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

Education Room
Thursday, November 14, 2013
12:00 p.m. to 1:30 p.m.

1.	Welcome and Approval of Minutes (Tab 1)	Joan Watt
2.	Public Comment to Proposed Rules 29 and 11 (Tab 2)	Joan Watt
3.	Proposed Language Addressing Addendums to Appellate Briefs (Rules 24, 58, and 27) (Tab 3)	Alison Adams-Perlac
4.	Rule 4(e) (Tab 4)	Judge Fred Voros
5.	Revised Rule 24 "Nature of the Case" Language (Tab 5)	Troy Booher
6.	Global Review of Rules Update (Tab 6)	Troy Booher
7.	Other Business	
8.	Adjourn	

Tab 1

MINUTES

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

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

Judicial Council Room
Wednesday, September 25, 2013
12:00 p.m. to 1:30 p.m.

PRESENT	**EXCUSED**
Joan Watt – Chair	Diane Abegglen
Judge Gregory Orme	
Judge Fred Voros	
Alison Adams-Perlac	
Troy Booher	
Paul Burke	
Marian Decker	
Alan Mouritsen	
Rodney Parker	
Bryan Pattison (by phone)	
Bridget Romano	
Clark Sabey	
Lori Seppi	
Ann Marie Taliaferro	
Mary Westby	

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

Ms. Watt welcomed everyone to the meeting.

Judge Voros moved to approve the minutes from the August 14, 2013 meeting. Ms. Seppi seconded the motion, and it passed unanimously.

Ms. Watt discussed moving the Global Rules discussion to the end of the agenda.

2. Committee Note to Rule 24 **Judge Gregory Orme**

Judge Orme discussed his proposals on a Committee Note to Rule 24. He stated that there was a consensus at the previous meeting that an example of a concise statement of the case would help. He stated that any of the three fit within the scope of the language of the rule, but asked what example the committee wants to hold out as the best one. Judge Voros and Ms. Decker reviewed the proposals at the end of the previous meeting and favored the second proposal. Ms. Watt agreed that the second proposal is the best. The longer one might be too much explanation, and the short one might not cover enough.

The proposed committee note with the second example states:

> The succinct statement of the nature of the case called for in Rule 24(a)(5) is intended to provide a brief explanation of the nature of the case for the purpose of orienting the reader as to the general context in which the appeal arises. It is not the place to identify all the issues on appeal, to detail the procedural history, or to make arguments. An example of what is contemplated follows.
>
> This case involves a dispute between two neighbors about the location of the boundary dividing their backyards. Defendants prevailed on a theory of boundary by acquiescence. Plaintiffs appeal, contending that the record boundary should be enforced, essentially pursuant to the doctrine of permissive use.

Judge Orme moved to adopt the Rule 24 committee note proposal using the second example. Judge Voros seconded the motion and it passed unanimously.

3. Proposed Language Addressing Addendums to Appellate Briefs (Rules 24 and 58) — **Alison Adams-Perlac**

Ms. Adams-Perlac discussed her proposals to address addendums involving non-public records in Rules 24 and 58. She stated that she looked at the Code of Judicial Administration. The first proposal specifically outlines each type of non-public record requiring a separate addendum. The second proposal generally states that the rule applies to records classified as something other than public. Under either proposal, if records in the addendum are not classified as public, they would be bound separately. Judge Voros noted that traditionally the addendum being bound separately has been based on size, not based on the type of record in the addendum. Ms. Romano stated that if the records are not public, they should always be bound separately, but if large, they should also be bound separately. Mr. Sabey agreed that that option should be preserved. Judge Voros wondered if the sentence about Table of Contents was something drafted by Ms. Adams-Perlac, or if it is a holdover. Adams-Perlac stated the sentence is a holdover.

Judge Voros recommended a separate subsection that provides for private records being bound separately. He asked what would happen if there were public records in an addendum with private records. He wondered if parties would have to bind the whole thing separately or bind the public documents and the private records separate from each other. Judge Orme said almost everything in a juvenile court case is protected. Mr. Sabey stated his concerns that the rule would be over broad if protected records had to be bound separately with unprotected records. Ms. Romano agreed.

Judge Voros asked what would happen under the proposal if a party had a thick addendum and one with non-public records. He stated there would be two separately bound addenda – one large, and one for non-public records. He suggested that the committee come up with a name for the special addenda, or something that flags it to have it treated differently. Ms. Romano suggested that the rule require that the addenda with non-public records be bound in a different color.

Ms. Adams-Perlac asked which version the committee preferred, version one, delineating the kinds of records, or version two stating "other than public". Ms. Westby stated that she preferred version two. Ms. Watt agreed that version two encompassed Ms. Adams-Perlac's concern that the committee would not need to amend it if other types of records are created.

Ms. Westby suggested that the change to Rule 58 could be as simple as requiring any addenda in juvenile cases to be separately bound, since the rule applies only to juvenile court cases. Just juvenile court cases which go to briefing. She stated the bypass procedure would wrap back into Rule 202.

