



Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Nathalie Skibine, Chair
Stanford Purser, Vice Chair

Location:	Meeting held through Webex and in person at: Matheson Courthouse, Council Room, N. 301 450 S. State St. Salt Lake City, Utah 84111 https://utcourts.webex.com/utcourts/j.php?MTID=m41d354d0fe6b778e1d76b42c0dd45a02
Date:	September 3, 2026
Time:	12:00 to 1:30 p.m.

Action: Welcome and approval of June 4, 2026 Minutes	Tab 1	Nathalie Skibine, Chair
Action: Rule 24	Tab 2	Nathalie Skibine
Action: Items referred by the Supreme Court	Tab 3	Nathalie Skibine
Action: Rule 38/ <i>Nielsen v. Cronquist</i> , 2026 UT App 65	Tab 4	Clark Sabey
Action: Rule 23	Tab 5	Mary Westby
Action: Rule 23B	Tab 6	Mary Westby

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

2026/2027 Meeting schedule:

October 1, 2026	January 7, 2027	April 1, 2027
November 5, 2026	February 4, 2027	May 6, 2027
December 3, 2026	March 4, 2027	June 3, 2027

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 4, 2026
12:00 pm to 1:30 pm

PRESENT

Dick Baldwin
Nicole Gray
Amber Griffith—Staff
Michael Judd—Recording
Secretary
Debra Nelson
Caroline Olsen
Judge Gregory Orme
Martha Pierce

Stan Purser—
Vice Chair
Clark Sabey
Nathalie Skibine—
Chair
Scarlet Smith
Nick Stiles—Staff
Mary Westby

EXCUSED

Judge Michele
Christiansen Forster
Tera Peterson
Michelle Quist

GUESTS

Judge David Mortensen

1. Action:

Nathalie Skibine, Chair

Approval of May 2026 Minutes

The committee reviewed the May 2026 minutes. Nick Stiles noted several typographical errors, which were corrected. The committee also corrected the attendance and excusal lists.

Following that discussion, Mary Westby moved to approve the May 2026 minutes as modified and displayed on screen at the committee's meeting. Debra Nelson seconded that motion, and it passed without objection by unanimous consent.

2.	Action: Appellate Disqualification	Judge Michele Christiansen Forster, Judge David Mortensen, Nicole Gray, Clark Sabey
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Following that discussion, Mary Westby moved to approve the rule as modified and displayed on screen at the committee's meeting. Stan Purser seconded that motion, and it passed without objection by unanimous consent. The rule will be submitted to the Supreme Court with a recommendation that it be posted for public comment.

3. Action: Nathalie Skibine, Chair
Rule 24

Following that discussion, Clark Sabey moved to approve the rule as modified and displayed on screen at the committee's meeting. Judge Gregory Orme seconded that motion, and it passed without objection by unanimous consent. The rule will be submitted to the Supreme Court with a recommendation that it be posted for public comment.

4. Action: Clark Sabey
Rules 48 and 49

Rules 48 and 49 had previously received the committee's final approval. Upon further review, however, a change was proposed to remove the phrase "or

other filing” from Rule 48. Clark Sabey explained that Rule 49(f) does not identify another filing to which that phrase would refer. The committee agreed and removed the phrase from the proposed rule.

Following that discussion, Mary Westby moved to approve the rules as modified and displayed on screen at the committee’s meeting. Stan Purser seconded that motion, and it passed without objection by unanimous consent. The rules will be submitted to the Supreme Court with a recommendation that they be posted for public comment.

5. Action: Nathalie Skibine, Chair
Items Referred by the Supreme Court

Because of time constraints, the committee briefly discussed the items referred by the Supreme Court. Martha Pierce noted that several of these changes relate to concerns about the Court’s exercise of its discretion. Ms. Westby noted that the committee may need to engage with policy questions requiring further consideration before making committee assignments.

The committee will discuss the referred items again at its September meeting and determine whether any rule changes are needed.

6. Action: Nick Stiles
URE 107 / URAP 11

Because of time constraints, the committee tabled this item until a future meeting.

7. Discussion: Nathalie Skibine, Chair
Old / New Business

The committee noted that its July and August meetings had been canceled and that its next meeting would be held on September 3, 2026.

8. Adjourn Nathalie Skibine, Chair

Following the business and discussions described above, the committee adjourned. The committee’s next meeting will take place on September 3, 2026.

TAB 2

Rule 24. Principal and reply briefs.

(a) **Principal briefs.** Principal briefs must contain under appropriate headings and in the order indicated:

(1) **A list of current and former parties.** The list of parties must include:

(A) all parties to the proceeding in the appellate court and their counsel;

(B) ~~appellate and~~ all trial court or agency counsel involved in any matter pertinent to the appeal; and

(~~C~~) listed separately, all parties to the proceeding in the court or agency whose judgment or order is under review that are not parties in the appellate court proceeding.

(2) **A table of contents.** The table of contents must list the sections of the brief with page numbers and the items in the addendum with the item number.

(3) **A table of authorities.** The table of authorities must list all cases alphabetically arranged, rules, statutes, and other authorities cited, with references to the pages on which they are cited.

(4) **An introduction.** The introduction should describe the nature and context of the dispute and explain why the party should prevail on appeal.

(5) **A statement of the issue.** The statement of the issue must set forth the issue presented for review, including for each issue:

(A) the standard of appellate review with supporting authority; and

(B) citation to the record showing that the issue was preserved for review; or a statement of grounds for seeking review of an issue not preserved.

(6) **A statement of the case.** The statement of the case must include, with citations to the record:

(A) the facts of the case, to the extent necessary to understand the issues presented for review;

Commented [JP1]: I worry this addition may leave parties wondering what is "pertinent to the appeal." I wanted to require a party to list it's appellate counsel and its trial or agency counsel. I'm curious to hear the thoughts about broadening the scope.

(B) the procedural history of the case, to the extent necessary to understand the issues presented for review; and

(C) the disposition in the court or agency whose judgment or order is under review.

(7) **A summary of the argument.** The summary of the argument must contain a succinct statement of the arguments made in the body of the brief.

(8) **An argument.** The argument must explain, with reasoned analysis supported by citations to legal authority and the record, why the party should prevail on appeal.

(9) **A claim for attorney fees.** A party seeking attorney fees for work performed on appeal must state the request explicitly and set forth the legal basis for an award.

(10) **A short conclusion.** The conclusion may summarize the party's position and must state the specific relief sought on appeal.

(11) **A certificate of compliance.** The filer must certify that the brief complies with:

(A) paragraph (g), governing the number of pages or words. If a word count is used, the filer must state the number of words in the brief and may rely on the word count of the word processing system used to prepare the brief; and

(B) Rule 21, governing public and private records.

(12) **An addendum.** Subject to Rule 21(h), the addendum must contain a copy of:

(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

(B) the order, judgment, opinion, or decision under review and any related minute entries, findings of fact, and conclusions of law; and

(C) materials in the record that are the subject of the dispute and that are of central importance to the determination of the issues presented for review, such as challenged jury instructions, transcript pages, insurance policies, leases, search warrants, or real estate purchase contracts.

(b) **Reply brief.** The appellant or petitioner may file a reply brief. A reply brief must be limited to responding to the facts and arguments raised in the appellee's or respondent's principal brief. The reply brief must include:

- (1) a table of contents, as required by paragraph (a)(2);
- (2) a table of authorities, as required by paragraph (a)(3);
- (3) an argument, as required by paragraph (a)(8);
- (4) a conclusion, as required by paragraph (a)(10); and
- (5) a certificate of compliance, as required by paragraph (a)(11).

(c) **No further briefs; joining or adopting the brief of another party.** No further briefs may be filed except with leave of the appellate court. More than one party may join in a single brief. Any party may adopt by reference any part of the brief of another.

(d) **References in briefs to parties and others.** Parties and other persons and entities should be referred to consistently by the term, phrase, or name most pertinent to the issues on appeal. These may include descriptive terms based on the person or entity's role in the dispute, ~~or~~ the designations used in the trial court or agency, or the names of parties. Unless germane to an issue on appeal, a party should not be described solely by the party's procedural role in the case. The identity of minors should be protected by use of descriptive terms, initials, or pseudonyms. In child welfare appeals, the surname of a minor must not be used nor may a surname of a minor's biological, adoptive, or foster parent be used.

(e) **References to the record.**

(1) Statements of fact and references to proceedings in the court or agency whose judgment or order is under review must be supported by citation to the record. A citation must identify the page of the record as marked by the clerk.

(2) A reference to an exhibit must set forth the exhibit number. If the reference is to evidence the admissibility of which is in controversy, the reference must set forth the

pages of the record at which the evidence was identified, offered, and received or rejected.

(f) **References to legal authority.** A reference to an opinion of the Utah Supreme Court or the Utah Court of Appeals issued on or after January 1, 1999, must include the universal citation (e.g., 2015 UT 99, ¶ 3; or 2015 UT App 320, ¶ 6).

(g) **Length of briefs.**

(1) Unless a brief complies with the following page limits, it must comply with the following word limits as~~ff~~:

Type of brief	Page limit	Word limit
Legality of death sentence, principal brief	60	28,000
Legality of death sentence, reply brief	30	14,000
Other cases, principal brief	30	14,000
Other cases, reply brief	15	7,000

(2) Headings, footnotes, and quotations count toward the page or word limit, but the table of contents, table of authorities, and addendum, and any certificates of counsel do not.

