AGENDA

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

Conference Room A, 1st Floor
Thursday, April 9, 2015
12:00 p.m. to 1:30 p.m.

12:00 p.m.	Welcome and Approval of Minutes (Tab 1)	Joan Watt
12:05 p.m.	Subcommittee Updates • Public Briefs • Forms • Federal Rules • Efiling Subcommittee	Tim Shea
12:15 p.m.	Public Briefs (Tab 2)	Tim Shea
12:30 p.m.	Rule 24 (Tab 3) Rule 24 and *State v. Nielsen* (Tab 4) Rule 27 (Tab 5)	Troy Booher
1:25 p.m.	Other Business	
1:30 p.m.	Adjourn	

Upcoming Meetings:

May 7, 2015
June 4, 2015
September 3, 2015

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

Judicial Council Room
Thursday, March 5, 2015
12:00 p.m. to 1:30 p.m.

PRESENT	**EXCUSED**
Joan Watt – Chair	Bridget Romano
Alison Adams-Perlac – Staff	
Troy Booher	
Paul Burke	
Marian Decker	
Alan Mouritsen	
Judge Gregory Orme	
Rodney Parker	
Bryan Pattison (by phone)	
John Plimpton – Recording Secretary	
Clark Sabey	
Lori Seppi	
Tim Shea	
Anne Marie Taliaferro	
Judge Fred Voros	
Mary Westby	

1. Welcome and Approval of Minutes **Joan Watt**

Ms. Watt welcomed the committee to the meeting. She asked for any comments on the minutes from the previous meeting. Ms. Decker pointed out that on page 2, in the fourth sentence of the second paragraph, "public available" should be "publicly available." The committee agreed. Ms. Decker also pointed out that on page 3, in the first full sentence, "avoid omitting" should be "omit." The committee agreed. Ms. Watt pointed out that on page 4, in the sixth sentence of the second paragraph, "it some cases" should be "in some cases." The committee agreed.

Mr. Parker moved to approve the minutes from the meeting held on March 5, 2015, as amended. Mr. Shea seconded the motion and it passed unanimously.

2. Meeting Dates

The committee rescheduled the next meeting, which had been scheduled for April 2, 2015, to April 9, 2015.

Ms. Watt said she would be unable to attend the meeting scheduled for May 7, 2015. The committee could not agree on a different date for the meeting. The committee agreed that the meeting would remain scheduled for May 7 and that Mr. Parker would chair it.

3. Subcommittee Updates

Ms. Watt said that the committee had recently formed three subcommittees. She said that the first subcommittee is the Public Briefs subcommittee. She said the second is the Forms subcommittee, which is tasked with updating forms to comply with rule amendments. Mr. Shea said that there are about eight or nine forms that need to be updated. Ms. Watt said that Mr. Parker and Ms. Seppi are on the Forms subcommittee. Ms. Watt said that the third subcommittee is the Federal Rules subcommittee, which is a joint subcommittee between the appellate rules committee and the civil rules committee. Ms. Watt said that the purpose of the Federal Rules subcommittee is to consider whether Utah should adopt federal rules regarding finality of judgments in civil cases. Ms. Watt said that Mr. Burke and Mr. Mouritsen are on the Federal Rules subcommittee.

a. Public Briefs

Mr. Shea said that the committee would be discussing public briefs later in the meeting.

b. Forms

Mr. Shea said that the Forms subcommittee just scheduled its first meeting that morning.

c. Federal Rules

Mr. Shea said that the Federal Rules subcommittee would be scheduling its first meeting soon.

d. Efiling

Mr. Shea said that the Efiling subcommittee was making good progress.

4. Supreme Court Update and Rule 38A **Joan Watt**

Ms. Watt said that the supreme court adopted the committee's proposed amendments to Rule 9, the rule governing docketing statements. She said that the amended Rule would go into effect on May 1, 2015.

Ms. Watt said that the committee had approved a proposed amendment to Rule 38B that would add a provision regarding the duration of representation by court-appointed appellate counsel.

She said that the supreme court suggested that the provision should be located in Rule 38A, not Rule 38B.

The committee proposed that Rule 38A to be amended read as follows:

Rule 38A. Withdrawal of counsel.

(a)(1) Withdrawal in criminal cases and certain civil cases. An attorney may not withdraw from a criminal case or from a civil case in which ~~appellant~~that attorney's client has the right to effective assistance of counsel except upon motion and order of the court. Absent good cause shown, leave to withdraw will not be granted unless the motion to withdraw is accompanied by an entry of proposed appearance by new counsel or a representation by the withdrawing attorney that the ~~defendant~~client is entitled to the appointment of new counsel.

(a~~b~~)(2) Duration of representation by court-appointed counsel. Absent good cause shown for withdrawal, if a party has a right to effective assistance of counsel, an attorney appointed to represent that party on appeal shall represent that party throughout the first appeal as of right, respond to a petition for writ of certiorari, file a petition for writ of certiorari if appointed counsel determines that such a petition is warranted, and brief and argue the merits if the Supreme Court grants certiorari review.

(c) Withdrawal in other civil cases.

(~~b~~c)(1) When oral argument not scheduled. An attorney may withdraw without leave of court in any other civil case that has not been scheduled for oral argument. The withdrawing attorney shall serve notice of the withdrawal with the court and upon all parties, including his or her client.

(~~b~~c)(2) When oral argument scheduled. An attorney may not withdraw from any other civil case that has been scheduled for oral argument except upon motion and order of the court. Absent good cause shown, leave to withdraw will not be granted unless the motion to withdraw is accompanied by an entry of proposed appearance of new counsel and new counsel's representation that oral argument may proceed as scheduled.

(~~b~~c)(3) Notice to appoint or appear in person. If an attorney withdraws under subdivision (b)(1), dies, is suspended from the practice of law, is disbarred, or is removed from the case by the court, the opposing party shall, and the court may, serve a notice on the unrepresented party, informing the party of the responsibility to appoint new counsel or, if the unrepresented party is a natural person, the responsibility to appear personally or appoint new counsel. A copy of the notice served by the opposing party shall be filed with the court. No further proceedings shall be held in the case until 20 days after such a notice is served, unless the unrepresented party waives the time requirement or unless the court otherwise orders.

Mr. Parker moved to approve the proposal to amend Rule 38A. Mr. Sabey seconded the motion, and it passed unanimously.

5. Public Briefs

Mr. Shea said that the Public Briefs subcommittee finished its work. He said that during the last meeting the committee wanted to include a redaction option. He said that with the redaction option, a brief would be presumptively public, but a party could move either to classify the entire brief as private or to file a redacted brief for the public along with a separate unredacted brief for the court.

Mr. Shea said that the subcommittee proposed a seven-day window during which the brief would be classified as private. He said that the window would provide parties with an opportunity to move to classify the entire brief as private or to redact further information. He said that, after the seven-day window closed, the brief would be presumptively classified as public. He said that the redaction option is contained in a proposed amendment to Rule 21(f). He said that the committee had been considering putting the redaction option in a new rule, Rule 21A, but that he thought it fit better in Rule 21. He said that other provisions in proposed Rule 21A were already covered by the Utah Code of Judicial Administration, so proposed Rule 21A is not necessary.

Mr. Booher asked if the last sentence of Rule 21(a)(1) means that paper briefs are no longer to be bound. Mr. Shea said yes, that once efiling is in effect, parties will not file paper briefs at all. Mr. Parker said that that sentence is directed at pro se litigants who file paper briefs. He said that the briefs should not be bound so that the court can easily scan them. Mr. Shea said that that sentence is part of the Efiling subcommittee's work. He said that the committee should consider proposed Rule 21(f) on an independent basis. Ms. Watt said that Rule 21(f) is the only thing the committee needs to consider at the moment.

Ms. Watt asked if the committee was the appropriate body to consider the proposed seven-day window rule. Mr. Shea responded that it was. He said that although the rule would be located in the Code of Judicial Administration, the committee would recommend to the supreme court that the judicial council amend the Code of Judicial Administration.

Ms. Watt asked if the seven-day window rule would prevent an attorney from giving a copy of a brief to a client immediately after filing the brief. Mr. Shea said it would not. He said that the rule would only apply to the appellate courts, and that an attorney would not be precluded from disseminating the brief to his or her client.

Judge Voros asked if the seven-day window rule needs to be included in the Rules of Appellate Procedure. Mr. Shea said he had considered that because the appellate rules have a higher profile than the Code of Judicial Administration. He said that a committee note referring to the Code of Judicial Administration might be appropriate. Ms. Watt said that a committee note is a good idea.

Judge Voros said he is concerned that attorneys might disseminate briefs to the media during the seven-day window. Mr. Parker said that he shared Judge Voros's concern. He said that the media often asks attorneys for copies of briefs. He said he didn't think the seven-day window rule would be practical or appropriate.

Mr. Shea said that the seven-day window rule would only apply to the courts. He said that the rule would not prohibit another entity, such as an attorney, from disseminating a brief during the

seven-day window. Mr. Parker said that, if that is the case, then the rule might not accomplish its objective.

Judge Voros said that the rule would only apply to briefs, not private information, so that opposing counsel could move to protect contents of the brief from being published by the court. Mr. Parker said that if the purpose of the rule is to prevent the publication of certain briefs or parts of briefs, then the rule would need to prevent dissemination by attorneys as well. Mr. Shea said that the rules could not do that. He said that GRAMA and the Code of Judicial Administration only apply to government entities.

Mr. Booher said that the seven-day window rule would not create any problems for attorneys. He said that they are already subject to discipline for disseminating nonpublic information. Judge Voros noted that in the vast majority of cases, the briefs will ultimately be public. He said that the rule would only prevent the court from publishing the brief for seven days to allow parties to make motions regarding the classification of the brief or parts of it.

Mr. Shea said that if there is a motion filed during the seven-day window, the court would keep the brief classified as private until ruling on the motion.

Judge Voros said that there is value in preventing the court from disseminating briefs for seven days because it is usually more difficult to get briefs from parties or attorneys than from the court. Mr. Parker said that the rule proposes a big change. He said that a blanket classification of all briefs as private for seven days is not justified. He said that the news media would not put up with it.

Judge Voros asked whether a private party can disseminate information that is classified as private by the court. Mr. Shea said that generally a private party can because prohibiting the private party from doing so creates First Amendment problems.

Mr. Shea said that Mr. Parker's point is well-taken because the seven-day window rule would be built around the small minority of cases. He said that, however, the rule keeps with the time provided in GRAMA for government entities to respond to requests for information. He said that the rule anticipates a publicly accessible electronic filing system in the appellate courts. He added that the rule would only apply to briefs, not docketing statements or other documents.

Ms. Decker asked if, before filing the brief, a party could file a motion notifying the court that the brief or certain parts of it might need to be classified as private. Mr. Shea said he had considered that option, as well as one that required a party to serve the brief on the opposing party seven days before filing it with the court. He suggested that these options would be impractical.

Mr. Shea said that there could be a rule providing that briefs have the same classification as the records that were filed in the trial court. Ms. Watt said she thought such a rule might be a good idea. She asked if there is anything like the seven-day window rule in the trial courts. Mr. Shea said there isn't. He said that records are classified as public or nonpublic initially, but a party can file a motion with a document to classify the document as private.