The committee agreed that Ms. Adams-Perlac will reconfigure her proposals for Rules 24 and 58and recirculate them for the next meeting.

4. Rule 8A **Clark Sabey**

Mr. Sabey discussed his proposal on Rule 8A. Mr. Sabey discussed his proposal with the staff attorneys from the Court of Appeals. He stated they agreed it would be helpful to describe it as a Motion for Emergency Relief, rather than a Petition, to help clarify that it is attached to an existing case, since it does not stand alone. He stated that seemed to be the primary issue addressed in *Snow, Christensen & Martineau v. Lindberg*, 2009 UT 72, 222 P.3d 1141. This amendment was drafted in response to that case. Mr. Parker stated that he thought there was a mechanism that an 8A petition could be filed on its own, without a jurisdictional basis; as long jurisdiction was fixed reasonably promptly, that a petition could lead out. Mr. Sabey stated that the mechanism does exist, and that the word "contemporaneously" in his proposal addresses that issue. He stated that clerks should not reject the motion if an underlying petition is filed within a few hours. However, the court has to have some reassurance that its jurisdiction has been properly invoked.

Mr. Booher stated that calling it a motion is helpful, but that doing so is also misleading and makes it seems substantive vs. procedural. He stated that the intent seems to be trying to expedite the relief sought for in something else, but the motion for emergency relief makes it sound like the basis for the relief you are seeking is contained in this document. He stated that the relief has to be requested through a motion to stay under Rule 8A. He asked what the relief is after *Snow, Christensen*, other than to expedite. Mr. Booher stated the relief is in the jurisdictional document. He stated that a motion under the proposed rule is really a motion to expedite the decision on something else you file. Mr. Sabey said he thinks it can be. Judge Voros asked what else it can be besides a motion to expedite. He stated that it is a motion for expedited treatment. Ms. Romano asked if it is possible in an interlocutory appeal, to file a 23C to stay the proceedings. Mr. Booher stated the scope of the relief is determined by the other document you file. The document under this rule just determines when you will get that relief. He stated that this is what leads to the confusion. It looks like the relief is stemming from the filing of the motion, when the relief is actually stemming from the other thing you filed.

Mr. Sabey stated that the relief asked for under Rule 8A is typically simple. Calling it a motion for expedited decision exacerbates the problem because it suggests that you are asking for the whole case to be resolved, rather than just part of it, as suggested by the *Snow Christensen* case.

Judge Voros stated that what Mr. Booher is saying is that this document just speeds up the relief you get pursuant to another filing, and that Mr. Sabey is saying the relief is only sped up on the part on which a party is requesting.

Judge Voros discussed a hypothetical case involving an order to medicate an attorney's client the same day at 5:00 p.m. He stated that the attorney needs to stay the order in district court, and that the 23C Motion does not get the attorney there. The attorney would need to file a motion under 23C plus something else, e.g., a stay motion.

Judge Voros left the meeting at 12:30 p.m.

Ms. Westby stated that under Rule 5, a motion to stay will not be considered before a petition. Mr. Booher stated that the requirement is impossible. He stated that he can draft a motion to stay in a short

time, but not a Rule 5 petition. Mr. Sabey stated that is the debate about what Rule 8 accomplishes, and that he would like to keep that debate out of the committee's considerations of this rule.

Mr. Parker asked what the word "contemporaneously" means, and how much time it allows. Ms. Westby stated that the court will start looking at the circumstances when this motion under this rule is filed, but they will not act on it until a writ or petition is filed. Mr. Sabey stated that the question comes back to what the committee should do with Rule 8A. Ms. Westby stated that a Rule 5 petition is not speedy and adequate if you are medicating at 5 p.m. She stated that a writ should be filed. Since a writ opens the case, she stated, that is your provisional document.

Mr. Sabey stated that the question is whether Rule 8 applies to stays, and can a party rely on that instead of a Rule 19 petition. He stated that he cannot answer that question. Mr. Booher stated that the opinion suggests you can, but it is not clear.

Mr. Sabey stated that he would prefer to leave the Rule 8 discussion aside. He stated that the Court of Appeals attorneys felt strongly about using the word "contemporaneously". Whether you think Rule 8 or Rule 19 gets you there, even if it is a few hours or a couple of days, you need to get a jurisdictional document to the court because the court doesn't look at motion without jurisdiction.

Mr. Parker asked what does contemporaneously mean. Ms. Romano suggested adding "absent extraordinary circumstances," before "must be contemporaneously filed with that motion." Mr. Sabey stated that using "contemporaneously" gives the clerk's office some leeway to look at it, but a jurisdictional document is still needed. Ms. Westby stated that there would be no decision without a jurisdictional document. Mr. Burke stated that he reads it that the petition/writ would have to be filed at the same time as the 23C motion, and that he would not have known differently if not for being in the meeting. Ms. Watt stated that a party can file a motion and then file the jurisdictional document later. Ms. Westby agreed and said the same thing happens in the Supreme Court.