(h) **Permission to file over length brief.**

(1) Although over length briefs are disfavored, a party may file a motion for leave to file a brief that exceeds the page~~7~~ or word limitations of this rule. The motion must state with specificity the issues to be briefed, the number of additional pages~~7~~ or words requested, and good cause for granting the motion. A motion filed at least ~~7~~seven days before the brief is due or seeking three or fewer additional pages~~7~~ or 1,400 or fewer additional words need not be accompanied by a copy of the proposed brief. Otherwise, a copy of the proposed brief must accompany the motion.

(2) If the motion is granted, the proposed brief, if accompanying the motion, will be accepted as filed on the date of the order. If the motion is denied, the court will destroy the proposed brief.

(3) If the motion is granted, the responding party is entitled to an equal number of additional pages, or words without further order of the court. ~~Whether the motion is granted or denied, the court will destroy the proposed brief.~~

(i) **Sanctions.** The court on motion or on its own initiative may strike or disregard a brief that contains burdensome, irrelevant, immaterial, or scandalous matters, and the court may assess an appropriate sanction including attorney fees for the violation.

(j) **Notice of supplemental authorities.** When authority of central importance to an issue comes to the attention of a party after briefing or oral argument but before decision, that party may file a notice of supplemental authority setting forth:

(1) the citation to the authority;

(2) a reference either to the page of the brief or to a point argued orally to which the authority applies; and

(3) relevance of the authority. The body of the notice must not exceed 350 words. Any other party may file a response no later than ~~7~~seven days after service of the notice. The body of the response must not exceed 350 words.

Effective ~~November 1, 2017~~

Advisory Committee Notes

The 2017 amendments substantially change the organization and content of briefs. An important objective of the amendments is to present the party's case in logical order, in measured increments, and without unnecessary repetition. The principal brief of each party must meet the same requirements.

123 Paragraph (a)(4). A party's principal brief should include an introduction. The author
124 should focus the introduction on the important features of the case. The introduction to
125 one case may be only a few sentences, while a more complex case may require a few
126 paragraphs or perhaps a few pages. The objective of the introduction is to give the reader
127 a sense of the forest before detailing the trees.

128 Paragraph (a)(6). The statement of the case should describe the facts surrounding the
129 dispute and procedural history of the litigation, but only to the extent that these are
130 necessary to understand the issues. Describing a fact or circumstance or proceeding that
131 has no bearing on the issues adds words of no value and distracts the reader. When
132 stating a fact or describing a proceeding, a concise narrative is sometimes a better
133 presentation than a numbered, itemized list. The party must cite to the places in the
134 record that support the statement.

135 Paragraph (a)(8). The 2017 amendments remove the reference to marshaling. *State v.*
136 *Nielsen*, 2014 UT 10, 326 P.3d 645, holds that the failure to marshal is not a technical
137 deficiency resulting in default, but is a manner in which an appellant may carry its
138 burden of persuasion when challenging a finding or verdict.

139 Paragraph (a)(11). The certificate of compliance is expanded to include not only
140 compliance with the limit on the length of the brief, but also compliance with the
141 public/private record requirements of [Rule 21](#). Briefs, including the addendum
142 containing trial court records, are public documents, increasingly available on the
143 Internet. However, many trial court records are not public. If the author needs to include
144 a non-public document in an addendum or non-public information in the body of the
145 brief, [Rule 21](#) requires that an identical, public brief be filed, but with the non-public
146 information removed.

147 Paragraph (b). The purpose of a reply brief is to respond to the facts and arguments
148 presented in an appellee's principal brief, not to reiterate points already made in the
149 appellant's principal brief, nor to introduce new matters that should have been raised in

150 that brief. Although not required, it is good practice to identify the point that is being
151 responded to.

152 Paragraph (d). Describing the actors in a dispute and litigation presents a challenge to the
153 author of a brief. Consistency promotes clarity; having chosen a term, phrase, name, or
154 initials to define a party, person, or entity, the author should use it throughout a brief.

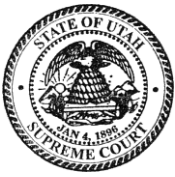
155 The name of a minor is often a private record and caution should be used to avoid
156 including other names or information from which a minor might be identified. A minor's
157 surname should be used only with the informed consent of a mature minor. The author
158 may file a private brief for the parties and the court using the minor's name while
159 simultaneously filing an otherwise identical public brief with the minor's name omitted,
160 redacted, reduced to initials, or substituted with a placeholder name. A minor may be
161 referred to by a descriptive term such as "the child," "the 11-year old," or "the sister."
162 The biological, adoptive, or foster parents of minors may be referred to by their relation
163 to the minor, such as "mother," "adoptive parent," or "foster father."

164 While the name of an adult is usually a public record, the author should recognize the
165 intrusion into the lives of victims, witnesses, and others who are not principals in the
166 dispute caused by a brief published on the Internet. Also, the use of names is disfavored
167 when clarity and discretion can be promoted by use of a reference based on the person's
168 role in the dispute or the case. Parties and other persons and entities should generally be
169 referred to by their role in the dispute, such as "employee," "Defendant Employer," or
170 "the Taxpayer." Descriptions such as "witness" or "neighbor" can also be useful while
171 respecting the interests of non-parties. The reference chosen should be the one most
172 relevant to the matters on appeal.

173 Paragraph (g). Because of the increasing rarity of monospaced font, the 2017 amendments
174 eliminated the number of lines as a measure of a brief's length. And to improve the clarity
175 of [Rule 24](#), the 2017 amendments moved the requirements for briefs in a cross-appeal to
176 [Rule 24A](#).

177 [Note A](#) adopted 2017

TAB 3



Memorandum

To: Advisory Committee on Appellate Procedure
Date: April 30, 2026
Subject: Items Referred by the Supreme Court

The Supreme Court, through its staff attorney Clark Sabey, has requested the Advisory Committee on Appellate Procedure to review and consider the below matters.

1. Whether to allow for replies in support of petitions on appeal under Rule 55.
2. Whether to preclude treatment of issues of first impression in cases decided under Rule 58 without full briefing.
3. Whether to craft a rule to address the circumstances when the appellate courts can rely on a lack of preservation to dispose of issues in truncated proceedings (Rules 10(a), 10(c), and 55).
4. Whether to amend Rule 30 to expressly limit the use of unpublished orders to cases resolved by well-established law.

Enclosures:

- Tab A: Rule 55
- Tab B: Rule 58
- Tab C: Rule 10
- Tab D: Rule 30

Tab A

Rule 55. Petition on appeal.

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

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

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

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

- (1) A statement of the nature of the case and the relief sought.
- (2) The entry date of the judgment or order on appeal.
- (3) The date and disposition of any post-judgment motions.
- (4) A concise statement of the material adjudicated facts as they relate to the issues presented in the petition on appeal.

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

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

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

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

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

Tab B

Rule 58. Ruling.

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

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

Tab C

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

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

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

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

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

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

(b) Dismissal for failure to prosecute.

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

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

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

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

(c) Simplified appeal process; eligible appeals.

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

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

- (A) appeals challenging only the sentence in a criminal case;
- (B) appeals from the revocation of probation or parole;
- (C) appeals from a judgment in an unlawful detainer action; and
- (D) petitions for review of a decision of the Department of Workforce Services Workforce Appeals Board or the Labor Commission.

(d) Memoranda in lieu of briefs.

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

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

- (A) an introduction describing the nature and context of the dispute, including the disposition in the court or agency whose judgment or order is under review;
- (B) a statement of the issues for review, including a citation to the record showing that the issue was preserved for review or a statement of grounds for seeking review of an issue not preserved;

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

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

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

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

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

Effective May 1, 2025

Tab D

1 **Rule 30. Decision of the court; notice of decision.**

2 **(a) Decision in civil cases.** The court may reverse, affirm, modify, or otherwise dispose
3 of any appealed order or judgment. If the findings of fact in a case are incomplete, the
4 court may order the trial court or agency to supplement, modify, or complete the findings
5 to make them conform to the issues presented and the facts as found from the evidence
6 and may direct the trial court or agency to enter judgment in accordance with the findings
7 as revised. The court may also order a new trial or further proceedings to be conducted.
8 If a new trial is granted, the court may pass upon and determine all questions of law
9 involved in the case presented upon the appeal and necessary to the final determination
10 of the case.

11 **(b) Decision in election cases.** In a case relating to a voting contest, an election, or the
12 establishment of boundaries of political districts for purposes of an election, the court will
13 establish a briefing schedule, hold oral argument, and issue a decision with sufficient
14 promptness to, as much as possible, avoid prejudicing any candidate or voter or delaying
15 an election deadline or election.

16 **(c) Decision in criminal cases.** If a judgment of conviction is reversed, a new trial will be
17 held unless the court specifies otherwise. If a judgment of conviction or other order is
18 affirmed or modified, the judgment or order affirmed or modified will be executed.

19 **(d) Decision and opinion in writing.** When a judgment, decree, or order is reversed,
20 modified, or affirmed, the reasons will be stated concisely in writing and filed with the
21 clerk. Any justice or judge concurring or dissenting may likewise give reasons in writing
22 and file the same with the clerk. The clerk's entry in the court's records constitutes the
23 entry of the judgment of the court.

24 **(e) Form of decision.** An appellate court's decision may be entered by order, opinion, or
25 per curiam decision. An order will not stand as precedent but will otherwise have the
26 same force and effect as other court decisions.

