

## 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:<br>Matheson Courthouse, Council Room, N. 301<br>450 S. State St.<br>Salt Lake City, Utah 84111<br><a href="https://utcourts.webex.com/utcourts/j.php?MTID=m0e213291b9b67d181d09e15d8bf27983">https://utcourts.webex.com/utcourts/j.php?MTID=m0e213291b9b67d181d09e15d8bf27983</a> |
| Date:     | December 5, 2024   |
| Time:     | 12:00 to 1:30 p.m.   |

|  |       |                         |
|--|-------|-------------------------|
| <b>Action:</b> Welcome and approval of November 7, 2024 Minutes  | Tab 1 | Nathalie Skibine, Chair |
| <b>Action:</b> Rule 29   | Tab 2 | Nathalie Skibine        |
| <b>Action:</b> Rule 42   | Tab 3 | Nathalie Skibine        |
| <b>Action:</b> Rule 40A  | Tab 4 | Nathalie Skibine        |
| <b>Action:</b> Rule 3  | Tab 5 | Dick Baldwin            |
| <b>Action:</b> Rules where "district court" may need to be changed to "trial court" to include the Business and Chancery Court | Tab 6 | Nicole Gray             |
| <b>Discussion:</b> Old/new business  |       | Nathalie Skibine, Chair |

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

#### **2025 Meeting schedule:**

|                  |               |                   |                  |
|------------------|---------------|-------------------|------------------|
| January 2, 2025  | April 3, 2025 | July 3, 2025      | October 2, 2025  |
| February 6, 2025 | May 1, 2025   | August 7, 2025    | November 6, 2025 |
| March 6, 2025    | June 5, 2025  | September 4, 2025 | December 4, 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, November 7, 2024  
12:00 pm to 1:30 pm

#### PRESENT

Dick Baldwin  
Judge Michele  
Christiansen Forster  
Nicole Gray  
Amber Griffith—Staff  
Michael Judd—Recording  
Secretary  
Debra Nelson  
Caroline Olsen  
Judge Gregory Orme

Tera Peterson  
Martha Pierce  
Stan Purser  
Clark Sabey  
Nathalie Skibine—  
Chair  
Scarlet Smith  
Nick Stiles—Staff  
Eric Weeks

#### EXCUSED

Michelle Quist  
Mary Westby

#### GUESTS

None

**1. Action:**

**Nathalie Skibine**

**Approval of October 2024 Minutes**

The committee reviewed the draft October 2024 minutes and noted no needed changes.

*Judge Michele Christiansen Forster moved to approve the October 2024 minutes as they appeared in the committee's materials. Stan Purser seconded that motion, and it passed without objection by unanimous consent.*

2. **Action:** Judge Christiansen Forster  
**Rule 42** Clark Sabey  
Michelle Quist  
Nicole Gray

The committee discussed the proposed version of Rule 42 and worked through several suggested changes to the language of the rule, including clarifying initial requirements as applying only to letters requesting retention (and not to a subsequent response), discussing the appropriate timing for letters and responses, and addressing nuances about letter length.

*Following that discussion, Judge Gregory Orme moved to approve Rule 42 as modified and as it appeared on the screen at the committee's meeting. Clark Sabey seconded that motion, and it passed without objection by unanimous consent. The approved rule will next be circulated for public comment.*

3. **Action:** Judge Christiansen Forster  
**Vexatious Litigants** Nick Stiles  
Mary Westby  
Tera Peterson

Nick Stiles offered background to the proposed rule. The rule, as drafted, stands as a pared-down adaptation of Rule 83 of the Utah Rules of Civil Procedure. The committee discussed, at some length, the behaviors giving rise to a vexatious-litigant finding, as contained in the rule. The committee also discussed how the rule would apply when a party has already been deemed a vexatious litigant in the trial court below, in accordance with Rule 83(j) of the Utah Rules of Civil Procedure. The committee then discussed where to place the rule and settled on a spot within Rule 40A, where it will sit alongside rules regarding attorney conduct and discipline.

*Following that discussion, Judge Christiansen Forster moved to approve Rule 42 as modified and as it appeared on the screen at the committee's meeting. Dick Baldwin seconded that motion, and it passed without objection by unanimous consent. The approved rule will next be circulated for public comment.*

**4. Discussion: Nicole Gray**  
**Rule 3**

The proposed change to Rule 3 is a simple one, reflecting only that appeals may be taken from Business and Chancery Court matters, as from district court and juvenile court matters.