Ms. Adams-Perlac said that the media has been particularly sensitive about the accessibility of court filings, and that is something to be considered. Mr. Burke said that the application of the seven-day window rule in a highly publicized case is very problematic. He said that the appellate courts are doing the people's business, and it is problematic for the court to say that it will not make briefs in high-profile cases accessible, with the implication that the media should try to get the briefs from the lawyers or parties in the case. He said that the seven-day window rule is inconsistent with the idea that the courts are a public institution doing the people's business.

Mr. Parker said that the rule is an attempt to balance the public interest in being able to access the work of the courts with the parties' privacy interests. He said that, in his view, the public interest carries more weight. He said that, once filed, briefs should be public unless there's some special reason for them not to be.

Mr. Booher agreed with Mr. Parker that the rule is an attempt to balance the public interest with the parties' privacy interests. But he said that the current practice is that the drafter of the brief gets to decide whether the contents of a brief are public or private, at least until the court rules on it. He said that there should be some way for the opposing party to have a say in how the content of a brief is classified. He said that one benefit of the seven-day window rule is that it gives the opposing party a say.

Judge Voros suggested that the opposing party could file a motion anticipating that some information in the brief will need to be classified as private. Ms. Adams-Perlac suggested that, to trigger the seven-day window, a party could be required to file a notice of intent to move to classify the brief (or parts of it) as private. She said that, without such a notice of intent requirement, it might be difficult for opposing counsel to file a motion within the seven-day window. She said that the public needs to have access to briefs, but only appropriate access. Mr. Sabey said that it would make sense to limit the seven-day window rule to certain categories of cases, such as those in which trial court records are nonpublic.

Mr. Shea said that the point of the seven-day window rule is to provide parties who did not write the brief with an opportunity to have information in the brief classified as nonpublic. He said that the rule could be limited to cases in which records were classified as nonpublic in the trial court. He said that, right now, all briefs are public once filed. Ms. Westby said that, under the Code of Judicial Administration, appellate records, except for the briefs, in certain protected types of cases are classified as nonpublic. Mr. Parker said that his understanding of the Code of Judicial Administration was that in those types of cases, the appellate records and briefs are nonpublic. Judge Voros asked what the Code of Judicial Administration says. Mr. Shea said that Mr. Parker's analysis is incorrect. Mr. Shea said that appellate briefs in cases that are protected at the trial level are currently public. Judge Voros said that the Code of Judicial Administration needs to make that explicit, because it seems ambiguous. Mr. Booher said that extending the nonpublic classification to the appellate level would render appellate decisions nonpublic, because court orders in protected cases are nonpublic.

Judge Voros said that the committee should decide what the rule should be regarding the relationship between classification on appeal and classification at trial. He said that the committee

should then make a recommendation based on what it decides. Ms. Watt said that, whatever the rule is, it should be clear and easily accessible to help parties and attorneys follow it. She said that the rule should be included in the appellate rules, as well.

Judge Voros said that we are currently at a transformational time due to the rapidly increasing accessibility of information. He said that the committee should take time and care to consider the ramifications of the rules it proposes on the public availability of appellate records and filings, and it should not be bothered if it moves slowly and carefully. Ms. Watt agreed.

6. Rule 24; Rule 24 and *State v. Nielsen*; Rule 27

The committee did not discuss Rule 24, Rule 24 and *State v. Nielsen*, or Rule 27.

7. Adjourn

The meeting was adjourned at 1:33 p.m. The next meeting will be held on Thursday, April 9, 2015.

Tab 2

Timothy M. Shea
Appellate Court Administrator

Andrea R. Martinez
Clerk of Court

Supreme Court of Utah

450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Appellate Clerks' Office
Telephone 801-578-3900
Fax 801-578-3999

March 10, 2015

To: Appellate Rules Committee
From: Tim Shea
Re: Public briefs

Let me try to summarize where I believe we have agreement and narrow the focus on the remaining issues. I use the term "confidential" to encompass private, protected, safeguarded, sealed, juvenile court legal, and juvenile court social records and any other information to which the right of public access is restricted by statute, rule, order, or caselaw.

(1) The authoring party should file a brief with as much information—public and confidential—as is needed to zealously advocate the party's arguments.

(2) If the brief contains confidential information, the filer must also file a version of the brief without the confidential information. The complete brief must be served on the other parties and will be used by the court in considering the party's arguments. The redacted brief must be served on the other parties and will be available to the public.

(3) By filing the brief the author is certifying that the brief contains no information classified as confidential or that a brief appropriately redacted for the public is being filed simultaneously.

(4) There should be a process by which a non-authoring party can ask the court to redact information from a brief or, in appropriate circumstances, classify the brief as confidential. This would extend to the public version of a brief already self-censored by the author.

(5) There should be a process by which a non-authoring party can ask the court for sanctions against an author who represents as public a brief that contains confidential information about the non-authoring party.

(6) Everyone also agrees that briefs, or at least a redacted version of a brief, must be public. The options that I have heard so far are that the complete brief or, if there is one, the redacted brief would be public:

- immediately upon filing;
- seven days after filing; or
- seven days after filing if the appeal is in a case described in CJA Rule 4-202.02(4)(A) or (4)(B):
  - Involuntary commitment under court order;
  - Utah Adoption Act;
  - Gestational Agreement;
  - Title 30, Husband and Wife, (except that an action for consortium due to personal injury under Section 30-2-11 is public);
  - Stalking Injunctions;

- Protection of Persons Under Disability and their Property;
- Protective Orders;
- Utah Child Support Act;
- Utah Uniform Child Custody Jurisdiction and Enforcement Act;
- Uniform Interstate Family Support Act;
- Utah Uniform Parentage Act; and
- an action to modify or enforce a judgment in any of these actions.

Item (1) is a given.

Item (2) is intended to be covered by proposed Rule 21(g).

Item (3) is intended to be covered by proposed Rule 40(b).

Item (4) is intended to be covered by proposed Rule 4-202.04.

Item (5) is intended to be covered by proposed Rule 40(c)—(current Rule 40(b)).

Item (6) will be covered by proposed Rule 4-202.02(2)(C) when the committee reaches agreement.

Rule 21. Filing and service.

(a) Filing. Papers required or permitted to be filed by these rules shall be filed with the clerk of the appropriate court. Filing may be accomplished by mail addressed to the clerk. Except as provided in subpart (f), filing is not considered timely unless the papers are received by the clerk within the time fixed for filing, except that briefs shall be deemed filed on the date of the postmark if first class mail is utilized. If a motion requests relief which may be granted by a single justice or judge, the justice or judge may accept the motion, note the date of filing, and transmit it to the clerk.

(b) Service of all papers required. Copies of all papers filed with the appellate court shall, at or before the time of filing, be served on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel of record, or, if the party is not represented by counsel, upon the party at the last known address. A copy of any paper required by these rules to be served on a party shall be filed with the court and accompanied by proof of service.

(c) Manner of service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of service. Papers presented for filing shall contain an acknowledgment of service by the person served or a certificate of service in the form of a statement of the date and manner of service, the names of the persons served, and the addresses at which they were served. The certificate of service may appear on or be affixed to the papers filed. If counsel of record is served, the certificate of service shall designate the name of the party represented by that counsel.

(e) Signature. All papers filed in the appellate court shall be signed by counsel of record or by a party who is not represented by counsel.

(f) Filing by inmate. Papers filed by an inmate confined in an institution are timely filed if they are deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a notarized statement or written declaration setting forth the date of deposit and stating that first-class postage has been prepaid.

(g) Filings containing other than public information and records. If a filing contains information classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social records or any other information to which the right of public access is restricted by statute, rule, order, or caselaw, the filer must also file a version with all non-public information removed. The filer must certify that the removed information is classified as other than public, citing the statute, rule, or order that makes that classification.

Advisory Committee Notes

Paragraph (e) is added to Rule 21 to consolidate various signature provisions formerly found in other sections of the rules.

Records are classified and public, private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social by Code of Judicial Administration Rule 4-202.02. The right of public access

might also be restricted by Title 63G, Chapter 2, Government Records Access and Management Act, by other statutes, rules, or caselaw, or by court order. If a filing contains information or records that are not public, Rule 21(g) requires the filer to file an unredacted version for the court and a version for the public that does not contain the confidential information.

Rule 24. Briefs.

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order indicated:

(a)(1) A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties. The list should be set out on a separate page which appears immediately inside the cover.

(a)(2) A table of contents, including the contents of the addendum, with page references.

(a)(3) A table of authorities with cases alphabetically arranged and with parallel citations, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(a)(4) A brief statement showing the jurisdiction of the appellate court.

(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and

(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or

(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.

(a)(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.

(a)(7) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.

(a)(8) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.

(a)(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(a)(10) A short conclusion stating the precise relief sought.

(a)(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief

unreasonably thick. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

(a)(11)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

(a)(11)(B) in cases being reviewed on certiorari, a copy of the Court of Appeals opinion; in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and

(a)(11)(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction. If a part of the record on appeal of central importance to the determination of the appeal is classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social or contains records to which the right of public access is restricted by statute, rule, order, or caselaw, that part of the record shall be in a separate addendum identified with a classification appropriate for the records it contains.

(b) Brief of the appellee. The brief of the appellee shall conform to the requirements of paragraph (a) of this rule, except that the appellee need not include:

(b)(1) a statement of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or

(b)(2) an addendum, except to provide material not included in the addendum of the appellant. The appellee may refer to the addendum of the appellant. If a part of the record on appeal of central importance to the determination of the appeal is classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social or contains records to which the right of public access is restricted by statute, rule, order, or caselaw, that part of the record shall be in a separate addendum identified with a classification appropriate for the records it contains.

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule. No further briefs may be filed except with leave of the appellate court.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person,' "the taxpayer," etc.

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions

or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs.

(f)(1) Type-volume limitation.

(f)(1)(A) A principal brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000 words or it uses a monospaced face and contains no more than 650 lines of text.

(f)(1)(B) Headings, footnotes and quotations count toward the word and line limitations, but the table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the record as required by paragraph (a) of this rule do not count toward the word and line limitations.

(f)(1)(C) Certificate of compliance. A brief submitted under Rule 24(f)(1) must include a certificate by the attorney or an unrepresented party that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word processing system used to prepare the brief. The certificate must state either the number of words in the brief or the number of lines of monospaced type in the brief.

(f)(2) Page limitation. Unless a brief complies with Rule 24(f)(1), a principal briefs shall not exceed 30 pages, and a reply briefs shall not exceed 15 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) of this rule.

In cases involving cross-appeals, paragraph (g) of this rule sets forth the length of briefs.

(g) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant, unless the parties otherwise agree or the court otherwise orders. Each party shall be entitled to file two briefs.

(g)(1) The appellant shall file a Brief of Appellant, which shall present the issues raised in the appeal.

(g)(2) The appellee shall then file one brief, entitled Brief of Appellee and Cross-Appellant, which shall respond to the issues raised in the Brief of Appellant and present the issues raised in the cross-appeal.

(g)(3) The appellant shall then file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee, which shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant.

(g)(4) The appellee may then file a Reply Brief of Cross-Appellant, which shall reply to the Brief of Cross-Appellee.

(g)(5) Type-Volume Limitation.

