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
Wednesday, August 14, 2013
12:00 p.m. to 2:00 p.m.

1.	Welcome and Introduction of Members	Joan Watt
2.	Approval of Minutes	Joan Watt
3.	Discussion of Rule 11-101(4) of the Supreme Court Rules of Professional Practice	Joan Watt
4.	Public Comments to Proposed Changes on Rules 4, 24, and 58	Alison Adams-Perlac
5.	Rule 24(j)	Judge Fred Voros
6.	Rule 9	Mary Westby
7.	Rule 5	Committee
8.	Rule 23B Update	Joan Watt
9.	Rule 29	Clark Sabey
10.	Rule 8A	Clark Sabey
11.	Rule 44 (Committee Note?)	Clark Sabey
12.	Global Review of Rules Update	Troy Booher
13.	Juvenile Record on Appeal Rule Changes	Judge Gregory Orme
14.	Other Business	
15.	Adjourn	

MATERIALS

SUPREME COURT'S ADVISORY COMMITTEE ON THE
UTAH RULES OF APPELLATE PROCEDURE

Wednesday, August 14, 2013

AGENDA ITEM 2

DRAFT

MINUTES

Supreme Court's Advisory Committee
on the Rules of Appellate Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

June 18, 2013

ATTENDEES
Joan Watt - Chair
Judge Gregory Orme
Judge Fred Voros
Diane Abegglen
Troy Booher
Paul Burke
Marian Decker
Brent Johnson
Bryan Pattison
Clark Sabey
Lori Seppi
Mary Westby

EXCUSED
Bridget Romano
Ann Marie Taliaferro

I. Welcome and Approval of Minutes

Joan Watt welcomed the committee members to the meeting. The minutes from the February 20, 2013 meeting were approved without amendment and seconded. The motion carried unanimously.

II. Rule 29

Clark Sabey, at the request of the Supreme Court, provided proposed amendments to Rule 29. Mr. Sabey explained that the Supreme Court does not want to allow parties to stipulate to waive oral argument. He stated that the court's position on this change is not negotiable. He also suggested that the Court of Appeals might want to take the opportunity to make any adjustments it would like for its court. Mr. Sabey also explained that the Supreme Court has elected to delete the last line from subsection (c), which currently states, "Such argument in reply shall be limited to answering points made by appellee in appellee's oral argument." He said that this change is also not negotiable.

Troy Booher expressed concern that deleting the last line in (c) seems to invite appellants to bring up new issues in rebuttal. Marian Decker stated that the Attorney General's Office is opposed to deleting the last line from subsection (c) and will comment if the proposal is

submitted for public comment. Ms. Decker stated that the amendment was prompted by a letter the Attorney General's Office sent to the court regarding its concern that it would like the opportunity to respond if the court's questions during rebuttal raise new issues. The Attorney General's Office received a letter in reply, which Ms. Decker read to the committee. The letter expressed the court's view that oral argument is for the benefit of the court, not the parties, and that the best way to address the Attorney General's concerns would be by amending the rule. Judge Orme stated that if the Supreme Court is adamant about deleting the last line in (c) the Court of Appeals will want to include its own language. The Court of Appeals likes (c) the way it is. The court sees the issue as a matter of fairness because the appellee has no chance to respond to new issues raised during the rebuttal.

Paul Burke suggested that the last line of (c) might be repetitive of the line before, which says, "The appellant *may reply to the appellee's argument* if appellant reserved part of appellant's time for this purpose." (emphasis added). Mr. Booher responded that if the line is redundant, both lines need to be amended to address the Supreme Court's concern.

Mr. Sabey stated that he is willing to take proposed language for amending (c) back to the Supreme Court for consideration. The committee drafted this proposed language to replace the last line of (c): "Such argument in reply shall be limited to responding to points made by appellee in appellee's oral argument and answering questions from the court."

Ms. Decker stated that the Attorney General's Office is opposed to the alternative language proposed by the committee. That office believes the amendment does not answer its concern that the appellee should be permitted to respond if the appellant makes a misrepresentation during rebuttal that pertains to a new issue. Mr. Sabey stated that he will take the Attorney General's concern back to the Supreme Court with the committee's alternative amendment to (c).

Judge Orme stated that the Court of Appeals would accept the committee's alternative amendment to (c).

Judge Voros stated that the language, "The Supreme Court presumes that oral argument is primarily for the benefit of the court and that oral argument will aid the decisional process with respect to all cases before it," which is in the proposed amendment to the Advisory Committee Notes, does not seem to state the Supreme Court's intent. Ms. Watt suggested that the purpose of oral argument is to aid the court, and Lori Seppi suggested the purpose is to allow the parties to address the court's concerns. After some debate, the committee adopted this proposed alternative language: "The primary purpose of oral argument is to aid in the court's decisional process."

Judge Voros expressed concern about this language in the proposed amendment to (b)(1): "Not later than 30 days prior to the term of court in which a case is to be submitted, ..." In response, the committee adopted this alternative language: "Not later than 30 days prior to the date on which a case is calendared, ..."

Mr. Booher noted that the language of subsections (b)(2) and (f) seem to suggest that oral argument is presumed and that the parties do not need to request oral argument. Judge Orme stated that most briefs do not include a request and that the court makes the decision for oral argument based upon the recommendation of central staff. Judge Voros added that the panel also discusses whether to hold oral argument during conference.

Ms. Watt summarized the proposed changes to Mr. Sabey's proposed amendments to rule 29. They are as follows:

> (a)(1) In ~~C~~cases ~~B~~before the Supreme Court.
> (b)(1) Not later than 30 days prior to the ~~term of court in which a case is to be submitted~~ date on which a case is calendared,…
> (c) … Such argument in reply shall be limited to ~~answering~~ responding to points made by appellee in appellee's oral argument and answering questions from the court.
> Advisory Committee Notes: … The ~~Supreme Court presumes that oral argument is primarily for the benefit of the court and that oral argument will aid the decisional process with respect to all cases before it~~ primary purpose of oral argument is to aid in the court's decisional process. …

The committee approved Mr. Sabey's proposed amendments with the changes listed above. Mr. Sabey will take the proposed changes back to the Supreme Court for review. If the court approves the changes, Ms. Watt will submit the rule for public comment. Ms. Decker opposed Mr. Sabey's proposed amendments and the committee's changes to the amendments.

III. Rule 9

Mary Westby summarized the proposed amendments to rule 9, dealing with docketing statements. She explained that, among other things, the proposed amendments eliminate the requirement for attachments in civil and criminal cases.

Mr. Booher suggested that subsection (c)(1), dealing with civil cases, should be changed to include the jurisdictional issues contained in the new retention letter checklist. Ms. Westby took a copy of the checklist and will make changes to (c)(1) as appropriate.

Mr. Booher proposed deleting the proposed references in subsections (c)(1)(D) and (c)(2)(D) to rule 11's "statement of issues." He stated that rule 11's "statement of issues" requirement is unrealistic and suggested that it should also be removed from rule 11. The committee approved deleting the reference to rule 11 in (c)(1)(D) and (c)(2)(D). Ms. Westby will make the change.

Mr. Booher proposed amending subsection (e) to read: "When a petition for ~~interlocutory appeal~~ permission to appeal from an interlocutory order is granted under rule 5, …" The committee approved this change.

Ms. Westby will make the noted changes and bring the proposed amendment to rule 9 back to the next committee meeting for further discussion.

IV. Rule 11(e)

Mr. Booher explained that almost no one complies with rule 11(e)(3)'s requirement for the appellant to submit a statement of issues if he/she does not order a complete transcript. Mr. Booher also stated that the requirement is never enforced. Mr. Booher stated that he had contacted the 10th Circuit about their practices and learned that litigants do not file the statements and the court does not consider it to be a problem. Mr. Booher stated that the parties won't know until briefing whether additional transcripts are necessary. Mr. Booher stated that it is unfair at the early stage of the appeal to force the appellant to commit to certain issues and to expect the appellee to know what it will do in response.

Mr. Booher stated that he believes the rule should be amended to eliminate the requirement and he circulated proposed changes. The committee reviewed the proposed amendments and made one change. In subsection (h), the amendment should read: "... or because the appellant ~~failed to~~ did not order a transcript of proceedings that the appellee needs to respond to issues raised in the Brief of Appellant..."

Ms. Seppi asked if the rule needs to spell out who will pay for the transcripts. Judge Orme noted that in most cases no one will have to order a transcript because the appellee will just ask the court to presume the regularity of the proceedings below. Mr. Booher and Ms. Decker agreed, stating that an appellee will only need to order a transcript if it shows that the appellant waived the issue below or for similar reasons. The committee agreed that the rule does not need to spell out who will pay for the transcripts.

Mr. Booher moved to amend rule 11 with the change listed above. Judge Voros seconded the motion. The committee passed the amendment unanimously.

V. Rule 5

Rule 5 was tabled until the next committee meeting.

VI. Rule 8A

Rule 8A was tabled until the next committee meeting.

VII. Rule 44

Mr. Sabey stated that he is still considering whether to propose an amendment to the Advisory Committee Notes. Consideration of rule 44 was tabled until the next committee meeting.