*Following that discussion, Judge Christiansen Forster moved to approve Rule 3 as modified and as it appeared on the screen at the committee's meeting. Mr. Sabey seconded that motion, and it passed without objection by unanimous consent.*

**5. Discussion: Nathalie Skibine**  
**Old/New Business**

The committee briefly discussed the possibility of additional changes to Rule 3 and parallel rules, as well as a potential treatment of a "jurisdictional trap" in the existing rules. Those matters will be reserved for the committee's next meeting.

**6. Adjourn Nathalie Skibine**

*Following the business and discussions described above, Debra Nelson moved to adjourn, and Judge Orme seconded. The committee adjourned. The committee's next meeting will take place on December 5, 2024.*

TAB 2

1 **Rule 29. Oral 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.** The court may hold oral argument in person, by phone, or by  
8 videoconference.

9 (b) **Notice; waiver; cancellation; ~~appearing remotely~~; continuance; remote appearance.**

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.

13 (A) Cancellation. If all parties to a case believe oral argument will not benefit the  
14 court, they may file a joint motion to cancel oral argument not later than 14 days  
15 from the date of the clerk's notice. The court will grant the motion only if it  
16 determines that oral argument will not aid the decisional process.

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

24 (C) Remote appearance. ~~A motion request to appear remotely will may be granted~~  
25 ~~if filed not later than 21 days before oral argument. An emergency request or a~~  
26 ~~motion to appear remotely filed within 21 days of oral argument may will be~~

27 ~~granted in the court's discretion on a showing of good cause.~~ A party may appear  
28 remotely if the party provides timely notice to the court and, when practicable, the  
29 other parties. Notice is timely:

30 (i) if a party e-files or emails notice at least 21 days before oral argument; or

31 (ii) if a party emails notice or calls the clerk within a reasonable time under the  
32 circumstances.

33 (2) **Court of Appeals.** Not later than 28 days before the date on which a case is  
34 calendared, the clerk will give notice to all parties that oral argument is to be  
35 permitted, the time and place of oral argument, and the time to be allowed each side.

36 (A) Waiver. Any party may waive oral argument by filing a written waiver with  
37 the clerk not later than 14 days from the date of the clerk's notice. If one party  
38 waives oral argument and any other party does not, the party waiving oral  
39 argument may nevertheless present oral argument.

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

48 ~~(C) Remote appearance. A motion request to appear remotely will may be granted~~  
49 ~~if filed not later than 21 days before oral argument. An emergency request or a~~  
50 ~~motion to appear remotely filed within 21 days of oral argument may will be~~  
51 ~~granted in the court's discretion on a showing of good cause.~~ A party may appear  
52 remotely if the party provides timely notice to the court and, when practicable, the  
53 other parties. Notice is timely:



54 (i) if a party e-files or emails notice at least 21 days before oral argument; or  
55 (ii) if a party emails or calls the clerk within a reasonable time under the  
56 circumstances.

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

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

76 (e) **Nonappearance of parties.** If the appellee fails to appear to present argument, the  
77 court will hear argument on behalf of the appellant, if present. If the appellant fails to  
78 appear, the court may hear argument on behalf of the appellee, if present. If neither party  
79 appears, the case may be decided on the briefs, or the court may direct that the case be  
80 rescheduled for argument.

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

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

89 *Effective ~~November 1, 2024~~*

90 Advisory Committee Note

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

93 *Note adopted November 1, 2022*

**TAB 3**

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

7 (b) **Notice of ~~order of intent to transfer.~~** ~~Upon entry of the order of transfer the Clerk of~~  
8 When the Supreme Court ~~shall give issues a~~ notice of ~~entry of the order of transfer by mail~~  
9 intent to transfer a case to the Court of Appeals, any party to the case may submit a letter  
10 to the Supreme Court requesting that the case be retained.

11 (1) A letter requesting retention must contain:

12 (A) The title of the action and the appellate case number;

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

15 (C) A concise statement of the issues to be presented on appeal;

16 (D) A brief explanation of the reasons supporting retention, including the  
17 considerations indicating a decision is likely to have significant precedential value  
18 as provided in Rule 46; and

19 (E) A completed checklist for appellate jurisdiction.

20 (2) The content of paragraphs (b)(1)(C) and (b)(1)(D) must not exceed five pages.

21 The letter must be filed within ten days following issuance of the intent to transfer  
22 notice.

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

25 (4) Any letter or response that does not comply with paragraph (b) will not be  
26 considered.