(g)(5)(A) The appellant's Brief of Appellant is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(g)(5)(B) The appellee's Brief of Appellee and Cross-Appellant is acceptable if it contains no more than 16,500 words or it uses a monospaced face and contains no more than 1,500 lines of text.

(g)(5)(C) The appellant's Reply Brief of Appellant and Brief of Cross-Appellee is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(g)(5)(D) The appellee's Reply Brief of Cross-Appellant is acceptable if it contains no more than half of the type volume specified in Rule 24(g)(5)(A).

(g)(6) Certificate of Compliance.

A brief submitted under Rule 24(g)(5) must comply with Rule 24(f)(1)(C).

(g)(7) Page Limitation. Unless it complies with Rule 24(g)(5) and (6), the appellant's Brief of Appellant must not exceed 30 pages; the appellee's Brief of Appellee and Cross-Appellant, 35 pages; the appellant's Reply Brief of Appellant and Brief of Cross-Appellee, 30 pages; and the appellee's Reply Brief of Cross-Appellant, 15 pages.

(h) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the page, word, or line limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages, words, or lines requested, and the good cause for granting the motion. A motion filed at least seven days prior to the date the brief is due or seeking three or fewer additional pages, 1,400 or fewer additional words, or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion filed within seven days of the date the brief is due and seeking more than three additional pages, 1,400 additional words, or 130 lines of text shall be accompanied by a copy of the finished brief. If the motion is granted, the responding party is entitled to an equal number of additional pages, words, or lines without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(i) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after that party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the appellate court, by letter setting forth the citations. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall state the reasons for the supplemental citations.

The body of the letter must not exceed 350 words. Any response shall be made within seven days of filing and shall be similarly limited.

(k) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Advisory Committee Notes

Rule 24(a)(9) now reflects what Utah appellate courts have long held. See In re Beesley, 883 P.2d 1343, 1349 (Utah 1994); Newmeyer v. Newmeyer, 745 P.2d 1276, 1278 (Utah 1987). "To successfully appeal a trial court's findings of fact, appellate counsel must play the devil's advocate. 'Attorneys must extricate themselves from the client's shoes and fully assume the adversary's position. In order to properly discharge the marshalling duty..., the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists.'" ONEIDA/SLIC, v. ONEIDA Cold Storage and Warehouse, Inc., 872 P.2d 1051, 1052-53 (Utah App. 1994) (alteration in original)(quoting West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah App. 1991)). See also State ex rel. M.S. v. Salata, 806 P.2d 1216, 1218 (Utah App. 1991); Bell v. Elder, 782 P.2d 545, 547 (Utah App. 1989); State v. Moore, 802 P.2d 732, 738-39 (Utah App. 1990).

The brief must contain for each issue raised on appeal, a statement of the applicable standard of review and citation of supporting authority.

Records are classified and public, private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social by Code of Judicial Administration Rule 4-202.02. The right of public access might also be restricted by Title 63G, Chapter 2, Government Records Access and Management Act, by other statutes, rules, or caselaw, or by court order. If a filing contains information or records that are not public, Rule 21(g) requires the filer to file an unredacted version for the court and a version for the public that does not contain the confidential information.

Rule 40. Attorney's or party's ~~certificate~~ signature; representations to the court; sanctions and discipline.

(a) Attorney's or party's certificate. Every motion, brief, and other paper of a party represented by an attorney shall be signed by at least one attorney of record who is an active member in good standing of the Bar of this state. The attorney shall ~~sign his or her individual name and~~ give his or her business address, telephone number, and Utah State Bar number. A party who is not represented by an attorney shall sign any motion, brief, or other paper and state the party's address and telephone number. ~~Except when otherwise specifically provided by rule or statute, motions, briefs, or other papers need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate that the attorney or party has read the motion, brief, or other paper; that to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, it is not frivolous or interposed for the purpose of delay as defined in Rule 33. If a motion, brief, or other paper is not signed as required by this rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the attorney or party. If a motion, brief, or other paper is signed in violation of this rule, the authority and the procedures of the court provided by Rule 33 shall apply.~~A person may sign a paper using any form of signature recognized by law as binding.

(b) Representations to court. By filing a document an attorney or self-represented party is certifying that to the best of the person's knowledge formed after an inquiry reasonable under the circumstances:

(b)(1) the filing is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b)(2) the legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(b)(3) the factual contentions are supported by the record on appeal; and

(b)(4)(A) the filing contains no information or records classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social or any other information or records to which the right of public access is restricted by statute, rule, order, or caselaw; or

(b)(4)(B) a filing required by Rule 21(g) that does not contain information or records classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social or any other information or records to which the right of public access is restricted by statute, rule, order, or caselaw is being filed simultaneously.

~~(b)~~ (c) Sanctions and discipline of attorneys and parties. The court may, after reasonable notice and an opportunity to show cause to the contrary, and upon hearing, if requested, take appropriate action against any attorney or person who practices before it for inadequate representation of a client, conduct unbecoming a member of the Bar or a person allowed to appear before the court, or for failure to comply with these rules or order of the court. Any action to suspend or disbar a member of the Utah State Bar shall be referred to the Office of Professional Conduct of the Utah State Bar.

~~(c)~~ (d) **Rule does not affect contempt power.** This rule shall not be construed to limit or impair the court's inherent and statutory contempt powers.

~~(d)~~ (e) **Appearance of counsel pro hac vice.** An attorney who is licensed to practice before the bar of another state or a foreign country but who is not a member of the Bar of this state, may appear, pro hac vice upon motion, filed pursuant to ~~the Code of Judicial Administration~~ Rule 14-806 of the Rules Governing the Utah State Bar. A separate motion is not required in the appellate court if the attorney has previously been admitted pro hac vice in the ~~lower tribunal~~ trial court, but the attorney shall file in the appellate court a notice of appearance pro hac vice to that effect.

Advisory Committee Notes

~~Refer to Rule 14-806 of the Rules Governing the Utah State Bar for qualification of out of state counsel to practice before the courts of Utah.~~

Records are classified and public, private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social by Code of Judicial Administration Rule 4-202.02. The right of public access might also be restricted by Title 63G, Chapter 2, Government Records Access and Management Act, by other statutes, rules, or caselaw, or by court order. If a filing contains information or records that are not public, Rule 21(g) requires the filer to file an unredacted version for the court and a version for the public that does not contain the confidential information.

Rule 4-202.02. Records classification.

Intent:

To classify court records as public or non-public.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) Court records are public unless otherwise classified by this rule.

(2) Public court records include but are not limited to:

(2)(A) abstract of a citation that redacts all non-public information;

(2)(B) aggregate records without non-public information and without personal identifying information;

(2)(C) an appellate brief …;

~~(2)(C)~~ (2)(D) arrest warrants, but a court may restrict access before service;

~~(2)(D)~~ (2)(E) audit reports;

~~(2)(E)~~ (2)(F) case files;

~~(2)(F)~~ (2)(G) committee reports after release by the Judicial Council or the court that requested the study;

~~(2)(G)~~ (2)(H) contracts entered into by the judicial branch and records of compliance with the terms of a contract;

~~(2)(H)~~ (2)(I) drafts that were never finalized but were relied upon in carrying out an action or policy;

~~(2)(I)~~ (2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure;

~~(2)(J)~~ (2)(K) financial records;

~~(2)(K)~~ (2)(L) indexes approved by the Management Committee of the Judicial Council, including the following, in courts other than the juvenile court; an index may contain any other index information:

~~(2)(K)(i)~~ (2)(L)(i) amount in controversy;

~~(2)(K)(ii)~~ (2)(L)(ii) attorney name;

~~(2)(K)(iii)~~ (2)(L)(iii) case number;

~~(2)(K)(iv)~~ (2)(K)(iv) case status;

~~(2)(K)(v)~~ (2)(L)(v) civil case type or criminal violation;

~~(2)(K)(vi)~~ (2)(L)(vi) civil judgment or criminal disposition;

~~(2)(K)(vii)~~ (2)(L)(vii) daily calendar;

~~(2)(K)(viii)~~ (2)(L)(viii) file date;

~~(2)(K)(ix)~~ (2)(L) party name;

~~(2)(L)~~ (2)(M) name, business address, business telephone number, and business email address of an adult person or business entity other than a party or a victim or witness of a crime;

~~(2)(M)~~ (2)(N) name, address, telephone number, email address, date of birth, and last four digits of the following: driver's license number; social security number; or account number of a party;

~~(2)(N)~~ (2)(O) name, business address, business telephone number, and business email address of a lawyer appearing in a case;

~~(2)(O)~~ (2)(P) name, business address, business telephone number, and business email address of court personnel other than judges;

~~(2)(P)~~ (2)(Q) name, business address, and business telephone number of judges;

~~(2)(Q)~~ (2)(R) name, gender, gross salary and benefits, job title and description, number of hours worked per pay period, dates of employment, and relevant qualifications of a current or former court personnel;

~~(2)(R)~~ (2)(S) unless classified by the judge as private or safeguarded to protect the personal safety of the juror or the juror's family, the name of a juror empaneled to try a case, but only 10 days after the jury is discharged;

~~(2)(S)~~ (2)(T) opinions, including concurring and dissenting opinions, and orders entered in open hearings;

~~(2)(T)~~ (2)(U) order or decision classifying a record as not public;

~~(2)(U)~~ (2)(V) private record if the subject of the record has given written permission to make the record public;

~~(2)(V)~~ (2)(W) probation progress/violation reports;

~~(2)(W)~~ (2)(X) publications of the administrative office of the courts;

~~(2)(X)~~ (2)(Y) record in which the judicial branch determines or states an opinion on the rights of the state, a political subdivision, the public, or a person;

~~(2)(Y)~~ (2)(Z) record of the receipt or expenditure of public funds;

~~(2)(Z)~~ (2)(AA) record or minutes of an open meeting or hearing and the transcript of them;

~~(2)(AA)~~ (2)(BB) record of formal discipline of current or former court personnel or of a person regulated by the judicial branch if the disciplinary action has been completed, and all time periods for administrative appeal have expired, and the disciplinary action was sustained;

~~(2)(BB)~~ (2)(CC) record of a request for a record;

~~(2)(CC)~~ (2)(DD) reports used by the judiciary if all of the data in the report is public or the Judicial Council designates the report as a public record;

~~(2)(DD)~~ (2)(EE) rules of the Supreme Court and Judicial Council;

~~(2)(EE)~~ (2)(FF) search warrants, the application and all affidavits or other recorded testimony on which a warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40;

~~(2)(FF)~~ (2)(GG) statistical data derived from public and non-public records but that disclose only public data;

~~(2)(GG)~~ (2)(HH) Notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the delinquency history summary of the person are public records. The delinquency history summary

shall contain the name of the person, a listing of the offenses for which the person was adjudged to be within the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.

(3) The following court records are sealed:

(3)(A) records in the following actions:

(3)(A)(i) Title 78B, Chapter 6, Part 1, Utah Adoption Act six months after the conclusion of proceedings, which are private until sealed;

(3)(A)(ii) Title 78B, Chapter 15, Part 8, Gestational Agreement, six months after the conclusion of proceedings, which are private until sealed; and-

(3)(A)(iii) Title 76, Chapter 7, Part 304.5, Consent required for abortions performed on minors; and

(3)(B) expunged records;

(3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code Section 77-23a-15;

(3)(D) records showing the identity of a confidential informant;

(3)(E) records relating to the possession of a financial institution by the commissioner of financial institutions under Utah Code Section 7-2-6;

(3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;

(3)(G) records designated as sealed by rule of the Supreme Court;

(3)(H) record of a Children's Justice Center investigative interview after the conclusion of any legal proceedings; and

(3)(I) other records as ordered by the court under Rule 4-202.04.

