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

Judicial Council Room
Thursday, November 6, 2014
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.	Rules of Civil Procedure 7, 54 and 58A (Tab 2)	Jonathan Hafen
12:25 p.m.	Rule 9(f) (Tab 3)	Joan Watt
12:40 p.m.	Rule 24 (Tabs 4) Rule 24 and *State v. Nielsen* (Tab 5) Rule 27 (Tab 6)	Troy Booher Joan Watt Troy Booher
1:25 p.m.	Other Business	
1:30 p.m.	Adjourn	

Next Meeting: January 8, 2015 at 12:00 p.m.

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, September 30, 2014
12:00 p.m. to 1:30 p.m.

PRESENT	**EXCUSED**
Joan Watt – Chair	none
Alison Adams-Perlac – Staff	
Troy Booher	
Paul Burke (by phone)	
Marian Decker	
Alan Mouritsen	
Judge Gregory Orme	
Rodney Parker	
Bryan Pattison	
John Plimpton – Recording Secretary	
Bridget Romano	
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. Seppi pointed out that on page 5, line 3, the word "stated" should be "statute."

Mr. Burke moved to approve the minutes from the meeting held on September 4, 2014, as amended. Ms. Seppi seconded the motion and it passed unanimously.

2. Public Comment to Rules 21A, 55, and 56 **Joan Watt**

Ms. Watt said that the two public comments seemed to be well-taken. Ms. Adams-Perlac said she disagreed with Carol Verdoia's comment because if the petition is private, there need not be a redaction. Ms. Romano said that Ms. Verdoia's comment was that the private nature of the juvenile court briefs is not clear from the rule change. Ms. Adams-Perlac said that a committee note might be appropriate to address Ms. Verdoia's concern, but redaction need not occur with private briefs.

Ms. Westby said she thinks Ms. Verdoia's point is that Rule 21A does not apply to petitions and responses because they are already covered in other rules. She stated that there should be language in Rule 58 requiring briefs ordered pursuant to that rule to be filed in compliance with Rule 21A, but that the language in Rules 55 and 56 requiring petitions and responses to be filed in compliance with Rule 21A is unnecessary and should be removed. The committee members agreed with Ms. Westby. Ms. Westby volunteered to draft the relevant changes to Rules 21A and 58.

Ms. Romano explained that Kelly Wright's comment was largely driven by concerns of tax attorneys about appellate records of tax commission proceedings, which have a different classification scheme than courts and to which Rule 4-202.02 does not apply. She said that she can ask the tax attorneys to elaborate on their concerns. She stated that the tax attorneys had a proposed solution, but it was complicated and she needed clarification on it. Ms. Watt said the committee would want to know how the tax commission handles classification now, and whether it is satisfactory. Ms. Romano said her understanding is that the tax commission is inconsistent in how it handles classification. She said the tax commission and other agencies are working on streamlining their classification procedures. Mr. Shea said the classification procedure on appeal would be similar to the classification procedure in the agency proceeding. Mr. Sabey agreed that it would not be difficult for appellate courts to follow the classification procedures of agencies, and that the real problem is that the agencies need to square away their classification procedures. Mr. Shea said that Rule 21A already defers to the agency classification procedures. Ms. Romano said she will find out more about exactly what the tax attorneys' concerns are.

The committee took no action on Rules 21A, 55, and 56 at this time.

3. Public Comment to Rule 40 **Alison Adams-Perlac**

The committee amended Rule 40 to read as follows:

Rule 40. Attorney's or party's certificate; 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; and that the filing complies with Rule 21A and Rule 4-202.02 of the Utah Code of Judicial Administration. 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.

(b) 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) 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) 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. A separate motion is not required in the appellate court if the attorney has previously been admitted pro hac vice in the lower tribunal, 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.

Mr. Booher moved to approve Rule 40 as amended. Judge Voros seconded the motion, and it passed unanimously.

4. Efiling Subcommittee **Joan Watt**

Mr. Shea said that the appellate courts have a goal of making efiling completely available my April, 2015. He said there is a component that is expected to be available for court employees in October or November, 2014. He said the rollout for efiling in the appellate courts will follow the district court model. He said at some point efiling in the appellate courts for lawyers will be mandatory.

He said that one aspect of efiling in the district courts that is not present for the appellate courts is rules. He said the appellate rules are very specific about paper filings and records, and they need to be amended to govern efiling and electronic records. He said a subcommittee should be assembled to work on drafting amendments. Mr. Sabey, Ms. Westby, Judge Orme, Judge Voros, Mr. Burke, and Mr. Parker, as well Mr. Shea, all volunteered to be on the efiling subcommittee.

5. *Ralphs v. McClellan* and Rule 4(f) Joan Watt

Ms. Watt said that *Ralphs* extended *Manning*, which permits the reinstatement of time to file an appeal for litigants whose right to appeal has been denied, to appeals from justice court. She said that *Ralphs* discusses a lack of clarity in procedural rules, but she believes the lack of clarity is more in the criminal rules than the appellate rules. She said that *Ralphs* mentioned there should be a time limit in the rules for filing a *Manning* motion. She said the question is whether the committee wants to put a time limit on filing a *Manning* motion and, if so, how long.

Mr. Burke asked whether the committee could constitutionally impose a time limit. Ms. Watt said that is a good point, because the *Manning* rule concerns the constitutional right to appeal. Ms. Romano said that laches applies to constitutional claims and could limit the time for filing a *Manning* motion. Ms. Watt said that most *Manning* motions are not filed with much delay and when they are it is because the defendant thought there was already an appeal pending. In *Ralphs*, the court said Rule 4(f) should impose a time limit for filing a *Manning* motion.

Mr. Booher asked whether Rule 4(f) generally applies to appeals from justice court. He said the time limit for a *Manning* motion in justice court, if there is to be one, should be in Rule 38 of the Utah Rules of Criminal Procedure. Judge Voros noted that, under Rule 1(a) of the Rules of Appellate Procedure, appeals from justice court to district court are outside the scope of the appellate rules. The committee agreed that Rule 4(f) is not the appropriate place for a time limit on *Manning* motions in justice court; the better place for it is Rule 38 of the Utah Rules of Criminal Procedure.

Mr. Sabey noted that the language in *Ralphs* is broad and also applies to *Manning* motions in district court, to which Rule 4(f) squarely applies. Mr. Booher said he would like to see data on how many *Manning* motions are granted. Ms. Watt said that many *Manning* motions are stipulated to. She said that because appeals often take so long, defendants will sometimes not know that an appeal has not been filed in their case for a year or more. Ms. Decker said that the Attorney General prefers a one-year time limit or none at all.