Ms. Watt asked if there is a standard order on interlocutories now. She stated that she tells all her attorneys they must have a petition and the stay together. She stated that is the practice right now. Mr. Sabey stated that is the right mind set. Ms. Watt asked if what is being allowed is the filing and you can follow up with the jurisdictional document, whether the committee wanted to capture that practice in the rule. Ms. Westby and Mr. Sabey stated that these are exceptions, and they do not want the rule to invite this to be the practice. This procedure should be reserved for extraordinary circumstances.

Mr. Booher asked whether a party can file multiple Rule 5 petitions from the same order if they are within 20 days. For example, can a party say they care about and issue right now, but in 19 days file an amended Rule 5 petition including the other issues? Mr. Sabey stated that he does not see why that cannot be done.

Mr. Booher stated that the purpose of this rule is to deal with extraordinary cases, and it is not being used that way which is why the proposal tries to temper the use of it. The rule is for those special cases, so we need to make sure people know what they can do. He stated he thinks it is important that people in extraordinary cases know they can use it.

Ms. Westby stated the proposal covers it. The proposal gives a party the opportunity for relief. It reflects the *Lindberg* case. Mr. Booher suggested adding a committee note pointing people to the *Lindberg* case. Ms. Romano stated that she thought the reference was already in the Advisory Committee Note. She also stated that it would be beneficial for the Appellate Section to have a CLE addressing this change.

Ms. Watt asked if the committee is comfortable that the proposal reflects what was said in *Lindberg*. Ms. Westby stated that *Lindberg* gave provisional relief, but declined to file. She stated that the proposal reflects the takeaway, that a jurisdictional document is required, and that this relief has to be narrowly tailored to the emergency aspects of your case.

Ms. Watt stated that by using the word "contemporaneously", "simultaneously" is unnecessary. Judge Orme stated that there is more wiggle room in "contemporaneously" than in "simultaneously". Mr. Parker stated that the proposal really trying to say that if you have an emergency, the court cannot solve it until you file the underlying document. Ms. Romano stated that the reading is narrowed where it states the jurisdictional document must have preceded the motion, or been contemporaneously filed. She reads that statement to mean before or at the same time.

The Committee discussed changes to section (a) as follows:

> (a) Emergency relief; exception. Emergency relief is any relief sought within a time period shorter than specified by otherwise applicable rules. A motion for emergency relief filed under this Rule is not sufficient to invoke the jurisdiction of the appellate court. ~~A separately filed petition or notice that invokes the appellate jurisdiction of the court under another provision of these rules must have preceded the motion for emergency relief or must be contemporaneously filed with that motion.~~ No emergency relief will be granted in the absence of a separately filed petition or notice under another provision of these rules that invokes the appellate jurisdiction of the court.

Ms. Romano asked whether something is needed in section (d) to tie it back to section (a). Ms. Westby stated that the "unless" clause is not deciding the petition, it is just giving a party time to respond. She stated that a party would have to invoke jurisdiction. Ms. Watt asked whether to committee wants to tie back in and clarify in section (d) that jurisdiction still has to be invoked. Mr. Sabey stated that it is not necessary. Ms. Romano asked whether (d) is referring to a response to 23C or to the underlying petition.

Mr. Booher stated that this provision is what is confusing. "No motion shall be granted." The motion is just requesting expedited relief. The response referred to in section (d) is no reason to grant relief. Mr. Parker stated the provision is clear to him. Mr. Booher stated that the motion just asks the court to make a decision fast. Mr. Sabey stated that subpart (d) is clearly limited to when a party has to file a response to a 23C motion for emergency relief. He said that the "unless" clause states the circumstance where the court can grant relief prior to receiving that response. He stated that (d) says nothing about jurisdiction, that it is not linked to section (a).

Mr. Booher asked whether a response to a rule 19 petition is the same as a response to a rule 23C motion. Mr. Booher stated that all the motion is asking for is to speed up the relief, not for an independent claim for relief. Mr. Sabey stated his disagreement, that it is tied to the relief. He stated that it is a subset of the relief asked for in the jurisdictional document. Ms. Romano stated that the response can be the same, but sometimes they are different. They can be separate. Mr. Sabey stated that he does not think the issue needs to be addressed here. He stated that a Rule 19 petition might be coextensive with a Rule 23c motion, but it might not be.

Mr. Booher stated that the court does not want to review Rule 19 or Rule 5 petitions before addressing a Motion for Emergency Relief, but it wants to know that it exists. Mr. Sabey stated that it depends on the case. The scope of relief may vary, or it may be the same.
Ms. Romano – we can't have a rule full of illustrative examples.

Mr. Parker stated that he would strike, "No emergency relief will be granted in the absence of a separately filed petition or notice that invokes the jurisdiction of the court under another provision of these rules." The committee discussed this suggestion and settled on keeping the sentence, but deleting "under another provision of these rules."

