by written order. If the request is made by email, the court will make a record of the request if the request is denied.

(2) **Court's accommodation of participant's preference; factors to consider.** The court will accommodate a timely request unless the court makes, on the record, a finding of good cause to order the participant to appear in the format originally noticed. The court may find good cause to deny a request based on:

(A) a constitutional or statutory right that requires a particular manner of appearance or a significant possibility that such a right would be impermissibly diminished or infringed by appearing remotely;

(B) a concern for a participant's or witness's safety, well-being, or specific situational needs;

(C) a prior technological challenge in the case that unreasonably contributed to delay or a compromised record;

(D) a prior failure to demonstrate appropriate court decorum, including attempting to participate from a location that is not conducive to accomplishing the purpose of the hearing;

(E) a prior failure to appear for a hearing of which the participant had notice;

(F) the possibility that the court may order a party, who is not already in custody, into custody;

(G) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights;

(H) an agreement or any objection of the parties;

(I) the court's determination that the consequential nature of a specific hearing requires all participants to appear in person; or

(J) the capacity of the court, including but not limited to the required technology equipment, staff, or security, to accommodate the request.

(3) **Effect on other participants.** The preference of one participant, and the court's accommodation of that preference, does not:

(A) change the format of the hearing for any other participant unless otherwise ordered by the court; or

(B) affect any other participant's opportunity to make a timely request to appear by a different format or the court's consideration of that request.

TAB 6

1 **Rule XX. Disqualification or recusal of a court of appeals judge.**

2 (a) **Motion to disqualify or recuse.**

3 (1) A party to an action or the party's attorney may file a motion to disqualify or recuse
4 a judge. The motion must be accompanied by a certificate that the motion is filed in
5 good faith and must be supported by an affidavit or unsworn declaration as described
6 in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act stating facts sufficient
7 to show bias, prejudice, or conflict of interest.

8 (2) The motion must be filed within seven days of:

9 (A) assignment of the judge to the panel; or

10 (B) appearance of the party or the party's attorney.

11 (3) Every motion to disqualify or recuse a judge must be signed by at least one
12 attorney of record who is an active member in good standing of the Bar of this state
13 or by a party who is self-represented. A person may sign a document using any form
14 of signature recognized by law as binding.

15 (4) No party may file more than one motion to disqualify in an action, unless the
16 second or subsequent motion is based on grounds that the party did not know of and
17 could not have known of at the time of the earlier motion. Motions to disqualify or
18 recuse more than one judge must be submitted as one motion.

19 (5) The affidavit or declaration supporting the motion must state when and how the
20 party came to know of the reason for disqualification or recusal.

21 (b) **Reviewing judge.**

22 (1) The judge who is the subject of the motion must, without taking any further action
23 on the matter, certify the motion and affidavit or declaration to the presiding judge of
24 the court of appeals. If the presiding judge is the subject of the motion, the associate
25 presiding judge will review the motion.

26 (2) If the reviewing judge finds that the motion and affidavit or declaration are timely
27 filed, filed in good faith, and legally sufficient, the reviewing judge shall issue an order
28 assigning another judge to the panel.

29 (3) In determining issues of fact or of law, the reviewing judge may consider any part
30 of the record of the action and may request of the judge who is the subject of the
31 motion, an affidavit or declaration responding to questions posed by the reviewing
32 judge.

33 (4) The reviewing judge may deny a motion not filed in a timely manner.

1 **Rule XX. Disqualification or recusal of a justice.**

2 **(a) Motion to disqualify or recuse.**

3 (1) A party to an action or the party's attorney may file a motion to disqualify a judge.
4 The motion must be accompanied by a certificate that the motion is filed in good faith
5 and must be supported by an affidavit or unsworn declaration as described in Title
6 78B, Chapter 18a, Uniform Unsworn Declarations Act stating facts sufficient to show
7 bias, prejudice or conflict of interest.

8 (2) The motion must be filed no later than 21 days after the notice of oral argument
9 scheduling. If oral argument is scheduled on an expedited basis, the motion is due
10 when practicable, not less than seven days before oral argument.

11 (3) Every motion to disqualify or recuse a judge must be signed by at least one
12 attorney of record who is an active member in good standing of the Bar of this state
13 or by a party who is self-represented. A person may sign a document using any form
14 of signature recognized by law as binding.

15 (4) No party may file more than one motion to disqualify in an action, unless the
16 second or subsequent motion is based on grounds that the party did not know of and
17 could not have known of at the time of the earlier motion. Motions to disqualify or
18 recuse more than one justice must be submitted as one motion.

19 (5) The affidavit or declaration supporting the motion must state when and how the
20 party came to know of the reason for disqualification.

21 **(b) Reviewing justice or justices.**

22 (1) The Chief Justice will review all motions to disqualify or recuse. If the Chief Justice
23 is the subject of the motion, the remaining justices will review the motion.

24 (2) If the reviewing justice or justices find that the motion and affidavit or declaration
25 are timely filed, filed in good faith, and legally sufficient, the reviewing justice or

26 justices will call an active judge from an appellate court or the district court to
27 participate in the cause in place of the disqualified or recused justice.

28 (3) In determining issues of fact or of law, the reviewing justice or justices may consider
29 any part of the record of the action and may request of the justice who is the subject of
30 the motion, an affidavit or declaration responding to questions posed by the reviewing
31 justice or justices.

32 (4) The reviewing justice may deny a motion not filed in a timely manner.