Ms. Westby said she thinks a time limit might be useful for *Manning* motions in justice court because often they are filed many years later after the defendant faces a collateral consequence of his misdemeanor conviction. But she said she would not want to impose a time limit on *Manning* motions in district court for felony convictions because most of those are filed within a reasonable time, given that the defendant is usually serving a prison sentence. Judge Voros asked if Ms. Westby had seen delayed *Manning* motions in district court. Ms. Westby said the large majority of them are filed in a reasonable time, and many are stipulated to. Judge Voros proposed that the committee tell the supreme court that the committee did not see a strong need for a time limit in Rule 4(f), and the criminal rules, not the appellate rules, are the appropriate place for a time limit for *Manning* motions in justice court. Mr. Sabey said the committee could ask the supreme court if it would also like a time limit for *Manning* motions in district court. Ms. Romano said, based on language in *Ralphs*, the supreme court seems to think that if there is no time limit, there can never be waiver or forfeiture of reinstatement of appeal. Judge Voros said that laches could still apply. Ms. Westby said that a lack of a time limit on a *Manning* motion just means a *Manning* motion can be filed at any time; it does not mean that the trial court cannot deny the motion. Ms. Romano said that a trial court might think

that it could not deny a *Manning* motion based on timeliness. Ms. Watt said that a long delay is a factual consideration that could be important in a trial court's determination as to whether to grant or deny a *Manning* motion. Judge Voros said that on a delayed appeal from justice court, evidence might be gone for the de novo appeal in district court, so it makes a lot of sense to have a time limit on *Manning* motions in justice court. He said that it makes less sense for *Manning* motions in district court because the appeal from district court is not de novo and the record is already complete. Ms. Westby said that the longest sentence from which you can appeal a justice court conviction is a year, so there should be a one-year time limit on filing a *Manning* motion in justice court. Ms. Romano said that *Ralphs* seems to hold that if there is no time limit, a trial court cannot deny a *Manning* motion based on timeliness. Judge Voros said that *Ralphs* did not contemplate the doctrine of laches, so the supreme court may still apply laches to a *Manning* motion. Mr. Booher said the language in *Ralphs* may have created the need for a time limit in Rule 4(f). Ms. Decker said the Attorney General had not considered that.

The committee members agreed that there seems to be no problem with Rule 4(f) not imposing a time limit for *Manning* motions in district court. They also agreed that there should be a time limit for *Manning* motions in justice court, but that the criminal rules, not the appellate rules, are the appropriate place for such a time limit. The committee decided not to amend Rule 4(f) at this time. It decided to contact the chair of the criminal rules committee about putting into the criminal rules a time limit for *Manning* motions in justice court. It also agreed that committee members may want to consider whether *Ralphs* created the need for a time limit in Rule 4(f) for possible reconsideration of Rule 4(f) by the committee at a later time.

The committee took no action on Rule 4(f) at this time.

6. Rule 24 **Troy Booher**

Mr. Booher led the committee through an overview of the proposed amendments to Rule 24. The committee intended not to take any action on Rule 24 at this time.

Mr. Shea proposed amending the second sentence of Rule 3(c) to read, "The title of the action or proceeding shall include only the names of the parties to the appeal." The committee determined that oftentimes it is uncertain who all of the appellees will be at the time the notice of appeal is filed. Mr. Parker said that the rule governs the parties listed in the caption, not who can be a party to an appeal. Ms. Westby said that the caption in the notice of appeal does need to be fairly broad to include all the parties at the trial level, and the parties listed in the caption can change as parties join or withdraw from the appeal. Judge Voros said that the appellate court can name the case as it sees fit. Ms. Watt said Rule 3(c) should not be changed because as it is now there is no confusion created by the notice of appeal about the case that is being appealed. Mr. Parker said he thinks Rule 3(c) should not be changed. Mr. Booher said Rule 24 can say that the caption on the cover page should include only parties to the appeal, but there needs to be a list inside the brief of all the parties to the proceeding. Judge Orme said the rule could clarify that the appellate court can change the caption as it deems appropriate. Ms. Watt said she thinks a rule governing the parties in the caption should be in Rule 24 and that it should be permissive, not mandatory. Mr. Booher said perhaps it should be in Rule 27. Judge Orme said giving parties the responsibility of naming the case

is problematic. Mr. Shea said the goal of the proposed amendment is to standardize naming conventions between the appellate courts. Mr. Sabey said changes to case names between appellate courts is unavoidable. The committee decided not to take action on Rule 3(c) at this time.

After the discussion about Rule 3(c) concluded, Mr. Booher resumed leading the committee through the proposed amendments to Rule 24. He said that one main goal of the proposed amendments is to eliminate redundancy in briefs. Mr. Booher noted that the prohibition on bold typeface does not apply to headings. Mr. Burke questioned whether the prohibition on bold, underline, and capitalized typeface should be in the "grounds for relief requested" section of the rule. Mr. Parker said he thinks underlining should not be prohibited. Judge Voros said he does not object to bolded typeface, but underlining is antiquated with the availability of italicization and now has no place in a brief. Mr. Parker said he likes underlining because it sets emphasis apart from italicized case names. Mr. Shea said the committee needed to be careful not to impose typeface restrictions on lawyers that judges do not abide by. Judge Voros said he would not prohibit bold typeface.

Ms. Watt said the committee was not going to take any action on Rule 24 at this meeting, but committee members should be prepared to take action on it first thing at the next meeting. Judge Voros asked Ms. Adams-Perlac to prepare a clean copy of Rule 24 with the proposed amendments so the committee members could see what it would look like. Ms. Adams-Perlac said she would. Ms. Decker said the AG would prepare a sample brief illustrating some changes it would like to see to Rule 24.

The committee took no action on Rule 24 at this time, but it is on the agenda for the next meeting.

7. Other Business

There was no other business discussed at the meeting.

8. Adjourn

The meeting was adjourned at 1:50 p.m. The next meeting will be held Thursday, November 6, 2014.