The proposal then read as follows:

> (a) Emergency relief; exception. Emergency relief is any relief sought within a time period shorter than specified by otherwise applicable rules. A motion for emergency relief filed under this Rule is not sufficient to invoke the jurisdiction of the appellate court. ~~A separately filed petition or notice that invokes the appellate jurisdiction of the court under another provision of these rules must have preceded the motion for emergency relief or must be contemporaneously filed with that motion.~~ No emergency relief will be granted in the absence of a separately filed petition or notice that invokes the appellate jurisdiction of the court.

Mr. Parker moved to approve the Rule 8A proposal with the amendments. Mr. Booher seconded the motion and it passed unanimously.

5. Committee Note to Rule 44 — Clark Sabey

Mr. Sabey discussed his proposed committee note to Rule 44. He stated that the intent was to clarify how Rule 44 works and to update it. He also stated that he deleted the reference to Rule 4C, the rule was changed from 4C long ago. Ms. Westby stated that she thinks Mr. Sabey's proposal captures his intent.

Mr. Booher moved to approve the Rule 44 proposal. Mr. Mouritsen seconded the motion, and it passed unanimously.

6. Rule 5 — Committee

This item was tabled for discussion after the Global Review of Rules update.

7. Global Review of Rules Update — Troy Booher

Mr. Booher discussed proposed Rule 3 updates. He stated that the intent was to update 3(e) to account for e-filing, and to point them to the requirements of the court in which the appeal is taken. Mr. Parker stated that the update is a good idea. He inquired as to the purpose of the last sentence in (e). He asked whether it has internal significance.

Ms. Westby agreed that the sentence is for the court, since this information is not always obvious from the docket.

Mr. Parker moved to adopt the Rule 3 proposal. Ms. Decker seconded the motion and it passed unanimously.

The Global Rules Review was then tabled for further discussion at the next meeting.

8. 2014 Meeting Schedule — Joan Watt

The committee discussed the 2014 meeting schedule. Ms. Adams-Perlac suggested a standing date for committee meetings. Judge Orme suggested meeting on the first Thursday of the month at noon, except for when Mr. Pattison has a disciplinary meeting, in which case we will have it on the first Friday of the month at noon.

The next meeting will be held on November 14th, 2013 at 12:00 p.m. There will be no December meeting. The first meeting of the year will be January 9, 2014 at 12:00 p.m. Meetings will be held the first

Friday of the month in February, April, and June. Meetings will be held on the first Thursday of all other months.

Ms. Adams-Perlac will send outlook appointments for all of the meetings.

9. Other Business

No other business.

10. Adjourn

Mr. Parker moved to adjourn the meeting. The motion passed unanimously, and the meeting adjourned at 1:16 p.m.

Tab 2

Rule 11. The record on appeal.

(a) Composition of the record on appeal. The original papers and exhibits filed in the trial court, including the presentence report in criminal matters, the transcript of proceedings, if any, the index prepared by the clerk of the trial court, and the docket sheet, shall constitute the record on appeal in all cases. A copy of the record certified by the clerk of the trial court to conform to the original may be substituted for the original as the record on appeal. Only those papers prescribed under paragraph (d) of this rule shall be transmitted to the appellate court.

(b) Pagination and indexing of record.

(b)(1) Immediately upon filing of the notice of appeal, the clerk of the trial court shall securely fasten the record in a trial court case file, with collation in the following order:

(b)(1)(A) the index prepared by the clerk;

(b)(1)(B) the docket sheet;

(b)(1)(C) all original papers in chronological order;

(b)(1)(D) all published depositions in chronological order;

(b)(1)(E) all transcripts prepared for appeal in chronological order;

(b)(1)(F) a list of all exhibits offered in the proceeding; and

(b)(1)(G) in criminal cases, the presentence investigation report.

(b)(2)(A) The clerk shall mark the bottom right corner of every page of the collated index, docket sheet, and all original papers as well as the cover page only of all published depositions and the cover page only of each volume of transcripts constituting the record with a sequential number using one series of numerals for the entire record.

(b)(2)(B) If a supplemental record is forwarded to the appellate court, the clerk shall collate the papers, depositions, and transcripts of the supplemental record in the same order as the original record and mark the bottom right corner of each page of the collated original papers as well as the cover page only of all published depositions and the cover page only of each volume of transcripts constituting the supplemental record with a sequential number beginning with the number next following the number of the

last page of the original record.

(b)(3) The clerk shall prepare a chronological index of the record. The index shall contain a reference to the date on which the paper, deposition or transcript was filed in the trial court and the starting page of the record on which the paper, deposition or transcript will be found.

(b)(4) Clerks of the trial and appellate courts shall establish rules and procedures for checking out the record after pagination for use by the parties in preparing briefs for an appeal or in preparing or briefing a petition for writ of certiorari.

