



## 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 <a href="https://utcourts.webex.com/utcourts/j.php?MTID=ma0f34fe93b4e0ac486e91247bddb91ca">https://utcourts.webex.com/utcourts/j.php?MTID=ma0f34fe93b4e0ac486e91247bddb91ca</a>
Date:	September 4, 2025
Time:	12:00 to 1:30 p.m.

<b>Action:</b> Welcome and approval of June 5, 2025 Minutes	Tab 1	Nathalie Skibine, Chair
<b>Action:</b> Final Approval of Rules 3 and 29	Tab 2	Nathalie Skibine
<b>Action:</b> Rule 23B	Tab 3	Nathalie Skibine
<b>Action:</b> Rules 11 and 28A	Tab 4	Caroline Olson, Judge Christiansen Forster, Mary Westby, Michele Mattsson
<b>Discussion:</b> Extensions		Nick Stiles
<b>Discussion:</b> Minimum Fee – Rule 34	Tab 5	Nick Stiles
<b>Action:</b> Rule 3	Tab 6	Mary Westby
<b>Action:</b> Rule 23A	Tab 7	Mary Westby
<b>Discussion:</b> Old/new business		Nathalie Skibine, Chair

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

#### **2025 & 2026 Meeting schedule:**

October 2, 2025	February 5, 2026	May 7, 2026	August 6, 2026
November 6, 2025	March 6, 2026	June 4, 2026	September 3, 2026
December 4, 2025	April 2, 2026	July 2, 2026	October 1, 2026

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 5, 2025  
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  
Michelle Quist  
Clark Sabey  
Nathalie Skibine—  
Chair  
Scarlet Smith  
Nick Stiles—Staff  
Mary Westby

#### EXCUSED

None

#### GUEST

None

#### 1. Action:

Nathalie Skibine

#### Approval of May 2025 Minutes

The committee reviewed the draft minutes from its May 2025 and noted no needed changes.

*Mary Westby moved to approve the May 2025 minutes as they appeared in the committee's materials. Judge Michele Christiansen Forster seconded that motion, and it passed without objection by unanimous consent.*

**2. Action: Mary Westby**  
**Rule 11**

Ms. Westby led the committee's discussion of proposed changes to Rule 11. Ms. Westby explained that the rule has become unworkable and she recommended deleting paragraphs (d) and (e) of the rule, adding that she has never seen (d) used and that (e) provides options when transcripts are unavailable. The committee recognized that these provisions are old, and that the most common struggle now relates to the receipt of handcrafted transcripts from pro se litigants. The committee discussed situations under which parties may need assistance with transcripts and agreed that those situations don't need to be addressed by this rule.

*Ms. Westby moved for final approval of Rule 11 as circulated. Judge Gregory Orme seconded that motion, and it passed without objection by unanimous consent.*

**3. Action: Caroline Olsen**  
**Rules 9, 11, and 28A**

Caroline Olsen led the committee's discussion, beginning with an identification of a potential issue: the interaction between timing for transcript requests and potential mediation timing when mediation is a strong possibility. Ms. Westby explained that she had spoken with the mediator and confirmed that the docketing statement is often what drives the direction to mediation. With that information in hand, the committee considered a proposal under which transcripts are due 14 days after a docketing statement instead of 14 days after filing of notice of appeal. Because child-welfare matters are governed by a different rule, this procedure would not apply. One goal of any amendment would be to make clear that if mediation is scheduled, the deadline for a transcript request is stayed, along with the rest of the proceedings.

*Based on that discussion, Ms. Olsen agreed to take lead on drafting proposed rule revisions. Ms. Olsen will do so as part of a subcommittee, joined by Ms. Westby, Michele Mattson, and Judge Michele Christiansen-Forster.*

**4. Action: Nathalie Skibine, Chair**  
**Rule 23B**

The proposed changes to Rule 23B would delete the requirement that parties include a proposed order when filing a rule 23B motion, as the court often does not use the proposed order. The committee discussed the benefits of that proposed-order requirement, including the possibility that even if the court doesn't frequently enter proposed orders as submitted, the proposed order may nevertheless provide some value to the court. Nicole Gray noted that this is the only type of proposed order that the clerk's office tracks, so these motions are unique in this way. One option the committee considered is to make this a specific requirement for the motion itself to contain the information that would, under the current rule, appear in the accompanying proposed order.