Tab 2

Timothy M. Shea
Appellate Court Administrator

Andrea R. Martinez
Clerk of Court

Supreme Court of Utah

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October 28, 2014

To: Appellate Procedures Committee
From: Tim Shea
Re: Rules of Civil Procedure 7, 54 and 58A

The Civil Procedures Committee has been working on amendments to Rules 7, 54 and 58A to address the issues raised by the line of Supreme Court opinions:

- Code v. Utah Dep't of Health, 2007 UT 43;
- Houghton v. Dep't of Health, 2008 UT 86;
- Giusti v. Sterling Wentworth Corp., 2009 UT 2;
- Central Utah Water Conservancy District v. King, 2013 UT 13; and, most recently,
- Butler v. Corporation of The President of The Church of Jesus Christ of Latter-Day Saints, 2014 UT 41

The Supreme Court has requested that you consider the amendments before we publish them for comment.

The Civil Rules Committee proposes to repeal and reenact Rule 7 to try to bring more regularity to motion practice in the district court. The paragraph that addresses the issue of a bright line indicating that the judge has decided the motion is paragraph (j)(1), lines 89-91. We propose that the judge's signature on the document memorializing the decision be that bright line, rather than the "magic words" described in the opinions. Unless the judge indicates that a further order confirming the decision is needed, the date on which the judge signs the "decision, however designated," is the start-date for calculating the time in which to file a petition for permission to appeal an interlocutory order. The amendment is explained further in the committee note, beginning on line 168.

The amendments to Rule 54, for the most part, conform the rule to its federal counterpart. The amendments do not substantively change Rule 54, but the *Butler* opinion, summarized in the committee note, describes the interplay between a "final [rule 7 compliant] order" and certification under Rule 54(b). Nothing in any of these amendments disturbs the principles of the *Butler* opinion, but obtaining a Rule 7 compliant order should be more straightforward.

The amendments to Rule 58A also follow the federal model, as modified by the needs of the state district court:

- Unless certified under Rule 54(b), a judgment on the merits of the complaint or petition is not appealable until attorney fees have been decided. Federal Rule 58(a) exempts an order for attorney fees from the separate document requirement. State Rule 58A(b) does not.
- The party rather than the clerk will need to prepare the separate judgment. Paragraph (c).
- The judge rather than the clerk signs the judgment. Paragraph (d).

Paragraph (e), which fixes the date on which a judgment is entered, is from federal Rule 58 and was suggested by the court in Central Utah Water Conservancy District v. King, 2013 UT 13, ¶27. That date is the start-date for calculating the time in which to file a notice of appeal.

Rule 7. Pleadings allowed; motions, memoranda, hearings, orders.

(a) Pleadings. Only these pleadings are allowed:

(a)(1) a complaint;

(a)(2) an answer to a complaint;

(a)(3) an answer to a counterclaim designated as a counterclaim;

(a)(4) an answer to a cross claim;

(a)(5) a third party complaint

(a)(6) an answer to a third party complaint; and

(a)(7) a reply to an answer if permitted by the court.

(b) Motions. A request for an order must be made by motion. The motion must be in writing, unless made during a hearing or trial, must state the relief requested, and must state the grounds for the relief requested. Except for the following, a motion must be made in accordance with this rule.

(b)(1) A motion made in proceedings before a court commissioner must follow the procedures of Rule 101.

(b)(2) A request under Rule 26 for extraordinary discovery must follow the expedited statement of discovery procedures of Rule 37(a).

(b)(3) A request under Rule 37 for a protective order or for an order compelling disclosure or discovery—but not a motion for sanctions—must follow the expedited statement of discovery procedures of Rule 37(a).

(b)(4) A request under Rule 45 to quash a subpoena must follow the expedited statement of discovery procedures of Rule 37(a).

(b)(5) A motion for summary judgment must follow the procedures of this rule, supplemented by the requirements of Rule 56.

(c) Form, name and content of motion.

(c)(1) The rules governing captions and other matters of form in pleadings apply to motions and other papers. The moving party must title the motion substantially as: “Motion [short phrase describing the relief requested].” Unless permitted by the court, the motion, which shall include the supporting memorandum, may not exceed 15 pages, not counting the appendix. The motion must include under appropriate headings and in the following order:

(c)(1)(A) a concise statement of the relief requested and the grounds for the relief requested; and

(c)(1)(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party and argument citing authority for the relief requested.

(c)(2) The moving party must attach to the motion an appendix of relevant portions of any documents cited, such as affidavits or discovery materials or opinions, statutes or rules.

(d) Name and content of memorandum opposing the motion.

(d)(1) A nonmoving party may file a memorandum opposing the motion within 14 days after the motion is filed. The nonmoving party must title the memorandum substantially as: "Memorandum opposing motion [short phrase describing the relief requested]." Unless permitted by the court, the memorandum may not exceed 15 pages, not counting the appendix. The memorandum must include under appropriate headings and in the following order:

(d)(1)(A) a concise statement of the party's preferred disposition of the motion and the grounds supporting that disposition;

(d)(1)(B) one or more sections that include a concise statement of the relevant facts claimed by the nonmoving party and argument citing authority for that disposition; and

(d)(1)(C) objections to evidence in the motion, citing authority for the objection.

(d)(2) The non-moving party must attach to the memorandum an appendix of relevant portions of any documents cited in the memorandum, such as affidavits or discovery materials or opinions, statutes or rules.

(e) Name and content of reply memorandum.

(e)(1) Within 7 days after the memorandum opposing the motion is filed, the moving party may file a reply memorandum, which must be limited to rebuttal of new matters raised in the memorandum opposing the motion. The moving party must title the memorandum substantially as "Reply memorandum supporting the motion [short phrase describing the relief requested]." Unless permitted by the court, the memorandum may not exceed 5 pages, not counting the appendix. The memorandum must include under appropriate headings and in the following order:

(e)(1)(A) a concise statement of the new matter raised in the memorandum opposing the motion;

(e)(1)(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party and argument citing authority rebutting the new matter;

(e)(1)(C) objections to evidence in the memorandum opposing the motion, citing authority for the objection; and

(e)(1)(D) response to objections made in the memorandum opposing the motion, citing authority for the response.

(e)(2) The moving party must attach to the memorandum an appendix of relevant portions of any documents cited in the memorandum, such as affidavits or discovery materials or opinions, statutes or rules.

(f) Response to objections made in the reply memorandum. If the reply memorandum includes an objection to evidence, the nonmoving party may file a response to the objection no later than 7 days after the reply memorandum is filed.