(c) Duty of appellant. After filing the notice of appeal, the appellant, or in the event that more than one appeal is taken, each appellant, shall comply with the provisions of paragraphs (d) and (e) of this rule and shall take any other action necessary to enable the clerk of the trial court to assemble and transmit the record. A single record shall be transmitted.

(d) Papers on appeal.

(d)(1) Criminal cases. All of the papers in a criminal case shall be included by the clerk of the trial court as part of the record on appeal.

(d)(2) Civil cases. Unless otherwise directed by the appellate court upon sua sponte motion or motion of a party, the clerk of the trial court shall include all of the papers in a civil case as part of the record on appeal.

(d)(3) Agency cases. Unless otherwise directed by the appellate court upon sua sponte motion or motion of a party, the agency shall include all papers in the agency file as part of the record.

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

(e)(1) Request for transcript; time for filing. Within 10 days after filing the notice of appeal, the appellant shall, order the transcript(s) online at www.utcourts.gov, specifying the entire proceeding or parts of the proceeding to be transcribed that are not already on file. The appellant shall serve on the appellee a designation of those parts of the proceeding to be transcribed. If the appellant desires a transcript in a

compressed format, appellant shall include the request for a compressed format within the request for transcript. If no such parts of the proceedings are to be requested, within the same period the appellant shall file a certificate to that effect with the clerk of the appellate court and serve a copy of that certificate on the appellee.

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

(e)(3) ~~Statement of issues;~~ ~~c~~Cross-designation by appellee. ~~Unless~~ If the appellant does not order the entire transcript ~~is to be included~~, the appellee may ~~appellant shall, within 10 days after filing the notice of appeal, file a statement of the issues that will be presented on appeal and shall serve on the appellee a copy of the request or certificate and a copy of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall~~, within 10 days after the service of the ~~request or certificate and the statement~~ designation or certificate described in paragraph (e)(1) of this rule ~~of the appellant~~, file and serve on the appellant a designation of additional parts to be included. ~~Unless within 10 days after service of such designation the appellant has requested such parts and has so notified the appellee, the appellee may within the following 10 days either request the parts or move in the trial court for an order requiring the appellant to do so.~~

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

court. The clerk of the trial court shall transmit the statement to the clerk of the appellate court within the time prescribed by Rule 12(b)(2). The clerk of the trial court shall transmit the index of the record to the clerk of the appellate court upon approval of the statement by the trial court.

(g) Statement of evidence or proceedings when no report was made or when transcript is unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, or if the appellant is impecunious and unable to afford a transcript in a civil case, the appellant may prepare a statement of the evidence or proceedings from the best available means, including recollection. The statement shall be served on the appellee, who may serve objections or propose amendments within 10 days after service. The statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval and, as settled and approved, shall be included by the clerk of the trial court in the record on appeal.

(h) Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is misstated or is omitted from the record by error, ~~or~~ by accident, or because the appellant did not order a transcript of proceedings that the appellee needs to respond to issues raised in the Brief of Appellant, ~~or is misstated,~~ the parties by stipulation, the trial court, or the appellate court, either before or after the record is transmitted, may direct that the omission or misstatement be corrected and if necessary that a supplemental record be certified and transmitted. The moving party, or the court if it is acting on its own initiative, shall serve on the parties a statement of the proposed changes. Within 10 days after service, any party may serve objections to the proposed changes. All other questions as to the form and content of the record shall be presented to the appellate court.

Public Comments to Rule 29

I welcome the proposed change to URAP 11.

I practice in the civil arena, where there are frequently several hearings on partially dispositive motions. I've worried that the statement of issues might be interpreted to limit my client to the issues it lists. The result would be that, in attempting to save costs by avoiding having the record of all hearings transcribed, I might be prejudicing my client by burdening it with the issues listed in the statement (which is filed early in the process). If I simply order the entire record, I can preserve my client's time to work on its issues, perhaps raising others that become apparent through the briefing process.

This change resolves my concern, and I think will usually further the rules' goal to economically resolve disputes. Allowing the record to be supplemented in the few instances the appellee might be surprised by a particular issue raised in the appellant's brief should help avoid gamesmanship.

Posted by Bart Kunz August 21, 2013 11:03 AM

Re: URAP 11(e)(3): It appears to be unclear how this rule interacts with URAP 12(a)(2), which requires “a party requesting a transcript” to pay for the transcription. If the appellee designates additional proceedings to be transcribed, is he the party requesting a transcript and responsible to pay for the parts of the transcript it requests? If not, does the appellant have a chance to object to this extra designation before it is tacked on to its bill? If the appellant is expected to pay for the extra designation and cannot object, what would stop an appellee from requesting non-relevant portions of the transcript to increase an appellant’s upfront costs? While it could be argued that appellants would ultimately get their money back if they prevailed, this would only apply if the appellant prevailed. There does not appear to be any means under URAP 34 for the losing party to recover costs from the prevailing party, even if the prevailing party imposed unnecessary costs upon the losing party. However, the appellee should not be responsible for paying transcript costs of portions of the transcript that should have been designated by the appellant originally, and the rules should not encourage an appellant to under-designate in hopes that the appellee would pick up the extra upfront costs.