**Commented [NS1]:** The Justices would be interested in permitting amicus to submit letters under this rule.

27 (c) Notice of decision. Upon entry of a transfer order or an order granting a retention request the  
28 Supreme Court clerk will provide notice of the order to each party to the proceeding and to the  
29 ~~clerk of the trial court. Upon entry of the order of transfer, the Clerk of the Supreme Court~~  
30 ~~shall transfer the original of the order and the case, including the record and file of the~~  
31 ~~case from the trial court, all papers filed in the Supreme Court, and a written statement~~  
32 ~~of all docket entries in the case up to and including the order of transfer, to the Clerk of~~  
33 ~~the Court of Appeals.~~

34 ~~(c) Receipt of order of transfer by Court of Appeals.~~ Upon receipt of the original order  
35 ~~of transfer from the Clerk of clerk.~~ If no timely retention request is received or if the  
36 Supreme Court declines a retention request, the ~~Clerk of~~Supreme Court clerk will also  
37 provide notice to the Court of Appeals ~~shall~~of the transfer order.

38 (d) Receipt of transfer order by Court of Appeals. Upon receipt from the Supreme Court  
39 clerk of the transfer order, the Court of Appeals clerk will enter the appeal upon the Court  
40 of Appeals docket. The ~~Clerk of the~~ Court of Appeals ~~shall~~clerk will immediately give  
41 notice to each party to the proceeding and to the ~~clerk of the~~ trial court clerk that the  
42 appeal has been docketed and that all further filings will be made with the ~~Clerk of the~~  
43 ~~Court of Appeals. The notice shall state the docket number assigned to the case in the~~  
44 Court of Appeals clerk.

45 ~~(d) Filing or transfer~~ (e) Transfer of appeal record. If the record on appeal has ~~not~~already  
46 been filed with the ~~Clerk of the~~ Supreme Court ~~as of the date of the order of transfer, the~~  
47 ~~Clerk of the Supreme Court shall notify the clerk of the trial court that upon completion~~  
48 ~~of the conditions for filing the record by that court, the clerk shall transmit~~ the record on  
49 appeal will be transmitted to ~~the Clerk of the~~ Court of Appeals. ~~If, however, the record~~  
50 ~~on appeal has already been transmitted to and filed with the Clerk of the Supreme Court~~  
51 ~~as of the date of the entry of the order of transfer, the Clerk of the Supreme Court shall~~  
52 ~~transmit the record on appeal to the Clerk of the Court of Appeals~~ clerk within five days  
53 of the date of the entry of the ~~order of~~ transfer order.

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

# TAB 4

1 **Rule 40A. Vexatious litigants.**

2 **(a) Grounds.** The appellate court may find a person to be a "vexatious litigant" if:

3 (1) the person, with or without legal representation, including an attorney acting pro  
4 se, does any of the following on more than one occasion:

5 (A) files a frivolous brief, motion, petition, or other document;

6 (B) files a brief, motion, petition, or other document that contains redundant,  
7 immaterial, impertinent, or scandalous material;

8 (C) engages in tactics that are frivolous or done solely for the purpose of  
9 harassment or delay; or

10 (D) purports to represent or to use the procedures of a court other than a court of  
11 the United States, a court created by the Constitution of the United States or by  
12 Congress under the authority of the Constitution of the United States, a tribal court  
13 recognized by the United States, a court created by a state or territory of the United  
14 States, or a court created by a foreign nation recognized by the United States;<sup>7</sup> or

15 (2) Any other court has previously determined the party to be a vexatious litigant in  
16 a related matter.

17 **(b) Vexatious litigant orders.** The court may, on its own motion or on the motion of any  
18 party, after notice and an opportunity to be heard, find the party to be a vexatious litigant  
19 and enter an order requiring a vexatious litigant to:

20 (1) furnish security to assure payment of the moving party's reasonable expenses,  
21 costs, and if authorized, attorney fees incurred in a pending action;

22 (2) obtain legal counsel before proceeding in a pending action;

23 (3) obtain legal counsel before filing any future appeal or petition;



24 (4) abide by a prefiling order requiring the vexatious litigant to obtain the court's  
25 permission before filing any briefs, motions, petitions, or other documents in a  
26 pending action;

27 (5) abide by a prefiling order requiring the vexatious litigant to obtain the court's  
28 permission before filing any future appeal or petition; or

29 (6) take any other action reasonably necessary to curb the vexatious litigant's abusive  
30 conduct.

31 **(c) Necessary findings and security.**

32 (1) Unless the court relies on another court's vexatious litigant determination, the  
33 court must find by clear and convincing evidence that the party is a vexatious litigant.

34 (2) The court will identify the amount of the security, if any, and the time within which  
35 it is to be furnished. If the security is not furnished as ordered, the court may dismiss  
36 the vexatious litigant's appeal or petition.