(g) Request to submit for decision. When briefing is complete or the time for briefing has expired, either party may and the moving party must file a "Request to Submit for Decision." The request to submit for decision must state the date on which the motion was filed, the date the memorandum opposing the

motion, if any, was filed, the date the reply memorandum, if any, was filed, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision.

(h) Hearings. The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing must be separately identified in the caption of the document containing the request. The court must grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

(i) Notice of supplemental authority. A party may file notice of citation to significant authority that comes to the party's attention after the party's motion or memorandum has been filed or after oral argument but before decision. The notice must state—without argument—citation to the authority, the page of the motion or memorandum or the point orally argued to which the authority applies, and the reason the authority is relevant. Any other party may promptly file a response, but the court may rule on the motion without a response. The response must comply with this paragraph.

(j) Orders.

(j)(1) Decision complete when signed; entered when recorded. However designated, the court's decision on a motion is complete when signed by the judge. The decision is entered when recorded in the docket.

(j)(2) Preparing and serving a proposed order. If directed by the court, a party shall within 14 days prepare a proposed order confirming the court's decision and serve the proposed order on the other parties for review and approval as to form. If the party directed to prepare a proposed order fails to timely serve the order, any other party may prepare a proposed order confirming the court's decision and serve the proposed order on the other parties for review and approval as to form.

(j)(3) Effect of approval as to form. A party's approval as to form of a proposed order certifies that the proposed order accurately reflects the court's decision. Approval as to form does not waive objections to the substance of the order.

(j)(4) Objecting to a proposed order. A party may object to the form of the proposed order by filing an objection within 7 days after the order is served.

(j)(5) Filing proposed order. The party preparing a proposed order must file it:

(j)(5)(A) after all other parties have approved the form of the order; (The party preparing the proposed order must indicate the means by which approval was received: in person; by telephone; by signature; by email; etc.)

(j)(5)(B) after the time to object to the form of the order has expired; (The party preparing the proposed order must also file a certificate of service of the proposed order.) or

(j)(5)(C) within 2 days after a party has objected to the form of the order. (The party preparing the proposed order may also file a response to the objection.)

(j)(6) Proposed order before decision prohibited; exceptions. Except as follows, a party may not file a proposed order concurrently with a motion or a memorandum or a request to submit for decision. A proposed order must be filed with:

(j)(6)(A) a stipulated motion;

(j)(6)(B) an ex parte motion;

(j)(6)(C) an expedited statement of discovery issues under Rule 37(b); and

(j)(6)(D) the request to submit for decision a motion in which a memorandum opposing the motion has not been filed.

(j)(7) Ex parte orders. Except as otherwise provided by these rules, an order made without notice to the other parties can be vacated or modified by the judge who made it with or without notice.

(j)(8) Order to pay money. An order to pay money can be enforced in the same manner as if it were a judgment.

(k) Stipulated motions. A party seeking relief that has been agreed to by the other parties may file a stipulated motion which must:

(k)(1) be titled substantially as: "Stipulated motion [short phrase describing the relief requested];

(k)(2) include a concise statement of the relief requested and the grounds for the relief requested;

(k)(3) include a signed stipulation in or attached to the motion; and

(k)(4) be accompanied by a proposed order that has been approved by the other parties.

(l) Ex parte motions. If a statute or rule permits a motion to be filed without serving the motion on the other parties, the party seeking relief may file a an ex parte motion which must:

(l)(1) be titled substantially as: "Ex parte motion [short phrase describing the relief requested];

(l)(2) include a concise statement of the relief requested and the grounds for the relief requested;

(l)(3) include the statute or rule authorizing the ex parte motion; and

(l)(4) be accompanied by a proposed order.

(m) Motion in opposing memorandum or reply memorandum prohibited. A party may not make a motion in a memorandum opposing a motion or in a reply memorandum. A party who objects to evidence in another party's motion or memorandum may not move to strike that evidence. The proper procedure is to include in the subsequent memorandum an objection to the evidence.

(n) Over-length motion or memorandum. The court may permit a party to file an over-length motion or memorandum upon ex parte motion and a showing of good cause. An over-length motion or memorandum must include a table of contents and a table of authorities with page references.

(o) Limited statement of facts and authority. No statement of facts and legal authorities beyond the concise statement of the relief requested and the grounds for the relief requested required in paragraph (c) is required for the following motions:

(o)(1) motion to allow an over-length motion or memorandum;

(o)(2) motion to extend the time to perform an act, if the motion is filed before the time to perform the act has expired;

(o)(3) motion to continue a hearing;

(o)(4) motion to appoint a guardian ad litem;

(o)(5) motion to substitute parties;

(o)(6) motion to refer the action to or withdraw it from alternative dispute resolution under Rule 4-510.05;

(o)(7) motion for a conference under Rule 16; and

(o)(8) motion to approve a stipulation of the parties.

Advisory Committee Notes [Add to existing notes]

The 2015 changes to Rule 7 repeal and reenact the rule. Many of the provisions from the former Rule 7 are preserved in the 2015 version, but there are many changes as well. The committee's intent is to bring more regularity to motion practice. Some of these features are found in Rule 7-1 of the U.S. District Court for the District of Utah:

- integrate the memorandum supporting a motion with the motion itself;
- describe more uniform motion titles;
- describe more uniform content in the memoranda;
- regulate the process for citing supplemental authority;
- prohibit proposed orders before a decision, except for specified motions;
- move the special requirements for a motion for summary judgment to Rule 56;
- allow a limited statement of facts for specified motions;
- require an objection to evidence, rather than a motion to strike evidence; and
- require a counter-motion rather than a motion in the opposing memorandum.

In Central Utah Water Conservancy District v. King, 2013 UT 13 ¶27; the Supreme Court directed the committee to address the problem of undue delay when the parties fail to comply with former Rule 7(f)(2). A major objective of the of the 2015 amendments is to continue the policy of clear expectations of the parties established in:

- Butler v. Corporation of The President of The Church of Jesus Christ of Latter-Day Saints, 2014 UT 41
- Central Utah Water Conservancy District v. King, 2013 UT 13;
- Giusti v. Sterling Wentworth Corp., 2009 UT 2;
- Houghton v. Dep't of Health, 2008 UT 86; and
- Code v. Utah Dep't of Health, 2007 UT 43.

However, the 2015 amendments do so in a manner simpler than the "magic words" required under the former Rule 7(f)(2).

In these cases, the Supreme Court established a policy favoring a clear indication of whether a further document would be required from the parties after a judge's decision. The parties should not be required to guess what, if anything, should come next.