The root problem is that the rules with respect to creation of the record create competing incentives for an appellee. Rule 11(e)(2) provides that the appellee is not obligated “to correct appellant’s deficiencies in providing the relevant portions of the transcript.” This encourages gamesmanship and discourages appellees from ensuring that a full and complete record is presented to the appellate court. However, not doing so would be a real risk for an appellee, as the appellate court retains the discretion to review the entire record on appeal, see, e.g., Brown v. State, 2013 UT 42, ¶ 106 n.77, ___ P.3d ___ (Lee, J., dissenting), and any hearing that has not been transcribed is not part of the record on appeal under URAP 11(b). The Committee should resolve these

competing incentives in favor of creation of a full record by (1) requiring the appellee to request supplementation of any parts of the record that contain evidence in favor of the court's decision, and requiring the appellant to pay for that transcription; and (2) allowing the appellee to request other portions of the record that are not necessary to appellant's marshaling burden, but that appellee wants to be in the record, at its own expense. Both transcripts would be taxable costs on appeal.

Posted by Nathan Whittaker August 21, 2013 10:33 AM

Rule 29. **Effective July 16, 2013 under Rule 11-105(5). Subject to change after the comment period.**

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

~~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.

Public Comments to Rule 29

Re: Rule 29(c). I agree with Christopher Ballard's comments opposing the proposed amendment. It would be unfair to allow new issues be raised on rebuttal, leaving the appellee with no chance to respond. Both sides should have equal opportunity to answer questions from the court.

Posted by Deborah Bulkeley August 23, 2013 11:58 AM

I oppose the amendment to rule 29(c) because it creates a potential unfairness to Appellees. The amendment would allow a court to question Appellant's counsel about a new issue during rebuttal argument. When a court does so, it denies Appellee's counsel the opportunity to respond to Appellant's argument on the new issue and to provide the court with Appellee's perspective on the court's question.

When neither Appellant's counsel nor the court addresses an issue raised in the briefs during Appellant's initial argument, and the court does not question Appellee's counsel about the undiscussed issue during his argument, then Appellee's counsel should be able to assume that the briefing has fully addressed all of the court's concerns on that issue. That is, unless the court raises the issue for the first time during Appellant's rebuttal argument. Appellee's counsel would have likely chosen to use some of his limited oral argument time to address the previously ignored issue had he known that, despite the briefing, the court was concerned enough to ask a question about it. Raising an issue for the first time during rebuttal is unfair to Appellees.

Current rule 29(c) ensures fairness. Although it allows Appellants the last word at argument, it limits an Appellant's reply argument "to answering points made by appellee" without also allowing the court to raise new issues during the rebuttal argument. This ensures that Appellee's counsel will have the same opportunity as Appellant's counsel to address the court's questions on all of the issues raised at oral argument.

The current rule does not limit the court's opportunity to ask questions about any issue in the briefs. Rather, it limits only the timing of those questions to ensure fairness to both sides. If the court's concerns about an issue are not adequately addressed by the briefs, then the court should raise those concerns during either Appellant's initial argument or the Appellee's argument, thereby allowing both sides equal opportunity to address the court's questions.

Posted by Christopher Ballard August 23, 2013 10:39 AM

I welcome the proposed change to URAP 11.

I practice in the civil arena, where there are frequently several hearings on partially dispositive motions. I've worried that the statement of issues might be interpreted to limit my client to the issues it lists. The result would be that, in attempting to save costs by avoiding having the record of all hearings transcribed, I might be prejudicing my client

by burdening it with the issues listed in the statement (which is filed early in the process). If I simply order the entire record, I can preserve my client's time to work on its issues, perhaps raising others that become apparent through the briefing process.

This change resolves my concern, and I think will usually further the rules' goal to economically resolve disputes. Allowing the record to be supplemented in the few instances the appellee might be surprised by a particular issue raised in the appellant's brief should help avoid gamesmanship.

Posted by Bart Kunz August 21, 2013 11:03 AM

Re: URAP 11(e)(3): It appears to be unclear how this rule interacts with URAP 12(a)(2), which requires “a party requesting a transcript” to pay for the transcription. If the appellee designates additional proceedings to be transcribed, is he the party requesting a transcript and responsible to pay for the parts of the transcript it requests? If not, does the appellant have a chance to object to this extra designation before it is tacked on to its bill? If the appellant is expected to pay for the extra designation and cannot object, what would stop an appellee from requesting non-relevant portions of the transcript to increase an appellant’s upfront costs? While it could be argued that appellants would ultimately get their money back if they prevailed, this would only apply if the appellant prevailed. There does not appear to be any means under URAP 34 for the losing party to recover costs from the prevailing party, even if the prevailing party imposed unnecessary costs upon the losing party. However, the appellee should not be responsible for paying transcript costs of portions of the transcript that should have been designated by the appellant originally, and the rules should not encourage an appellant to under-designate in hopes that the appellee would pick up the extra upfront costs.