37 **(d) Orders in a pending action.**

38 (1) If a vexatious litigant is subject to an order requiring the court's permission to file  
39 any briefs, motions, petitions, or other documents, the vexatious litigant must submit  
40 the proposed filing to the ~~clerk of court~~ clerk and must:

41 ~~(A) demonstrate that the filing is based on a good faith dispute of the facts;~~

42 (B) demonstrate that the filing is warranted under existing law or a good faith  
43 argument for the extension, modification, or reversal of existing law; and

44 ~~(C)~~ include an oath, affirmation, or declaration under criminal penalty that the  
45 filing is not filed for the purpose of harassment or delay and contains no  
46 redundant, immaterial, impertinent, or scandalous matter.

47 (2) A prefiling order in a pending action shall be effective until a final determination  
48 of the action unless otherwise ordered by the court.

49 **(e) Contempt sanctions.** Disobedience by a vexatious litigant of an order under this rule  
50 may be punished as contempt of court.

51 **(f) Other authority.** This rule does not affect the authority of the court under other  
52 statutes and rules or the inherent authority of the court.

# TAB 5

1 **Rule 3. Appeal as of right - how taken.**

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

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

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

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

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

23 (d) **Notice of appeal contents.**

24 (1) The notice of appeal must:

25 (A) specify the party or parties taking the appeal;

26           (2B) designate the judgment – or the appealable order – from which the appeal is  
27           taken, order, or part thereof being appealed;

28           (3C) name the court from which the appeal is taken; and

29           (4D) name the court to which the appeal is taken.

30           (2) The notice of appeal encompasses all orders that, for purposes of appeal, merge  
31           into the designated judgment or appealable order. It is not necessary to designate  
32           those orders in the notice of appeal.

33           (3) In a civil case, a notice of appeal encompasses the final judgment set out in a  
34           separate document under Utah Rule of Civil Procedure 58A if the notice designates  
35           an order that adjudicates all remaining claims and the rights and liabilities of all  
36           remaining parties.

37           (4) An appellant may designate only part of a judgment or appealable order by  
38           expressly stating that the notice of appeal is so limited. Without such an express  
39           statement, specific designations do not limit the scope of the notice of appeal.

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

44           (f) **Filing fee in civil appeals.** When filing any notice of separate, joint, or cross appeal in  
45           a civil case, the party taking the appeal or cross appeal must, pursuant to Rule 21, pay the  
46           filing fee established by law to the trial court clerk, unless waived by the trial court. The  
47           trial court clerk must accept a notice of appeal regardless of whether the filing fee has  
48           been paid.

49 (g) **Docketing of appeal.**

50 (1) Transmitting notice of appeal to the appellate court. After an appellant files the  
51 notice of appeal, the trial court clerk must immediately email a copy of the notice of  
52 appeal to the appellate court clerk. The email will include:

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

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

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

# TAB 6

1 **Rule 9. Docketing statement.**

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

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

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

14 (1) A concise statement of the nature of the proceeding and the effect of the order  
15 appealed, and the ~~district~~ trial court case number, e.g., "This appeal is from a final  
16 judgment of the First District Court granting summary judgment in case number  
17 001900055."

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

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

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

23 (C) If the notice of appeal was filed after receiving a time extension under Rule  
24 4(e), the date the motion for an extension was granted.

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



27 (E) If the appellant is an inmate confined in an institution and is invoking Rule  
28 21(f), the date the notice of appeal was deposited in the institution's internal mail  
29 system.

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

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

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

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

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

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

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

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

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

- 53 (B) The date the notice of appeal was filed in the ~~district~~trial court.
- 54 (C) If the notice of appeal was filed after receiving a time extension under rule  
55 4(e), the date the motion for an extension was granted.
- 56 (D) If a motion under Rule 24 of the Utah Rules of Criminal Procedure was filed,  
57 the date such motion was filed in the trial court and the date any order disposing  
58 of such motion was entered.
- 59 (E) If a motion to reinstate the time to appeal was filed under Rule 4(f), the date  
60 the order disposing of such motion was entered.
- 61 (F) If the appellant is an inmate confined to an institution and is invoking Rule  
62 21(f), the date the notice of appeal was deposited in the institution's internal mail  
63 system.
- 64 (3) The charges of which the defendant was convicted, and any sentence imposed;  
65 or, if the defendant was not convicted, the dismissed or pending charges.
- 66 (4) A statement of at least one substantial issue appellant intends to assert on appeal.  
67 An issue not raised in the docketing statement may nevertheless be raised in  
68 appellant's brief; conversely, an issue raised in the docketing statement does not  
69 have to be included in appellant's brief.
- 70 (5) A concise summary of the facts necessary to provide context for the issues  
71 presented. If the conviction was pursuant to a plea, the statement of facts should  
72 include whether a motion to withdraw the plea was made before sentencing, and  
73 whether the plea was conditional.
- 74 (6) A reference to all related or prior appeals in the case, with case numbers and  
75 citations.
- 76 (e) **Content of a docketing statement in a review of an administrative order.** The  
77 docketing statement in a case arising from an administrative proceeding must include:

- 78 (1) A concise statement of the nature of the proceedings and the effect of the order  
79 appealed, e.g., “This petition is from an order of the Workforce Appeals Board  
80 denying reconsideration of the denial of benefits.”
- 81 (2) The statutory provision that confers jurisdiction on the appellate court.
- 82 (3) The following dates relevant to a determination of the timeliness of the petition  
83 for review:
- 84 (A) The date the final order from which the petition for review is filed.  
85 (B) The date the petition for review was filed.
- 86 (4) A statement of at least one substantial issue petitioner intends to assert on  
87 review. An issue not raised in the docketing statement may nevertheless be raised in  
88 petitioner’s brief; conversely, an issue raised in the docketing statement does not  
89 have to be included in petitioner’s brief.
- 90 (5) A concise summary of the facts necessary to provide context for the issues  
91 presented.
- 92 (6) If applicable, a reference to all related or prior petitions for review in the same  
93 case.
- 94 (7) The following documents must be attached to the docketing statement:
- 95 (A) The final order from which the petition for review is filed.  
96 (B) In appeals arising from an order of the Public Service Commission, any  
97 application for rehearing filed pursuant to Utah Code section 54-7-15.
- 98 (f) **Consequences of failure to comply.** In a civil appeal, failure to file a docketing  
99 statement within the time period provided in subsection (b) may result in dismissal of a  
100 civil appeal or a petition for review. In a criminal case, failure to file a docketing  
101 statement within the time period provided in subsection (b) may result in a finding of  
102 contempt or other sanction.

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

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

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

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

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

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

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

15 (b) **Dismissal for failure to prosecute.**

16 (1) If the effective date of a notice of appeal is tolled under the provisions of [Rule 4\(b\)](#)  
17 or [4\(c\)](#), the court, on its own motion, may dismiss the appeal for failure to prosecute  
18 if:

19 (A) any motion within the scope of [Rule 4\(b\)](#) has not been submitted to the ~~district~~  
20 [trial](#) court for decision within 150 days after the motion was filed; or

21 (B) a proposed final judgment has not been submitted to the ~~district-trial~~ court  
22 within 150 days after the announcement of judgment under [Rule 4\(c\)](#).

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

26 (c) **Simplified appeal process; eligible appeals.**

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

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

35 (A) appeals challenging only the sentence in a criminal case;

36 (B) appeals from the revocation of probation or parole;

37 (C) appeals from a judgment in an unlawful detainer action; and

38 (D) petitions for review of a decision of the Department of Workforce Services  
39 Workforce Appeals Board or the Labor Commission.

40 (d) **Memoranda in lieu of briefs.**

41 (1) In appeals designated under paragraph (c), the parties must file memoranda in  
42 support of their positions instead of briefs. The schedule for preparing memoranda  
43 will be set by appellate court order.

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

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

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

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

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

55 (E) a certificate of compliance, certifying that the memorandum complies with  
56 [Rule 21](#) regarding public and private documents.

57 (3) An appellant or petitioner may file a reply memorandum limited to responding to  
58 the facts and arguments raised in appellee's or respondent's principal memorandum.  
59 The reply memorandum must include an argument and a certificate of compliance  
60 with [Rule 21](#) regarding public and private documents.

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

64 ~~(e) Extension of time. By stipulation filed with the court prior to the expiration of time in~~  
65 ~~which a memorandum is due, the parties may extend the time for filing by no more than~~  
66 ~~21 days. Any additional motions for an extension of time will be governed by [Rule 22\(b\)](#).~~

67 ~~Effective May 1, 2024~~

**Commented [AG1]:** Rule 10 is currently out for public comment with the removal of this paragraph.

1 **Rule 11. The record on appeal.**

2 (a) **Composition of the record on appeal.** The record on appeal consists of the documents  
3 and exhibits filed in or considered by the trial court, including the presentence report in  
4 criminal matters, and the transcript of proceedings, if any.

5 (b) **Preparing, paginating, and indexing the record.**

6 (1) **Preparing the record.** On the appellate court's request, the trial court clerk will  
7 prepare the record in the following order:

8 (A) all original documents in chronological order;

9 (B) all published depositions in chronological order;

10 (C) all transcripts prepared for appeal in chronological order;

11 (D) a list of all exhibits offered in the proceeding;

12 (E) all exhibits; and

13 (F) in criminal cases, the presentence investigation report.

14 (2) **Pagination.**

15 (A) Using Bates numbering, the entire record must be paginated.