There were three ways to meet the test: a proposed order was submitted with the supporting or opposing memorandum; an order was prepared at the direction of the judge; the decision included an express indication that a further order was not required. The 2015 amendments remove a proposed order from the process in most circumstances. The trend under the former rule was to include in every order an indication that nothing further was required even when the order expressly directed a party to prepare a further order. Or orders were being prepared in some manner other than as described in the rule, yet the order did not expressly state than nothing further was required. The order technically was not complete, but everyone proceeded as if it were.

The 2015 amendments continue the policy of a bright-line test for a completed decision but do not rely on conditions that might or might not be met. The one condition that can be counted on is the judge's signature. Under the former rule, a completed decision was imposed by operation of law when the order was prepared in one of the recognized ways. The 2015 rule imposes a completed decision by operation of law when the document memorializing the decision is signed. Under the former rule, the judge's silence meant that something further was required, unless the order was prepared in one of the ways described in Rule 7. The presumption in the 2015 amendments is the opposite: silence means that nothing further is required from the parties. Judges can expressly require an order confirming a decision if one is needed in a particular case.

The committee recognizes the many different forms a judge's decision might take. The committee discussed defining "order," but decided against the attempt. There are too many variations. If written, the document might be titled "order," "ruling," "opinion," "decision," "memorandum decision," etc. The decision might not be written; an oral directive is an order. A clerk's minute entry of an oral decision is, when signed by the judge, treated the same as a written order. The committee decided instead to modify a phrase of long standing from Rule 54(b)—"a decision, however designated"—in this rule and in Rule 58A. In this rule, however a judge's decision may be designated, that decision is complete when the judge signs the document memorializing the decision. Whether there is a right to appeal is determined by whether the decision—or subsequent order confirming the decision—is a judgment. That analysis is governed by Rule 54. When the judgment is entered is governed by Rule 58A.

Rule 54. Judgments; costs.

(a) Definition; form. "Judgment" as used in these rules includes a decree ~~and any~~ or order that adjudicates all claims and the rights and liabilities of all parties or any other order from which an appeal of right lies. A judgment ~~need~~ should not contain a recital of pleadings, the report of a master, or the record of prior proceedings. ~~Judgments shall state whether they are entered upon trial, stipulation, motion or the court's initiative; and, unless otherwise directed by the court, a judgment shall not include any matter by reference.~~

(b) Judgment upon multiple claims and/or involving multiple parties. When an action presents more than one claim for relief ~~is presented in an action, whether~~ as a claim, counterclaim, cross claim, or third party claim~~,~~ and/or when multiple parties are involved, the court may ~~direct the entry of a final~~ enter judgment as to one or more but fewer than all of the claims or parties only ~~upon an express determination by~~ if the court expressly determines that there is no just reason for delay ~~and upon an express direction for the entry of judgment. In the absence of such determination and direction,~~ Otherwise, any order or other ~~form of~~ decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties ~~shall not terminate~~ does not end the action as to any of the claims or parties, and ~~the order or other form of decision is subject to revision~~ may be changed at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for judgment. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

~~**(c)(1) Generally.** Except as to a party against whom a judgment is entered by default, and except as provided in Rule 8(a), every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be given for or against one or more of several claimants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between or among themselves.~~

~~**(c)(2) Judgment by default.** A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.~~

(d) Costs.

(d)(1) To whom awarded. ~~Except when express provision therefor is made either in a statute of this state or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; provided, however, where an appeal or other proceeding for review is taken, costs of the action, other than costs in connection with such appeal or other proceeding for review, shall abide the final determination of the cause.~~ Unless a statute, these rules, or a court order provides otherwise, costs should be allowed to the prevailing party. Costs against the state of Utah, its officers and agencies shall be imposed only to the extent permitted by law.

(d)(2) How assessed. The party who claims ~~his~~ costs must within 14 days after the entry of judgment file and serve ~~upon the adverse party against whom costs are claimed, a copy of~~ a verified memorandum of ~~the items of his~~ costs ~~and necessary disbursements in the action, and file with the court a like memorandum thereof duly verified stating that to affiant's knowledge the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding~~. A party dissatisfied with the costs claimed may, within 7 days after service of the memorandum of costs, ~~file a motion to have~~ object to the bill of costs ~~taxed by the court~~.

(d)(3) Memorandum filed before judgment. A memorandum of costs served and filed after the verdict, or at the time of or subsequent to the service and filing of the findings of fact and conclusions of law, but before the entry of judgment, ~~shall nevertheless be considered as~~ is deemed served and filed on the date judgment is entered.

~~**(e) Interest and costs to be included in the judgment.** The clerk must include in any judgment signed by him any interest on the verdict or decision from the time it was rendered, and the costs, if the same have been taxed or ascertained. The clerk must, within two days after the costs have been taxed or ascertained, in any case where not included in the judgment, insert the amount thereof in a blank left in the judgment for that purpose, and make a similar notation thereof in the register of actions and in the judgment docket.~~

Advisory Committee Notes

In Butler v. Corporation of The President of the Church of Jesus Christ of Latter-Day Saints, 2014 UT 41, the Supreme Court established the requirements of a judgment entered by means of a Rule 54(b) certification:

> First, it must be entered in an action involving multiple claims or multiple parties. Second, it must have been entered on an order that would otherwise be appealable but for the fact that other claims or parties remain in the action. …. Third, the trial court, in its discretion, must make a determination that there is no just reason for delay of the appeal. Id. ¶28

To satisfy the second requirement, the Supreme Court in Butler included, in addition to the other requirements of appealability, the principle that the order must include one of the three indicia of finality imposed by former Rule 7(f)(2): a proposed order was submitted with the supporting or opposing memorandum; an order was prepared at the direction of the judge; the decision included an express indication that a further order was not required. The 2015 amendments to Rule 7 replace these indicia with the judge's signature. The 2015 amendments of Rule 7, Rule 54 and Rule 58A do not disturb the principles established in Butler; they do make simpler the task of satisfying the requirement that the interlocutory order be complete under Rule 7 before it can be certified under Rule 54.

Rule 58A. Entry of judgment; abstract of judgment.