*Following that discussion, Debra Nelson moved to approve the rule as drafted and presented on the screen. Ms. Westby seconded, and it passed without objection by unanimous consent.*

**5. Action: Mary Westby**  
**Rule 38A**

Ms. Westby explained to the committee that the proposed amendment to Rule 38A would prohibit attorneys from withdrawing from an appeal while a motion is pending in the appellate court.

*Following that discussion, a motion was received and seconded, and the committee approved the rule to be submitted to the Supreme Court with a recommendation that it be published for public comment.*

**6. Discussion: Nathalie Skibine, Chair**  
**Old/New Business**

None.

**7. Adjourn**

**Nathalie Skibine, Chair**

*Following the business and discussions described above, the committee adjourned. The committee's next meeting will take place on September 4, 2025.*

TAB 2

**Rule 3. Appeal as of right;— how taken**

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

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

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

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

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

**(d) Notice of appeal contents.** The notice of appeal must:

(1) specify the party or parties taking the appeal;

(2) designate the judgment, [or](#) order, ~~or part thereof~~ being appealed;

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



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

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

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

(g) **Docketing of appeal.**

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

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

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

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

Effective ~~January 22, 2025~~

**Rule 29. Oral Argument.**

**(a) Holding oral argument.**

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

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

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

**(b) Notice; ~~waiver; cancellation and waiver; appearing remotely; continuance; remote appearance; additional argument time~~**

(1) **Supreme Court.** Not later than 28 days before the date on which a case is calendared, the clerk will give notice of the time and place of oral argument, and the time to be allowed each side.

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

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

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

~~motion to appear remotely filed within 21 days of oral argument may will be granted in the court's discretion on a showing of good cause.~~ An attorney or a party appearing pro se may appear remotely if the person~~arty~~ provides timely notice to the court and, when practicable, the other parties. Notice is timely:

(i) if the person~~a party~~ e-files or emails notice at least ~~21~~14 days before oral argument; or

(ii) if the person~~a party~~ emails notice or contacts~~calls~~ the court clerk within a reasonable time under the circumstances.

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

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

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

(C) Remote appearance. ~~A motion request to appear remotely will may be granted if filed not later than 21 days before oral argument. An emergency request or a motion to appear remotely filed within 21 days of oral argument may will be granted in the court's discretion on a showing of good cause. The court prefers in-~~

54 person oral argument. ~~With the court's approval~~ Aa An attorney or a party  
55 appearing pro se may appear remotely if the person demonstrates good cause and  
56 provides timely notice to the court and, when practicable, the other parties. Notice  
57 is timely:

58 (i) if the person e-files or emails notice at least ~~21~~14 days before oral argument;  
59 or

60 (ii) if the person emails notice or contacts the court clerk within a reasonable  
61 time under the circumstances.

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

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

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

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

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

*Effective ~~November 1, 2024~~*

Advisory Committee Note

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

*Note adopted November 1, 2022*

TAB 3

**Rule 23B. Motion to remand for findings necessary to determination of ineffective assistance of counsel claim.**

(a) **Grounds for motion; time.** A party to an appeal in a criminal case may move the court to remand the case to the trial court for entry of findings of fact, necessary for the appellate court's determination of a claim of ineffective assistance of counsel. The motion will be available only upon a nonspeculative allegation of facts, not fully appearing in the record on appeal, which, if true, could support a determination that counsel was ineffective.

The motion must be filed before or at the time of the filing of the appellant's brief. Upon a showing of good cause, the court may permit a motion to be filed after the filing of the appellant's brief. After the appeal is taken under advisement, a remand pursuant to this rule is available only on the court's own motion and only if the claim has been raised and the motion would have been available to a party.

(b) **Content of motion.** The content of the motion must conform to the requirements of Rule 23. The motion may incorporate by reference the statement of the case from the principal brief. The motion must identify the ineffectiveness claims and specify the factual issues relevant to each such claim to be addressed on remand. The motion must ~~include or~~ be accompanied by affidavits or declarations alleging facts not fully appearing in the record on appeal that show the claimed deficient performance of the attorney. The affidavits or declarations must also allege facts that show the claimed prejudice suffered by the appellant as a result of the claimed deficient performance. ~~The motion must also be accompanied by a proposed order of remand that identifies the ineffectiveness claims and specifies the factual issues relevant to each such claim to be addressed on remand.~~

(c) **Orders of the court; response; reply.** If a motion under this rule is filed at the same time as appellant's principal brief, any response and reply must be filed within the time for the filing of the parties' respective briefs on the merits, unless otherwise specified by the court. If a motion is filed before appellant's brief, the court may elect to defer ruling on the motion or decide the motion prior to briefing.