VIII. Global Review of Rules

Ms. Watt proposed forming a subcommittee to address the issues identified in Mr. Booher's letter to the committee dated June 3, 2013. Mr. Booher, Ms. Westby, Mr. Sabey, and Mr. Burke volunteered for the subcommittee. Mr. Booher will chair the subcommittee.

IX. Global Review – Replies

Ms. Westby noted that this topic ties in with the Global Review of Rules subcommittee and that she will address it there.

X. Rule 23B

The rule 23B subcommittee is meeting next week.

XI. Juvenile Court Record on Appeal Update

Judge Orme noted that the Judicial Council has approved amendments to the Rules of Judicial Administration. The amendments are now out for public comment. The amendments deal with the names of parents/children in juvenile cases. The amendments require addenda to be sealed and to be bound separately. They also require briefs to obscure the names of parents, foster parents, and children. These changes will necessitate changes to the appellate rules as well. Judge Orme will bring the proposed changes to the next committee meeting for discussion.

XII. Rule 45

Mr. Booher proposed this amendment: "...shall be initiated by filing in the Utah Supreme Court a petition for a writ of certiorari to the ~~Supreme Court of Utah~~ Utah Court of Appeals."

Judge Voros seconded the motion. The motion carried unanimously.

XIII. Other Business/Adjourn

The committee scheduled its next meeting for August 14, 2013, at noon. The meeting adjourned.

AGENDA ITEM 3

Rule 11-101. Creation and Composition of Advisory Committees.

Intent:

To establish advisory committees and procedures to govern those committees.

Applicability:

This rule shall apply to the Supreme Court, the Administrative Office of the Courts, and the Supreme Court advisory committees.

Statement of the Rule:

(1) Establishment of committees. There is hereby established a Supreme Court advisory committee in each of the following areas: civil procedure, criminal procedure, juvenile court procedure, appellate procedure, evidence, and the rules of professional conduct. The Supreme Court shall designate a liaison to each advisory committee and to the Utah State Bar.

(2) Composition of committees. The Supreme Court shall determine the size of each committee based upon the workload of the individual committees. The committees should be broadly representative of the legal community and should include practicing lawyers, academicians, and judges. Members should possess expertise within the committee's jurisdiction.

(3) Application and recruitment of committee members. Vacancies on the committees shall be announced in a manner reasonably calculated to reach members of the Utah State Bar. The notice shall specify the name of the committee which has the vacancy, a brief description of the committee's responsibilities, the method for submitting an application or letter of interest and the application deadline. Members of the committees or the Supreme Court may solicit applications for membership on the committees. Applications and letters of interest shall be submitted to the Supreme Court.

(4) Appointment of committee members and chair. Upon expiration of the application deadline, the Supreme Court shall review the applications and letters of interest and appoint those individuals who are best suited to serve on the committee. Members shall be appointed to serve staggered four-year terms. The Supreme Court shall select a chair from among the committee's members. No lawyer may serve more than two consecutive terms on the committee unless appointed by the Supreme Court as the committee chair or as an institutional or court representative (e.g. an academician, judge, recording secretary, etc.) or when justified by exceptional circumstances. Judges who serve as members of the committees generally shall not be selected as chairs. Committee members shall serve as officers of the court and not as representatives of any client, employer, or other organization or interest group. At the first meeting of a committee in any calendar year, and at every meeting at which a new member of the committee first attends, each committee member shall briefly disclose the general nature of his or her legal practice.

(5) Vacancies. In the event of a vacancy on a committee due to death, incapacity, resignation or removal, the Supreme Court, after consultation with the committee chair, shall appoint a new committee member to serve for the remainder of the unexpired term.

(6) Absences. In the event that a committee member fails to attend three committee meetings during a calendar year, the chair may notify the Supreme Court of those absences and may request that the Supreme Court replace that committee member.

(7) Administrative assistance. The Administrative Office of the Courts shall coordinate staff support to each committee, including the assistance of the Office of General Counsel in research and drafting and the coordination of secretarial support and publication activities.

(8) Recording secretaries. A committee chair may appoint a third-year law student, a member of the Bar in good standing, or a legal secretary to serve as a recording secretary for the committee. The recording secretary, shall attend and take minutes at committee meetings, provide research and drafting assistance to committee members and perform other assignments as requested by the chair.

AGENDA ITEM 4

Rule 24. Briefs.

(a) Brief of the appellant. For purposes of this rule, the term appellant includes petitioners in original proceedings filed in an appellate court. Likewise, the term "appeal" includes original proceedings, the term "appellee" includes respondents in such cases, and the term "cross-appeal" includes cross-petitions in such cases. The brief of the appellant shall contain under appropriate headings and in the order indicated:

(a)(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. The list should be set out on a separate page which appears immediately inside the cover.

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

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

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

(a)(5) Nature of the case. A one-paragraph summary stating the nature of the case, the crux of the dispute, and the primary theme of the issues raised before the appellate court.

(a)~~(5)~~(6) Statement of the issues. A statement of the issues presented for review, including for each issue:, the standard of ~~appellate~~ review with supporting authority; and

(a)~~(5)~~(6)(A) citation to the record in accordance with paragraph (e) of this rule showing that the issue was preserved in the trial court or agency; or

(a)~~(5)~~(6)(B) a statement of grounds for seeking review of an issue not preserved in the trial court or agency, with supporting authority for each of the grounds identified.

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

~~paragraph (11) of this rule.~~

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

(a)(8) Statement of the facts. A statement of the facts relevant to the issues presented for review supported with citations to the record in accordance with paragraph (e) of this rule.

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

(a)~~(9)~~(10) ~~An~~ The argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(a)~~(10)~~(11) Relief sought. A short conclusion stating the precise relief sought.

(a)~~(11)~~(12) 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 ~~If the addendum is bound separately, the addendum shall~~ contain a table of contents. The addendum shall contain ~~a copy of:~~ copies of the following:

~~(a)(11)(B)~~ (a)(12)(A) in cases ~~being reviewed~~ on certiorari, a copy of the opinion 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~~

(a)(12)(B) the text of any constitutional provision, statute, rule, or regulation ~~of central importance cited in the brief but not reproduced verbatim in the brief;~~ whose interpretation is necessary to a resolution to the issues on appeal;

(a)(12)(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)(12)(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.

~~(a)(11)(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.~~

(b) Brief of the appellee. The brief of the appellee shall conform to the requirements of paragraph

(a) of this rule, except that the appellee need not include:

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

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

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraphs (a)(2), (3), ~~(9)~~, (11) and ~~(10)~~ (12) of this rule. No further briefs may be filed except with leave of the appellate court.

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

employee," "the injured person,' " "the taxpayer," "the foster parents," "the eight-year old," etc.

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs.

(f)(1) Type-volume limitation.

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

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

(f)(2) Page limitation. Unless a brief complies with Rule 24(f)(1), a principal briefs shall not

exceed 30 pages, and a reply briefs shall not exceed 15 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) of this rule. In cases involving cross-appeals, paragraph (g) of this rule sets forth the length of briefs.

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

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

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

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

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

(g)(5) Type-Volume Limitation.

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

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

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

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

(g)(6) Certificate of Compliance.

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

(g)(7) Page Limitation.

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

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

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

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

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

Advisory Committee Notes

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

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

Rule 24. Briefs.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a)(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. ~~The~~ Except in cases involving termination of parental rights or adoption, the addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. In cases involving termination of parental rights or adoption, the addendum shall be separately bound. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

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

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

(a)(11)(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.

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

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

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

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

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

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the

exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs.

(f)(1) Type-volume limitation.

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

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

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

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

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

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

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

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

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

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

(g)(5) Type-Volume Limitation.

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

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

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

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

(g)(6) Certificate of Compliance.

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

(g)(7) Page Limitation.

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

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

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

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

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

Advisory Committee Notes

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

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

Rule 4. Appeal as of right: when taken.

(a) Appeal from final judgment and order. In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. However, when a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(b) Time for appeal extended by certain motions.

(b)(1) If a party timely files in the trial court any of the following motions, the time for all parties to appeal from the judgment runs from the entry of the order disposing of the motion:

(b)(1)(A) a motion for judgment under Rule 50(b) of the Utah Rules of Civil Procedure;

(b)(1)(B) a motion to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, under Rule 52(b) of the Utah Rules of Civil Procedure;

(b)(1)(C) a motion to alter or amend the judgment under Rule 59 of the Utah Rules of Civil Procedure;

(b)(1)(D) a motion for a new trial under Rule 59 of the Utah Rules of Civil Procedure; or

(b)(1)(E) a motion for a new trial under Rule 24 of the Utah Rules of Criminal Procedure.

(b)(2) A notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any motion listed in Rule 4(b), shall be treated as filed after entry of the order and on the day thereof, except that such a notice of appeal is effective to appeal only from the underlying judgment. To appeal from a final order disposing of any motion listed in Rule 4(b), a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order.(c) Filing prior to entry of judgment or order. A notice of appeal filed after the announcement of a decision, judgment, or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(d) Additional or cross-appeal. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal is docketed, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule, whichever period last expires.