~~**(a) Judgment upon the verdict of a jury.** Unless the court otherwise directs and subject to Rule 54(b), the clerk shall promptly sign and file the judgment upon the verdict of a jury. If there is a special verdict or a general verdict accompanied by answers to interrogatories returned by a jury, the court shall direct the appropriate judgment, which the clerk shall promptly sign and file.~~

~~**(b) Judgment in other cases.** Except as provided in paragraphs (a) and (f) and Rule 55(b)(1), all judgments shall be signed by the judge and filed with the clerk.~~

~~**(c) When judgment entered; recording.** A judgment is complete and shall be deemed entered for all purposes, except the creation of a lien on real property, when it is signed and filed as provided in paragraphs (a) or (b). The clerk shall immediately record the judgment in the register of actions and the register of judgments.~~

(a) Separate document required. Every judgment and amended judgment must be set out in a separate document ordinarily titled "Judgment"—or, as appropriate, "Decree."

(b) Separate document not required. A separate document is not required for an order disposing of a post-judgment motion:

(b)(1) for judgment under Rule 50(b);

(b)(2) to amend or make additional findings under Rule 52(b);

(b)(3) for a new trial, or to alter or amend the judgment, under Rule 59; or

(b)(4) for relief under Rule 60.

(c) Preparing a judgment.

(c)(1) Preparing and serving a proposed judgment. The prevailing party or a party directed by the court must prepare and serve on the other parties a proposed judgment for review and approval as to form. The proposed judgment shall be served within 14 days after the jury verdict or after the court's decision. If the prevailing party or party directed by the court fails to timely serve a proposed judgment, any other party may prepare a proposed judgment and serve it on the other parties for review and approval as to form.

(c)(2) Effect of approval as to form. A party's approval as to form of a proposed judgment certifies that the proposed judgment accurately reflects the verdict or the court's decision. Approval as to form does not waive objections to the substance of the judgment.

(c)(3) Objecting to a proposed judgment. A party may object to the form of the proposed judgment by filing an objection within 7 days after the judgment is served.

(c)(4) Filing proposed judgment. The party preparing a proposed judgment must file it:

(c)(4)(A) after all other parties have approved the form of the judgment; (The party preparing the proposed judgment must indicate the means by which approval was received: in person; by telephone; by signature; by email; etc.)

(c)(4)(B) after the time to object to the form of the judgment has expired; (The party preparing the proposed judgment must also file a certificate of service of the proposed judgment.) or

(c)(4)(C) within 2 days after a party has objected to the form of the judgment. (The party preparing the proposed judgment may also file a response to the objection.)

(d) Judge's signature; judgment filed with the clerk. Except as provided in paragraph (h) and Rule 55(b)(1), all judgments must be signed by the judge and filed with the clerk. The clerk must promptly record all judgments in the docket.

(e) Time of entry of judgment.

(e)(1) If a separate document is not required, a judgment is complete and is entered when it is signed by the judge and recorded in the docket.

(e)(2) If a separate document is required, a judgment is complete and is entered at the earlier of these events:

(e)(2)(A) the judgment is set out in a separate document signed by the judge and recorded in the docket; or

(e)(2)(B) 150 days have run from the clerk recording the decision, however designated, that should have prompted the separate document.

~~**(d)**~~ **(f) Notice of judgment.** The party preparing the judgment shall promptly serve a copy of the signed judgment on the other parties in the manner provided in Rule 5 and promptly file proof of service with the court. Except as provided in Rule of Appellate Procedure 4(g), the time for filing a notice of appeal is not affected by this requirement.

~~**(e)**~~ **(g) Judgment after death of a party.** If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be entered.

~~**(f)**~~ **(h) Judgment by confession.** If a judgment by confession is authorized by statute, the party seeking the judgment must file with the clerk a statement, verified by the defendant, ~~to the following effect~~ as follows:

~~(f)(1)~~ (h)(1) If the judgment is for money due or to become due, ~~it shall~~ the statement must concisely state the claim and that the specified sum is due or to become due.

~~(f)(2)~~ (h)(2) If the judgment is for the purpose of securing the plaintiff against a contingent liability, ~~it~~ the statement must state concisely the claim and that the specified sum does not exceed the liability.

~~(f)(3) It~~ (h)(3) The statement must authorize the entry of judgment for the specified sum.

The clerk ~~shall~~ must sign ~~and file~~ the judgment for the specified sum~~, with costs of entry, if any, and record it in the register of actions and the register of judgments~~.

~~**(g)**~~ **(i) Abstract of judgment.** The clerk may abstract a judgment by a signed writing under seal of the court that:

~~(g)(1)~~ (i)(1) identifies the court, the case name, the case number, the judge or clerk that signed the judgment, the date the judgment was signed, and the date the judgment was recorded in the registry of actions and the registry of judgments;

~~(g)(2)~~ (i)(2) states whether the time for appeal has passed and whether an appeal has been filed;

~~(g)(3)~~ (i)(3) states whether the judgment has been stayed and when the stay will expire; and

~~(g)(4)~~ (i)(4) if the language of the judgment is known to the clerk, quotes verbatim the operative language of the judgment or attaches a copy of the judgment.

Advisory Committee Note

The 2015 amendments to Rule 58A adopt the requirement, found in Rule 58 of the Federal Rules of Civil Procedure, that a judgment be set out in a separate document. In the past, problems have arisen when the district court entered a decision with dispositive language, but without the other formal elements of a judgment, resulting in uncertainty about whether the decision started the time for appeals. This problem was compounded by uncertainty under Rule 7 about whether the decision was the court's final ruling on the matter or whether the prevailing party was expected to prepare an order confirming the decision.

The 2015 amendments of Rule 7, Rule 54 and Rule 58 are intended to reduce this confusion by requiring "that there be a judgment set out on a separate document—distinct from any opinion or memorandum—which provides the basis for the entry of judgment." See Advisory Committee Notes to 1963 Amendments to Fed. R. Civ. P. 58. Courts and practitioners are encouraged to use appropriate titles with separate documents intended to operate as judgments, such as "Judgment" or "Decree," and to avoid using such titles on documents that are not appealable. The parties should consider the form of judgment included in the Appendix of Forms. On the question of what constitutes a separate document, the Committee refers courts and practitioners to existing case law interpreting Fed. R. Civ. P. 58. For example, In re Cendant Corp., 454 F.3d 235, 242-244 (3d Cir. 2006) offers three criteria:

1) the judgment must be set forth in a document that is independent of the court's opinion or decision;

2) it must contain ordering clauses stating the relief to which the prevailing party is entitled, and not merely refer to orders made in other documents or state that a motion has been granted; and

3) it must substantially omit recitation of facts, procedural history, and the reasons for disposing of the parties' claims.