16 (B) If the appellate court requests a supplemental record, the same procedures as  
17 in (b)(2)(A) apply, continuing Bates numbering from the last page number of the  
18 original record.

19 (3) **Index.** A chronological index of the record must accompany the record on appeal.  
20 The index must identify the date of filing and starting page of the document,  
21 deposition, or transcript.

22 (4) **Examining the record.** Appellate court clerks will establish rules and procedures  
23 for parties to check out the record after pagination.

24 (c) **The transcript of proceedings; duty of appellant to order; notice to appellee if partial**  
25 **transcript is ordered.**



26 (1) **Request for transcript; time for filing.** Within 14 days after filing the notice of  
27 appeal, or within 30 days of the notice of appeal where an indigent appellant has a  
28 statutory or constitutional right to counsel, the appellant must order the transcript(s)  
29 online at [www.utcourts.gov](http://www.utcourts.gov), specifying the entire proceeding or parts of the  
30 proceeding to be transcribed that are not already on file. The appellant must serve on  
31 the appellee a designation of those parts of the proceeding to be transcribed. If no such  
32 parts of the proceedings are to be requested, within the same period the appellant  
33 must file a certificate to that effect with the appellate court clerk and serve a copy on  
34 the appellee.

35 (2) **Transcript required of all evidence regarding challenged finding or conclusion.**  
36 If the appellant intends to argue on appeal that a finding or conclusion is unsupported  
37 by or is contrary to the evidence, the appellant must include in the record a transcript  
38 of all evidence relevant to such finding or conclusion. Neither the court nor the  
39 appellee is obligated to correct appellant's deficiencies in providing the relevant  
40 portions of the transcript.

41 (3) **Statement of issues; cross-designation by appellee.** If the appellant does not order  
42 the entire transcript, the appellee may, within 14 days after the appellant serves the  
43 designation or certificate described in paragraph (c)(1), order the transcript(s) in  
44 accordance with (c)(1), and serve on the appellant a designation of additional parts to  
45 be included.

46 (d) **Agreed statement as the record on appeal.** In lieu of the record on appeal as defined  
47 in paragraph (a) of this rule, the parties may prepare and sign a statement of the case,  
48 showing how the issues presented by the appeal arose and were decided in the trial court  
49 and setting forth only so many of the facts averred and proved or sought to be proved as  
50 are essential to a decision of the issues presented. If the court deems the statement  
51 accurate, it, together with such additions as the trial court may consider necessary fully  
52 to present the issues raised by the appeal, will be approved by the trial court. The trial  
53 court clerk will transmit the statement to the appellate court clerk within the time

54 prescribed by Rule [12\(b\)\(2\)](#). The trial court clerk will transmit the record to the appellate  
55 court clerk on the trial court's approval of the statement.

56 **(e) Statement of evidence or proceedings when no report was made or when transcript**  
57 **is unavailable.** If no report of the evidence or proceedings at a hearing or trial was made,  
58 or if a transcript is unavailable, or if the appellant is impecunious and unable to afford a  
59 transcript in a civil case, the appellant may prepare a statement of the evidence or  
60 proceedings from the best available means, including recollection. The statement must be  
61 served on the appellee, who may serve objections or propose amendments within 14 days  
62 after service. The statement and any objections or proposed amendments must be  
63 submitted to the trial court for resolution, and the trial court clerk will conform the record  
64 to the trial court's resolution.

65 **(f) Supplementing or modifying the record.**

66 (1) If any dispute arises as to whether the record is complete and accurate, the dispute  
67 may be submitted to and resolved by the trial court. The trial court will ensure that  
68 the record accurately reflects the proceedings before the trial court, including by  
69 entering any necessary findings to resolve the dispute.

70 (2) If anything material to either party is omitted from or misstated in the record by  
71 error of the trial court or court personnel, by accident, or because the appellant did  
72 not order a transcript of proceedings that the appellee needs to respond to issues  
73 raised in the appellant's brief, the omission or misstatement may be corrected and a  
74 supplemental record may be created and forwarded:

75 (A) on stipulation of the parties;

76 (B) by the trial court before or after the record has been forwarded; or

77 (C) by the appellate court on a motion from a party. The motion must state the  
78 position of every other party on the requested supplement or modification or why  
79 the movant was unable to learn a party's position.

80 (3) The moving party, or the court if it is acting on its own initiative, must serve on  
81 the parties a statement of the proposed changes. Within 14 days after service, any  
82 party may serve objections to the proposed changes.

83 (g) **Accessing sealed records.** Any portion of the record properly designated as sealed in  
84 the ~~district~~ trial court remains sealed on appeal. A party may file a motion or petition to  
85 access the sealed portion of the record in accordance with Rule 4-202.04 of the Utah Code  
86 of Judicial Administration.