(f) **Entry and notice of decision.** The entry of the decision in the court's records constitutes the entry of the court's judgment. Immediately upon entering the decision, the clerk must give notice to the respective parties and make the decision public in accordance with the court's direction.

(1) If the court's decision is by order, the appellate clerk will transmit the order to the parties and to the lower court or agency.

(2) If the court's decision is by opinion or per curiam decision, the decision will be published on the courts' website at utcourts.gov.

(g) **Citation of decisions.** Published decisions of the Supreme Court and the Court of Appeals, and unpublished decisions of the Court of Appeals issued between October 1, 1998 and December 31, 2010, may be cited as precedent in all courts of the State. Other unpublished decisions may also be cited, so long as all parties and the court are supplied with accurate copies at the time all such decisions are first cited.

Effective December 9, 2025.

TAB 4



Memorandum

To: Advisory Committee on Appellate Procedure
Date: August 27, 2026
Subject: Rule 38/*Nielsen v. Cronquist*, 2026 UT App 65
From: Clark Sabey, Supreme Court Staff Attorney

The Supreme Court has requested the Advisory Committee on Appellate Procedure review ¶¶ 24-33 of the Court of Appeals opinion *Nielsen v. Cronquist*, 2026 UT App 65, 589 P.3d 1230. The opinion observed that there is a specific provision in Rule 25 of the Rules of Civil Procedure for preservation of claims when a property interest has been transferred while a case is pending. However, there is no corollary provision in Rule 38 of the Rules of Appellate Procedure.

The Court would like the Committee to review whether there may be a reason for treating claims on appeal differently or if the rule should be amended to provide for preservation of claims. If there is a reason for treating claims differently than the Committee may need to look at clarifying the rule to explicitly state so.

Enclosures:

- Tab A: *Nielsen v. Cronquist*, 2026 UT App 65, 589 P.3d 1230
- Tab B: URCP Rule 25
- Tab C: URAP Rule 38

Tab A

589 P.3d 1230

Court of Appeals of Utah.

Travis I. NIELSEN and
Brittini L. Nielsen, Appellants,
v.
Elam Terrell CRONQUIST,
Lyle Kim Cronquist Sr., and
Berniece W. Cronquist, Appellees.

No. 20240680-CA

I

Filed April 23, 2026

Synopsis

Background: Northern landowners brought action against owners of two adjacent southern parcels, seeking to quiet title to boundaries and asserting various tort claims. Southern landowners filed counterclaims for boundary by acquiescence as well as various tort claims, including conversion and nuisance. Following a bench trial, the First District Court, Logan Department, Angela F. Fonnesebeck and Lynn W. Davis, JJ., entered judgment for southern landowners and awarded attorney's fees. Northern landowners appealed, and southern landowners filed motion to dismiss based on mootness.

Holdings: The Court of Appeals, Harris, J., held that:

northern landowners' appeal as to title and boundary claims was rendered moot upon northern landowners' sale of their property to nonparty;

judgment on claim for conversion of sheet metal improperly failed to identify the "person entitled to" the sheet metal, and thus remand was required for more detailed findings and conclusions; and

court acted within its discretion when determining that southern landowners' requested amount of attorney's fees was reasonable.

Affirmed in part, vacated in part, and remanded; appeal dismissed in part; request for attorney's fees denied.

Opinion, 2025 WL 3730931, amended and superseded.

Procedural Posture(s): On Appeal; Motion to Dismiss; Motion for Attorney's Fees; Judgment; Motion for Rehearing.

First District Court, Logan Department, The Honorable Angela Fonnesebeck, The Honorable Lynn W. Davis, No. 210100168

Attorneys and Law Firms

Wayne K. Caldwell, Aubri O. Thomas, Wayman Stodart, and Arther P. Hart, Attorneys for Appellants

Samuel A. Goble, Erin E. Byington, and Jill L. Sanders, Attorneys for Appellees

Judge Ryan M. Harris authored this Amended Opinion, in which Judges Michele M. Christiansen Forster and David N. Mortensen concurred.

Amended Opinion¹

1 This amended opinion replaces the opinion that was issued on December 26, 2025. In response to a petition for rehearing filed by the Nielsens, and after reviewing invited supplemental briefs associated with that petition, we have added paragraph 17 to our factual recitation, and we have revised Part I of this opinion. To that extent, we grant the petition for rehearing. But in all other respects, that petition is denied. Indeed, all other parts of our opinion, as well as our ultimate conclusions, stand unchanged.

HARRIS, Judge:

***1234** ¶1 Travis I. Nielsen and Brittini L. Nielsen (the Nielsens) lived on a parcel of land that shared a boundary with two other parcels owned by members of their extended family: ***1235** one parcel owned by Elam Terrell Cronquist (Terry) and another parcel owned by Lyle Kim Cronquist Sr. (Kim) and Berniece W. Cronquist (Berniece) (Terry, Kim, and Berniece are herein collectively referred to as "the Cronquists").² In 2021, a dispute between the Nielsens and the Cronquists ignited a lawsuit involving over a dozen claims and counterclaims, including claims for quiet title, boundary by acquiescence, conversion of personal property, interference with water rights, nuisance, trespass, and attorney fees. After a bench trial, the court ruled in favor

of the Cronquists on all claims and awarded attorney fees on some of those claims.

2 Because several parties share the same last name, we follow our usual practice of referring to them by their first or preferred names, with no disrespect intended by the apparent informality.

¶2 The Nielsens appeal, asserting that the trial court's findings of fact and conclusions of law were erroneous in various respects. But during the pendency of this appeal, the Nielsens sold their parcel, an eventuality that renders moot all of the Nielsens' title- and boundary-related claims. As for the Nielsens' remaining appellate challenges, we affirm in part and reverse in part, and we remand this case to the trial court for further proceedings.

BACKGROUND³

3 “On appeal from a bench trial, we view and recite the evidence in the light most favorable to the trial court's findings; we present additional evidence only as necessary to understand the issues on appeal.” *State v. Sparling*, 2024 UT App 59, n.1, 549 P.3d 86 (cleaned up), cert. denied, 554 P.3d 1096 (Utah 2024).

¶3 The three parcels of land central to this case were once a single parcel. The owners of this single parcel—Ollie and Wilda Cronquist—successfully applied to subdivide it in 1997. This subdivision resulted in the creation of multiple lots, including the three adjacent parcels relevant here: the Nielsens' parcel, Terry's parcel (situated southwest of the Nielsens' parcel), and Kim and Berniece's parcel (to the southeast). At the time of the subdivision in 1997, a survey was conducted and a plat map was recorded, outlining the boundaries of these three parcels.

¶4 Between Terry's parcel and Kim and Berniece's parcel lay an access road that stretched from the Nielsens' parcel southward, connecting to Smithfield Canyon Road. This access road was situated in a fifty-foot-wide corridor that belonged to the Nielsens' parcel in fee simple, without any restrictions, covenants, or easements recorded on the Nielsens' property deed. Sometime before the subdivision of parcels, a fence was installed along the west side of the access road, separating the road from Terry's parcel. On the east side of the access road, Kim and Berniece maintained a lawn, sprinklers, and a septic system from their house up to

the access road and had done so since at least the subdivision in 1997.

¶5 Aside from the shared boundary lines, the Nielsens' parcel also shared water lines with Kim and Berniece's parcel. The Nielsens' parcel featured a retention pond, which was supplied with water from a source called “Swamp Springs,” where “all parties enjoy[ed] established water rights.” From this retention pond, two lines extended to Kim and Berniece's parcel, one providing water for irrigation and the other providing water to a horse trough inside their corral. The Nielsens' parcel also featured an above-ground electric water pump, which pulled culinary water from a nearby source called “Miles Spring” to the Nielsens' home. From the Nielsens' parcel, a water line extended to Kim and Berniece's parcel, providing culinary water to their home. This water line existed when the Nielsens purchased their parcel in 2018, and soon thereafter, Berniece began making payments to the Nielsens for the electricity required to pump the Miles Spring culinary water to Kim and Berniece's home.

¶6 Near the northern boundary of Terry's parcel (adjacent to the Nielsens' parcel), there is an open-sided shed that—all parties agree—was primarily located on the Nielsens' parcel according to the plat map. Terry's son, Destry Cronquist, provided sheet metal for the shed's roof, and he left some additional sheet metal next to the shed, located at least partially on the Nielsens' parcel. *1236 At some point, Travis transported the spare sheet metal to another property and refused to return it to either Destry or Terry.

¶7 By January 2021, the Nielsens were considering selling their property. Around this time, disputes arose regarding the boundaries between the Nielsens' parcel and the other two parcels. Specifically, the Nielsens claimed that the fence on the west side of the access road (alongside Terry's parcel) encroached on their parcel, and that Kim and Berniece's maintenance of the lawn and septic system on the east side of the access road also encroached on their parcel. In addition to the location of the boundaries along the access road, the parties disputed the location of the southern boundary of the Nielsens' parcel—from the north end of the access road westward along Terry's parcel and eastward along Kim and Berniece's parcel.

¶8 Eventually, the Nielsens filed suit against the Cronquists, seeking to quiet title to their parcel's boundaries. After the suit was filed, Travis disconnected the water line to Kim and Berniece's horse trough, and as a result, their horses

went without water for four days. Travis also “intermittently” turned off the valve controlling the water connection to Kim and Berniece’s irrigation line. The Nielsens also set up cameras around their property and recorded interactions between the parties.