The root problem is that the rules with respect to creation of the record create competing incentives for an appellee. Rule 11(e)(2) provides that the appellee is not obligated “to correct appellant’s deficiencies in providing the relevant portions of the transcript.” This encourages gamesmanship and discourages appellees from ensuring that a full and complete record is presented to the appellate court. However, not doing so would be a real risk for an appellee, as the appellate court retains the discretion to review the entire record on appeal, see, e.g., Brown v. State, 2013 UT 42, ¶ 106 n.77, ___ P.3d ___ (Lee, J., dissenting), and any hearing that has not been transcribed is not part of the record on appeal under URAP 11(b). The Committee should resolve these competing incentives in favor of creation of a full record by (1) requiring the appellee to request supplementation of any parts of the record that contain evidence in favor of the court’s decision, and requiring the appellant to pay for that transcription; and (2) allowing the appellee to request other portions of the record that are not necessary to appellant’s marshaling burden, but that appellee wants to be in the record, at its own expense. Both transcripts would be taxable costs on appeal.

Posted by Nathan Whittaker August 21, 2013 10:33 AM

Tab 3

Rule 24(a)(11)-(12)

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

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

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

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

(a)(12) A private addendum to the brief or a statement that no private addendum is necessary under this paragraph. The private addendum shall be bound separately from the brief, and shall contain a table of contents.

(a)(12)(A) The private addendum shall contain any records that are classified as something other than public under the Utah Code of Judicial Administration, rule 4-202.02.

Rule 58

(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. 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. Child welfare records shall be bound separately in a private addendum as described in rule 24(a)(12).

(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.

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; 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. <u>The cover of an addendum shall be the same color as the brief with which it is filed, unless it is a private addendum, which shall have a purple cover.</u> All brief covers shall be of heavy cover stock. There shall be adequate contrast between the printing and the color of the cover. The cover of all briefs shall set forth in the caption the full title given to the case in the court or agency from which the appeal was taken, as modified pursuant to Rule 3(g), as well as the designation of the parties both as they appeared in the lower court or agency and as they appear in the appeal. In addition, the covers shall contain: the name of the appellate court; the number of the case in the appellate court opposite the case title; the title of the document (e.g., Brief of Appellant); the nature of the proceeding in the appellate court (e.g., Appeal, Petition for Review); the name of the court and judge, agency or

board below; and the names and addresses of counsel for the respective parties designated as attorney for appellant, petitioner, appellee, or respondent, as the case may be. The names of counsel for the party filing the document shall appear in the lower right and opposing counsel in the lower left of the cover. In criminal cases, the cover of the defendant's brief shall also indicate whether the defendant is presently incarcerated in connection with the case on appeal and if the brief is an Anders brief.

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

Tab 4

Rule 4. Appeal as of right: when taken.

. . .

(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.

. . .

(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. Whether the movant filed a notice of appeal pursuant to subsection (c) is not relevant to the determination of excusable neglect or good cause. 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.

. . .

Tab 5

Utah State Courts

Alison Adams-Perlac <alisonap@utcourts.gov>

Rule 24 Amendments

tbooher@zjbappeals.com <tbooher@zjbappeals.com> Fri, Sep 27, 2013 at 3:18 PM
To: Alison Adams-Perlac <alisonap@utcourts.gov>, Alan Mouritsen <amouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, Bridget Romano <bromano@utah.gov>, "Bryan J. Pattison" <bpattison@djplaw.com>, Clark Sabey <clarks@utcourts.gov>, Diane Abegglen <dianea@utcourts.gov>, Joan Watt <jwatt@sllda.com>, Judge Fred Voros <jfvoros@utcourts.gov>, Judge Gregory Orme <jorme@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>

Committee,

I was involved in a moot today for an appeal in which the attached briefs were filed. (Alan was too.) The attachments are two opening briefs and a response brief filed in the Ninth Circuit. The Federal Rules of Appellate Procedure do not contemplate an "Introduction" section prior to the jurisdictional statement or statement of the issues, but all three briefs have one. And I found the introduction in each brief to be tremendously helpful.

I would like to bring up as food for thought whether we want to eliminate entirely the nature of the case and just request an introduction for briefs. As long as the introduction counts toward the word limit, it's not clear why that it not a better solution.

I know these thoughts are tardy with regard to rule 24, but since I just read these briefs this morning, I just had the thought.

Troy L. Booher

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3 attachments


Intervenors Opening Brief.pdf
376K


State of Washington Opening Brief.pdf
446K


Stormans Response Brief (final).pdf
481K

Tab 6

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 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 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.

(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~~g~~) 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.

(i) 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.

Rule 19. Extraordinary writs.