(4) The following court records are private:

(4)(A) records in the following actions:

(4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;

(4)(A)(ii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed; and

(4)(A)(iii) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed; and

(4)(B) records in the following actions, except that the case history; judgments, orders and decrees; letters of appointment; and the record of public hearings are public records:

(4)(B)(i) Title 30, Husband and Wife, except that an action for consortium due to personal injury under Section 30-2-11 is public;

(4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;

(4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;

(4)(B)(iv) Title 78B, Chapter 7, Protective Orders;

(4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;

(4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;

(4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;

(4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);

(4)(C) aggregate records other than public aggregate records under subsection (2);

(4)(D) alternative dispute resolution records;

(4)(E) applications for accommodation under the Americans with Disabilities Act;

(4)(F) citation, but an abstract of a citation that redacts all non-public information is public;

(4)(G) judgment information statement;

(4)(H) judicial review of final agency action under Utah Code Section 62A-4a-1009;

(4)(I) the following personal identifying information about a party: driver's license number, social security number, account description and number, password, identification number, maiden name and mother's maiden name, and similar personal identifying information;

(4)(J) the following personal identifying information about a person other than a party or a victim or witness of a crime: residential address, personal email address, personal telephone number; date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information;

(4)(K) medical, psychiatric, or psychological records;

(4)(L) name of a minor, except that the name of a minor party is public in the following district and justice court proceedings:

(4)(L)(i) name change of a minor;

(4)(L)(ii) guardianship or conservatorship for a minor;

(4)(L)(iii) felony, misdemeanor or infraction;

(4)(L)(iv) child protective orders; and

(4)((L)(v) custody orders and decrees;

(4)(M) personnel file of a current or former court personnel or applicant for employment;

(4)(N) photograph, film or video of a crime victim;

(4)(O) record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5:

(4)(O)(i) permanently if the hearing is not traditionally open to the public and public access does not play a significant positive role in the process; or

(4)(O)(ii) if the hearing is traditionally open to the public, until the judge determines it is possible to release the record without prejudice to the interests that justified the closure;

(4)(P) record submitted by a senior judge or court commissioner regarding performance evaluation and certification;

(4)(Q) record submitted for in camera review until its public availability is determined;

(4)(R) reports of investigations by Child Protective Services;

(4)(S) victim impact statements;

(4)(T) name of a prospective juror summoned to attend court, unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;

(4)(U) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs filed pursuant to court order;

(4)(V) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure;

(4)(W) an addendum to an appellate brief filed in a case involving:

(4)(W)(i) adoption;

(4)(W)(ii) termination of parental rights;

(4)(W)(iii) abuse, neglect and dependency;

(4)(W)(iv) substantiation under Section 78A-6-323; or

(4)(W)(v) protective orders or dating violence protective orders;

(4)(X) other records as ordered by the court under Rule 4-202.04.

(5) The following court records are protected:

(5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the courts concerning litigation, privileged communication between the courts and an attorney representing, retained, or employed by the courts, and records prepared solely in anticipation of litigation or a judicial, quasi-judicial, or administrative proceeding;

(5)(B) records that are subject to the attorney client privilege;

(5)(C) bids or proposals until the deadline for submitting them has closed;

(5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(5)(E) budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the court's contemplated policies or contemplated courses of action;

(5)(F) court security plans;

(5)(G) investigation and analysis of loss covered by the risk management fund;

(5)(H) memorandum prepared by staff for a member of any body charged by law with performing a judicial function and used in the decision-making process;

(5)(I) confidential business records under Utah Code Section 63G-2-309;

(5)(J) record created or maintained for civil, criminal, or administrative enforcement purposes, audit or discipline purposes, or licensing, certification or registration purposes, if the record reasonably could be expected to:

(5)(J)(i) interfere with an investigation;

(5)(J)(ii) interfere with a fair hearing or trial;

(5)(J)(iii) disclose the identity of a confidential source; or

(5)(J)(iv) concern the security of a court facility;

(5)(K) record identifying property under consideration for sale or acquisition by the court or its appraised or estimated value unless the information has been disclosed to someone not under a duty of confidentiality to the courts;

(5)(L) record that would reveal the contents of settlement negotiations other than the final settlement agreement;

(5)(M) record the disclosure of which would impair governmental procurement or give an unfair advantage to any person;

(5)(N) record the disclosure of which would interfere with supervision of an offender's incarceration, probation or parole;

(5)(O) record the disclosure of which would jeopardize life, safety or property;

(5)(P) strategy about collective bargaining or pending litigation;

(5)(Q) test questions and answers;

(5)(R) trade secrets as defined in Utah Code Section 13-24-2;

(5)(S) record of a Children's Justice Center investigative interview before the conclusion of any legal proceedings;

(5)(T) presentence investigation report; and

(5)(U) other records as ordered by the court under Rule 4-202.04.

(6) The following are juvenile court social records:

(6)(A) correspondence relating to juvenile social records;

(6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations;

(6)(C) medical, psychological, psychiatric evaluations;

(6)(D) pre-disposition and social summary reports;

(6)(E) probation agency and institutional reports or evaluations;

(6)(F) referral reports;

(6)(G) report of preliminary inquiries; and

(6)(H) treatment or service plans.

(7) The following are juvenile court legal records:

(7)(A) accounting records;

(7)(B) discovery filed with the court;

(7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, decrees;

(7)(D) name of a party or minor;

(7)(E) record of a court hearing;

(7)(F) referral and offense histories

(7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.

(8) The following are safeguarded records:

(8)(A) upon request, location information, contact information and identity information other than name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a, Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;

(8)(B) upon request, location information, contact information and identity information other than name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the party

or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;

(8)(C) location information, contact information and identity information of prospective jurors on the master jury list or the qualified jury list;

(8)(D) location information, contact information and identity information other than name of a prospective juror summoned to attend court;

(8)(E) the following information about a victim or witness of a crime:

(8)(E)(i) business and personal address, email address, telephone number and similar information from which the person can be located or contacted;

(8)(E)(ii) date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information.

Rule 4-202.04. Request to access a record associated with a case; request to classify a record associated with a case.

Intent:

To establish the process for accessing a court record associated with a case.

Applicability:

This rule applies to court records associated with a case.

Statement of the Rule:

(1) A request to access a public court record shall be presented in writing to the clerk of the court unless the clerk waives the requirement. A request to access a non-public court record to which a person is authorized access shall be presented in writing to the clerk of the court. A written request shall contain the requester's name, mailing address, daytime telephone number and a description of the record requested. If the record is a non-public record, the person making the request shall present identification.

(2)(A) If a written request to access a court record is denied by the clerk of court, the person making the request may file a motion to access the record.

(2)(B) A person not authorized to access a non-public court record may file a motion to access the record. If the court allows access, the court may impose any reasonable conditions to protect the interests favoring closure.

~~(2)(C)~~ (3) A person with an interest in a court record may file a motion to classify the record as private, protected, ~~or~~ sealed, or safeguarded or to have information redacted from the record. If the court record is associated with a case over which the court no longer has jurisdiction, a person with an interest in the record may file a petition to classify the record as private, protected, sealed, or safeguarded or to have information redacted from the record. The court shall deny access to the record until the court enters an order ~~is entered~~.

(4) The court may classify the record as private, protected, ~~or~~ sealed, ~~if it~~ or safeguarded or redact information from the record if the record or information :

~~(2)(C)(i)~~ (4)(A) is ~~so~~ classified as private, protected, sealed, or safeguarded under Rule 4-202.02;

~~(2)(C)(ii)~~ (4)(B) is classified as private, controlled, or protected by a governmental entity and shared with the court under the Government Records Access and Management Act;

~~(2)(C)(iii)~~ (4)(C) is a record regarding the character or competence of an individual; or

~~(2)(C)(iv)~~ (4)(D) is a record containing information the disclosure of which constitutes an unwarranted invasion of personal privacy.

~~(2)(D) Motions~~ (5) As appropriate for the nature of the case with which the record is associated, the motion or petition shall be filed and proceedings shall be conducted under ~~Utah Rule of Civil Procedure 7 and served under Utah Rule of Civil Procedure 5~~ the rules of civil procedure, criminal procedure, juvenile procedure, or appellate procedure. The person filing the motion or petition shall serve any representative of the press who has requested notice in the case. The court shall conduct a closure hearing when a motion or petition to close a record is contested, when the press has requested notice of closure motions

or petitions in the particular case, or when the ~~judge~~ court decides public interest in the record warrants a hearing.

~~(3)~~ (6) In deciding whether to allow access to a court record or whether to classify a court record as private, protected, ~~or~~ sealed, or safeguarded or to redact information from the record, the court may consider any relevant factor, interest, or policy ~~presented by the parties~~, including but not limited to the interests described in Rule 4-202. In ruling on a motion or petition under this rule the ~~judge~~ court shall:

~~(3)(A)~~ (6)(A) make findings and conclusions about specific records;

~~(3)(B)~~ (6)(B) identify and balance the interests favoring opening and closing the record; and

~~(3)(C)~~ (6)(C) if the record is ordered closed, determine there are no reasonable alternatives to closure sufficient to protect the interests favoring closure.

(7)(A) If an appellate brief is sealed, the clerk of the court shall seal the brief under Rule 4-205. If an appellate brief is classified as private, protected, or safeguarded, the clerk of the court shall allow access only to persons authorized by Rule 4-202.03. If information is redacted from the brief, the clerk of the court shall obliterate the information and allow public access to the edited brief.

(7)(B) If the petitioner serves the order on the director of the State Law Library, the director shall comply with the order in the same manner as the clerk of the court under paragraph (7)(A).

(7)(C) The petitioner may serve the order on any person who has a copy of the brief, but the order is binding only on the court, the parties to the petition, and the state law library.

~~(4)~~ (8) A request under this rule is governed also by Rule 4-202.06. A motion or petition under this rule is not governed by Rule 4-202.06 or Rule 4-202.07.

Rule 4-202.09. Miscellaneous.

Intent:

To set forth miscellaneous provisions for these rules.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) The judicial branch shall provide a person with a certified copy of a record if the requester has a right to inspect it, the requester identifies the record with reasonable specificity, and the requester pays the fees.

(2)(A) The judicial branch is not required to create a record in response to a request.

(2)(B) Upon request, the judicial branch shall provide a record in a particular format if:

(2)(B)(i) it is able to do so without unreasonably interfering with its duties and responsibilities; and

(2)(B)(ii) the requester agrees to pay the additional costs, if any, actually incurred in providing the record in the requested format.

(2)(C) The judicial branch need not fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

(3) If a person requests copies of more than 50 pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure, the judicial branch may provide the requester with the facilities for copying the requested records and require that the requester make the copies, or allow the requester to provide his own copying facilities and personnel to make the copies at the judicial branch's offices and waive the fees for copying the records.