¶9 The Cronquists answered the Nielsens’ complaint and, in addition, filed counterclaims of their own. The counterclaims included causes of action for boundary by acquiescence as well as various tort claims, including a conversion claim for the sheet metal and nuisance claims alleging that the Nielsens interfered with Kim and Berniece’s water rights in both Swamp Springs and Miles Spring. In their answer to the counterclaims, the Nielsens alleged that the right to use culinary water from Miles Spring was “granted only to [the Nielsens] through Smithfield City” and that Kim and Berniece had “been illegally diverting” water “to their own homes for their own use.” The Nielsens then filed an amended complaint, which, among other things, added a claim for conversion against Kim and Berniece for “wrongfully install[ing] water lines” to obtain water from Miles Spring.

¶10 By stipulation of the parties, the matter was reassigned to a senior judge who presided over a five-day bench trial. After receiving evidence and hearing argument, the court issued written findings of fact and conclusions of law. As relevant to this appeal, the court ruled in favor of the Cronquists on their boundary-by-acquiescence claims.⁴ As for Terry’s conversion claim (for the sheet metal), the court found that Destry “testified that the metal belonged to him and he gave permission for its use on” Terry’s shed. And the court found that Travis had taken the sheet metal. Yet the court ordered that “the metal be returned to Terry who was the intended beneficiary of the metal.” No other findings were made as to the ownership of the spare sheet metal.

⁴ For the reasons discussed below in Part I, we need not relay the trial court’s analysis on the boundary-related claims.

¶11 The court also ruled on the water claims. As for Kim and Berniece’s claim of interference with a water right, the court concluded that Travis had “wrongfully interfered” with Kim and Berniece’s Swamp Springs water by “cutting and pulling water lines to [Kim and Berniece’s] horse trough and arbitrarily shutting off the water valve” to their irrigation. The court then rejected the Nielsens’ conversion claim involving the Miles Spring water, finding that the claim was “without merit” and “improperly motivated.” The court explained that

the Nielsens “purchased [their parcel] subject to sharing a [one-inch] pipe from Miles Spring for culinary water” and that the Nielsens received payments for the electricity to pump the Miles Spring water to Kim and Berniece’s parcel for more than three years. The court further observed that the Nielsens “offered no explanation why [Kim and Berniece] would suddenly have no right to their culinary water.” Thus, the court concluded that the Nielsens’ conversion claim was “unsupported by any reasonable belief,” “contradicted by [the Nielsens’] own testimony and actions,” and “improperly motivated to blame” *1237 Kim and Berniece for the Nielsens’ “participation in the Miles Spring water system.”

¶12 With regard to these water claims, the Cronquists requested attorney fees. Specifically, they sought fees for the interference claim under a statute that entitles the “prevailing party in a civil action ... to collect reasonable costs and attorney fees, if that action is brought ... for injuries caused by a diversion of water in violation of an existing water right.” *See* Utah Code § 73-2-28. And they sought fees for defending against the Nielsens’ conversion of water claim under Utah’s bad-faith litigation statute, which entitles the prevailing party to fees where a claim is found to be “without merit and not brought or asserted in good faith.” *See id.* § 78B-5-825(1).

¶13 In support of their attorney fees claims, the Cronquists’ counsel submitted an affidavit as well as time records of the attorneys’ work on the case, all of which set forth the hours spent, the hourly rates, and descriptions of the tasks performed. For some of the time entries, the amount requested was one-third of the total amount billed for the task, while other entries were requested at 100%. In their motion for fees, the Cronquists explained that they sought 100% “of the billing entries that were only related to water” but only “33%” of entries “that were related to all of the claims for the case,” and that the “33% calculation [was] based” in part on “the amount of fact preparation” attributable to the water claims “versus the rest of the claims in the case.” After reviewing the motion, the court granted the request and specifically found that the Cronquists had “made reasonable efforts in calculating attorney[] fees relating to both” the interference with a water right claim and the conversion claim.

¶14 Later, the Nielsens appealed. A few days after the Nielsens filed their opening brief on appeal, the Cronquists filed a suggestion of mootness and motion to dismiss. In that motion, they asserted that all boundary-related claims had become moot because the Nielsens had sold their parcel to a third party during the pendency of the appeal and therefore

no longer had any legal interest in those specific claims. The Cronquists also pointed out that no effort had been made to substitute in the third-party purchaser of the Nielsens' parcel as a party to this appeal.

¶15 In response, the Nielsens acknowledged that they had sold the parcel, but they nevertheless opposed the motion to dismiss the appeal entirely. They first argued that “the property [was] not integral to all of the issues on appeal or the parties’ claims,” asserting specifically that they retained an interest in the conversion and nuisance claims, as well as the attorney fees issues. As for the boundary-related claims, the Nielsens argued that rule 38 of the Utah Rules of Appellate Procedure “allows for the substitution of parties when necessary but does not outright require it.” The Nielsens thus posited that “until a court is presented [with] a motion for substitution and that motion is granted, the original party remains in that matter as the party in question,” and they asserted that the third party's purchase of their parcel did “not automatically render the appeal moot or deprive the court of jurisdiction.” The Nielsens further argued that the sale of their parcel “in no way rendered relief impossible,” because the third-party purchaser had, “for those claims strictly tied to the land, become a true successor in interest as any relief that would have been afforded to [the Nielsens] [was] now properly afforded to [the third-party purchaser].”

¶16 We deferred our ruling on the suggestion of mootness “pending plenary consideration of the appeal,” and the parties filed the remaining briefs according to the briefing schedule.

¶17 We issued our original opinion in December 2025. In that opinion, we concluded (among other things) that the Nielsens’ title- and boundary-related claims had been rendered moot. After issuance of our original opinion, the Nielsens filed a petition for rehearing, asking us to reassess the mootness issue. At that juncture, and for the first time, they filed a motion to substitute, asking for leave to substitute the third-party purchaser into the case as the appellant. And they filed a motion asking us to reinstate the appeal on the title- and boundary-related claims.

*1238 ISSUES AND STANDARDS OF REVIEW

¶18 In this appeal, the Nielsens assert that the trial court committed various errors in its post-trial ruling. With respect to many of these alleged errors, the Cronquists have asserted mootness as grounds for dismissal of the appeal. If an issue

is moot, we “lack judicial power to address” the merits of the argument. *In re M.S.*, 2023 UT App 74, ¶ 22, 533 P.3d 859. Because this mootness issue “arises for the first time here on review, our decision is not governed by any standard of review, and we decide the matter as a question of law in the first instance.” *Grewal v. Junction Market Fairview, LC*, 2024 UT 20, ¶ 12, 554 P.3d 863 (cleaned up).

¶19 The Nielsens also challenge the trial court's findings and conclusions regarding the Cronquists’ sheet-metal conversion counterclaim, asserting that the court erred in awarding relief to a non-party in the case by ordering the return of the spare sheet metal to Terry despite evidence that Destry was the owner. “We review the trial court's legal conclusions for correctness, granting them no particular deference,” but “we review the trial court's findings of fact for clear error, reversing only where the finding is against the clear weight of the evidence, or if we otherwise reach a firm conviction that a mistake has been made.” *Covey v. Covey*, 2003 UT App 380, ¶ 17, 80 P.3d 553 (cleaned up).

¶20 Finally, the Nielsens challenge the reasonableness of the attorney fees awarded to the Cronquists. “A court's decision regarding the reasonableness of an attorney fee award is reviewed deferentially, for patent error or clear abuse of discretion.” *Zion Village Resort LLC v. Pro Curb U.S.A. LLC*, 2020 UT App 167, ¶ 22, 480 P.3d 1055 (cleaned up).

ANALYSIS

I. Mootness: The Title- and Boundary-Related Claims

¶21 At trial, this case centered on boundary disputes between the Nielsens and the Cronquists. But the Nielsens no longer own the property central to those particular disputes and therefore no longer have any legal interest in the location of that parcel's boundaries. Thus, any relief we could afford the Nielsens—the parties claiming error here—would have no effect. For these reasons, we agree with the Cronquists that the Nielsens’ appellate claims—including any associated evidentiary challenges—related to their former parcel's boundaries are moot, and we therefore dismiss the Nielsens’ appeal as to those issues.

¶22 We start with the premise that, as a general rule, lawsuits must be brought and maintained by the party with the interest in the matter at hand. This general rule is what motivates our jurisprudence regarding the concepts

of standing and mootness, and it is what motivates our procedural requirements about real parties in interest. *See* Utah R. Civ. P. 17(a).

¶23 “Standing is a jurisdictional requirement that must be satisfied before a court may entertain a controversy between two parties.” *Laws v. Grayeyes*, 2021 UT 59, ¶ 27, 498 P.3d 410 (cleaned up). “Although the Utah Constitution—unlike the federal constitution—does not contain a ‘case or controversy’ requirement and therefore ‘includes no express limitation’ on Utah courts’ jurisdiction, our supreme court has stated that the Utah Constitution ‘nevertheless mandates certain standing requirements, which emanate from the principle of separation of powers.’ ” *Erda Cmty. Ass’n v. Grantsville City*, 2024 UT App 126, ¶ 21, 558 P.3d 91 (quoting *Laws*, 2021 UT 59, ¶ 33, 498 P.3d 410). “Our traditional standing requirements mimic those imposed by the United States Supreme Court’s interpretation of the federal constitution.” *Id.* ¶ 23 (cleaned up). And these requirements “subsist[] through all stages” of a case, including both the “trial and appellate” stages. *Spencer v. Kemna*, 523 U.S. 1, 7, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998) (cleaned up). As a general matter, and in the absence of a rule or statute to the contrary, to satisfy standing requirements, “parties must continue to have a personal stake in the outcome of the lawsuit” at all stages of the lawsuit. *Id.* (cleaned up).