(1) If the court defers the motion, the time for filing any response or reply will be the same as for a motion filed at the same time as appellant's brief, unless otherwise specified by the court.

(2) If the court elects to decide the motion prior to briefing, it will issue a notice that any response must be filed within 30 days of the notice or within such other time as the court may specify. Any reply in support of the motion must be filed within 210 days after the response is served or within such other time as the court may specify.

(3) If the requirements of parts (a) and (b) of this rule have been met, the court may order that the case be temporarily remanded to the trial court to enter findings of fact relevant to a claim of ineffective assistance of counsel. The order of remand will identify the ineffectiveness claims and specify the factual issues relevant to each such claim to be addressed by the trial court. The order will also direct the trial court to complete the proceedings on remand within 90 days of issuance of the order of remand, absent a finding by the trial court of good cause for a delay of reasonable length.

(4) If it appears to the appellate court that the appellant's attorney of record on the appeal faces a conflict of interest upon remand, the court will direct that counsel withdraw and that new counsel for the appellant be appointed or retained.

(d) **Effect on appeal.** If a motion is filed at the same time as appellant's brief, the briefing schedule will not be stayed unless ordered by the court. If a motion is filed before appellant's brief, the briefing schedule will be automatically stayed until the court issues notice of whether it will defer the motion or decide the motion before briefing.

(e) **Proceedings before the trial court.** Upon remand the trial court will promptly conduct hearings and take evidence as necessary to enter the findings of fact necessary to determine the claim of ineffective assistance of counsel. Any claims of ineffectiveness not identified in the order of remand will not be considered by the trial court on remand, unless the trial court determines that the interests of justice or judicial efficiency require



consideration of issues not specifically identified in the order of remand. Evidentiary hearings will be conducted without a jury and as soon as practicable after remand. The burden of proving a fact will be upon the proponent of the fact. The standard of proof will be a preponderance of the evidence. The trial court will enter written findings of fact concerning the claimed deficient performance by counsel and the claimed prejudice suffered by appellant as a result, in accordance with the order of remand. Proceedings on remand must be completed within 90 days of entry of the order of remand, unless the trial court finds good cause for a delay of reasonable length.

(f) **Preparation and transmittal of the record.** At the conclusion of all proceedings before the trial court, the ~~clerk of the~~ trial court clerk will immediately prepare the record of the supplemental proceedings as required by these rules. If the record of the original proceedings before the trial court has been transmitted to the appellate court, the ~~clerk of the~~ trial court clerk will immediately transmit the record of the supplemental proceedings upon preparation of the supplemental record. If the record of the original proceedings before the trial court has not been transmitted to the appellate court, the ~~clerk of the~~ court clerk will transmit the record of the supplemental proceedings upon the preparation of the entire record.

(g) **Appellate court determination.** Errors claimed to have been made during the trial court proceedings conducted pursuant to this rule are reviewable under the same standards as the review of errors in other appeals. The findings of fact entered pursuant to this rule are reviewable under the same standards as the review of findings of fact in other appeals.

~~Effective November 1, 2022~~

#### **Advisory Committee Note**

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

Note ~~Ad~~opted 2022

TAB 4

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

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

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

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

(A) all original documents in chronological order;

(B) all published depositions in chronological order;

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

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

(E) all exhibits; and

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

(2) **Pagination.**

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

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

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

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

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

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

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

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

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

**Commented [AG1]:** The removal of paragraphs (d) and (e) is currently out for public comment.

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

87 *Effective ~~January 22, 2025~~*

**Rule 28A. Appellate Mediation Office.**

(a) **Appellate Mediation Office; purpose of mediation conference.** The court may order the attorneys for the parties and the parties to appear before a mediator appointed by the court for a mediation conference to explore the possibility of settlement and any other matters that may aid in the efficient management and disposition of the case. The court will advise the parties by order that the case has been referred to the Appellate Mediation Office. All decisions regarding conduct of the mediation conference are within the sole discretion of the mediator.