(4) The judicial branch may not use the form in which a record is stored to deny or unreasonably hinder the rights of persons to inspect and receive copies of a record.

(5) Subpoenas and other methods of discovery under state or federal statutes or rules of procedure are not records requests under these rules. Compliance with discovery shall be governed by the applicable statutes and rules of procedure.

(6) If the judicial branch receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect, it shall allow access to the information in the record that the requester is entitled to inspect, and shall deny access to the information in the record the requester is not entitled to inspect.

(7) The Administrative Office shall create and adopt a schedule governing the retention and destruction of all court records.

(8) The courts will use their best efforts to ensure that access to court records is properly regulated, but assume no responsibility for accuracy or completeness or for use outside the court.

(9)(A) Non-public information in a public record. The person filing a public record shall omit or redact non-public information. The person filing the record shall certify that, upon information and belief, all non-public information has been omitted or redacted from the public record. The person filing a private,

protected or sealed, or safeguarded record shall identify the classification of the record at the top of the first page of a classified document or in a statement accompanying the record.

(9)(B) ~~If a person believes that a record qualifies as a non-public record, the person may file with the record a motion to classify the record as private, protected or sealed. Under Rule 4-202.04, the clerk shall deny access to the record until the motion is decided. Unless filed with a motion to classify as private, protected or sealed, public records, even with non-public information, will be accessible.~~ A party may move or a non-party interested in a record may petition to classify a record as private, protected, sealed, or safeguarded or to redact non-public information from a public record.

(9)(C) If the following non-public information is required in a public record, only the designated information shall be included:

(9)(C)(i) social security number: last four digits;

(9)(C)(ii) financial or other account number: last four digits;

(9)(C)(iii) driver's license number: state of issuance and last four digits;

(9)(C)(iv) address of a non-party: city, state and zip code;

(9)(C)(v) email address or phone number of a non-party: omit; and

(9)(C)(vi) minor's name: initials.

(9)(D) If it is necessary to provide the court with private personal identifying information, it must be provided on a cover sheet or other severable document, which is classified as private.

~~(10) A vendor or governmental agency that provides a court information technology support to gather, store, or make accessible court records is bound by rules 4-202 through 4-202.10.~~

Rule 4-205. Security of court records.

Intent:

To assure that the security and accuracy of court records are maintained.

To assure that authorized personnel have access to court records when appropriate.

To establish responsibility of court personnel for security of court records.

To establish the procedures for securing non-public records.

Applicability:

This rule shall apply to all courts of record and not of record.

Statement of the Rule:

(1) Court records restricted. All court records shall be kept in a restricted area of the court closed to public access.

(2) The clerk of the court may authorize, in writing, abstractors, credit bureau representatives, title company representatives and others who regularly research court records to have direct access to public court records. The clerk of the court shall ensure that persons to whom such authorization is granted are trained in the proper retrieval and filing of court records. The clerk of court may set reasonable restrictions on time and place for inspecting and copying records.

(3) Removal of records. Court records shall not be removed from their normal place of storage except by court personnel or by individuals obtaining the written authorization of the clerk of the court or the judge assigned to the case. Court records shall not be removed from the courthouse without permission of the court. Records removed from the courthouse shall be returned within two days, except that records removed for the purpose of an appeal shall be returned within such time as specified by the clerk of the court, unless otherwise ordered by the judge. Any person removing a record is responsible for the security and the integrity of the record.

(4) Management of non-public records.

(4)(A) Method of sealing and storage. Non-public records which are part of a larger public record shall be filed apart from the public record or in a manner that clearly distinguishes the record as not public. Sealed records shall be placed in an envelope which is securely sealed. The clerk of the court shall record the case number and record classification on the envelope and shall inscribe across the sealed part of the envelope the words "Not to be opened except upon permission of the court."

(4)(B) Expunged records.

(4)(B)(i) Upon entry of an order of expungement, the clerk of the court shall:

(4)(B)(i)(a) obliterate or destroy all reference to the expunged portion of the record in the paper copy of the index and maintain a separate index of expunged records not available to the public;

~~(4)(B)(ii)~~ (4)(B)(i)(b) cover, without obliterating or destroying, all entries in the paper copy of the register of actions, including case identifying information other than the court docket number; and

~~(4)(B)(iii)~~ (4)(B)(i)(c) place an entry in the computer record that restricts retrieval of case identifying information and the register of actions to court personnel with authorization to review such information. The security restriction shall not be removed except upon written order of the court.

(4)(B)(ii) Upon being served with an order of expungement, the clerk of an appellate court shall comply with paragraph (4)(B)(i). A brief will not be classified as private, protected, sealed, or safeguarded as the result of an expungement order, but only if a motion or petition to do so under Rule 4-202.04 is granted.

(4)(C) Record of event. The record of expunging or sealing a record shall be entered in the register of actions.

Tab 3

Rule 24. Briefs.

(a) Definitions. For purposes of this rule, the terms “appeal,” “cross-appeal,” “appellant,” and “appellee” include the equivalent elements of original proceedings filed in the appellate court.

(b) Brief of the appellant. The Brief of Appellant shall contain under appropriate headings and in the order indicated:

(b)(1) List of parties. A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties and except as provided in paragraph (e). The list should be set out on a separate page immediately inside the cover.

(b)(2) Table of contents. A table of contents with page references to the items included in the brief, including page or tab references to items in the addendum.

(b)(3) Table of authorities. A table of authorities including all cases, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(b)(4) Introduction. A succinct statement of the nature of the case, intended to provide a brief explanation of the case for the purpose of orienting the reader as to the general context in which the appeal arises.

(b)(5) Contention statement. A statement of error that the appellant contends warrants relief on appeal.

(b)(6) Preservation. A citation to the record in accordance with paragraph (f) of this rule showing that the contention was preserved in the trial court or administrative agency. An party contending that evidence was erroneously admitted or excluded shall identify the pages of the record where the evidence was identified, offered, and admitted or excluded. If a contention was not preserved, a statement of the grounds for seeking review of the unpreserved contention of error.

(b)(7) Standard of review. The standard of review governing the contention, with supporting authority.

(b)(8) Statement of the case. To the extent relevant to the contentions on appeal, a procedural history including the disposition(s) below and a statement of the facts. Both the procedural history and statement of facts shall be supported by citations to the record in accordance with paragraph (f) of this rule.

(b)(9) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.

(b)(10) Argument. An argument setting forth controlling legal authority together with reasoned analysis explaining why that authority supports reversal.

(b)(10)(A) Emphasis. No text in a brief shall be bold, underlined, or in ALL CAPS unless it is a quotation. Headings and the cover may contain bold text.

(b)(10)(B) Citations. The legal citations shall conform to the public domain citation format and shall use italics.

(b)(10)(C) Unpublished Opinions. The unpublished decisions of the Court of Appeals issued on or after October 1, 1998, 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.

(b)(10)(D) Reference to the Record. References to the proceedings below shall be accompanied with citations to the relevant pages of the record. Where the appellant contends that a finding or verdict is not supported by sufficient evidence, the appellant should marshal the record evidence supporting the finding or verdict.

(b)(11) Attorney fees. A party seeking to recover attorney fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(b)(12) Conclusion and Relief sought. A statement of the precise relief sought.

(b)(13) Signature. A signature in compliance with Rule 21(e).

(b)(14) Proof of service. A proof of service in compliance with Rule 21(d).

(b)(15) Certificate of compliance. If applicable, a certificate of compliance in accordance with paragraph (g)(1)(C) of this rule.

(b)(16) Addendum. An addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick, in which case it shall be separately bound and contain a table of contents. The addendum shall contain copies of the following:

(b)(16)(A) in cases on certiorari, a copy of the decision of the Court of Appeals under review;

(b)(16)(B) the text of any constitutional provision, statute, rule, or regulation whose interpretation is necessary to a resolution on the contentions set forth in the brief;

(b)(16)(C) the order or judgment appealed from or sought to be reviewed, together with any related minute entries, memorandum decisions, and findings of fact and conclusions of law; and

(b)(16)(D) other parts of the record necessary to an understanding of the issues on appeal such as jury instructions, insurance policies, leases, search warrants, real estate purchase contracts, and transcript pages.

(c) Brief of the appellee. The Brief of Appellee shall conform to the requirements of paragraph (b) of this rule, except that the brief of appellee need not include:

(c)(1) a contention statement, the standard of review, or a citation to the record showing that a contention was preserved unless the appellee is dissatisfied with those subsections of the brief of appellant;

(c)(2) an addendum, except to provide relevant material not included in the addendum of the Brief of Appellant.

(d) Reply brief. The appellant may file a Reply Brief of Appellant, and if the appellee has cross-appealed, the appellee may file a Reply Brief of Cross-Appellant. No further briefs may be filed except with leave of the appellate court.

(d)(1) A reply shall conform to the requirements of paragraphs (b)(2), (3), (4), (10), (11), (12), (13), and (14) of this rule.

(d)(2) A reply brief shall be limited to addressing arguments raised in the Brief of Appellee or the Brief of Cross-Appellee. The beginning of each section of a reply brief shall specify those pages in the Brief of Appellee or the Brief of Cross-Appellee where the arguments being addressed appear.

(e) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee" or by initials. To promote clarity, counsel are encouraged to use the designations used in the lower court or in the agency proceedings; descriptive terms such as "the employee," "the injured person," "the taxpayer"; or the actual names of parties. Counsel shall avoid references by name to minors or to biological, adoptive, or foster parents in cases involving child abuse, neglect, or dependency, termination of parental rights, or adoption. With respect to the names of minors or parents in those cases, counsel are encouraged to use descriptive terms such as “child,” “the 11-year old,” “mother,” “adoptive parent,” and “foster father.”

(f) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. References to “Trial Transcript” or “Memorandum in Support of Motion for Summary Judgment” do not comply with this rule unless accompanied by the relevant page numbers in the record on appeal.(g) Length of briefs.

(g)(1) Type-volume limitation.

(g)(1)(A) In an appeal involving the legality of a death sentence, a principal brief is acceptable if it contains no more than 28,000 words or it uses a monospaced face and contains no more than 2,600 lines of text; and a reply brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text. In all other appeals, a principal brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000 words or it uses a monospaced face and contains no more than 650 lines of text.

(g)(1)(B) Headings, footnotes and quotations count toward the word and line limitations, but the table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the record as required by paragraph (b)(11) of this rule do not count toward the word and line limitations.

(g)(1)(C) Certificate of compliance. A brief submitted under Rule 24(g)(1) must include a certificate by the attorney or an unrepresented party that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word processing system used to prepare the brief. The certificate must state either the number of words in the brief or the number of lines of monospaced type in the brief.

(g)(2) Page limitation. Unless a brief complies with Rule 24(g)(1), a principal brief shall not exceed 30 pages, and a reply brief shall not exceed 15 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (b)(11) of this rule. In cases involving cross-appeals, paragraph (h) of this rule sets forth the length of briefs.

(h) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant, unless the parties otherwise agree or the court otherwise orders. Each party shall be entitled to file two briefs.

(h)(1) Brief of appellant. The appellant shall file a Brief of Appellant in compliance with paragraph (b) of this rule.

(h)(2) Brief of appellee and cross-appellant. The appellee shall then file one brief, entitled Brief of Appellee and Cross-Appellant. The brief shall respond to the Brief of Appellant and present the issues raised in the cross-appeal and shall comply with the relevant provisions in paragraphs (b) and (c) of this rule.