87 *Effective May 1, 2024*

1 **Rule 34. Costs.**

2 (a) **To whom allowed.** Costs are awarded only in civil cases. Except as otherwise  
3 provided by law or court order:

4 (1) if an appeal is dismissed, costs must be awarded for the appellee unless the parties  
5 agree otherwise;

6 (2) if a judgment or order is affirmed, costs must be awarded for the appellee;

7 (3) if a judgment or order is reversed, costs must be awarded for the appellant;

8 (4) if a judgment or order is affirmed or reversed in part, or is vacated, costs are  
9 awarded only as the court orders.

10 (b) **Costs for and against the State of Utah.** In cases involving the State of Utah or an  
11 agency or officer thereof, the court has discretion to award costs for or against the State  
12 unless specifically required or prohibited by law.

13 (c) **Costs on appeal.** The following costs may be awarded:

14 (1) \$3.00 per page of a printed brief and attachments;

15 (2) actual costs incurred in preparing and transmitting the record, including costs of  
16 the reporter's transcript unless the court orders otherwise;

17 (3) premiums paid for supersedeas or cost bonds to preserve rights pending appeal;  
18 and

19 (4) fees for filing and docketing the appeal.

20 (d) **Bill of costs awarded after remittitur.** A party claiming costs must, within 14 days  
21 after the remittitur is filed with the trial court clerk, serve on the adverse party and file  
22 with the trial court clerk an itemized and verified bill of costs. The adverse party may,  
23 within seven days of service of the bill of costs, serve and file a notice of objection,  
24 together with a motion to have the trial court award costs. If there is no objection to the  
25 cost bill within the allotted time, the trial court clerk must award the costs as filed and

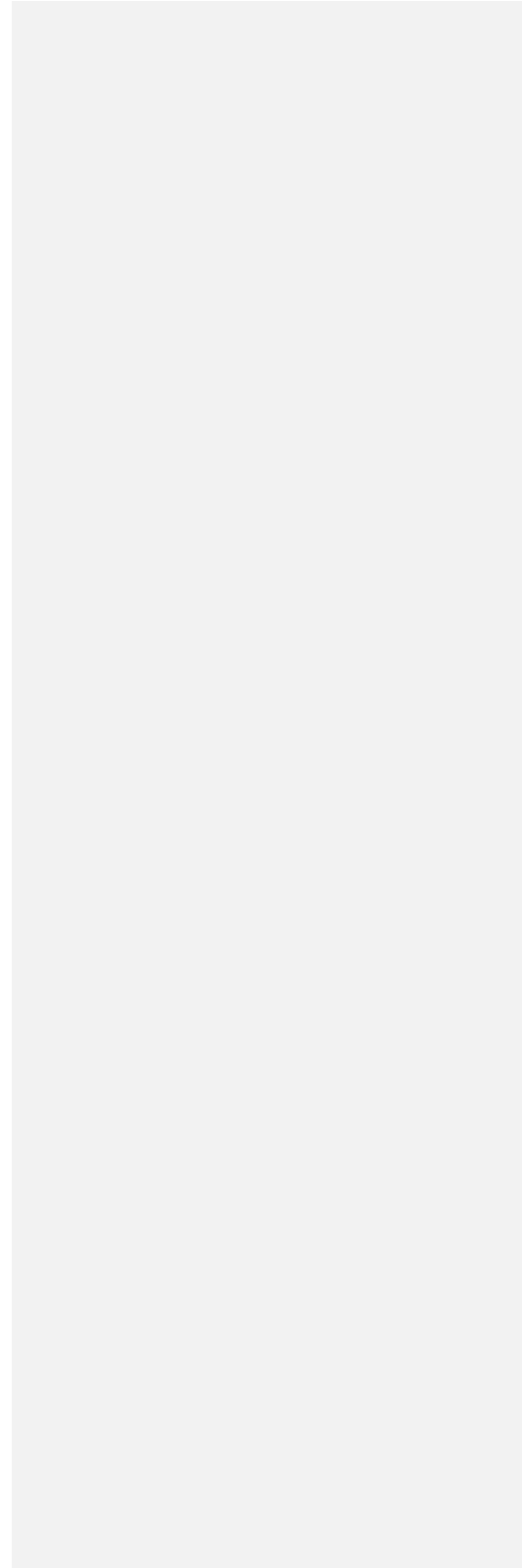
26 enter judgment for the party entitled thereto, which judgment will be entered in the  
27 judgment docket with the same force and effect as in the case of other judgments of  
28 record. If the cost bill of the prevailing party is timely opposed, the clerk, upon reasonable  
29 notice and hearing, must award the costs and enter a final determination and judgment  
30 in the docket with the same force and effect as in the case of other judgments of record.  
31 The clerk's determination will be reviewable by the trial court upon the request of either  
32 party made within seven days of the entry of the judgment.