¶24 At the beginning of a case, in order to be deemed to have standing to sue, ***1239** plaintiffs must “allege that they have suffered or will suffer some distinct and palpable injury that gives them a personal stake in the outcome of the legal dispute.” *Harman v. 105 Partners, LLC*, 2024 UT App 109, ¶ 40, 556 P.3d 669 (cleaned up). Standing principles dictate that “a party may generally assert only his or her own rights and cannot raise the claims of third parties who are not before the court.” *Id.* (cleaned up). These same principles are reflected in rule 17(a) of the Utah Rules of Civil Procedure, which dictates that “[e]very action shall be prosecuted in the name of the real party in interest.” The purpose of this requirement “is to allow defendants the right to have a cause of action prosecuted by the real party in interest in order for the judgment to preclude any action on the same demand by another.” *Green v. Louder*, 2001 UT 62, ¶ 43, 29 P.3d 638 (cleaned up); *see also* 6A Wright & Miller’s Federal Practice & Procedure § 1541 (3d ed. 2026 update) (stating that rule 17 of the Federal Rules of Civil Procedure, which contains a real-party-in-interest requirement similar to Utah’s rule 17, “performs the useful function of protecting individuals from harassment and multiple suits by persons who would not be bound by the

principles of claim preclusion if they were not prevented from bringing subsequent actions by a real-party-in-interest rule”). Thus, a lawsuit brought in the name of the wrong party is subject to dismissal on both rule-based real-party-in-interest grounds as well as jurisdiction-based standing grounds.

¶25 But once a lawsuit has been initiated by the correct party, our rules of civil procedure allow that party to continue to litigate the suit through trial even if—during the pendency of the proceedings in the trial court—that party transfers its interest in the lawsuit. The applicable rule states that, “[i]n case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.” Utah R. Civ. P. 25(c). This rule “is designed to allow an action to continue unabated when an interest in a lawsuit changes hands, rather than requiring the initiation of an entirely new lawsuit.” *ELCA Enters., Inc. v. SISCO Equip. Rental & Sales, Inc.*, 53 F.3d 186, 191 (8th Cir. 1995) (cleaned up) (applying rule 25(c) of the Federal Rules of Civil Procedure, which is substantively similar to Utah’s rule). The rule “promote[s] order and help[s] avoid confusion,” *see Trapnell & Assocs. v. Legacy Resorts, LLC*, 2020 UT 44, ¶ 44, 469 P.3d 989, and it encourages efficiency by allowing lawsuits that may be in their advanced stages to continue without the necessity of substitution (or even dismissal and re-filing) by the party who obtained the interest.

¶26 And a “transfer of interest,” as envisioned by rule 25(c), includes not just transfers of the right to sue—the chose in action—but also transfers of the underlying contract or property interest that gave rise to the lawsuit in the first place. *See CCW Ranch, LLC v. Nielsen*, 2012 UT App 205, ¶ 3 n.1, 283 P.3d 1072 (noting that an “intrafamily sale” of the real property, during the pendency of the trial court proceedings, was the sort of transfer that implicates rule 25(c)); *see also Crown Point Partners LLC v. Crown Point Plan Comm’n*, 275 F.R.D. 279, 280-82 (N.D. Ind. 2011) (deeming a transfer of the real property at issue in the lawsuit to be the sort of transfer that implicates rule 25(c)).

¶27 Thus, had the Nielsens transferred the property during the pendency of the trial court proceedings, rule 25(c) would have applied, and—absent a court order, made upon motion, mandating a substitution of parties—they would have been able to continue prosecuting the lawsuit through trial, notwithstanding the fact that, after the transfer, they no longer had an interest in the property.

¶28 But the Niensens didn't transfer the property during the pendency of the trial court proceedings; they transferred it after the case was final at the trial court level and after they had filed a notice of appeal in this court. And unfortunately for the Niensens, rule 25(c) applies only to transfers of interest that occur during the pendency of trial court proceedings; it does not apply to transfers of interest that occur while a case is on appeal. *See, e.g.*, Fed. R. Civ. P. 25 advisory committee's *1240 note to 1961 amendment (“As to substitution on appeal the rules of the appellate courts should be consulted.”); 7C Wright & Miller's Federal Practice & Procedure § 1951 (3d ed. 2026 update) (“Rule 25 applies only to substitution in the district court. Substitution in an action pending in a court of appeals is governed by [the] Appellate Rule[s].”).

¶29 On appeal, such matters are governed by our rules of appellate procedure; in this instance, the one that's applicable is rule 38. *See Trapnell*, 2020 UT 44, ¶ 70 & n.10, 469 P.3d 989 (applying rule 38 of the Utah Rules of Appellate Procedure in assessing an argument about a party's entitlement to substitution on appeal). That rule has four subsections, each of which discusses substitution of parties in appellate cases in various settings. *See* Utah R. App. P. 38 (subsection (a) covers the death of a party, subsection (b) covers incompetency, subsection (d) concerns public officers, and subsection (c)—a catch-all provision—governs “[s]ubstitution for other causes”). None of the four subsections expressly discusses transfers of interest; that is, there is no analogue, in our appellate rules, to civil rule 25(c). Indeed, the parties agree that, of the four subsections in appellate rule 38, subsection (c) is the only one that has potential application here.

¶30 That subsection states that “[i]f substitution of a party is appropriate for any other reason [than those specifically stated in the rule], the court may substitute the party upon good cause shown.” *Id.* R. 38(c). We are unaware of any Utah caselaw interpreting this subsection. And federal cases are of no help here; unlike rules 17 and 25 of the Utah Rules of Civil Procedure, where federal rules and Utah rules are similarly worded, there is no analogue to this subsection in the federal appellate rules. *See* Fed. R. App. P. 43(b) (“Substitution for a Reason Other Than Death. If a party needs to be substituted for any reason other than death, the procedure prescribed in [the death of a party subsection] applies.”); *see also Jenco, LC v. Valderra Land Holdings, LLC*, 2025 UT 20, ¶ 26, 572 P.3d 381 (explaining that “to the extent Utah's rules and the federal rules are similarly worded, we at times turn to the federal rules

and cases interpreting them for guidance,” but noting that “where Utah's rule is materially different from the analogous federal rule, federal caselaw offers limited guidance” (cleaned up)).

¶31 We also note that, while the other subsections of appellate rule 38 appear to be drawn, at least in significant part, from the text of civil rule 25, *compare* Utah R. App. P. 38(a) (regarding death of a party), *with* Utah R. Civ. P. 25(a) (regarding death of a party); *compare* Utah R. App. P. 38(b) (regarding incompetency), *with* Utah R. Civ. P. 25(b) (regarding incompetency), the drafters of the appellate rule opted *not* to include a subsection regarding transfer of interest. “We interpret court rules, like statutes and administrative rules, according to their plain language.” *In re C.D.S.*, 2023 UT 11, ¶ 25, 531 P.3d 217 (cleaned up); *see also Ross v. Ross*, 2019 UT App 104, ¶ 10, 447 P.3d 104 (“Our procedures for interpreting statutes and rules are the same: We do so according to our general rules of statutory construction.” (cleaned up)). “In examining statutory language, we consider the relevant statute in its entirety, construing each part or section in connection with every other part or section so as to produce a harmonious whole.” *Vineyard Props. of Utah LLC v. RLS Constr. LLC*, 2021 UT App 144, ¶ 26, 505 P.3d 65 (cleaned up). Further, “we presume that the expression of one term should be interpreted as the exclusion of another, and we seek to give effect to omissions in statutory language by presuming all omissions to be purposeful.” *State v. Stewart*, 2018 UT 24, ¶ 13, 438 P.3d 515 (cleaned up).

¶32 Applying these principles, we must view the differences between appellate rule 38(c) and civil rule 25(c) as intentional, and we must attempt to give those differences meaning. Rule 25(c) creates a rather unique circumstance: it changes ordinary rules regarding standing, mootness, and real parties in interest, and it provides that a party litigating a lawsuit may continue to do so even though it has transferred its interest in the matter in dispute. We consider rule 25(c) to constitute an exceptional departure from our usual standing requirements, and we are not willing to read that same exception into an appellate rule that—apparently by design—does *1241 not include the same language supporting the existence of that exception.⁵

5

We do not know why the drafters of appellate rule 38 chose not to include a section about transfers of interest. But it doesn't take much imagination to think of potential reasons the drafters might have had for wanting to return,

on appeal, to first principles of standing and mootness (rather than continue with civil rule 25(c)'s exceptional provision). By the time the case reaches the appellate stage, the trial proceedings are over, and new tools—including civil rule 62 and appellate rule 8—are available to appellants who wish to maintain the trial-level status quo during the pendency of an appeal. *See* Utah R. Civ. P. 62 (stay of proceedings to enforce a judgment or order); Utah R. App. P. 8 (stay or injunction pending appeal). As always, if we have misperceived the drafters' intent in choosing the language of appellate rule 38, those drafters are of course free to amend the rule to incorporate principles from civil rule 25(c).