(h)(3) Reply brief of appellant and brief of cross-appellee. The appellant shall then file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee. The brief shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant and shall comply with the relevant provisions in paragraphs (c) and (d) of this rule.

(h)(4) Reply brief of cross-appellant. The appellee may then file a Reply Brief of Cross-Appellant, which shall reply to the Brief of Cross-Appellee. The brief shall comply with paragraph (d) of this rule.

(h)(5) Type-Volume Limitation.

(h)(5)(A) The Brief of Appellant is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(h)(5)(B) The Brief of Appellee and Cross-Appellant is acceptable if it contains no more than 16,500 words or it uses a monospaced face and contains no more than 1,500 lines of text.

(h)(5)(C) The Reply Brief of Appellant and Brief of Cross-Appellee is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(h)(5)(D) The Reply Brief of Cross-Appellant is acceptable if it contains no more than half of the type volume specified in Rule 24(h)(5)(A).

(h)(6) Certificate of Compliance. A brief submitted under Rule 24(h)(5) must comply with Rule 24(g)(1)(C).

(h)(7) Page Limitation. Unless it complies with Rule 24(h)(5) and (6), the Brief of Appellant must not exceed 30 pages; the Brief of Appellee and Cross-Appellant, 35 pages; the Reply Brief of Appellant and Brief of Cross-Appellee, 30 pages; and the Reply Brief of Cross-Appellant, 15 pages.

(i) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the page, word, or line limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages, words, or lines requested, and the good cause for granting the motion. A motion filed at least seven days prior to the date the brief is due or seeking three or fewer additional pages, 1,400 or fewer additional words, or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion filed within seven days of the date the brief is due and seeking more than three additional pages, 1,400 additional words, or 130 lines of text shall be accompanied by a copy of the finished brief. If the motion is granted, the responding party is entitled to an

equal number of additional pages, words, or lines without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(j) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(k) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after briefing or oral argument but before decision, that party may promptly advise the clerk of the appellate court, by letter. The letter shall identify the authority, indicate the page of the brief or point argued orally to which it pertains, and briefly state its relevance. Any other party may respond by letter within seven days of the filing of the original letter. The body of any letter filed pursuant to this rule may not exceed 350 words. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals.

(l) Compliance with Rule 21A. Any filing made under this rule that contains information or records classified as other than public shall comply with Rule 21A.

(m) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Advisory Committee Notes

The 2014 amendments eliminate, add, and change a number of requirements. The rule eliminates the statement of jurisdiction, the setting forth of determinative provisions, and the nature of the case. The rule adds to what must be included in the addendum, an introduction that replaces some of the eliminated requirements, and a citation requirement at the beginning of each section of a reply brief. And the rule changes the statement of issues to contention statements.

The rule reflects the marshaling requirement articulated in *State v. Nielsen*, 2014 UT 10, 326 P.3d 645, which holds that the failure to marshal is no longer a technical deficiency that will result in default, but is the manner in which an appellant carries its burden of persuasion when challenging a finding or verdict based upon evidence.

Briefs that do not comply with the technical requirements of this rule are subject to Rule 27(e).

Examples of the public domain citation format referenced in paragraph (b)(6)(E) are as follows:

Before publication in Utah Advanced Reports:

Smith v. Jones, 1999 UT 16.

Smith v. Jones, 1999 UT App 16.

Before publication in Pacific Reporter but after publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, 380 Utah Adv. Rep. 24.

Smith v. Jones, 1999 UT App 16, 380 Utah Adv. Rep. 24.

After publication in Pacific Reporter:

Smith v. Jones, 1999 UT 16, 998 P.2d 250.

Smith v. Jones, 1999 UT App 16, 998 P.2d 250.

Examples of a pinpoint citation to a Utah Supreme Court opinion or a Utah Court of Appeals opinion issued on or after January 1, 1999, would be as follows:

Before publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, ¶ 21.

Smith v. Jones, 1999 UT App 16, ¶ 21.

Smith v. Jones, 1999 UT App 16, ¶¶ 21-25.

Before publication in Pacific Reporter but after publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, ¶ 21, 380 Utah Adv. Rep. 24.

Smith v. Jones, 1999 UT App 16, ¶ 21, 380 Utah Adv. Rep. 24.

After publication in Pacific Reporter:

Smith v. Jones, 1999 UT 16, ¶ 21, 998 P.2d 250.

Smith v. Jones, 1999 UT App 16, ¶ 21, 998 P.2d 250.

If the immediately preceding authority is a post-January 1, 1999, opinion, cite to the paragraph number:

Id. ¶ 15.

Rule 24. Briefs.

(a) Definitions. For purposes of this rule, the terms “appeal,” “cross-appeal,” “appellant,” and “appellee” include the equivalent elements of original proceedings filed in the appellate court.

(b) Brief of the appellant. The ~~b~~Brief of ~~the a~~Appellant shall contain under appropriate headings and in the order indicated:

(~~a~~b)(1) List of parties. A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties and except as provided in paragraph (e). The list should be set out on a separate page ~~which appears~~ immediately inside the cover.

(~~a~~b)(2) Table of contents. A table of contents ~~, including the contents of the addendum,~~ with page references to the items included in the brief, including page or tab references to items in the addendum.

(~~a~~b)(3) Table of authorities. A table of authorities including all ~~with~~ cases~~,~~ ~~alphabetically arranged and with parallel citations,~~ rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(~~a~~b)(4) Introduction. A ~~brief~~succinct statement of the nature of the case, intended to provide a brief explanation of the case for the purpose of orienting the reader as to the general context in which the appeal arises. ~~showing the jurisdiction of the appellate court.~~

(b)(5) Contention statement. A statement of error that the appellant contends warrants relief on appeal.

(b)(6) Preservation. A citation to the record in accordance with paragraph (f) of this rule showing that the contention was preserved in the trial court or administrative agency. An party contending that evidence was erroneously admitted or excluded shall identify the pages of the record where the evidence was identified, offered, and admitted or excluded. If a contention was not preserved, a statement of the grounds for seeking review of the unpreserved contention of error.

(b)(7) Standard of review. The standard of review governing the contention, with supporting authority.

~~(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and~~

~~(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or~~

~~(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.~~

~~(a)(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.~~

(~~a~~b)(~~7~~85) ~~A s~~Statement of the case. To the extent relevant to the contentions on appeal, a procedural history including the disposition(s) below~~,~~ and a statement of the facts. Both the procedural history and statement of facts ~~The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below~~ shall be supported by citations to the record in accordance with paragraph (~~e~~f) of this rule.

(b~~a~~)(9~~8~~) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.

(a~~b~~)(~~9~~610) ~~An a~~Argument. ~~For each ground for relief presented, T~~the argument ~~section~~ shall contain the ~~following under appropriate subheadings and in the order indicated:~~

~~(b)(6)(A) Contention statement. A statement of error that the appellant contends warrants relief on appeal.~~ contentions and reasons of the appellant with respect to the ~~issues presented, including the grounds for reviewing any issue not preserved in the~~

~~trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.~~

~~(b)(6)(B) Preservation. A citation to the record in accordance with paragraph (f) of this rule showing that the contention was preserved in the trial court or administrative agency. An appellant contending that evidence was erroneously admitted or excluded shall identify the pages of the record where the evidence was identified, offered, and admitted or excluded. If the contention was not preserved, a statement of the grounds for seeking review of the unpreserved claimcontention of error.~~

~~(b)(6)(C) Standard of review. The standard of review governing the contention, with supporting authority.~~

~~(ab)(106)(D) Relief sought. A statement of short conclusion stating the precise relief sought. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.~~

~~(b)(6)(E) Grounds for relief requested.~~ An argument setting forth controlling legal authority together with reasoned analysis explaining why that authority ~~requires~~supports reversal ~~of the order or verdict challenged on appeal~~.

(b)(10)(A) Emphasis. No text in a brief shall be bold, underlined, or in ALL CAPS unless it is a quotation. Headings and the cover may contain bold text.

(b)(10)(B) Citations. The legal citations shall conform to the public domain citation format and shall use italics. ~~No text in a brief shall be bold, underlined or in ALL CAPS unless it is a quotation.~~

(b)(10)(C) Unpublished Opinions. The unpublished decisions of the Court of Appeals issued on or after October 1, 1998, 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.

(b)(10)(D) Reference to the Record. References to the proceedings below shall be accompanied with citations to the relevant pages of the record. Where the appellant

contends that a finding or verdict is not supported by sufficient evidence, the appellant should marshal the record evidence supporting the finding or verdict.

(b)(11) Attorney fees. A party seeking to recover attorney fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(b)(~~7~~12) Conclusion and ~~. A brief conclusion.~~Relief sought. A statement of the precise relief sought.

(b)(~~8~~13) Signature. A signature in compliance with Rule 21(e).

(b)(~~9~~14) Proof of ~~S~~service. A proof of service in compliance with Rule 21(d).

(b)(15~~0~~) Certificate of c~~C~~ompliance. If applicable, a certificate of compliance in accordance with paragraph (g)(1)(C) of this rule.

(~~a~~b)(~~11~~16) Addendum. An addendum ~~to the brief or a statement that no addendum is necessary under this paragraph. The addendum~~ shall be bound as part of the brief unless doing so makes the brief unreasonably thick, in which case it shall be separately bound and contain a table of contents. ~~If the addendum is bound separately, the addendum shall contain a table of contents.~~ The addendum shall contain ~~a~~ copies~~y~~ of the following:

~~(a)(11)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;~~

(~~a~~b)(~~11~~16)(~~B~~A) in cases ~~being reviewed~~ on certiorari, a copy of the decision of the Court of Appeals under reviewopinion; ~~in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and~~

(b)(1~~1~~6)(B) the text of any constitutional provision, statute, rule, or regulation whose interpretation is necessary to a resolution on the contentions set forth in the brief;

(b)(1~~1~~6)(C) the order or judgment appealed from or sought to be reviewed, together with any related minute entries, memorandum decisions, and findings of fact and conclusions of law; and

(~~a~~b)(~~11~~16)(~~C~~D) ~~those~~other parts of the record necessary to an understanding of the issues on appeal such as jury instructions, insurance policies, leases, search warrants, real estate purchase contracts, and transcript pages. ~~that are of central importance to~~

~~the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.~~

~~[(b)(12) Citation of decisions. Published decisions of the Supreme Court and the Court of Appeals, and unpublished decisions of the Court of Appeals issued on or after October 1, 1998, 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.]~~

(~~b~~c) Brief of the appellee. The ~~b~~Brief of ~~the a~~Appellee shall conform to the requirements of paragraph (~~a~~b) of this rule, except that the brief of appellee need not include:

(~~b~~c)(1) a contention statement, the standard of review, or a citation to the record showing that a contention was preserved unless the appellee is dissatisfied with those subsections of the brief of appellant; ~~of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or~~

(~~b~~c)(2) an addendum, except to provide relevant material not included in the addendum of the ~~appellant~~Brief of Appellant. ~~The appellee may refer to the addendum of the appellant.~~

(~~c~~d) Reply brief. The appellant may file a Reply ~~b~~Brief of Appellant, ~~in reply to the brief of the appellee,~~ and if the appellee has cross-appealed, the appellee may file a Reply Brief of Cross-Appellant.~~brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule.~~ No further briefs may be filed except with leave of the appellate court.