(b) **Confidentiality.** Unless contained in a written settlement agreement under paragraph (f), statements and comments made during mediation conferences and in related discussions, and any record of those statements, are confidential and may not be disclosed by anyone (including the appellate mediation office, counsel, or the parties; and their agents or employees) to anyone not participating in the mediation process. Proceedings under this rule may not be recorded by counsel or the parties. Mediators may not be called as witnesses, and the information and records of the Appellate Mediation Office may not be disclosed to judges, staff, or employees of any court.

(c) **Continuances.** Mediation conferences will not be rescheduled or continued absent good cause as determined by the mediator.

(d) **Extensions/tolling.** If a case is in mediation, the appeal process is stayed, including any due dates under the appellate rules. The stay will be lifted if the matter is withdrawn from mediation.~~The time for filing briefs or motions for summary disposition and for other appellate proceedings is not automatically tolled pending a mediation conference. The parties may seek an extension by motion or stipulation as provided in Rule 22.~~

(e) **Request for mediation conference by a party.**

(1) For cases pending in the Supreme Court, the parties may request a mediation conference by stipulated motion filed with the Court. The Court will determine

whether the case will be referred to mediation. If a mediation conference is ordered, the mediation will be conducted in accordance with this rule.

(2) For cases pending in the Court of Appeals, the parties may request a mediation conference by motion, letter, or confidential request. The Chief Appellate Mediator will determine whether a mediation conference will be conducted. The decision of the Chief Appellate Mediator is final and not subject to review. If a mediation conference is ordered, the mediation will be conducted in accordance with this rule.

(3) The denial of a mediation request will not prevent the parties from engaging in private settlement negotiations or private mediation.

(f) **Settlement/termination.** In appeals settled in whole or in part pursuant to this rule, the court will enter an appropriate order upon written stipulation of all parties, or in the case of voluntary dismissal by the appellant pursuant to these rules, and send the order to the parties. In appeals not settled and terminated from mediation, the court will enter an appropriate order and send the order to the parties. A motion to enforce a settlement agreement will be considered only if the alleged agreement is in writing. The motion and related documents will be filed under seal.

(g) **Sanctions.** The court may impose sanctions, including costs, fees or dismissal, for the failure of counsel or a party to comply with the provisions of this rule or with orders entered pursuant to this rule.



TAB 5

### **Rule 34. Costs.**

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

- (1) if an appeal is dismissed, costs must be awarded for the appellee unless the parties agree otherwise;
- (2) if a judgment or order is affirmed, costs must be awarded for the appellee;
- (3) if a judgment or order is reversed, costs must be awarded for the appellant;
- (4) if a judgment or order is affirmed or reversed in part, or is vacated, costs are awarded only as the court orders.

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

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

- (1) \$3.00 per page of a printed brief and attachments;
- (2) actual costs incurred in preparing and transmitting the record, including costs of the reporter's transcript unless the court orders otherwise;
- (3) premiums paid for supersedeas or cost bonds to preserve rights pending appeal;  
and
- (4) fees for filing and docketing the appeal.

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

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

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

*Effective January 22, 2025*

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### **Advisory Committee Note**

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

*Note adopted May 1, 2021.*

# TAB 6

**Rule 3. Appeal as of right: - how taken.****(a) Filing the notice of appeal.**

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

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

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

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

**(d) Notice of appeal contents.** The notice of appeal must:

(1) specify the party or parties taking the appeal;

~~(2) designate the judgment or order being appealed;~~

(2) if privately retained trial counsel files the notice of appeal, state whether trial counsel will remain counsel of record on appeal, and, if not, provide appellant's contact information for purposes of receiving court notices;

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

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

(5) designate the judgment or order, ~~or part thereof~~ being appealed;

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

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

(g) **Docketing of appeal.**

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

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

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

(2) **Docketing the appeal.** Upon receiving the copy of the notice of appeal from the trial court clerk, the appellate court clerk will enter the appeal on the docket. An appeal will be docketed under the title given to the action in the trial court, with the

appellant identified as such, but if the title does not contain the name of the appellant,  
such name will be added to the title.

*Effective*



TAB 7

**Rule 23A. Motion for reinstatement of appeal.**

An appeal dismissed for failure to take a step other than the timely filing of a notice of appeal may be reinstated by the court upon motion of the appellant for (a) mistake, inadvertence, surprise, or excusable neglect or (b) fraud, misrepresentation, or misconduct of an adverse party. The motion ~~shall~~must be ~~made~~filed within ~~a reasonable time~~thirty days after entry of the order of dismissal or before remittitur, whichever is later.