¶33 And without an exception similar to the one extant in civil rule 25(c), ordinary standing and mootness principles apply. After all, these doctrines are “closely linked: ripeness and mootness easily could be seen as the time dimensions of standing.” *McInnis-Misenor v. Maine Med. Center*, 319 F.3d 63, 69 (1st Cir. 2003) (cleaned up); *see also WildEarth Guardians v. Public Service Co. of Colo.*, 690 F.3d 1174, 1182 (10th Cir. 2012) (“Mootness usually results when a plaintiff has standing at the beginning of a case, but, due to intervening events, loses one of the elements of standing during litigation; thus, courts have sometimes described mootness as ‘the doctrine of standing set in a time frame.’” (quoting *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397, 100 S.Ct. 1202, 63 L.Ed.2d 479 (1980))); *accord Mathews v. Tooele County*, 2025 UT 30, ¶ 20, 573 P.3d 1276.

¶34 A case becomes moot if, “at any point” during the life of the case, “a change in circumstances eliminates the legal controversy between the parties.” *Mathews*, 2025 UT 30, ¶ 20, 573 P.3d 1276. Mootness inquiries often turn on whether “the relief requested [has been] rendered impossible or of no legal effect.” *Transportation All. Bank v. International Confections Co.*, 2017 UT 55, ¶ 15, 423 P.3d 1171 (cleaned up). “Because the mootness doctrine largely turns on the continuing availability of the relief requested, Utah's mootness cases have commonly looked to the precise terms of the plaintiff's pleadings (whether it be the complaint or some other filing) to determine the nature of the requested relief.” *Harman v. 105 Partners, LLC*, 2024 UT App 109, ¶ 26, 556 P.3d 669 (cleaned up).

¶35 Ordinarily, it is possible for an issue to become moot during the pendency of an appeal; this occurs when “during the pendency of the appeal circumstances change so that the controversy is eliminated, thereby rendering the relief requested impossible or of no legal effect.” *In re adoption of L.O.*, 2012 UT 23, ¶ 8, 282 P.3d 977 (cleaned up); *see also* 1A

C.J.S. *Actions* § 76 (2026) (“If events that occur subsequent to the filing of a lawsuit or appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed.” (cleaned up)). As applicable here, it is possible for an appeal to be mooted when the real property at issue in the underlying lawsuit gets sold during the appellate process.

¶36 For instance, our supreme court has on two occasions held that the sale of real property during an appeal rendered the case moot. *See Grewal v. Junction Market Fairview, LC*, 2024 UT 20, ¶ 29, 554 P.3d 863; *Richards v. Baum*, 914 P.2d 719, 722 (Utah 1996). In *Richards*, buyers sued to enforce their right to purchase real property, but after receiving an adverse judgment, the buyers did not obtain a stay of the judgment pending appeal. *See* 914 P.2d at 722. And when the property was sold to a third-party purchaser during the appeal, there was nothing the appellate court could do to afford relief to the buyers/appellants. *See id.* (explaining that “the sole relief the [appellants] sought at trial was specific performance of a real estate contract and a decree quieting title to the property,” yet “[b]ecause of their failure to obtain a stay pending [the] appeal, the property was lawfully sold to another” and thus “[n]o action which [the court] could ... take would affect the litigants' rights to the property”). The court thus determined that the buyers' appeal had been rendered moot. *See id.* In *Grewal*, which featured a *1242 similar fact pattern, the court held that *Richards* was “sufficiently analogous” to that case “to control the mootness question.” 2024 UT 20, ¶ 29, 554 P.3d 863.

¶37 In this case, by contrast, the remedy itself still exists. That is, we could still assess the merits of the title and boundary claims, and our ruling could affect the rights of the third party who purchased the Nielsens' parcel. But that third party is not a party to this appeal, nor did that party attempt to substitute into this appeal at any point prior to the issuance of our original decision. Thus, in the absence of that real party in interest, the issue here is whether our decision on the title and boundary claims could provide relief to *the Nielsens*, specifically. Because we conclude that it couldn't, we must in turn conclude that the Nielsens' appeal as to those claims has been rendered moot.

¶38 Appellate courts in other jurisdictions have applied the mootness doctrine in situations like this one, where an appellant no longer has an interest in the real property anchoring their claims for relief. *See Ditto v. City of Chattanooga*, No. E2023-01185-COA-R3-CV, 2024 WL

4002560, at *1 (Tenn. Ct. App. Aug. 30, 2024); *Ahn v. Sanger*, No. 23-CV-02459, 2024 WL 1995807, at *1 (N.D. Cal. May 6, 2024) (reviewing a bankruptcy court ruling). In *Ditto*, an appellant's case was mooted when he sold the property at issue to a third-party purchaser while his appeal was pending. 2024 WL 4002560, at *1. There, a city sought to condemn and demolish the structures on the appellant's property, and the appellant was denied an injunction prohibiting the city from doing so. *See id.* However, on appeal, the court held that it was “undisputed” that the appellant “no longer ha[d] any legal interest” in the property that was the “subject of [the] litigation” because the appellant “concede[d] that he sold the [p]roperty to a third party after initiating” the appeal. *Id.* at *5. The court thus held that even if it reversed, the appellant was “no longer entitled to anything having to do with the [p]roperty” and, as a result, the court's “ruling would not affect him in the slightest.” *Id.* The court held that the appellant's claims were therefore moot. *See id.*

¶39 Similarly, in *Ahn*, the claimant sought to have two liens encumbering the property at issue invalidated by a bankruptcy court. *See* 2024 WL 1995807, at *1. But by the time the case reached the reviewing court, the claimant no longer had any interest in the relevant property, and by agreement, there was no risk that a deficiency judgment could have been pursued against the claimant in personam. *See id.* Given this, the reviewing court explained that the claimant “lack[ed] a legally cognizable interest in whether” the liens “encumbering the property [were] void” and, therefore, the claimant's challenge was “constitutionally moot because it [was] impossible for the [c]ourt to grant [the claimant] effectual relief on her claims.” *Id.*

¶40 In this case, the Nielsens' title- and boundary-related claims are moot because the Nielsens sold their parcel to a third party while this appeal was pending. As in *Ditto* and *Ahn*, the Nielsens no longer have any legal interest in the property central to this dispute. Without any such interest, the Nielsens no longer have any interest in the title- and boundary-related claims in this case, which all involve the now-sold property. Thus, any relief we could afford the Nielsens on these claims would have no legal effect for them. And the third-party purchaser—who the Nielsens concede has “become a true successor in interest” to any “claims strictly tied to the land”—is not a party to this appeal. No motion to substitute was filed before the issuance of our original opinion, and, therefore, the real party in interest for the Nielsens' title- and boundary-related claims was never a part of this case. Thus, all claims brought by the Nielsens

relating to the title and boundaries of the property are moot, and we are therefore without judicial power to address the merits of those claims.

¶41 The Nielsens resist this conclusion with several arguments. First, they argue that they did not need to file a motion for substitution and that—pursuant to civil rule 25(c)—they were permitted to continue litigating this appeal in their own names even without a motion for substitution ever having been filed. We reject this argument because, as already discussed, civil rule 25(c) does not apply to appellate proceedings and because *1243 appellate rule 38 does not contain civil rule 25(c)'s special provision allowing a party to continue pursuing a case in its own name after a transfer of interest.

¶42 Second, the Nielsens point to two motions—a motion to substitute and a motion seeking reinstatement of the appeal on the title and boundary claims, both filed *after* the issuance of our original opinion—that, if granted, would allow the new owner of the property to litigate the appeal in his own name. But the obvious problem is that these motions were filed after we issued our opinion ruling against the Nielsens on the mootness issues. With the issuance of that opinion, the appellate issues were decided and the appeal was effectively over. While appellate rule 38 does not set forth specific timelines for the filing of motions for substitution of parties, in our view a motion filed after the issuance of the final appellate opinion should usually be deemed untimely. And in our view, it was untimely here.

¶43 The Nielsens clearly knew about the sale of their property long before our original opinion issued. Indeed, the Cronquists filed a motion to dismiss this appeal, on mootness grounds, only four days after the Nielsens filed their appellate brief. The Nielsens filed an opposition to that motion to dismiss, but neither they nor the third-party purchaser—either in that opposition or anywhere else—sought permission for a substitution of parties. Indeed, in that opposition, the Nielsens maintained that substitution was not required. Waiting to file such a motion until *after* the issue is resolved against them in the original opinion is simply too late. On this basis, we deny the Nielsens' belated motion for substitution and their motion to reinstate the appeal.

¶44 Third, the Nielsens argue that the sale of the property did not render moot the other claims in the appeal, including the tort claims and requests for attorney fees. This point is well taken, and we address the remaining claims in Part II below.

But the viability of those remaining claims does not save the title- and boundary-related claims from becoming moot as to the Nielsens. *See Grewal*, 2024 UT 20, ¶ 31, 554 P.3d 863 (concluding that a dispute regarding attorney fees was not mooted by the sale of the relevant property even though the challenges related to the property itself were rendered moot); *see also Dominguez v. Dominguez*, 583 S.W.3d 365, 371 (Tex. App. 2019) (holding that the sale of property mooted the issues relating to the property but that “for the remaining issues, ... the rule against mootness [did] not apply”).