(d)(1) A reply shall conform to the requirements of paragraphs (b)(2), (3), (4), (~~7~~10), (~~8~~11), (~~9~~12), (13), and (1~~0~~4) of this rule.

(d)(2) A reply brief shall be limited to addressing arguments raised in the Brief of Appellee or the Brief of Cross-Appellee. The beginning of each section of a reply brief

shall specify those pages in the Brief of Appellee or the Brief of Cross-Appellee where the arguments being addressed appear.

(~~d~~e) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee~~.~~" or by initials. ~~It~~To promote~~s~~ clarity, counsel are encouraged to use the designations used in the lower court or in the agency proceedings~~,~~; ~~or the actual names of parties, or~~ descriptive terms such as "the employee," "the injured person,~~"~~ "the taxpayer~~,~~"; or the actual names of parties. Counsel shall avoid references by name to minors or to biological, adoptive, or foster parents in cases involving child abuse, neglect, or dependency, termination of parental rights, or adoption. With respect to the names of minors or parents in those cases, counsel are encouraged to use descriptive terms such as “child,” “the 11-year old,” “mother,” “adoptive parent,” and “foster father.”~~etc.~~

(~~e~~f) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. References to “Trial Transcript” or “Memorandum in Support of Motion for Summary Judgment” do not comply with this rule unless accompanied by the relevant page numbers in the record on appeal.~~If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.~~

(~~f~~g) Length of briefs.

(~~f~~g)(1) Type-volume limitation.

(~~f~~g)(1)(A) In an appeal involving the legality of a death sentence, a principal brief is acceptable if it contains no more than 28,000 words or it uses a monospaced face and contains no more than 2,600 lines of text; and a reply brief is acceptable if it contains no

more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text. In all other appeals, ~~A~~a principal brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000 words or it uses a monospaced face and contains no more than 650 lines of text.

(~~f~~g)(1)(B) Headings, footnotes and quotations count toward the word and line limitations, but the table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the record as required by paragraph (~~a~~b)(11) of this rule do not count toward the word and line limitations.

(~~f~~g)(1)(C) Certificate of compliance. A brief submitted under Rule 24(~~f~~g)(1) must include a certificate by the attorney or an unrepresented party that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word processing system used to prepare the brief. The certificate must state either the number of words in the brief or the number of lines of monospaced type in the brief.

(~~f~~g)(2) Page limitation. Unless a brief complies with Rule 24(~~f~~g)(1), a principal brief~~s~~ shall not exceed 30 pages, and a reply brief~~s~~ shall not exceed 15 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (~~a~~b)(11) of this rule. In cases involving cross-appeals, paragraph (~~g~~h) of this rule sets forth the length of briefs.

(~~g~~h) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant, unless the parties otherwise agree or the court otherwise orders. Each party shall be entitled to file two briefs.

(~~g~~h)(1) Brief of appellant. The appellant shall file a Brief of Appellant~~, which shall present the issues raised in the appeal~~ in compliance with paragraph (b) of this rule.

(~~g~~h)(2) Brief of appellee and cross-appellant. The appellee shall then file one brief, entitled Brief of Appellee and Cross-Appellant.~~,~~ The brief ~~which~~ shall respond to the ~~issues raised in the~~ Brief of Appellant and present the issues raised in the cross-appeal and shall comply with the relevant provisions in paragraphs (b) and (c) of this rule.

(~~g~~h)(3) Reply brief of appellant and brief of cross-appellee. The appellant shall then file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee.~~,~~ The brief ~~which~~ shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant and shall comply with the relevant provisions in paragraphs (c) and (d) of this rule.

(~~g~~h)(4) Reply brief of cross-appellant. The appellee may then file a Reply Brief of Cross-Appellant, which shall reply to the Brief of Cross-Appellee. The brief shall comply with paragraph (d) of this rule.

(~~g~~h)(5) Type-Volume Limitation.

(~~g~~h)(5)(A) The ~~appellant's~~ Brief of Appellant is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(~~g~~h)(5)(B) The ~~appellee's~~ Brief of Appellee and Cross-Appellant is acceptable if it contains no more than 16,500 words or it uses a monospaced face and contains no more than 1,500 lines of text.

(~~g~~h)(5)(C) The ~~appellant's~~ Reply Brief of Appellant and Brief of Cross-Appellee is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(~~g~~h)(5)(D) The ~~appellee's~~ Reply Brief of Cross-Appellant is acceptable if it contains no more than half of the type volume specified in Rule 24(~~g~~h)(5)(A).

(~~g~~h)(6) Certificate of Compliance. A brief submitted under Rule 24(~~g~~h)(5) must comply with Rule 24(~~f~~g)(1)(C).

(~~g~~h)(7) Page Limitation. Unless it complies with Rule 24(~~g~~h)(5) and (6), the ~~appellant's~~ Brief of Appellant must not exceed 30 pages; the ~~appellee's~~ Brief of Appellee and Cross-Appellant, 35 pages; the ~~appellant's~~ Reply Brief of Appellant and Brief of Cross-Appellee, 30 pages; and the ~~appellee's~~ Reply Brief of Cross-Appellant, 15 pages.

(~~h~~i) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the page, word, or line limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages, words, or lines requested, and the good

cause for granting the motion. A motion filed at least seven days prior to the date the brief is due or seeking three or fewer additional pages, 1,400 or fewer additional words, or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion filed within seven days of the date the brief is due and seeking more than three additional pages, 1,400 additional words, or 130 lines of text shall be accompanied by a copy of the finished brief. If the motion is granted, the responding party is entitled to an equal number of additional pages, words, or lines without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(~~i~~j) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(~~j~~k) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after briefing or ~~that party's brief has been filed, or after~~ oral argument but before decision, ~~a~~that party may promptly advise the clerk of the appellate court, by letter ~~setting forth the citations~~. The letter shall identify the authority, indicate the page of the brief or point argued orally to which it pertains, and briefly state its relevance. Any other party may respond by letter within seven days of the filing of the original letter. The body of any letter filed pursuant to this rule may not exceed 350 words. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. ~~There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall state the reasons for the supplemental citations. The body of the letter must not exceed 350 words. Any response shall be made within seven days of filing and shall be similarly limited.~~

(~~k~~l) Compliance with Rule 21A. Any filing made under this rule that contains information or records classified as other than public shall comply with Rule 21A.

(m) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs ~~which~~ that are not in

compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Advisory Committee Notes

~~Paragraph (a) clarifies that in briefs governed by this rule the parties should use the terms "appellant" and "appellee" rather than "petitioner" and respondent."~~

The 2014 amendments eliminate, add, and change a number of requirements. The rule eliminates the statement of jurisdiction, the setting forth of determinative provisions, and the nature of the case. ~~, and the summary of the argument.~~ The rule adds to what must be included in the addendum, an introduction that replaces some of the eliminated requirements, and a citation requirement at the beginning of each section of a reply brief. And the rule changes the statement of issues to contention statements ~~and moves the contention statements, standards of review, and preservation requirements to the argument section of the brief~~.

The rule reflects the marshaling requirement articulated in *State v. Nielsen*, 2014 UT 10, __326 P.3d 645__, which holds that the failure to marshal is no longer a technical deficiency that will result in default, but is the manner in which an appellant carries its burden of persuasion when challenging a finding or verdict based upon evidence.

Briefs that do not comply with the technical requirements of this rule are subject to Rule 27(e).

Examples of the public domain citation format referenced in paragraph (b)(6)(E) are as follows:

Before publication in Utah Advanced Reports:

Smith v. Jones, 1999 UT 16.

Smith v. Jones, 1999 UT App 16.

Before publication in Pacific Reporter but after publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, 380 Utah Adv. Rep. 24.

Smith v. Jones, 1999 UT App 16, 380 Utah Adv. Rep. 24.

After publication in Pacific Reporter:

Smith v. Jones, 1999 UT 16, 998 P.2d 250.

Smith v. Jones, 1999 UT App 16, 998 P.2d 250.

Examples of a pinpoint citation to a Utah Supreme Court opinion or a Utah Court of Appeals opinion issued on or after January 1, 1999, would be as follows:

Before publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, ¶ 21.

Smith v. Jones, 1999 UT App 16, ¶ 21.

Smith v. Jones, 1999 UT App 16, ¶¶ 21-25.

Before publication in Pacific Reporter but after publication in Utah Advance Reports:

Smith v. Jones, 1999 UT 16, ¶ 21, 380 Utah Adv. Rep. 24.

Smith v. Jones, 1999 UT App 16, ¶ 21, 380 Utah Adv. Rep. 24.

After publication in Pacific Reporter:

Smith v. Jones, 1999 UT 16, ¶ 21, 998 P.2d 250.

Smith v. Jones, 1999 UT App 16, ¶ 21, 998 P.2d 250.

If the immediately preceding authority is a post-January 1, 1999, opinion, cite to the paragraph number:

Id. ¶ 15.

~~Rule 24(a)(9) now reflects what Utah appellate courts have long held. See In re Beesley, 883 P.2d 1343, 1349 (Utah 1994); Newmeyer v. Newmeyer, 745 P.2d 1276, 1278 (Utah 1987). "To successfully appeal a trial court's findings of fact, appellate counsel must play the devil's advocate. 'Attorneys must extricate themselves from the client's shoes and fully assume the adversary's position. In order to properly discharge the marshalling duty..., the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists.'" ONEIDA/SLIC, v. ONEIDA Cold Storage and Warehouse, Inc., 872 P.2d 1051, 1052-53 (Utah App. 1994)(alteration in original)(quoting West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah App. 1991)). See also State ex rel. M.S. v. Salata, 806 P.2d 1216, 1218 (Utah App. 1991); Bell v. Elder, 782 P.2d 545, 547 (Utah App. 1989); State v. Moore, 802 P.2d 732, 738-39 (Utah App. 1990).~~

~~The brief must contain for each issue raised on appeal, a statement of the applicable standard of review and citation of supporting authority.~~

Tab 4

State offers two lines of response. First it asks us to stop short of reaching the merits in light of Nielsen's purported failure to marshal the evidence—specifically, his failure to present, "in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists." *Chen v. Stewart*, 2004 UT 82, ¶ 77, 100 P.3d 1177 (internal quotation marks omitted). Second, and alternatively, the State challenges Nielsen's position on the merits, identifying evidence in the record that it sees as sufficient to sustain an inference that Trisha was taken against her will.

¶32 We reject the State's first point but agree with its second. Before addressing the merits of Nielsen's challenge to the sufficiency of the evidence, we first consider the State's marshaling argument—acknowledging some dicta in our prior cases that appears to support it, but refining and clarifying the standard going forward.

1. Marshaling

¶33 Our rules of appellate procedure prescribe standards for the form, organization, and content of a brief on appeal. *See* UTAH R. APP. P. 24. Some of the standards in rule 24 are sufficiently clear and objective that the failure to follow them may result in the rejection of a noncompliant brief by our clerk's office. A brief that exceeds the rule's limits on length, for example, would be rejected by our clerk's office, as would a brief that fails to include a table of contents or statement of the standard of review. *See id.* 24(a)(2), (5). Typically a party filing a noncompliant brief would be given an opportunity to correct these sorts of deficiencies. But failure to do so theoretically could result in our failure to reach the merits on the basis of the party's procedural default under rule 24.