(e) Extension of time to appeal. The trial court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by paragraphs (a) and (b) of this rule. A motion filed before expiration of the prescribed time may be ex parte unless the trial court otherwise requires. Notice of a motion filed after expiration of the prescribed time shall be given to the other parties in accordance with the rules of practice of the trial court. No extension shall exceed 30 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(f) Motion to reinstate period for filing a direct appeal in criminal cases. Upon a showing that a criminal defendant was deprived of the right to appeal, the trial court shall reinstate the thirty-day period for filing a direct appeal. A defendant seeking such reinstatement shall file a written motion in the sentencing court and serve the prosecuting entity. If the defendant is not represented and is indigent, the court shall appoint counsel. The prosecutor shall have 30 days after service of the motion to file a written response. If the prosecutor opposes the motion, the trial court shall set a hearing at which the parties may present evidence. If the trial court finds by a preponderance of the evidence that the defendant has demonstrated that ~~he~~ the defendant was deprived of ~~his~~ the right to appeal, it shall enter an order reinstating the time for appeal. The defendant's notice of appeal must be filed with the clerk of the trial court within 30 days after the date of entry of the order.

(g) Motion to reinstate period for filing a direct appeal in civil cases. The trial court shall reinstate the thirty-day period for filing a direct appeal if the trial court finds by a preponderance of the evidence that (i) the party seeking to appeal lacked actual notice of the entry of judgment at a time that would have allowed the party to file a timely motion under paragraph (e) of this rule; (ii) the party seeking to appeal exercised reasonable diligence in monitoring the proceedings; and

(iii) the party responsible for serving the judgment under Rule 58A(d) of the Utah Rules of Civil Procedure did not promptly serve a copy of the signed judgment on the party seeking to appeal. A party seeking such reinstatement shall file a written motion in the trial court within one year from the entry of judgment. The party shall comply with Rule 7 of the Utah Rules of Civil Procedure and shall serve each of the parties in accordance with Rule 5 of the Utah Rules of Civil Procedure. If the trial court enters an order reinstating the time for filing a direct appeal, a notice of appeal must be filed within 30 days after the date of entry of the order.

Rule 58. Ruling.

(a) After reviewing the petition on appeal, any response, and the record, the Court of Appeals may rule by opinion or memorandum decision. The Court of Appeals may issue a decision or may set the case for full briefing under rule 24. Subsections (a)(11) and (d) of rule 24 have particular applicability to appeals in cases involving termination of parental rights. The Court of Appeals may order an expedited briefing schedule and specify which issues shall be briefed. If the issue to be briefed is ineffective assistance of counsel, the Court of Appeals may order the juvenile court to appoint conflict counsel within 15 days for briefing and argument.

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

Comments: Rules of Appellate Procedure

Rule 24

The Utah Association of Criminal Defense Lawyers ("UACDL") and its Capital Committee oppose the proposed changes to Rule 24 that limit the length of briefs in capital cases because doing so injects unfairness into the appeals process and will result in prolonged proceedings and additional, costly errors. Capital cases are extraordinarily complicated and require a greater degree of skill level. These cases often raise dozens of issues that must be preserved on appeal and in the state courts to avoid procedural bars in subsequent state post-conviction and federal habeas corpus proceedings. Limiting the briefing to 30,000 words institutes an arbitrary standard for capital cases that has no relation to the actual complexity of individual cases. At the very least, this capricious standard sends an implicit message to capital defense attorneys to curtail full briefing even if justice demands more detailed analysis of complicated constitutional issues. The word count limit is particularly onerous given the high burdens on criminal defense lawyers in capital cases. "Given the high stakes inherent in such proceedings—life and liberty—" the Utah Supreme Court closely scrutinizes defense counsel's representation in those cases. Menzies v. State, 2006 UT 81, ¶¶ 82, 84, 93. In fact, the Supreme Court has specified high qualifications for attorneys to even be eligible to appear in capital cases. See Utah R. Crim. P. 8. These high standards help to satisfy the extensive constitutional mandates that must be met before the state may execute a person.

Given the seriousness of capital cases, the legal issues and procedural requirements are extraordinarily complicated. Accordingly, capital defense lawyers file dozens of motions in the trial court. Each of those motions must then be reviewed on appeal. But, under the proposed rule change, capital defense attorneys' ability to adequately brief the issues is severely curtailed. To meet the word count limit, attorneys will be forced to limit the amount of space provided to individual arguments. This result increases the chances of providing the Utah Supreme Court inadequate information to accurately and correctly decide whether a person lives or dies. Further bolstering these arguments, the Utah Supreme Court relies on the American Bar Association's Death Penalty Guidelines ("ABA Guidelines") when reviewing the adequacy of defense counsel's representation. See Menzies, 2006 UT 81, ¶ 90. Those guidelines require capital attorneys to raise all issues on appeal and to fully and thoroughly brief them. The ABA Guidelines stand as minimum ethical requirements for capital cases. The failure to follow them risks unjust executions and reversal in subsequent court proceedings. In the end, the proposed rule change injects error and inefficiencies into capital cases.

The word count limit raises additional concerns for subsequent post-appeal proceedings. Capital cases are litigated extensively in state post-conviction and federal habeas corpus proceedings following a direct appeal. But, the scope and nature of the claims that may be considered in those proceedings depends directly on what issues counsel raised on direct appeal. If counsel does not fully brief the arguments on appeal, capital defendants may lose the opportunity to challenge them in post-conviction/habeas proceedings. The proposed rule change, therefore, has a direct adverse effect on how capital cases proceed, even years down the road. Without an opportunity for full briefing on appeal, capital defendants will be deprived of their ability for collateral review.

Even assuming that the Utah Supreme Court does not strictly enforce the page limit requirement and grants motions for leave to exceed them, the rule change establishes a standard of practice

that attorneys will be hesitant to ignore. Simply specifying a word count limit places capital defense attorneys in an ethical dilemma with their clients. Specifically, should the attorney please the court and follow the word count limit or forego the rule and fully brief the case as necessary? Constitutional and ethical duties demand that the clients' best interests prevail, especially in cases involving death.

This dilemma presents a particularly difficult problem for less experienced attorneys who happen to be appointed to a capital case. Even though the attorney may technically qualify to represent a capital defendant, the attorney may lack familiarity with appellate court procedures and the option of filing a motion for an overlength brief. Or, the newer attorney may not be aware of ABA Guidelines and, instead, follow the court rule on word count limit out of fear of displeasing the court. Should any of these circumstances apply, the rule change would encourage shoddy or incomplete representation. Given the extreme costs of capital cases, increasing the possibility of error through a word count limit imposes a huge burden on the court system, governmental budgets, and scarce law enforcement resources, not to mention the toll that protracted litigation takes on victims, attorneys, and the defendant.

Finally, UACDL questions how the drafters of the proposed rule concluded that 30,000 words are sufficient for a capital case. This number appears to be arbitrary and unsupported by any research that demonstrates that ordinary capital appeals need no more than 30,000 words. The mere term "an ordinary capital case" begs the question of what a capital case entails. Absent sound reasons for relying on the 30,000 figure, the rule change appears to simply be an arbitrary mark without any justification.

Although the rule change may be motivated by a worthy desire to streamline capital cases and to encourage the efficient administration of justice, the unintended consequences would defeat the purpose of the change. The rule would actually prolong court proceedings in the long run and frustrate the resolution of capital cases. The more efficient and fair approach is to allow attorneys to fully brief the issues on appeal to set the stage for all subsequent proceedings. Justice demands full briefing especially given the high stakes involved in these cases.

Posted by Utah Ass'n. Criminal Defense Lawyers July 11, 2013 01:46 PM

The proposed changes to the "nature of the case" section only deepen the confusion over what this section is for. The proposed one-paragraph limit is much too short for a proper introduction that could help the court quickly understand both the crux of the dispute and the general thrust of a party's arguments. And it is ambiguous what it means to state "the primary theme of the issues raised before the appellate court." Does "primary theme of the issues" refer to arguments? If so, the word "arguments" would be better. Or does it refer to something else? It is unclear.

It may be better to simply call the section an "introduction" and direct the party to provide a brief explanation of what the case is about and why it should win on appeal. The rule could read: "Introduction. A brief statement in narrative form of the nature of the case, the determinative issues on appeal, and why the party believes it should prevail."

Posted by Alexander Dushku May 24, 2013 04:09 PM

Rules 24 v. 2 and 58

This comment is regarding the amendments to URAP 024 which establish requirements and guidelines for protecting the confidentiality of persons involved in the appeal of an adoption or termination of parental rights. The other confidential orders from juvenile court need to be included as well. Specifically, the confidentiality of persons involved in appeals from abuse, neglect, dependency, protective orders, and substantiation proceedings also need to be protected. The records (documents) from these proceedings are not public in juvenile court statutes, and numerous other statutes protect the confidentiality of records regarding abused/neglected children and adults accused of abuse and neglect.

Posted by Carol Verdoia July 9, 2013 03:26 PM

For both URAP 024 and URAP 058, the references should not be limited to termination of parental rights and adoption cases. I posted a detailed comment about this in response to the same rule for a 7/11/13 deadline -- not sure why URAP 024 has appeared again, but please see my previous detailed comment. Termination of parental rights and adoption orders are not the only confidential orders that are appealed. Abuse, neglect, dependency, protective orders, and substantiation proceedings are similarly confidential and are appealed as well.