¶45 Finally, the Nielsens argue that appellate rule 38 is permissive and does not require substitution of the parties. We agree that rule 38 is permissive, but we do not see how this function of the rule saves the title- and boundary-related claims from becoming moot on appeal if the real party in interest is not properly substituted. The third party here was certainly not required to substitute into this appeal, nor were the Nielsens required to substitute out. But without such substitution, we are being asked to adjudicate title and boundary claims without having the actual owner of the relevant property before us. Again, any relief we could afford the Nielsens on these claims would have no legal effect. At least in the context of this case, rule 38 and our mootness doctrine exist in harmony.

¶46 In sum, because the Nielsens sold their parcel and no longer have any legal interest in it, any relief we could provide them as to the title- and boundary-related claims would have no legal effect. Those claims are therefore moot as to the Nielsens.

II. The Remaining Claims

¶47 But the Nielsens’ sale of their parcel to a third party did not moot any challenges regarding non-real-property claims. Those remain live, and the Nielsens may continue to press them. Indeed, they attempt to advance some such challenges in this appeal. But upon review of the Nielsens’ briefing, it is frankly difficult to ascertain which parts of the court’s findings and conclusions they are challenging. They assert that the trial court erred in various respects, and they even provide a chart of the alleged errors in the court’s findings and conclusions. But they do not attempt to explain many of the alleged errors’ relevance; they certainly make no systematic effort to tie the listed errors to *1244 particular issues or claims. We have done our best to figure out which non-real-property claims are at issue in this appeal, but we note our supreme court’s

observation that “[a] party may not simply point toward a pile of sand and expect the court to build a castle.” *Salt Lake City v. Kidd*, 2019 UT 4, ¶ 35, 435 P.3d 248.

¶48 After reviewing the briefs, we can discern adequately briefed challenges to the trial court’s findings and conclusions regarding the Cronquists’ sheet-metal conversion claim and to the court’s attorney fees awards, and we address the merits of those challenges below. But we reject any other intended challenges as inadequately briefed or clearly without merit.⁶ *See Utah R. App. P. 24(a)(8)* (stating that a party “must explain, with reasoned analysis supported by citations to legal authority and the record, why the party should prevail on appeal”); *see also Cottam v. IHC Health Services Inc.*, 2024 UT App 19, ¶ 15, 544 P.3d 1051 (stating that parties must “persuade a reviewing court through reasoned, supported argument that the [trial] court committed harmful, reversible error—a burden that necessarily requires the appellant to address the reasoning and basis of the [trial] court’s ruling and to explain why that court got it wrong”—and that “when an appellant’s brief fails to satisfy the minimal requirements of rule 24, we need not discuss the merits of the case” (cleaned up)).

⁶ In this case, the Nielsens have not adequately briefed several issues. For instance, they asserted claims for intentional and negligent infliction of emotional distress at trial and received an adverse judgment on these claims, and while they note these claims in their chart of errors, they do not provide any authorities or analysis on these particular claims or explain how the trial court erred in ruling against them on these claims. Likewise, the court found for the Cronquists on their nuisance claim regarding the cameras that the Nielsens had set up near the Cronquists’ parcels, yet the Nielsens’ brief is devoid of any analysis as to this particular nuisance claim. And the Nielsens’ assertion that the trial court erred by denying their motion for a new trial is also inadequately briefed, given that the Nielsens merely assert generally that errors in the findings of fact and conclusions of law merit a new trial.

One other claim mentioned in the Nielsens’ briefs—while not necessarily inadequately briefed—fails on its merits. The Nielsens assert that the trial court erred by denying their motion for partial summary judgment before trial. Part of their argument turned on the boundary-related claims discussed in Part I, which are now moot. But another part involved their conversion and nuisance claims. Specifically, the Nielsens argue that because the Cronquists did not deny allegations of conversion and nuisance in their

answer, those allegations should have been deemed admitted for purposes of trial and summary judgment granted accordingly. This argument fails, because in their answer, the Cronquists included the following: “To the extent that any allegations remain that have not been specifically addressed herein, [the Cronquists] deny any such allegations.” And rule 8(b) of the Utah Rules of Civil Procedure permits a party to “deny all of the statements in a claim by general denial.” The Nielsens do not address why we should not treat the Cronquists’ denial as a general denial consistent with rule 8.

A. Conversion of Sheet Metal

¶49 The Nielsens challenge the trial court’s ruling in favor of the Cronquists on their conversion claim regarding the sheet metal. Specifically, they argue that the court’s conversion ruling adjudicated the rights of—and effectively awarded relief to—a non-party (Destry) over whom the trial court had no jurisdiction. On this point, we agree with the Nielsens.

¶50 “To prove conversion, a party must establish an act of willful interference with property, done without lawful justification, by which the person entitled to property is deprived of its use and possession, and that the party is entitled to immediate possession of the property at the time of the alleged conversion.” *Rand v. KOA Campgrounds*, 2014 UT App 246, ¶ 11, 338 P.3d 222 (cleaned up).

¶51 In this case, the trial court’s findings and conclusions do not identify the “person entitled to” the sheet metal. *See id.* (cleaned up). Terry’s son, Destry, provided sheet metal for the shed’s roofing and siding, and left some of it near the shed. And at some point, Travis took the remaining sheet metal, transported it to another property, and refused to return it to either Destry or Terry. The court found that Destry had “testified that the metal belonged to him and he gave permission for its use on” Terry’s shed. *1245 Yet the court ordered that “the metal be returned to Terry who was the intended beneficiary of the metal.” No other findings were made as to the ownership of the spare sheet metal.

¶52 To the extent the court found that Destry was the person entitled to the sheet metal, the court effectively awarded relief to a non-party over whom it had no jurisdiction. *See Van Leeuwen v. BANA RESI-NON-CORE*, 2023 UT App 91, ¶ 31, 536 P.3d 84 (explaining that “the trial court had no jurisdiction to grant the non-party relief” when the “non-party failed to intervene and the requirement of intervention was not waived by the opposing party” (cleaned up)); *Fisher v. Fisher*, 2003 UT App 91, ¶ 19, 67 P.3d 1055 (holding that the trial court had

no jurisdiction to enforce a lien filed by a non-party); *Ostler v. Buhler*, 1999 UT 99, ¶ 9, 989 P.2d 1073 (reversing the trial court’s order awarding disbursement to a non-party for lack of jurisdiction); *Openshaw v. Openshaw*, 80 Utah 9, 12 P.2d 364, 365 (1932) (holding that a judgment “in favor of a person who is not a party to the action or proceeding is void because the court has no jurisdiction to make it”). That was reversible error. Destry was not a party to the action and should not have been afforded relief on the conversion claim.

¶53 To the extent that the trial court was attempting to find that the sheet metal actually belonged to Terry, the findings and conclusions do not adequately articulate this. *See Armed Forces Ins. Exch. v. Harrison*, 2003 UT 14, ¶ 28, 70 P.3d 35 (explaining that findings of fact “should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached” (cleaned up)). The trial court did not find that Terry was the owner of the sheet metal, but instead only ordered that the metal be returned to him because he was the “intended beneficiary” of the metal. But the court did not explain how Terry came to be the intended beneficiary of the metal—it made no factual findings on this point, and it did not discuss any legal theory under which such status might be obtained.

¶54 Accordingly, we vacate the court’s order regarding the sheet metal, and we remand the matter for entry of more detailed findings and conclusions on this point. *See Monaco Apartment Homes v. Figueroa*, 2021 UT App 50, ¶ 6, 489 P.3d 1132 (“Where the inadequacy of the trial court’s findings of fact and conclusions of law results in our inability to ascertain the basis of the trial court’s decision, we are prevented from effectively reviewing [that] decision and may remand for the entry of more detailed findings.” (cleaned up)).

B. Attorney Fees

¶55 Finally, the Nielsens challenge the trial court’s award of attorney fees to the Cronquists on two different claims. But here, the Nielsens’ challenge is limited: they assert simply that the trial court abused its discretion in making its determination as to what amount of fees was reasonable under the circumstances. We discern no reversible error in the court’s award of attorney fees.

¶56 “The general rule in Utah is that, subject to certain exceptions, a party is entitled to attorney fees only if authorized by statute or by contract.” *Meadowbrook, LLC v. Flower*, 959 P.2d 115, 117 (Utah 1998) (cleaned up). Two

statutes provided the basis for the award of fees here. First, the trial court awarded fees to the Cronquists for defending against a claim for conversion of the Miles Spring water under Utah's bad-faith litigation statute, which entitles the prevailing party in a civil action to recover attorney fees "if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith." See Utah Code § 78B-5-825(1). Second, on a different claim, the court awarded fees to the Cronquists under a statute that entitles the "prevailing party in a civil action ... to collect reasonable costs and attorney fees, if that action is brought ... for injuries caused by a diversion of water in violation of an existing water right." See *id.* § 73-2-28(4).

¶57 Notably, in their briefing, the Nielsens do not appear to challenge the court's conclusion that the Cronquists are *entitled* to attorney fees under these statutes. *1246⁷ Rather, they argue only that the amount of awarded fees was not reasonable. And as already noted, our standard of review on this issue is deferential. See *Zion Village Resort LLC v. Pro Curb U.S.A. LLC*, 2020 UT App 167, ¶ 22, 480 P.3d 1055 (stating that "a court's decision regarding the reasonableness of an attorney fee award is reviewed deferentially, for patent error or clear abuse of discretion" (cleaned up)).