¶34 Other standards in rule 24 are more subjective, and not susceptible to rejection by the clerk's office or to procedural default by the court. Such standards are often an outgrowth of a party's burden of persuasion on appeal. Thus, rule 24 requires the appellant's brief to set forth "the contentions and reasons of the appellant with respect to the issues presented . . . with citations to the authorities, statutes, and parts of the record relied on." *Id.* 24(a)(9). Our clerk's office makes no attempt to police this rule at the outset. That assessment is left to the court. And we perform it not as a matter of gauging procedural compliance with the rule, but as a necessary component of our evaluation of the case on its

merits, as viewed through the lens of the applicable standard of review. *See State v. Thomas*, 961 P.2d 299, 305 (Utah 1998) ("While failure to cite to pertinent authority may not always render an issue inadequately briefed, it does so when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court."); *Salt Lake Cnty. v. Butler, Crockett & Walsh Dev. Corp.*, 2013 UT App 30, ¶ 37 n.5, 297 P.3d 38 (holding that the appellant "has not met its burden of persuasion on appeal by adequately briefing a plausible claim").

¶35 Historically, our marshaling requirement was understood to fall into the latter category. For many years, we conceived of the responsibility to marshal the evidence supporting a challenged factual finding as a mere component of an appellant's broader burden of overcoming the weighty deference granted to factual determinations in the trial court. Thus, when a party failed to marshal and distinguish evidence supportive of a challenged verdict or finding of fact, our response was not to decline to reach the merits as a matter of default, but simply to affirm on the ground that the appellant had failed to carry its heavy burden of persuasion.

¶36 This version of the marshaling principle was announced in our cases as early as 1961. *See Charlton v. Hackett*, 360 P.2d 176, 176 (Utah 1961). We followed this approach consistently for several decades thereafter. *See, e.g., Nyman v. Cedar City*, 361 P.2d 1114, 1115 (Utah 1961); *Egbert & Jaynes v. R.C. Tolman Constr. Co.*, 680 P.2d 746, 747 (Utah 1984). We coined the term "marshal[ing]" in 1985, *see Scharf v. BMG Corp.*, 700 P.2d 1068, 1070 (Utah 1985), but still continued to view marshaling as part of the overall burden necessary to meet the clear error standard of review on appeal. *See, e.g., IFG Leasing Co. v. Gordon*, 776 P.2d 607, 616–17 (Utah 1989).

¶37 Over time our caselaw occasionally has migrated in the other direction—toward the hard-and-fast *default* notion of a procedural rule. Instead of noting an appellant's failure to marshal as a step toward concluding that it had failed to establish clear error, we sometimes have identified a marshaling deficiency as a ground for an appellant's procedural default—citing a lack of marshaling as a basis for not reaching the merits. *See, e.g., United Park City Mines Co. v. Stichting Mayflower Mountain Fonds*, 2006 UT 35, ¶¶ 38, 41, 140 P.3d 1200.

¶38 Over a similar span of time, we also added some additional teeth to the rule. Thus, while rule 24(a)(9) itself (adopted in 1999) speaks only of "marshal[ing] all record evidence that supports the challenged finding," our caselaw has sometimes extended this principle to require an appellant to "present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists," and to do so in a manner in which he "temporarily remove[s] [his] own prejudices and fully embrace[s] the adversary's position" by assuming the role of "devil's advocate." *Chen*, 2004 UT 82, ¶¶ 77–78 (internal quotation marks omitted).

¶39 Our commitment to the hard-and-fast default notion of the marshaling rule has been less than complete. Sometimes we have openly overlooked a failure to marshal and proceeded to the merits. *See, e.g., State v. Green*, 2005 UT 9, ¶¶ 12–13, 108 P.3d 710. In many other cases, moreover, we have reverted to our earlier conception of marshaling, and disposed of the case on its merits despite an alleged failure to marshal "every scrap" of contrary evidence. And in all events we have declined to state a limiting principle, leaving the question of whether to treat marshaling as a basis for a default or instead as a component of the burden of persuasion purely a matter of our discretion. *See Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-day Saints*, 2007 UT 42, ¶¶ 19–20, 164 P.3d 384 (noting that parties risk forfeiting their challenges to factual questions when they fail to marshal but sustaining the court of appeals' choice to resolve the case on its merits because "[t]he reviewing court . . . retains discretion to consider independently the whole record and determine if the decision below has adequate factual support").

¶40 The time has come to reconcile and regularize our cases in this field. In so doing, we recognize and reiterate the importance of the requirement of marshaling. It is a boon to both judicial economy and fairness to the parties. *See Chen*, 2004 UT 82, ¶ 79. Thus, an appellant who seeks to prevail in challenging the sufficiency of the evidence to support a factual finding or a verdict on appeal should follow the dictates of rule 24(a)(9), as a party who fails to identify and deal with supportive evidence will never persuade an appellate court to reverse under the deferential standard of review that applies to such issues. That said, we now conclude that the hard-and-fast default notion of marshaling is more problematic than helpful—particularly when compounded by the heightened requirements of our caselaw (to present "every scrap" of evidence and to play "devil's advocate") and our retention of

discretion to disregard a marshaling defect where we deem it appropriate.

¶41 We therefore repudiate the default notion of marshaling sometimes put forward in our cases and reaffirm the traditional principle of marshaling as a natural extension of an appellant's burden of persuasion. Accordingly, from here on our analysis will be focused on the ultimate question of whether the appellant has established a basis for overcoming the healthy dose of deference owed to factual findings and jury verdicts—and not on whether there is a technical deficiency in marshaling meriting a default.

¶42 In so holding, we do not mean to minimize the significance of our longstanding requirement of marshaling. Instead we aim only to clarify it and put it in proper perspective. Thus, we reiterate that a party challenging a factual finding or sufficiency of the evidence to support a verdict will almost certainly fail to carry its burden of persuasion on appeal if it fails to marshal. Our point is only that that will be the question on appeal going forward. The focus should be on the merits, not on some arguable deficiency in the appellant's duty of marshaling.

¶43 Too often, the appellee's brief is focused on this latter point, and not enough on the ultimate merits of the case. To encourage the latter and discourage the former, we also hereby repudiate the requirements of playing "devil's advocate" and of presenting "every scrap of competent evidence" in a "comprehensive and fastidious order." *Supra* ¶ 38. That formulation is nowhere required in the rule. And its principal impact on briefing has been to incentivize appellees to conduct a fastidious review of the record in the hope of identifying a scrap of evidence the appellant may have overlooked. That is not the point of the marshaling rule, and will no longer be an element of our consideration of it.

¶44 Under this standard as now clarified, we reject the State's request that we treat Nielsen's failure to marshal every scrap of evidence supporting the jury's verdict as a stand-alone basis for rejecting his challenge to his kidnapping conviction. We proceed instead to the merits of Nielsen's argument, while emphasizing that our assessment of his claim on appeal is certainly affected (and greatly undermined) by the overbroad assertions in his brief regarding the absence of evidence in the record and by his general failure to identify and deal with that evidence.

Tab 5

Rule 27. Form of briefs.

(a) Paper size; printing margins. Briefs shall be typewritten, printed or prepared by photocopying or other duplicating or copying process that will produce clear, black and permanent copies equally legible to printing, on opaque, unglazed paper 8 1/2 inches wide and 11 inches long, and shall be securely bound along the left margin. Paper may be recycled paper, with or without deinking. The printing must be double spaced, except for matter customarily single spaced and indented. Margins shall be at least one inch on the top, bottom and sides of each page. Page numbers may appear in the margins.

(b) ~~Typeface~~Font. All briefs shall use one of the following fonts: Book Antiqua or Garamond. ~~Either a proportionally spaced or monospaced typeface in a plain, roman style may be used. A proportionally spaced typeface~~All text must be 13-point or larger ~~for both text and footnotes. A monospaced typeface may not contain more than ten characters per inch for both text and footnotes~~.

(c) Binding. Briefs shall be printed on both sides of the page, and bound with a compact-type binding so as not unduly to increase the thickness of the brief along the bound side. Coiled plastic and spiral-type bindings are not acceptable.

(d) Color of cover; contents of cover. The cover of the opening brief of appellant shall be blue; that of appellee, red; that of intervenor, guardian ad litem, or amicus curiae, green; that of any reply brief, or in cases involving a cross-appeal, the appellant's second brief, gray; that of any petition for rehearing, tan; that of any response to a petition for rehearing, white; that of a petition for certiorari, white; that of a response to a petition for certiorari, orange; and that of a reply to the response to a petition for certiorari, yellow. The cover of an addendum shall be the same color as the brief with which it is

filed. All brief covers shall be of heavy cover stock. There shall be adequate contrast between the printing and the color of the cover. The cover of all briefs shall set forth in the caption the full title given to the case in the court or agency from which the appeal was taken, as modified pursuant to Rule 3(g), as well as the designation of the parties both as they appeared in the lower court or agency and as they appear in the appeal. In addition, the covers shall contain: the name of the appellate court; the number of the case in the appellate court opposite the case title; the title of the document (e.g., Brief of Appellant); the nature of the proceeding in the appellate court (e.g., Appeal, Petition for Review); the name of the court and judge, agency or board below; and the names and addresses of counsel for the respective parties designated as attorney for appellant, petitioner, appellee, or respondent, as the case may be. The names of counsel for the party filing the document shall appear in the lower right and opposing counsel in the lower left of the cover. In criminal cases, the cover of the defendant's brief shall also indicate whether the defendant is presently incarcerated in connection with the case on appeal and if the brief is an Anders brief.

(e) Effect of non-compliance with rules. The clerk shall examine all briefs before filing. If they are not prepared in accordance with these rules, they will not be filed but shall be returned to be properly prepared. The clerk shall retain one copy of the non-complying brief and the party shall file a brief prepared in compliance with these rules within 5 days. The party whose brief has been rejected under this provision shall immediately notify the opposing party in writing of the lodging. The clerk may grant additional time for bringing a brief into compliance only under extraordinary circumstances. This rule is not intended to permit significant substantive changes in briefs.

Advisory Committee Note

~~The change from the term "pica size" to "ten characters per inch" is intended to accommodate the widespread use of word processors. The definition of pica is print of approximately ten characters per inch. The amendment is not intended to prohibit proportionally spaced printing.~~

An Anders brief is a brief filed pursuant to Anders v. California, 386 U.S. 793, 97 S.Ct. 1396 (1967), in cases where counsel believes no nonfrivolous appellate issues exist. In order for an Anders-type brief to be accepted by either the Utah Court of Appeals or the Utah Supreme Court, counsel must comply with specific requirements that are more rigorous than those set forth in Anders. See, e.g. State v. Wells, 2000 UT App 304, 13 P.3d 1056 (per curiam); In re D.C., 963 P.2d 761 (Utah App. 1998); State v. Flores, 855 P.2d 258 (Utah App. 1993) (per curiam); Dunn v. Cook, 791 P.2d 873 (Utah 1990); and State v. Clayton, 639 P.2d 168 (Utah 1981).