Posted by Carol Verdoia July 9, 2013 03:40 PM

Rules 58 and 4

Re: URCP 58A(d) & URAP 4(g) (cross-posted)

1. It appears that the requirement to serve a notice of judgment under URCP 58A(d) only applies to "the party preparing the judgment." Likewise, URAP 4(g) requires a party seeking to reinstate the period for filing the appeal to show that "the party responsible for serving the judgment did not promptly serve a copy of the signed judgment . . . ." It seems this rule is unclear as to what happens if the Court prepares the judgment itself. Does any party have a responsibility to notify the other parties in such a circumstance? Does the Court have a responsibility to notify the parties of the entry of the judgment? As URAP 4(g)(iii) specifies a "party," does this mean that relief is unavailable if the court prepared the judgment?

2. When read with URCP 58A(d), URAP 4(g)(iii) seems to require that notice not be served under URCP 5 in order for a party to obtain relief. As service under URCP 5 is not the same as delivery or actual notice, this seems like it may be inconsistent with the intent of URAP 4(g), which otherwise appears to apply an excusable neglect standard. Did the committee intend to restrict the ability of a party to obtain relief under URAP 4(g) if the party preparing the judgment served notice under Rule 5, but the party seeking relief did not receive actual notice and was otherwise reasonably diligent in monitoring the proceedings? Or is it the intent to allow the party preparing the judgment to guarantee that the time limit for appeal cannot be reset regardless of excusable neglect?

3. Both URCP 58A(d) and URAP 4(g)(iii) use the term "promptly serve." If the intent of URAP 4(g)(iii) is to allow the party preparing the judgment to guarantee that the time limit for appeal cannot be reset, (see paragraph 2), perhaps a specific time such as "7 (or 14) days after entry of judgment" would be better. Notices served after that time would be probative for the purpose of actual notice under URAP 4(g)(i), but would not be an absolute bar.

Nathan Whittaker
Day Shell & Liljenquist, L.C.

Posted by Nathan Whittaker May 24, 2013 10:49 AM

Style notes re: URAP 4(g)

The committee may want to consider putting the enumerated conditions on lines 53-57 into their own subparagraphs, [fn1] and labeling them as (1) through (3). [fn2] If the committee wishes to avoid a dangling section after the enumerated conditions, [fn3] it may want to subdivide (g) as follows:

On line 51, add a new paragraph after the heading labeled (g)(1).

Label the three enumerated conditions into subparagraphs (g)(1)(A) through (g)(1)(C).

On line 58, add a new paragraph at the beginning of the line and label it (g)(2).

On line 61, add a new paragraph after the word "Procedure" and label it (g)(3).

Nathan Whittaker
Day Shell & Liljenquist, LC

[1] Bryan A. Garner, Guidelines for Drafting and Editing Court Rules § 3.3(A) (5th ed. 2007) ("Set off enumerated items into subparts when feasible.").

[2] Id. at § 3.2(A) (structural divisions should be in the following order: lowercase letter, Arabic numeral, capital letter, lowercase roman numeral.).

[3] Id. at § 3.3(E) ("Avoid unnumbered dangling sections . . . .").

Posted by Nathan Whittaker May 24, 2013 10:02 AM

AGENDA ITEM 5

Rule 24. Briefs

. . .

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

. . .

AGENDA ITEM 6

Proposed Rule 9 Revisions

Rule 9. Docketing statement.

~~1. (a) Time for filing~~

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

(b) *Time for filing.* Within 21 days after a notice of appeal, cross-appeal, or a petition for review 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 attachments, if required, 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)~~ (c) *Content of docketing statement.* The docketing statement shall contain the following information~~:~~

~~(c)(1~~ as applicable:

(c)(1) For appeals in civil cases, the docketing statement shall include:

(1)(A) 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~~"This appeal is from a final judgment or decree ~~of~~from the First District Court~~" 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~~ granting summary judgment in case number 141900055."

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

(c1)(3B)(~~A~~i) The date of entry of the final judgment or order from which the appeal is taken.

(c)(31)(B)(ii) The date the notice of appeal ~~or petition for review was filed.~~

~~(c)(3)(C) 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 orders~~was filed in the district court.

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

(1)(B)(iv) If any motions listed in Utah Rule of Appellate Procedure 4(b) were filed, the date on which such motion was filed in the trial court and the date of entry of any order disposing of such motion~~s~~.

(~~c~~1)(4B)(v) If the appellant is an inmate confined ~~in~~to an institution and is invoking ~~Rule 4(g), a statement to that effect.~~

~~(c)(5) If an appeal is 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), Utah Rules~~rule 21(f), the date on which the notice of appeal was deposited in the institution's internal mail system.

(1)(B)(vi) **If a motion to reinstate the time to appeal was filed pursuant to Utah Rule of Appellate Procedure 4(g), the date of the order disposing of such motion.** (Conditional based on pending changes to rule 4).

(1)(C) If the appeal is taken from an order certified as final pursuant to Utah Rule of Civil Procedure~~:~~

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

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

~~(c)(6) 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~~

(1)(D) A statement of ~~the~~at least one substantial issue~~s~~ 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~~. An issue not raised in the docketing statement may nevertheless be raised in appellant's opening brief. An issue raised in the docketing statement does not have to be included in appellant's brief.

(1)(E) A concise summary of facts ~~material~~necessary to ~~a consideration of~~provide context for 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~~_

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

~~(d) Necessary attachments.~~

(c)(2) For appeals in criminal cases, the docketing statement shall include:

(2)(A)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 141900055."

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

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

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

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

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

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

(2)(B)(vi) If the appellant is an inmate confined to an institution and is invoking rule 21(g), the date on which the notice of appeal was deposited in the institution's internal mail system.

(2)(C) The charges of which the defendant was convicted, and any sentence imposed; or, if the defendant was not convicted, the dismissed or pending charges, and the statutory basis permitting a State appeal.

(2)(D) 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 appellant's opening brief. An issue raised in the docketing statement does not have to be included in appellant's brief.

(2)(E) A concise summary of 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.

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

(c)(3) For petitions for review from administrative proceedings, the docketing statement shall include:

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

(3)(B) The statutory provision that confers jurisdiction on the appellate court.

(3)(C) The following dates relevant to a determination of the timeliness of the appeal:

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

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

(3)(D) A statement of at least one substantial issue appellant intends to assert on appeal, including, for each issue identified, the applicable standard of appellate review with supporting authority. An issue not raised in the docketing statement may nevertheless be raised in appellant's opening brief unless the appellant has filed a statement of issues pursuant to rule 11(e)(3), in which case the scope of the appeal will be limited to those issues identified in the statement of issues. An issue raised in the docketing statement does not have to be included in appellant's brief.

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

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

(3)(G) *Required attachments to docketing statements in administrative reviews:* Copies of the following documents must be attached to each copy of the docketing statement:

(~~d~~3)(~~1~~G)(i) 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~~petition for review is filed.

(3)(G)(ii) In appeals arising from an order of the Public Service Commission, any application for rehearing filed pursuant to Utah Code ~~Section~~Ann. § 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) 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)~~ .

(d) *Consequences of failure to comply. ~~Docketing statements which fail to comply with this rule will not be accepted. Failure to comply may result in dismissal of the appeal or the petition. An issue not~~*

~~*listed in the docketing statement may nevertheless be raised in appellant's opening brief.*~~

~~*Advisory Committee Notes*~~

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

~~*The docket 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 docket statement has been reordered and brought into conformity with revised Rule 4, Utah Rules of Appellate Procedure. This rule is satisfied by*~~. Failure to file a docketing statement ~~in compliance with form 7.~~within the time period in subsection (b) may result in the dismissal of a civil appeal or a petition for review. Failure to file a docketing statement within the time period in subsection (b) in a criminal case may result in a finding of contempt or other sanction.

(e) *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.

Proposed Rule 9 Revisions

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 establish that there is at least one substantial issue for review. The docketing statement is a document used for jurisdictional and screening purposes. It is not a persuasive document and should not include argument.

(b) *Time for filing.* Within 21 days after a notice of appeal, cross-appeal, or a petition for review 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 attachments, if required, 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. (c) *Content of docketing statement.* The docketing statement shall contain the following information as applicable:

(c)(1) For appeals in civil cases, the docketing statement shall include:

(1)(A) 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 from the First District Court granting summary judgment in case number 141900055."

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

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

(1)(B)(ii) The date the notice of appeal was filed in the district court.

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

(1)(B)(iv) If any motions listed in Utah Rule of Appellate Procedure 4(b) were filed, the date on which such motion was filed in the trial court and the date of entry of any order disposing of such motion.

(1)(B)(v) If the appellant is an inmate confined to an institution and is invoking rule 21(f), the date on which the notice of appeal was deposited in the institution's internal mail system.

(1)(B)(vi) **If a motion to reinstate the time to appeal was filed pursuant to Utah Rule of Appellate Procedure 4(g), the date of the order disposing of such motion.**

(Conditional based on pending changes to rule 4).

(1)(C) If the appeal is taken from an order certified as final pursuant to Utah Rule of Civil Procedure 54(b), a statement of what claims or parties remain before the trial court for adjudication, and a statement of whether the facts underlying the appeal are sufficiently related to the facts underlying the claims remaining before the trial court to constitute res judicata on those claims.

(1)(D) 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 appellant's opening brief. An issue raised in the docketing statement does not have to be included in appellant's brief.