⁷ To the extent the Nielsens attempted to mount a challenge to the Cronquists' entitlement to attorney fees under those two statutes, such a challenge is inadequately briefed. For example, the Nielsens attempt to "incorporate[] ... by reference" their list of the trial court's alleged errors to argue that the attorney fees award was in error. For reasons already discussed, see *supra* ¶ 47, this argument does not help us determine whether the court erred on the merits of its fees award. For example, nothing in the Nielsens' chart of errors touches on the trial court's determination that the conversion of water claim proceeded with an *improper purpose* or that it was *meritless* under the bad faith statute. The Nielsens merely assert that because there were numerous errors in the findings and conclusions, it necessarily follows that the fees award was in error. We reject that argument because it lacks the analysis necessary for adequate briefing.

¶58 Here, we perceive no abuse of discretion in the trial court's assessment of what amount of fees would be reasonable. The Cronquists' trial counsel submitted time records of the attorneys' work on the case, as well as an affidavit in support. These records included the hours spent on the case, the hourly rates charged for those hours, and descriptions of the tasks performed. For some of the entries, the Cronquists asked the court to award the full amount, and for other entries, they

asked the court to award only one-third of the billed amount. After reviewing the request and supporting documentation, the trial court found that the Cronquists had "made reasonable efforts in calculating attorney[] fees relating to both" the interference with a water right claim and the conversion claim regarding the Miles Spring water.

¶59 The Nielsens argue that the Cronquists applied an arbitrary one-third coefficient to some entries "based on some internal metric" to calculate the amount allocatable to the water-related claims. But the Cronquists explained in their motion where that one-third figure comes from: the "33% calculation [was] based" in part on "the amount of fact preparation" attributable to the water-related claims "versus the rest of the claims in the case." And after reviewing the time entries—including the one-third allocation for the general case entries—the trial court found that the Cronquists had "made reasonable efforts in calculating attorney[] fees relating to both" the interference with a water right claim and the conversion claim regarding the Miles Spring water. We cannot say that the district court exceeded its discretion in this regard, especially given that the water-related claims consumed a considerable amount of focus in this litigation, as evident in the findings and conclusions themselves.

¶60 The Nielsens also argue that at least some of the time entries appear "unrelated to [the] current action" and that these entries should not have been included in the request for fees in this case. Specifically, they argue that "many of the charges" appear to be "related to work on [the Cronquists'] case with Smithfield City." As an example, the Nielsens point to a time entry involving strategy for "water rights" and "water facility & water service agreement," which the Nielsens argue relates to another case involving water rights and Smithfield City. But the Nielsens do not provide any explanation as to how that case or that research would be irrelevant to the instant case. Indeed, some research regarding Smithfield City's water rights or any agreement the city may have had with the Nielsens (or their predecessors-in-interest) seems relevant given that the Nielsens expressly argued that the city prohibited them from sharing water with another residence—Kim and Berniece's parcel.

¶61 For these reasons, we conclude that the trial court acted within its discretion in making its reasonableness assessment, and we therefore affirm the court's attorney fees awards.⁸

⁸ The Cronquists request attorney fees for having to address a "frivolous appeal," presumably pursuant to rule

33 of the Utah Rules of Appellate Procedure. We decline to grant this request. Fees are to be awarded under this rule “only in egregious cases, lest there be an improper chilling of the right to appeal erroneous lower court decisions.” *Marroquin v. Marroquin*, 2019 UT App 38, ¶ 36, 440 P.3d 757 (cleaned up). While we ultimately reject some of the Nielsens’ arguments, we do not consider this an “egregious” appeal worthy of sanctions.

***1247 CONCLUSION**

¶62 Because the Nielsens sold the property central to their title- and boundary-related claims during this appeal, their appeal as to those claims is moot, and we dismiss the appeal

as it relates to those claims. As for the remaining claims, we vacate the trial court's order regarding the conversion of sheet metal claim, because it was unclear in the findings and conclusions whether the court was awarding relief to a non-party, and we remand this case to the trial court for further proceedings on that point. And finally, we conclude that the court did not abuse its discretion in making its reasonableness assessment regarding attorney fees, and we therefore affirm the court's attorney fees awards.

All Citations

589 P.3d 1230, 2026 UT App 65

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Tab B

Utah Courts

URCP Rule 25 (Rules of Civil Procedure)

Rule 25. Substitution of parties.

Rule printed on August 27, 2026 at 1:12 pm. Go to <https://www.utcourts.gov/rules> for current rules.

(a) Death.

(a)(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party. The moving party shall serve the motion and any notice of hearing on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than ninety days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(a)(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in Subdivision (a) of this rule may allow the action to be continued by or against his representative.

(c) Transfer of interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in Subdivision (a) of this rule.

(d) Public officers; death or separation from office. When a public officer is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within 6 months after the successor takes office, it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of an officer adopts or continues or threatens to adopt or continue the action of his predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

Tab C

1 **Rule 38. Substitution of parties.**

2 **(a) Death of a party.** If a party dies after a notice of appeal is filed or while a proceeding
3 is otherwise pending in the court, the personal representative of the deceased party may
4 be substituted as a party on motion filed by the representative or by any party. The
5 motion of a party shall be served upon the representative in accordance with the
6 provisions of Rule 21. If the deceased party has no representative, any party may
7 suggest the death on the record and proceedings shall then be had as the court may
8 direct. If a party against whom an appeal may be taken dies after entry of a judgment or
9 order in the trial court or agency but before a notice of appeal is filed, an appellant may
10 proceed as if death had not occurred. After the notice of appeal is filed, substitution
11 shall be effected in accordance with this paragraph. If a party entitled to appeal dies
12 before filing a notice of appeal, the notice of appeal may be filed by the deceased party's
13 personal representative or, if there is no personal representative, by the deceased party's
14 attorney of record. After the notice of appeal is filed, substitution shall be effected in
15 accordance with this paragraph.

16 **(b) Incompetency.** If a party becomes incompetent, the court may allow the action to be
17 maintained by or against the party's representative upon good cause shown.

18 **(c) Substitution for other causes.** If substitution of a party is appropriate for any other
19 reason, the court may substitute the party upon good cause shown.

20 **(d) Public officers; death or separation from office.**

21 (d)(1) When a public officer is a party to an appeal or other proceeding in an official
22 capacity and during its pendency dies, resigns or otherwise ceases to hold office, the
23 action does not abate and the public officer's successor is automatically substituted
24 as a party. Proceedings following the substitution shall be in the name of the
25 substituted party, but any misnomer not affecting the substantial rights of the
26 parties shall be disregarded. An order of substitution may be entered at any time,
27 but the omission to enter such an order shall not affect the substitution.

28 (d)(2) When a public officer is a party to an appeal or other proceeding in an official
29 capacity, the public officer may be described as a party by official title rather than by
30 name; but the court may require the name to be added.

31

TAB 5

1 Rule 23. Motions.

2 (a) **Content of motion.** Unless another form is elsewhere prescribed by these rules, an
3 application for an order or other relief must be made by filing a motion for such order or
4 relief with proof of service on all other parties. The motion must contain:

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

6 (2) a particular statement of the factual grounds;

7 (3) a discussion of points and authorities in support (unless the motion is for an
8 enlargement of time); and

9 (4) affidavits or declarations and documents, where appropriate.

10 (b) **Response.** Any party may file a response to a motion within 14 days after the motion
11 is served; however, the court may, for good cause shown, dispense with, shorten, or
12 extend the time for responding to any motion.

13 (c) **Reply.** The moving party may file a reply only to answer new matters raised in the
14 response. A reply, if any, may be filed no later than ~~five~~5 days after the response is served,
15 but the court may rule on the motion without awaiting a reply.

16 (d) **Determination of motions for procedural orders.** Notwithstanding paragraph (a) as
17 to motions generally, motions for procedural orders not substantially affecting the rights
18 of the parties or the ultimate disposition of the appeal, including any motion under
19 ~~Rule -22(b)~~, may be acted upon at any time, without awaiting a response or reply.
20 Pursuant to rule or at the court's direction, the clerk may dispose of motions for specified
21 types of procedural orders. The court may review a clerk's disposition upon a party's
22 motion or upon its own motion.

23 (e) **Power of a single justice or judge to entertain motions.** In addition to the authority
24 expressly conferred by these rules or by law, a single justice or judge of the court may
25 entertain and may grant or deny any request for relief that under these rules may
26 properly be sought by motion, except that:

(1) a single justice or judge may not dismiss or otherwise determine an appeal or other proceeding;

(2) the court may provide by order or rule that any motion or class of motions must be acted upon by the court; and

(3) the action of a single justice or judge may be reviewed by the court.

(f) **Page limitation.** Motions may not exceed 15 pages or 5400 words. Any memorandum in opposition to a motion may not exceed 15 pages or 5400 words. If a word count is used, the filer must include a certification that the document complies with the applicable word count.

Effective ~~May 1, 2023~~

TAB 6

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 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.

(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 ten days after the response is served or within such other time as the court may specify.

(3) If the requirements of paragraphs (a) and (b) 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 remand order 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 remand order, 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 remand order 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. 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 remand order. Proceedings on remand must be completed within 90 days of entry of the remand order, 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 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 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 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.

(h) Page limitation. Motions and responses may not exceed 14000 words. Any reply may not exceed 7000 words. The filer must include a certification that the document complies with the applicable word count.

Effective ~~May 1, 2026~~

Advisory Committee Note

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

81 *Note adopted 2022*