33 (e) **Costs in other proceedings and agency appeals.** In all other matters before the court,  
34 including appeals from an agency, costs may be allowed as in cases on appeal from a trial  
35 court. Within 14 days after the time to file a petition for rehearing expires or within 14  
36 days after an order denying such a petition, the party to whom costs have been awarded  
37 may file with the appellate clerk and serve on the adverse party an itemized and verified  
38 bill of costs. The adverse party may, within seven days after the bill of costs is served, file  
39 a notice of objection and a motion to have the costs awarded by the clerk. If no objection  
40 to the cost bill is filed within the allotted time, the clerk must thereupon award the costs  
41 and enter judgment against the adverse party. If the adverse party timely objects to the  
42 cost bill, the clerk, upon reasonable notice and hearing, will determine and settle the costs,  
43 award the same, and a judgment will be entered thereon against the adverse party. The  
44 clerk's determination will be reviewable by the court upon either party's request made  
45 within seven days after judgment is entered. Unless otherwise ordered, oral argument  
46 will not be permitted. A judgment under this paragraph may be filed with the clerk of  
47 any ~~district-trial~~ court in the state, who must docket the judgment in the same manner  
48 and with the same force and effect as ~~district-trial~~ court judgments.

49 \_\_\_\_\_

#### 50 **Advisory Committee Note**

51 In an effort to conform with the Supreme Court's directive to use plain language where  
52 possible, the Court approved changing the term "taxed" to "awarded." No substantive  
53 change is intended with this amendment.



1 **Rule 43. Certification by the Court of Appeals to the Supreme Court.**

2 (a) **Transfer.** In any case over which the Court of Appeals has original appellate  
3 jurisdiction, the court may, upon the affirmative vote of at least four judges of the court,  
4 certify a case for immediate transfer to the Supreme Court for determination.

5 (b) **Procedure for transfer.**

6 (1) The Court of Appeals may, on its own motion, decide whether a case should be  
7 certified. Any party to a case may, however, file a suggestion for certification not  
8 exceeding five pages, explaining why the party believes that the case should be  
9 certified. The suggestion may not be filed before a docketing statement is filed. Within  
10 14 days of service, an adverse party may file and serve a statement not exceeding five  
11 pages either supporting or opposing the suggestion for certification.

12 (2) Upon entering the certification order, the Court of Appeals Clerk must  
13 immediately transfer the case, including the record and file of the case from the trial  
14 court, all ~~papers~~ documents filed in the Court of Appeals, and a written statement of  
15 all docket entries in the case up to and including the certification order, to the Supreme  
16 Court Clerk. The Court of Appeals Clerk must promptly notify all parties and the trial  
17 court clerk that the case has been transferred.

18 (3) Upon receiving the certification order, the Supreme Court Clerk must enter the  
19 appeal on the Supreme Court's docket. The Supreme Court Clerk must immediately  
20 send notices to all parties and to the trial court clerk that the case has been docketed  
21 and that all further filings will be made with the Supreme Court Clerk. The notice  
22 must state the docket number assigned to the case in the Supreme Court. The case will  
23 proceed before the Supreme Court to final decision and disposition as in other  
24 appellate cases under these rules.

25 (4) If the record on appeal has not been filed with the Court of Appeals Clerk as of the  
26 date of the certification order, the Court of Appeals Clerk must notify the trial court  
27 clerk that upon completing the conditions for filing the record by that court, the clerk

28 must transmit the record on appeal to the Supreme Court Clerk. If, however, the  
29 record on appeal has already been transmitted to and filed with the Court of Appeals  
30 Clerk as of the date the certification order is entered, the Court of Appeals Clerk must  
31 transmit the record on appeal to the Supreme Court Clerk within five days after the  
32 certification order is entered.

33 (c) **Criteria for transfer.** The Court of Appeals must consider certification only in the  
34 following cases:

35 (1) Cases where it is apparent that the case should be decided by the Supreme Court  
36 and that the Supreme Court would likely grant a petition for a writ of certiorari in the  
37 case if decided by the Court of Appeals, irrespective of how the Court of Appeals  
38 might rule; and

39 (2) Cases that will govern a number of other cases involving the same legal issue or  
40 issues pending in the ~~district~~-trial courts, juvenile courts, or the Court of Appeals, or  
41 cases of first impression under state or federal law that will have wide applicability.