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

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

(c)(2) For appeals in criminal cases, the docketing statement shall include:

(2)(A)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 141900055."

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

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

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

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

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

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

(2)(B)(vi) If the appellant is an inmate confined to an institution and is invoking rule 21(g), the date on which the notice of appeal was deposited in the institution's internal mail system.

(2)(C) The charges of which the defendant was convicted, and any sentence imposed; or, if the defendant was not convicted, the dismissed or pending charges, and the statutory basis permitting a State appeal.

(2)(D) 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 appellant's opening brief. An issue raised in the docketing statement does not have to be included in appellant's brief.

(2)(E) A concise summary of 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.

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

(c)(3) For petitions for review from administrative proceedings, the docketing statement shall include:

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

(3)(B) The statutory provision that confers jurisdiction on the appellate court.

(3)(C) The following dates relevant to a determination of the timeliness of the appeal:

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

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

(3)(D) A statement of at least one substantial issue appellant intends to assert on appeal, including, for each issue identified, the applicable standard of appellate review with supporting authority. An issue not raised in the docketing statement may nevertheless be raised in appellant's opening brief unless the appellant has filed a statement of issues pursuant to rule 11(e)(3), in which case the scope of the appeal will be limited to those issues identified in the statement of issues. An issue raised in the docketing statement does not have to be included in appellant's brief.

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

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

(3)(G) *Required attachments to docketing statements in administrative reviews:* Copies of the following documents must be attached to each copy of the docketing statement:

(3)(G)(i) The final judgment or order from which the petition for review is filed.

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

(d) *Consequences of failure to comply.* Failure to file a docketing statement within the time period in subsection (b) may result in the dismissal of a civil appeal or a petition for review. Failure to file a docketing statement within the time period in subsection (b) in a criminal case may result in a finding of contempt or other sanction.

(e) *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.

AGENDA ITEM 7

Rule 5. Discretionary appeals from interlocutory orders.

(a) **Petition for permission to appeal.** An appeal from an interlocutory order may be sought by any party by filing a petition for permission to appeal from the interlocutory order with the clerk of the appellate court with jurisdiction over the case within 20 days after the entry of the order of the trial court, with proof of service on all other parties to the action. A timely appeal from an order certified under Rule 54(b), Utah Rules of Civil Procedure, that the appellate court determines is not final may, in the discretion of the appellate court, be considered by the appellate court as a petition for permission to appeal an interlocutory order. The appellate court may direct the appellant to file a petition that conforms to the requirements of paragraph (c) of this rule.

(b) **Fees and copies of petition**. For a petition presented to the Supreme Court, the petitioner shall file with the Clerk of the Supreme Court an original and five copies of the petition, together with the fee required by statute. For a petition presented to the Court of Appeals, the petitioner shall file with the Clerk of the Court of Appeals an original and four copies of the petition, together with the fee required by statute. The petitioner shall serve the petition on the opposing party and notice of the filing of the petition on the trial court. If an order is issued authorizing the appeal, the clerk of the appellate court shall immediately give notice of the order by mail to the respective parties and shall transmit a certified copy of the order, together with a copy of the petition, to the trial court where the petition and order shall be filed in lieu of a notice of appeal.

(c) **Content of petition.**

(c)(1) The petition shall contain:

(c)(1)(A) A concise statement of facts material to a consideration of the issue presented and the order sought to be reviewed;

(c)(1)(B) The issue presented expressed in the terms and circumstances of the case but without unnecessary detail, and a demonstration that the issue was preserved in the trial court. Petitioner must state the applicable standard of appellate review and cite supporting authority;

(c)(1)(C) A statement of the reasons why an immediate interlocutory appeal should be permitted, including a concise analysis of the statutes, rules or cases believed to be determinative of the issue stated; and

(c)(1)(D) A statement of the reason why the appeal may materially advance the termination of the litigation.

(c)(2) If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, the phrase "Subject to assignment to the Court of Appeals" shall appear immediately under the title of the document, i.e. Petition for Permission to Appeal. Appellant may then set forth in the petition a concise statement why the Supreme Court should decide the case in light of the relevant factors listed in Rule 9(c)(9).

(c)(3) The petitioner shall attach a copy of the order of the trial court from which an appeal is sought and any related findings of fact and conclusions of law and opinion.

(d) **Page limitation.** A petition for permission to appeal shall be as short as possible, but may not exceed 20 pages, excluding the table of contents, if any, and the appendix.

(~~d~~ e) **Service in criminal and juvenile delinquency cases.** Any petition filed by a defendant in a criminal case originally charged as a felony or by a juvenile in a delinquency proceeding shall be served on the Criminal Appeals Division of the Office of the Utah Attorney General.

(~~e~~ f) **Answer; no reply.** No answer to a petition for permission to appeal will be received unless requested by the court. Within 10 days after ~~service of the petition~~ the entry of an order requesting it, any other party may file an answer in opposition or concurrence to the petition. Any answer to a petition for permission to appeal shall be subject to the same page limitation set out in subsection (d) above. If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, the answer may contain a concise response to the petitioner's contentions under Rule 5(c) . An original and five copies of the answer shall be filed in the Supreme Court. An original and four copies shall be filed in the Court of Appeals. The respondent shall serve the answer on the petitioner. The petition and any answer shall be submitted without oral argument unless otherwise ordered. No reply in support of a petition for permission to appeal shall be permitted. No petition will be granted in the absence of a request for an answer nor before the period of time to answer expires.

(~~f~~ g) **Grant of permission.** An appeal from an interlocutory order may be granted only if it appears that the order involves substantial rights and may materially affect the final decision or that a determination of the correctness of the order before final judgment will better serve the administration and interests of justice. The order permitting the appeal may set forth the particular issue or point of law which will be considered and may be on such terms, including the filing of a bond for costs and damages, as the appellate court may determine. The clerk of the appellate court shall immediately give the parties and trial court notice by mail of any order granting or denying the petition. If the petition is granted, the appeal shall be deemed to have been filed and docketed by the granting of the petition. All proceedings subsequent to the granting of the petition shall be as, and within the time required, for appeals from final judgments except that no docketing statement shall be filed under Rule 9 unless the court otherwise orders.

(h) **Absence of accuracy, brevity, and clarity.** The failure of a petitioner to present with accuracy, brevity, and clarity the information essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason to deny the petition.

(~~g~~ I) **Stays pending interlocutory review.** The appellate court will not consider an application for a stay pending disposition of an interlocutory appeal until the petitioner has filed a petition for interlocutory appeal.

(j) **Cross-petitions not permitted**. A cross-petition for permission to appeal a non-final order is not permitted by this rule. All parties seeking to appeal from an interlocutory order must comply with subsection (a) above.

AGENDA ITEM 9

Rule 29. Oral argument.

(a)(1) ~~*In General*~~ *In cases before the Supreme Court.* Oral argument will be held unless the Supreme Court determines that it will not aid the decisional process.

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

(b)(1) *Notice by Supreme Court; request for cancellation or continuance.* Not later than 30 days prior to the date on which a case is calendared, the clerk shall give notice of the time and place of oral argument, and the time to be allowed each side. If the parties to a case believe oral argument will not benefit the court, they may file a stipulated motion to cancel oral argument not later than 15 days from the date of the clerk's notice. The court will grant the motion only if it determines that oral argument will not aid the decisional process. A motion to continue oral argument must be supported by (1) a stipulation of all parties or a statement that the movant was unable to obtain such a stipulation, and (2) an affidavit of counsel specifying the grounds for the motion. A motion to continue filed not later than 15 days from the date of the clerk's notice may be granted on a showing of good cause. A motion to continue filed thereafter will be granted only on a showing of exceptional circumstances.

(b)(2) *Notice by* ~~*clerk and request by a party for argument*~~ *Court of Appeals; waiver of argument; continuance.* Not later than 30 days prior to the ~~term of court in which a case is to be submitted~~ date on which a case is calendared, the clerk shall give notice to all parties that oral argument is to be permitted, the time and place of oral argument, and the time to be allowed each side. Any party may waive oral argument by filing a written waiver with the clerk not later than 15 days from the date of the clerk's notice. If one party waives oral argument and any other party does not, the party waiving oral argument may nevertheless present oral argument. A request to continue oral argument or for additional argument time must be made by motion. A motion to continue oral argument must be supported by (1) a stipulation of all parties or a statement that the movant was unable to obtain such a stipulation, and (2) an affidavit of counsel specifying the grounds for the motion. A motion to continue filed not later than 15 days from the date of the clerk's notice may be granted on a showing of good cause. A motion to continue filed thereafter will be granted only on a showing of exceptional circumstances.

(c) *Order of argument.* The appellant shall argue first and the appellee shall respond. The appellant may reply to the appellee's argument if appellant reserved part of appellant's time for this purpose. Such argument in reply shall be limited to ~~answering~~ responding to points made by appellee in appellee's oral argument and answering any questions from the court.

(d) Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a separate appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument. Unless otherwise agreed by the parties, in cases involving a cross-appeal the appellant, as determined pursuant to Rule 24(g), shall open the argument and present only the issues raised in the appellant's opening brief. The appellee/cross-appellant shall then present an argument which answers the appellant's issues and addresses original issues raised by the cross-appeal. The appellant shall then present an argument which replies to the appellee/cross-appellant's answer to the appellant's issues and answers the issues raised on the cross-appeal. The appellee/cross-appellant may then present an argument which is confined to a reply to the appellant's answer to the issues

raised by the cross-appeal. The court shall grant reasonable requests, for good cause shown, for extended argument time.