While "some trivial departures" from these criteria—such as a one-sentence explanation of reasoning, a single citation to authority, or a reference to a separate memorandum decision—"must be tolerated in the name of common sense," any explanation must be "very sparse." Kidd v. District of Columbia, 206 F.3d 35, 39 (D.C. Cir. 2000).

The concurrent amendments to Rule 7 remove the separate document requirement formerly applicable to interlocutory orders. Henceforward, the separate document requirement will apply only to judgments, a change that should reduce the tendency to confuse judgments with other orders. Rule 7 has also been amended to modify the process by which orders on motions are prepared. The process for preparing judgments is the same.

Under amended Rule 7(j), a written decision, however designated, is complete—is the judge's last word on the motion—when it is signed, unless the court expressly requests a party to prepare an order confirming the decision. But this should not be confused with the need to prepare a separate judgment

when the decision has the effect of disposing of all clams in the case. If a decision disposes of all claims in the action, a separate judgment is required whether or not the court directs a party to prepare an order confirming the decision.

Rule 58A is similar to Fed. R. Civ. P. 58 in listing the instances where a separate document is not required. The state rule differs from the federal rule regarding an order for attorney fees. Fed. R. Civ. P. 58 includes an order for attorney fees as one of the orders not requiring a separate document. That particular order is omitted from the Utah rule because under Utah law a judgment does not become final for purposes of appeal until the trial court determines attorney fees. See ProMax Development Corporation v. Raile, 2000 UT 4, 998 P.2d 254. See also Utah Rule of Appellate Procedure 4, which states that the time in which to appeal post-trial motions is from the disposition of the motion.

State Rule 58A is also similar to Fed. R. Civ. P. 58 in determining the time of entry of judgment when a separate document is required but not prepared. This situation involves the “hanging appeals” problem that the Supreme Court asked this Committee to address in Central Utah Water Conservancy District v. King, 2013 UT 13, ¶27. Under the 2015 amendments, if a separate document is required but is not prepared, judgment is deemed to have been entered 150 days from the date the decision—or the order confirming the decision—was entered on the docket.

Tab 3

Rule 9. Docketing statement.

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

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

~~(b) Interlocutory appeals. When a petition for interlocutory review is granted under Rule 5, a docketing statement shall not be filed, unless otherwise ordered.~~

(c) Content of docketing statement in a civil case. The docketing statement in an appeal arising from a civil case shall include ~~contain the following information~~:

(c)(1) A concise statement of the nature of the proceeding and the effect of the order appealed, and the district court case number, e.g., "This appeal is from a final judgment ~~or decree~~ of the First District Court granting summary judgment in case number 001900055." ~~or "This petition is from an order of the Utah State Tax Commission."~~

~~(c)(2) The statutory provision that confers jurisdiction on the appellate court.~~

(c)(~~3~~2) The following dates relevant to a determination of the timeliness of the notice of appeal and the jurisdiction of the appellate court:

(c)(2~~3~~)(i~~A~~) The date of entry of the final judgment or order from which the appeal is taken.

(c)(2~~3~~)(ii~~B~~) The date the notice of appeal ~~or petition for review~~ was filed in the trial court.

(c)(2~~3~~)(iii~~C~~) If the notice of appeal was filed after receiving an extension of the time to file pursuant to Rule 4(e), the date the motion for an extension was granted.

(c)(2)(iv) If any motions listed in Rule 4(b) were filed, the date such motion was filed in the trial court and the date of entry ~~The date of any motions filed pursuant to Rules~~

~~50(b), 52(b), or 59, Utah Rules of Civil Procedure, or Rule 24, Utah Rules of Criminal Procedure, and the date and effect~~ of any order~~s~~ disposing of such motion~~s~~.

(c)(2)(v) If the appellant is an inmate confined in an institution and is invoking Rule 21(f), the date the notice of appeal was deposited in the institution's internal mail system.~~a statement to that effect.~~

(c)(2~~5~~)(vi) If a motion to reinstate the time to appeal was filed pursuant to Rule 4(g), the date of the order disposing of such motion.

(c)(3) If the ~~an~~ appeal is taken from an order ~~in a multiple-party or a multiple-claim case, and the judgment has been~~ certified as ~~a~~ final ~~judgment by the trial court~~ pursuant to Rule 54(b) of the~~,~~ Utah Rules of Civil Procedure~~,~~: a statement of what claims and parties remain before the trial court for adjudication.

~~(c)(5)(A) a statement of what claims and parties remain before the trial court for adjudication, and~~

~~(c)(5)(B) a statement of whether the facts underlying the appeal are sufficiently similar to the facts underlying the claims remaining before the trial court to constitute res judicata on those claims~~.

(c)(4~~6~~) A statement of at least one substantial issue appellant intends to assert on appeal. An issue not raised in the docketing statement may nevertheless be raised in the brief of the appellant; conversely, an issue raised in the docketing statement does not have to be included in the brief of the appellant.

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

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

~~If the case is criminal,~~

~~(c)(6)(A) the charges of which the defendant was convicted or, if the defendant is not convicted, the dismissed or pending charges;~~

~~(c)(6)(B) any sentence imposed; and~~

~~(c)(6)(C) whether the defendant is currently incarcerated.~~

~~(c)(7) A statement of the issues appellant intends to assert on appeal, including, for each issue,~~

~~(c)(7)(A) citations to determinative statutes, rules, or cases;~~

~~(c)(7)(B) the applicable standard of appellate review, with supporting authority.~~

~~(c)(8) A succinct summary of facts material to a consideration of the issues presented.~~

~~(c)(9) If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, and the appellant advocates or opposes such an assignment, a succinct statement of reasons why the Supreme Court should or should not assign the case. The Supreme Court may, for example, consider whether the case presents or involves one or more of the following:~~

~~(c)(9)(A) a novel constitutional issue;~~

~~(c)(9)(B) an important issue of first impression;~~

~~(c)(9)(C) a conflict in Court of Appeals decisions;~~

~~(c)(9)(D) any other persuasive reason why the Supreme Court should or should not resolve the issue.~~

~~(c)(10) A reference to all related or prior appeals in the case, with case numbers and citations~~

(d) Content of a docketing statement in a criminal case. The docketing statement in an appeal arising from a criminal case shall include:

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

(d)(2) The following dates relevant to a determination of the timeliness of the appeal and the jurisdiction of the appellate court:

(d)(2)(i) The date of entry of the final judgment or order from which the appeal is taken.