(a) Petition for extraordinary writ to a judge or agency; petition; service and filing. An application for an extraordinary writ referred to in Rule 65B, Utah Rules of Civil Procedure, directed to a judge, agency, person or entity shall be made by filing a petition with the clerk of the appellate court. Service of the petition shall be made on the respondent judge, agency, person, or entity and on all parties to the action or case in the trial court or agency. In the event of an original petition in the appellate court where no action is pending in the trial court or agency, the petition shall be served personally on the respondent judge, agency, person or entity and service shall be made by the most direct means available on all persons or associations whose interests might be substantially affected.

(b) *Contents of petition and filing fee*. A petition for an extraordinary writ shall contain the following:

(b)(1) A statement of all persons or associations, by name or by class, whose interests might be substantially affected;

(b)(2) A statement of the issues presented and of the relief sought;

(b)(3) A statement of the facts necessary to an understanding of the issues presented by the petition;

(b)(4) A statement of the reasons why no other plain, speedy, or adequate remedy exists and why the writ should issue;

(b)(5) Except in cases where the writ is directed to a district court, a statement explaining why it is impractical or inappropriate to file the petition for a writ in the district court;

(b)(6) Copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition;

(b)(7) A memorandum of points and authorities in support of the petition; and

(b)(8) The prescribed filing fee, unless waived by the court.

(b)(9) Where emergency relief is sought, the petition must comply with Rule ~~8A~~ 23C(b), including any additional requirements set forth by that subpart.

(b)(10) Where the subject of the petition is an interlocutory order, the petition must state whether a petition for interlocutory appeal has been filed and, if so, summarize its status or, if not, state why interlocutory appeal is not a plain, speedy or adequate remedy.

(c) *Response to petition* . The judge, agency, person, or entity and all parties in the action other than the petitioner shall be deemed respondents for all purposes. Two or more respondents may respond jointly. If any respondent does not desire to appear in the proceedings, that respondent may advise the clerk of the appellate court and all parties by letter, but the allegations of the petition shall not thereby be deemed admitted. Where emergency relief is sought, Rule ~~8A~~ 23C(d) shall apply. Otherwise, within seven days after service of the petition, any respondent or any other party may file a response in opposition or concurrence, which includes supporting authority.

(d) *Review and disposition of petition*. The court shall render a decision based on the petition and any timely response, or it may require briefing or the submission of further information, and may hold oral argument at its discretion. If additional briefing is required, the briefs shall comply with Rules 24 and 27. Rule ~~8A~~ 23C(f) applies to requests for hearings in emergency matters. With regard to emergency petitions submitted under Rule ~~8A~~ 23C, and where consultation with other members of the court cannot be timely obtained, a single judge or justice may grant or deny the petition, subject to review by the court at the earliest possible time. With regard to all petitions, a single judge or justice may deny the petition if it is frivolous on its face or fails to materially comply with the requirements of this rule or Rule 65B, Utah Rules of Civil Procedure. The denial of a petition by a single judge or justice may be reviewed by the appellate court upon specific request filed within seven days of notice of disposition, but such request shall not include any additional argument or briefing.

(e) *Transmission of record*. In reviewing a petition for extraordinary writ, the appellate court may order the record, or any relevant portion thereof, to be transmitted.

(f) *Number of copies*. For a petition presented to the Supreme Court, petitioner shall file with the clerk of the court an original and five copies of the petition. For a petition pending in the Supreme Court, respondent shall file with the clerk of the court an original and five copies of the response. For a petition presented to the Court of Appeals, petitioner shall file with the clerk of the court an original and four copies of the petition. For a petition pending in the Court of Appeals, respondent shall file with the clerk of the court an original and four copies of the response.

(g) *Issuance of extraordinary writ by appellate court sua sponte*. The appellate court, in aid of its own jurisdiction in extraordinary cases, may issue a writ of certiorari sua sponte directed to a judge, agency, person, or entity. A copy of the writ shall be served on the named respondents in the manner and by an individual authorized to accomplish personal service under Rule 4, Utah Rules of Civil Procedure. In addition, copies of the writ shall be transmitted by the clerk of the appellate court, by the most direct means available, to all persons or associations whose interests might be substantially affected by the writ. The respondent and the persons or associations whose interests are substantially affected may, within four days of the issuance of the writ, petition the court to dissolve or amend the writ. The petition shall be accompanied by a concise statement of the reasons for dissolution or amendment of the writ.

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.

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.

(~~e~~f) *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 ~~answer~~response, unless otherwise ordered by the court. A petition for rehearing will not be granted in the absence of a request for a response~~n answer~~.

(~~b~~f) *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.

(~~c~~j) *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.

(~~d~~k) *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.

(~~e~~l) *Amicus curiae*. An amicus curiae may not file a petition for rehearing but may file a~~n answer~~ response to a petition if the court has requested a~~n answer~~ response under subparagraph (~~a~~e) 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.