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

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

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

* * *

Advisory Committee Notes

Advisory Committee Notes

~~The former practice was to presume that argument was waived unless requested. The amendments change the practice to presume that argument is requested unless expressly waived. The rule incorporates the oral argument priority classification formerly found in the administrative orders of the Supreme Court. The 2012 amendment to rule 29(a) was intended to reflect current court practice.~~

The 2013 amendments to rules 29(a) and (b) reflect current practices. The amendment to Rule 29(c) clarifies that this provision is not intended to place any limitation on the scope or timing of the questions posed by an appellate court during argument.

AGENDA ITEM 10

Rule 8A. Emergency relief.

(a) Emergency relief; exception. Emergency relief is any relief sought within a time period shorter than specified by otherwise applicable rules. An appellate court may grant a motion for an emergency stay under this Rule, to the extent permitted by Rule 8, prior to the filing of a document or pleading invoking the jurisdiction of the appellate court. However, a request for emergency relief under this rule does not confer jurisdiction on the appellate court and must be filed as a pleading that is separate from any document invoking the court's jurisdiction.

(b) Content of ~~petition~~ motion. A party seeking emergency relief shall file with the appellate court a ~~petition~~ motion for emergency relief containing under appropriate headings and in the order indicated ~~the following~~:

(b)(1) a specification of the order from which relief is sought;

(b)(2) a copy of any written order at issue;

(b)(3) a specific and clear statement of the relief sought;

(b)(4) a statement of the factual and legal grounds entitling the party to relief;

(b)(5) a statement of the facts justifying emergency action; and

(b)(6) a certificate that all papers filed with the court have been served upon all parties by overnight mail, hand delivery, ~~or~~ facsimile, or electronic transmission.

The ~~petition~~ motion shall not exceed fifteen pages, exclusive of any addendum containing statutes, rules, regulations, or portions of the record necessary to decide the matter. It also shall not seek relief beyond that necessitated by the emergency circumstances justifying the motion.

(c) Service in criminal and juvenile delinquency cases. Any ~~petition~~ motion filed by a defendant in a criminal case originally charged as a felony or by a juvenile in a delinquency proceeding shall be served on the Appeals Division of the Office of the Utah Attorney General.

(d) Response; no reply. Any party may file a response to the ~~petition~~ motion within three days after service of the ~~petition~~ motion or whatever shorter time

the appellate court may fix. The response shall not exceed fifteen pages, exclusive of any addendum containing statutes, rules, regulations, or portions of the record necessary to decide the matter. No reply shall be permitted. Unless the appellate court is persuaded that an emergency circumstance justifies and requires a provisional stay of a lower tribunal's proceedings prior to the opportunity to receive or review a response, no ~~petition~~ motion shall be granted before the response period expires.

(e) Form of papers and number of copies. Papers filed pursuant to this rule shall comply with the requirements of Rule 23(f).

(f) Hearing. A hearing on the ~~petition~~ motion will be granted only in exceptional circumstances. No ~~petition~~ motion for emergency relief will be heard without the presence of an adverse party except on a showing that the party (1) was served with reasonable notice of the hearing, and (2) cannot be reached by telephone.

(g) Power of a single justice or judge to entertain ~~petitions~~ motions. A single justice or judge may act upon a ~~petition~~ motion for emergency relief to the extent permitted by Rule 19(d) where the relief sought is an extraordinary writ and by Rule 23(e) in all other cases.

AGENDA ITEM 11

Rule 44. Transfer of improperly pursued appeals.

If a notice of appeal, a petition for permission to appeal from an interlocutory order, or a petition for review is filed in a timely manner but is pursued in an appellate court that does not have jurisdiction in the case, the appellate court, either on its own motion or on motion of any party, shall transfer the case, including the record on appeal, all motions and other orders, and a copy of the docket entries, to the court with appellate jurisdiction in the case. The clerk of the transferring court shall give notice to all parties and to the clerk of the trial court of the order transferring the case. The time for filing all papers in a transferred case shall be calculated according to the time schedule of the receiving court.

Advisory Committee Note. - ~~Rule 4C is renumbered as~~ Rule ~~44. It is amended to~~ permits the transfer of an appeal that is timely but improperly filed ~~not only~~ between the Supreme Court and Court of Appeals ~~but also to the District Court~~. ~~Under the Administrative Procedures Act,~~ It also permits transfer of improperly filed petitions for review of informal adjudicative proceedings of administrative agencies from an appellate court to ~~the~~ a District Court that has jurisdiction to review ~~informal adjudicative~~ those proceedings ~~of administrative agencies~~. ~~The Supreme Court and Court of Appeals have jurisdiction over the review of formal adjudicative proceedings. Provided that all parties have notice of the intent to seek judicial review, the same policy considerations that permit the transfer of the improperly filed appeal between the Supreme Court and the Court of Appeals should permit the transfer of such a case to the District Court.~~

AGENDA ITEM 12

Rule 3. Appeal as of right: how taken.

(a) *Filing appeal from final orders and judgments.* An appeal may be taken from a district or juvenile court to the appellate court with jurisdiction over the appeal from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or other sanctions short of dismissal, as well as the award of attorney fees.

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

(c) *Designation of parties.* The party taking the appeal shall be known as the appellant and the adverse party as the appellee. The title of the action or proceeding shall not be changed in consequence of the appeal, except where otherwise directed by the appellate court. In original proceedings in the appellate court, the party making the original application shall be known as the petitioner and any other party as the respondent.

(d) *Content of notice of appeal.* The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order, or part thereof, appealed from; shall designate the court from which the appeal is taken; and shall designate the court to which the appeal is taken.

(e) *Service of notice of appeal.* The party taking the appeal shall give notice of the filing of a notice of appeal by serving ~~personally or mailing a copy thereof to counsel of record of~~ each party to the judgment or order in accordance with the requirements of the court from which the appeal is taken.~~; or, if the party is not represented by counsel, then on the party at the party's last known address. A certificate evidencing such service shall be filed with the notice of appeal.~~ If counsel of record is served, the certificate of service shall designate the name of the party represented by that counsel.

(f) *Filing fee in civil appeals.* At the time of filing any notice of separate, joint, or cross appeal in a civil case, the party taking the appeal shall pay to the clerk of the trial court the filing fee established by law. The clerk of the trial court shall accept a notice of appeal regardless of whether the filing fee has been paid. Failure to pay the filing fee within a reasonable time may result in dismissal.

(g) *Docketing of appeal.* Upon the filing of the notice of appeal, the clerk of the trial court shall immediately transmit a certified copy of the notice of appeal, showing the date of its filing, and a statement by the clerk indicating whether the filing fee was paid and whether the cost bond required by Rule 6 was filed. Upon receipt of the copy of the notice of appeal, the clerk of the appellate court shall enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the trial court, with the appellant identified as such, but if the title does not contain the name of the appellant, such name shall be added to the title.

Rule 4. Appeal as of right: when taken.

(a) *Appeal from final judgment and order.* In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. However, when a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(b) *Time for appeal extended by certain motions.*

(b)(1) If a party timely files in the trial court any of the following motions, the time for all parties to appeal from the judgment runs from the entry of the order disposing of the motion:

(b)(1)(A) a motion for judgment under Rule 50(b) of the Utah Rules of Civil Procedure;

(b)(1)(B) a motion to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, under Rule 52(b) of the Utah Rules of Civil Procedure;

(b)(1)(C) a motion to alter or amend the judgment under Rule 59 of the Utah Rules of Civil Procedure;

(b)(1)(D) a motion for a new trial under Rule 59 of the Utah Rules of Civil Procedure; or

(b)(1)(E) a motion for a new trial under Rule 24 of the Utah Rules of Criminal Procedure.

(b)(2) A notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any motion listed in Rule 4(b), shall be ~~treated as filed~~ stayed until ~~after~~ the entry of the order ~~and on the day thereof, except that such a notice of appeal~~ and, upon the lifting of the stay, ~~is~~ will be effective to appeal only from the underlying judgment. To appeal from a final order disposing of any motion listed in Rule 4(b), a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order.

(c) *Filing prior to entry of judgment or order.* A notice of appeal filed after the announcement of a decision, judgment, or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(d) *Additional or cross-appeal.* If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal is docketed in the court in which it was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule, whichever period last expires.

(e) Extension of time to appeal. The trial court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by paragraphs (a) and (b) of this rule. The trial court may rule at any time after the filing of those motions made before the expiration of the prescribed time. ~~A motion filed before expiration of the prescribed time may be ex parte unless the trial court otherwise requires. Notice of a motion filed after expiration of the prescribed time shall be given to the other parties in accordance with the rules of practice of the trial court.~~ No extension shall exceed 30 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

Rule 23. Motions.

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

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

(2) A particular statement of the factual grounds;

(3) If the motion is for other than an enlargement of time, a memorandum of points and authorities in support; and

(4) Affidavits and papers, where appropriate.

(b) *Response.* Any party may file a response ~~in opposition~~ to a motion within 10 days after service of the motion; however, the court may, for good cause shown, dispense with, shorten or extend the time for responding to any motion.