(d)(2)(ii) The date the notice of appeal was filed in the district court.

(d)(2)(iii) If the notice of appeal was filed after receiving an extension of the time to file pursuant to rule 4(e), the date the motion for an extension was granted.

(d)(2)(iv) If a motion pursuant to Rule 24 of the Utah Rules of Criminal Procedure was filed, the date such motion was filed in the trial court and the date of entry of any order disposing of such motion.

(d)(2)(v) If a motion to reinstate the time to appeal was filed pursuant to Rule 4(f), the date of the order disposing of such motion.

(d)(2)(vi) If the appellant is an inmate confined to an institution and is invoking Rule 21(f), the date the notice of appeal was deposited in the institution's internal mail system.

(d)(3) The charges of which the defendant was convicted, and any sentence imposed; or, if the defendant was not convicted, the dismissed or pending charges.

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

(d)(5) A concise summary of the facts necessary to provide context for the issues presented. If the conviction was pursuant to a plea, the statement of facts should include whether a motion to withdraw the plea was made prior to sentencing, and whether the plea was conditional.

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

~~(d) Necessary attachments. Copies of the following must be attached to each copy of the docketing statement:~~

~~(d)(1) The final judgment or order from which the appeal is taken;~~

~~(d)(2) Any rulings or findings of the trial court or administrative tribunal included in the judgment from which the appeal is taken;~~

~~(d)(3) In appeals arising from an order of the Public Service Commission, any application for rehearing filed pursuant to Utah Code Section 54-7-15;~~

~~(d)(4) The notice of appeal and any order extending the time for the filing of a notice of appeal.~~

~~(d)(5) Any notice of claim.~~

~~(d)(6) Any motions filed pursuant to Rules 50(b), 52(b), 54(b), or 59, Utah Rules of Civil Procedure, or Rule 24, Utah Rules of Criminal Procedure, and orders disposing of such motions; and~~

~~(d)(7) If the appellant is an inmate confined in an institution and is invoking Rule 4(g), the notarized statement or written declaration required by that provision.~~

(e) Content of a docketing statement in a review of an administrative order. The docketing statement in a case arising from an administrative proceeding shall include:

(e)(1) A concise statement of the nature of the proceedings and the effect of the order appealed, e.g., "This petition is from an order of the Workforce Appeals Board denying reconsideration of the denial of benefits."

(e)(2) The statutory provision that confers jurisdiction on the appellate court.

(e)(3) The following dates relevant to a determination of the timeliness of the petition for review:

(e)(3)(i) The date of entry of the final order from which the petition for review is filed.

(e)(3)(ii) The date the petition for review was filed.

(e)(4) A statement of at least one substantial issue petitioner intends to assert on review. An issue not raised in the docketing statement may nevertheless be raised in the brief of petitioner; conversely, an issue raised in the docketing statement does not have to be included in the brief of petitioner.

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

(e)(6) If applicable, a reference to all related or prior petitions for review in the same case.

(e)(7) Copies of the following documents must be attached to each copy of the docketing statement:

(e)(7)(i) The final order from which the petition for review is filed.

(e)(7)(ii) In appeals arising from an order of the Public Service Commission, any application for rehearing filed pursuant to Utah Code section 54-7-15.

~~(e) Appellee's statement regarding assignment. If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, an appellee may within 10 days of service of the docketing statement file a succinct statement of reasons why the appeal should or should not be assigned.~~

(f) Consequences of failure to comply. Failure to file a ~~D~~docketing statement~~s~~ within the time period provided in subsection (b) ~~which fail to comply with this rule will not be accepted. Failure to comply~~ may result in dismissal of a civil ~~the~~ appeal or ~~the~~ a petition for review. Failure to file a docketing statement within the time period provided in subsection (b) in a criminal case may result in a finding of contempt or other sanction if appellant is represented by counsel, and may result in dismissal of the appeal if appellant is not represented by counsel. ~~An issue not listed in the docketing statement may nevertheless be raised in appellant's opening brief.~~

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

Advisory Committee Notes

The content of the docketing statement has been slightly reordered to first state information governing the jurisdiction of the court.

The docketing statement and briefs contain a new section requiring a statement of the applicable standard of review, with citation of supporting authority, for each issue presented on appeal.

The content of the docketing statement has been reordered and brought into conformity with revised Rule 4, Utah Rules of Appellate Procedure. This rule is satisfied by a docketing statement in compliance with form 7.

Tab 4

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 concise statement of the nature of the case, the contentions on appeal, and a summary of the arguments made in the body of the brief.

(b)(5) 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)(6) Argument. For each ground for relief presented, 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.

(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 contention of error.

(b)(6)(C) Standard of review. The standard of review governing the contention, with supporting authority. (b)(6)(D) Relief sought. A statement of 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 reversal. 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. 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)(7) Conclusion. A brief conclusion.

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

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

(b)(10) Certificate of compliance. If applicable, a certificate of compliance in accordance with paragraph (g)(1)(C) of this rule.

(b)(11) 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)(11)(A) in cases on certiorari, a copy of the decision of the Court of Appeals under review; (b)(11)(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)(11)(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)(11)(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. [(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.]

(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), (7), (8), (9), and (10) 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

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, 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, __ P.3d __, 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:

264 Id. ¶ 15.

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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~~concise statement of the nature of the case, the contentions on appeal, and a summary of the arguments made in the body of the brief. ~~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~~b)(~~7~~5) ~~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.

~~(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~~b)(~~9~~6) ~~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 ~~claim~~contention of error.

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

(~~a~~b)(~~10~~6)(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 reversal ~~of the order or verdict challenged on appeal~~. 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. 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.

Comment [n1]: Move to URAP 27? Make clear which part appears to headings.

(b)(7) Conclusion. A brief conclusion.

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

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

(b)(10) Certificate of c~~C~~ompliance. If applicable, a certificate of compliance in accordance with paragraph (g)(1)(C) of this rule.

(~~a~~b)(11) 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)(~~B~~A) in cases ~~being reviewed~~ on certiorari, a copy of the decision of the Court of Appeals under review~~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~~

(b)(11)(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)(11)(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)(~~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), (7), (8), (9), and (10) 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, 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, __ P.3d __, 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.

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

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

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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:

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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 5

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 6

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).