(c) *Reply.* The moving party may file a reply only to answer new matter raised in the response. A reply, if any, may be filed no later than 5 days after service of the response. The court shall not postpone action on the motion to await the reply.

(d) *Determination of motions for procedural orders.* Notwithstanding the provisions of paragraph (a) of this rule as to motions generally, motions for procedural orders which do not substantially affect the rights of the parties or the ultimate disposition of the appeal, including any motion under Rule 22(b), may be acted upon at any time, without awaiting a response or reply. Pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. The court may review a disposition by the clerk upon motion of a party or upon its own motion.

(e) *Power of a single justice or judge to entertain motions.* In addition to the authority expressly conferred by these rules or by law, a single justice or judge of the court may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single justice or judge may not dismiss or otherwise determine an appeal or other proceeding, and except that the court may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single justice or judge may be reviewed by the court.

(f) *Form of papers; number of copies.*

(1) Only the original of a motion to enlarge time shall be filed. The number of required copies of motions for summary disposition shall be governed by Rule 10(b). For other motions presented to the Supreme Court, the movant shall file with the clerk of the court an original and three copies. For other motions pending in the Supreme Court, the respondent shall file an original and three copies of the response. For a motion presented to the Court of Appeals, the movant shall file with the clerk of the court an original and four copies. For a motion pending in the Court of Appeals, the respondent shall file an original and four copies of the response.

(2) Motions and other papers shall be typewritten on opaque, unglazed paper 81/2 by 11 inches in size. Paper may be recycled paper, with or without deinking. The text shall be in type not smaller than ten characters per inch. Lines of text shall be double spaced and shall be upon one side of the paper only. Consecutive sheets shall be attached at the upper left margin.

(3) A motion or other paper shall contain a caption setting forth the name of the court, the title of the case, the docket number, and a brief descriptive title indicating the purpose of the paper. The attorney shall sign all papers filed with the court with his or her individual name. The attorney shall give his or her business address, telephone number, and Utah State Bar number in the upper left hand corner of the first page of every paper filed with the court except briefs. A party who is not represented by an attorney shall sign any paper filed with the court and state the party's address and telephone number.

Rule 24. Briefs.

(k) *Requirements and sanctions.* All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. ~~Briefs which are~~ The filing of a brief that is not in compliance is a ground for any action the court deems appropriate, including striking the brief, disregarding the brief, or an assessment of attorney fees. ~~may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.~~ .

Advisory Committee Notes: Rule 24(k) now reflects the court's authority to fashion remedies for inadequate briefing as recognized in *Broderick v. Apartment Mgmt. Consultants, L.L.C.*, 2012 UT 17, ¶¶ 19-21, 279 P.3d 391.

Rule 25. Brief of an amicus curiae or guardian ad litem.

Field Code Changed

A brief of an amicus curiae or of a guardian ad litem representing a minor who is not a party to the appeal may be filed only by leave of court granted on motion or at the request of the court. The motion for leave may be accompanied by a proposed amicus brief, provided it complies with applicable rules and the number of copies specified by Rule 26(b) are submitted to the court. A motion for leave shall identify the interest of the ~~applicant~~ movant and shall state the reasons why a brief of an amicus curiae or the guardian ad litem is desirable. Except for a motion for leave to participate in support of, or in opposition to, a petition for writ of certiorari filed pursuant to Rule 50(f), ~~The~~ the motion for leave shall be filed at least ~~twenty-one~~21 days prior to the date on which the brief of the party whose position as to affirmance or reversal the amicus curiae or guardian ad litem will support is due, unless the court for cause shown otherwise orders. Parties to the proceeding may indicate their support for, or opposition to, the motion. Any response of a party to a motion for leave shall be filed within seven days of service of the motion. If leave is granted, an amicus curiae or guardian ad litem shall file its brief within ~~seven~~ 7 days of the time allowed the party whose position the amicus curiae or guardian ad litem will support, unless the order granting leave otherwise indicates. The time for responsive briefs under Rule 26(a) shall run from the timely service of the amicus or guardian ad litem brief or from the timely service of the brief of the party whose position the amicus curiae or guardian ad litem supports, whichever is later. A motion of an amicus curiae or guardian ad litem to participate in the oral argument will be granted when circumstances warrant in the court's discretion.

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.* Either a proportionally spaced or monospaced typeface in a plain, roman style may be used. A proportionally spaced typeface 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; and 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~~. All brief covers shall be of heavy cover stock. There shall be adequate contrast between the printing and the color of the cover.

(e) *Contents of 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.

(ef) *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.

Rule 35. Petition for rehearing.

(a) *Petition for rehearing permitted.* A petition for rehearing may be filed in cases that have received plenary review and the court has issued as an opinion, memorandum decision, or per curiam decision. No petitions for rehearing will be considered regarding the denial of a petition for permission to appeal an interlocutory order, the denial of a petition for writ of certiorari, the denial of a motion for remand pursuant to rule 23B, or the grant or denial of any motion for summary disposition pursuant to rule 10.

(b)*Time for filing; contents; answer; oral argument not permitted.* A rehearing will not be granted in the absence of a petition for rehearing. A petition for rehearing may be filed with the clerk within 14 days after the entry of the decision of the court, unless the time is shortened or enlarged by order.

(c) *Contents of petition.* The petition shall state with particularity the points of law or fact which the petitioner claims the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires. Counsel for petitioner must certify that the petition is presented in good faith and not for delay.

(d) *Oral argument.* Oral argument in support of the petition will not be permitted.

(e) *Response.* No answer response to a petition for rehearing will be received unless requested by the court. The Any answer response to the petition for rehearing shall be filed within 14 days after the entry of the order requesting the answerresponse, unless otherwise ordered by the court. A petition for rehearing will not be granted in the absence of a request for a responsen answer.

(bf) *Form of petition; length.* The petition shall be in a form prescribed by Rule 27 and shall include a copy of the decision to which it is directed.

(g). *Number of copies to be filed and served.* An original and six 6 copies shall be filed with the court. Two copies shall be served on counsel for each party separately represented.

(h) *Length.* Except by order of the court, a petition for rehearing and any response requested by the court shall not exceed 15 pages.

(i) *Color of cover.* The cover of a petition for rehearing shall be tan; that of any response to a petition for rehearing filed by a party, white; and that of any response filed by an amicus curiae, green.

(ej) *Action by court if granted.* If a petition for rehearing is granted, the court may make a final disposition of the cause without reargument, or may restore it to the calendar for reargument or resubmission, or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(dk) *Untimely or consecutive petitions.* Petitions for rehearing that are not timely presented under this rule and consecutive petitions for rehearing will not be received by the clerk.

(el) *Amicus curiae.* An amicus curiae may not file a petition for rehearing but may file an answer response to a petition if the court has requested an answer response under subparagraph (ae) of this rule.

Rule 47. ~~Certification and~~ Transmission of record; joint and separate petitions; cross-petitions; parties.

(a) Joint and separate petitions; cross-petitions. Parties interested jointly, severally, or otherwise in a decision may join in a petition for a writ of certiorari; any one or more of them may petition separately; or any two or more of them may join in a petition. When two or more cases are sought to be reviewed on certiorari and involve identical or closely related questions, it will suffice to file a single petition for a writ of certiorari covering all the cases. A cross-petition for writ of certiorari shall not be joined with any other filing.

(b) Parties. All parties to the proceeding in the Court of Appeals shall be deemed parties in the Supreme Court, unless the petitioner notifies the Clerk of the Supreme Court in writing of the petitioner's belief that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served on all parties to the proceeding below, and a party noted as no longer interested may remain a party by notifying the clerk, with service on the other parties, that the party has an interest in the petition.

(c) ~~Motion for certification and~~ Transmission of record. ~~A party intending to file a petition for certiorari, prior to filing the petition or at any time prior to action by the Supreme Court on the petition, may file a motion for an order to have the Clerk of the Court of Appeals or the clerk of the trial court certify the record, or any part of it, and provide for its transmission to the Supreme Court. Motions to certify the record prior to action on the petition by the Supreme Court should rarely be made, only when the record is essential to the Supreme Court's proper understanding of the petition or the brief in opposition and such understanding cannot be derived from the contents of the petition or the brief in opposition, including the appendix. If a motion is appropriate, it shall be made to the Supreme Court after the filing of a petition but prior to action by the Supreme Court on the petition. In the case of a stay of execution of a judgment of the Court of Appeals, such a motion may be made before the filing of the petition. Thereafter, the Clerk of the Supreme Court or any party to the case may request that additional parts of the record be certified and transmitted to the Supreme Court.~~ When a petition for writ of certiorari is granted, the Clerk of the Supreme Court shall notify the Clerk of the Court of Appeals to transmit the record on appeal to the Supreme Court.

Rule 48. Time for petitioning.

(a) Timeliness of petition. A petition for a writ of certiorari must be filed with the Clerk of the Supreme Court within 30 days after the entry of the final decision by the Court of Appeals. The docket fee shall be paid at the time of filing the petition.

(b) Refusal of petition. The clerk will refuse to receive any petition for a writ of certiorari which is beyond the time indicated in paragraph (a) of this rule or which is not accompanied by the docket fee.

(c) Effect of petition for rehearing. The time for filing a petition for a writ of certiorari runs from the date the decision is entered by the Court of Appeals, not from the date of the issuance of the remittitur. If a petition for rehearing is timely filed by any party, the time for filing the petition for a writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or of the entry of a subsequent decision entered upon the rehearing.

(d) Time for cross-petition.

(d)(1) A cross-petition for a writ of certiorari must be filed:

(d)(1)(A) within the time provided in Subdivisions (a) and (c) of this rule; or

(d)(1)(B) within 30 days of the filing of the petition for a writ of certiorari.

(d)(2) Any cross-petition timely only pursuant to paragraph (d)(1)(B) of this rule will not be granted unless a timely petition for a writ of certiorari of another party to the case is granted.

(d)(3) The docket fee shall be paid at the time of filing the cross-petition. The clerk shall refuse any cross-petition not accompanied by the docket fee.

(d)(4) A cross-petition for a writ of certiorari may not be joined with any other filing. The clerk of the court shall refuse any filing so joined.

(e) Extension of time. The Supreme Court, upon a showing of excusable neglect or good cause, may extend the time for filing a petition or a cross-petition for a writ of certiorari upon motion filed not later than 30 days after the expiration of the time prescribed by paragraph (a) or (c) of this rule, whichever is applicable. The court may rule at any time after the filing of those motions made before the expiration of the prescribed time. ~~Any such motion which is filed before expiration of the prescribed time may be ex parte, unless the Supreme Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties.~~ No extension shall exceed 30 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later, and only one extension may be granted.

~~(f) Seven copies of the petition for a writ of certiorari, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court.~~

Rule 49. Petition for writ of certiorari.

(a) Contents. The petition for a writ of certiorari shall contain, under appropriate headings and in the order indicated:

(a)(1) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed, except where the caption of the case in the Supreme Court contains the names of all parties.

(a)(2) A table of contents with page references.

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

(a)(4) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise and should not be argumentative or repetitious. General conclusions, such as "the decision of the Court of Appeals is not supported by the law or facts," are not acceptable. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the Supreme Court.

(a)(5) A reference to the official and unofficial reports of any opinions issued by the Court of Appeals.

(a)(6) A concise statement of the grounds on which the jurisdiction of the Supreme Court is invoked, showing:

(a)(6)(A) the date of the entry of the decision sought to be reviewed;

(a)(6)(B) the date of the entry of any order respecting a rehearing and the date of the entry and terms of any order granting an extension of time within which to petition for certiorari;

(a)(6)(C) reliance upon Rule 47(c), where a cross-petition for a writ of certiorari is filed, stating the filing date of the petition for a writ of certiorari in connection with which the cross-petition is filed; and

(a)(6)(D) the statutory provision believed to confer jurisdiction on the Supreme Court.

(a)(7) Controlling provisions of constitutions, statutes, ordinances, and regulations set forth verbatim with the appropriate citation. If the controlling provisions involved are lengthy, their citation alone will suffice and their pertinent text shall be set forth in the appendix referred to in subparagraph (10) of this paragraph.

(a)(8) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and its disposition in the lower courts. There shall follow a statement of the facts relevant to the issues presented for review. All statements of fact and references to the proceedings below shall be supported by citations to the record on appeal or to the opinion of the Court of Appeals.

(a)(9) With respect to each question presented, a direct and concise argument explaining the special and important reasons as provided in Rule 46 for the issuance of the writ.

(a)(10) An appendix containing, in the following order:

(a)(10)(A) copies of all opinions, including concurring and dissenting opinions, and all orders, including any order on rehearing, delivered by the Court of Appeals in rendering the decision sought to be reviewed;

(a)(10)(B) copies of any other opinions, findings of fact, conclusions of law, orders, judgments, or decrees that were rendered in the case or in companion cases by the Court of Appeals and by other courts or by administrative agencies and that are relevant to the questions presented. Each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of its entry; and

(a)(10)(C) any other judicial or administrative opinions or orders that are relevant to the questions presented but were not entered in the case that is the subject of the petition.

If the material that is required by subparagraphs (7) and (10) of this paragraph is voluminous, they may be separately presented.

(b) *Form of petition; number of copies*. The cover of the petition for a writ of certiorari shall be white and shall otherwise comply with the form of a brief as specified in Rule 27. Seven copies of the petition, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court.

(c) No separate brief. All contentions in support of a petition for a writ of certiorari shall be set forth in the body of the petition, as provided in subparagraph (a)(9) of this rule. The petitioner shall not file a separate brief in support of a petition for a writ of certiorari. If the petition is granted, the petitioner will be notified of the date on which the brief in support of the merits of the case is due.

(d) Page limitation. The petition for a writ of certiorari shall be as short as possible, but may not exceed 20 pages, excluding the subject index, the table of authorities, any verbatim quotations required by subparagraph (a)(7) of this rule, and the appendix.

(e) Absence of accuracy, brevity, and clarity. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

Rule 50. ~~Brief in opposition~~Response to the petition; reply brief; brief of amicus curiae.

(a) *~~Brief in opposition~~Response to petition*. Within 30 days after service of a petition the respondent ~~shall~~ may file a response to the petition~~n opposing brief~~, disclosing any matter or ground ~~why~~ concerning whether the case should ~~not~~ be reviewed by the Supreme Court. The cover of the response shall be orange and ~~Such brief~~ shall otherwise comply with Rules 27 and, as applicable, 49. The number of copies to be filed shall be as described in Rule 49(b). ~~Seven copies of the brief in opposition, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court.~~

(b) *Page limitation*. A ~~brief in opposition~~response to the petition shall be as short as possible and may not, in any single case, exceed 20 pages, excluding the subject index, the table of authorities, any verbatim quotations required by Rule 49(a)(7), and the appendix.

(c) *Objections to jurisdiction*. No motion by a respondent to dismiss a petition for a writ of certiorari will be received. Objections to the jurisdiction of the Supreme Court to grant the petition for writ of certiorari may be included in the response~~brief in opposition~~.

(d) *Distribution of filings*. Upon the filing of a ~~brief in opposition~~response, the expiration of the time allowed therefor, or express waiver of the right to file, the petition and the response~~brief in opposition~~, if any, will be distributed by the clerk for consideration. However, if a cross-petition for a writ of certiorari has been filed, distribution of both it and the petition for a writ certiorari will be delayed until the filing of a ~~brief in opposition by~~response to the cross-~~respondent~~petition, the expiration of the time allowed therefor, or express waiver of the right to file.

(e) *Reply ~~brief~~*. A reply ~~brief~~ addressed to arguments first raised in the response ~~brief in opposition~~ may be filed by any petitioner no later than 5 days after service of the response, but distribution under paragraph (d) of this rule will not be delayed pending the filing of any ~~such brief~~reply. ~~Such brief~~A reply shall be as short as possible, but may not exceed five pages. ~~Such brief~~The cover of the reply shall be yellow and shall otherwise comply with Rule 27. The number of copies to be filed shall be as described in Rule 49~~50~~(b~~a~~).

(f) ~~Brief~~ *Motion of amicus curiae relating to petition*. A motion for leave to participate as ~~brief of~~ an amicus curiae in support of, or in opposition to, a petition for writ of certiorari shall be filed within 5 days ~~concerning a petition for certiorari may be filed only by leave of the Supreme Court granted on motion or at the request of the Supreme Court. The motion for leave shall be accompanied by a proposed amicus brief, not to exceed 20 pages, excluding the subject index, the table of authorities, any verbatim quotations required by Rule 49(a)(7), and the appendix. The proposed amicus brief shall comply with Rule 27, and, as applicable, Rule 49. The number of copies of the proposed amicus brief submitted to the Supreme Court shall be the same as dictated by Rule 48(f). A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. The motion for leave shall be filed on or before the date~~ of the filing of the timely petition or response of the party whose position the amicus curiae will support, unless the Supreme Court for cause shown otherwise orders. A motion for leave shall identify the interest of the movant, shall explain why the petition for writ of certiorari should or should not be granted, and shall explain the benefit that would be provided to the Supreme Court by a brief of amicus curiae on the merits if the petition is granted. Parties to the proceeding in the Court of Appeals may indicate their support for, or opposition to, the motion. Any response of a party to a motion for leave shall be filed within ~~seven~~ 7 days of service of the motion. The Supreme Court may elect to consider the motion in conjunction with its review of the petition for writ of certiorari. If the petition is granted and leave to participate as amicus curiae on the merits is granted, the timing for the filing of the brief of amicus curiae on

the merits and for any responsive brief of a party is governed by Rule 25. ~~If leave is granted, the proposed amicus brief will be accepted as filed and, unless the order granting leave otherwise indicates, amicus curiae also will be permitted to submit a brief on the merits, provided it is submitted in compliance with the briefing schedule of the party the amicus curiae supports. Denial of a motion for leave to file brief of an amicus curiae concerning a petition for certiorari shall not preclude a subsequent amicus motion relating to the merits after a grant of certiorari. All motions for leave to file brief of an amicus curiae on the merits after a grant of certiorari are governed by Rule 25.~~

(g) *Motion of amicus curiae filed after grant of petition.* All motions for leave to participate as an amicus curiae on the merits filed after a grant of a petition for writ of certiorari are governed by Rule 25.